S234969

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

DOUGLAS TROESTER,

Plaintiff and Appellant,

v.

STARBUCKS CORPORATION,

Defendant and Respondent.

ON A CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CASE NO. 14-55530

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STARBUCKS CORPORATION

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RESPONDENT'S ANSWER BRIEF ON THE MERITS

I. INTRODUCTION

California's *de minimis* rule applies to wage and hour claims under the California Labor Code for the following reasons. First, appellant Douglas Troester argues that this Court should not import a "federal" rule absent evidence of legislative intent. This argument fails because the *de minimis* rule is not a federal rule. Rather, it has been a backbone of California law for nearly 150 years and applied in a wide variety of contexts. There is no reason that this Court should not apply it to California wage claims too, as many courts have done.

Second, even if the *de minimis* rule was not already California law, this Court has long held that "[f]ederal decisions have frequently guided our interpretation of state labor provisions the language of which parallels that of federal statutes." (*Building Material & Const. Teamsters' Union, Local 216 v. Farrell* (1986) 41 Cal.3d 651, 658.) Troester argues this rule does not apply because state law somehow conflicts with federal decisions applying the *de minimis* rule. He argues there is a conflict because California requires employees to be paid for "all" hours worked, but his argument ignores the fact that the Fair Labor Standards Act imposes the same requirement. Thus, this Court may properly look to federal law—especially when the California Division of Labor Standards Enforcement has endorsed it for nearly three decades and the Legislature has ratified it by not changing it even though it has existed for so long.

Finally, Troester's position regarding "all" hours worked leads to absurdities. If an employee has to spend a few seconds leaving work after clocking out, then there is a labor law violation according to Troester. This means that there could be innumerable lawsuits over a few seconds of time. The *de minimis* rule is one of common sense and everyday practicality, which prevents such absurdities.

II. BACKGROUND

A. Troester Allegedly Worked Brief Moments "Off-The-Clock" On "Closing Shifts."

Troester worked in a Starbucks store in California from February 2008 until January 2011. (2 ER 38, 58, 61.) He initially worked as a "barista," an entry-level coffee-server, and then as a "shift supervisor." (2 ER 38, 61-62.)

Citing only a *summary* of the relevant facts, Troester argues that he performed tasks off-the-clock for "4 to 10 minutes on a daily basis." (AOB 6.) But that description does not accurately reflect what the undisputed evidence showed and the district court found. Rather, the amount "generally totaled *less than four minutes*" and only "rare[ly]" did it exceed that amount, in which case it still "nearly always was less than 10 minutes." (1 ER 5, emphasis added.)[1]

Troester contends that, as a shift supervisor, he performed unpaid work at the end of the business day, i.e., "closing" shifts. (2 ER 40, 82, 89.) According to Troester, at the end of a closing shift, he was responsible for using the store computer to transmit sales data to Starbucks headquarters—the "close store procedure." (2 ER 40, 87.) This procedure consisted only of selecting "close store" with the computer's mouse or keyboard, entering a password, and then pressing the "Y" key. (2 ER 40, 87-88.)

Troester contends that the computer system required that he clock out before initiating the close store procedure. (2 ER 41, 102-105.) He

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[1] Nor does the aggregate time—incurred over the course of nearly a year and a half—total 12 hours as Troester incorrectly estimates. (AOB 6.) Nearly 7 hours of this estimate is simply the result of Troester's attorney using incorrect figures or making typographical errors in his calculations. (5 ER 817-18, ¶¶ 3-10.) Another 2 hours of this estimate comes from Troester's attorney mistakenly considering the seconds in the alarm records but not in the punch records. (5 ER 818, ¶ 11.) The time at issue, therefore, totals just over 4 hours. (*Ibid.*)

claims that the close store procedure typically lasted "one minute to two minutes" before he activated the alarm. (2 ER 41, 113.) Immediately afterwards, Troester set the store alarm by typing a numeric code on the alarm panel near the computer. (2 ER 40, 84.) The alarm system required that employees leave the store within 60 seconds of setting the alarm. (2 ER 42, 85.) So, after activating the alarm, Troester immediately exited the store and locked the front door. (2 ER 42, 90, 93-94.) He estimates that it took 30 seconds to leave the store and as little as 15 seconds to lock the door. (2 ER 42, 92-94.) Troester claims that he then walked his co-workers to their cars, which took 35-45 seconds. (2 ER 42, 95.) This time—generally totaling less than four minutes—is the amount of off-the-clock time that Troester claims regularly occurred. (1 ER 5.) He wants to be paid for it. (2 ER 42, 99.)

Troester further claims that, on rare occasions, he performed additional tasks after clocking out and exiting the store. First, every "couple of months," he brought the store's patio furniture inside the store after he and the other employees forgot to do so while still on-the-clock. (ER 43, 99.) Second, every "couple of months," he opened the door so that another employee could retrieve a coat that he or she had left behind. (2 ER 43, 90-91, 101.) Third, two or three times a month, he stayed outside the store with a co-worker who was waiting for a ride. (*Ibid.*) Even when performing these rare additional tasks, the district court concluded that the total amount of time still "nearly always was less than 10 minutes." (1 ER 7.)

B. Troester Sues.

Troester sued on behalf of a putative class of Starbucks non-managerial employees in California who performed a "store closing procedure." (4 ER 743, ¶ 12.) He claims that Starbucks violated the California Labor Code by failing to pay minimum and overtime wages for

the alleged off-the-clock work. (4 ER 745, ¶¶ 20-43.) He also claims that, as a result of failing to pay for this time, Starbucks provided inaccurate wage statements (4 ER 748-49, ¶¶ 44-51), neglected to pay all wages due upon termination (4 ER 750-51, ¶¶ 52-62), and violated California's Unfair Competition Law (4 ER 751-52, ¶¶ 63-69). He also seeks injunctive relief. (4 ER 752.)

C. The District Court Grants Summary Judgment On All Of Troester's Claims.

Starbucks sought summary judgment on all of Troester's claims, arguing, *inter alia*, that any unpaid time was *de minimis* and thus not recoverable. (2 ER 23-26.)[2]

As the district court aptly put it, Troester claims that Starbucks "fail[ed] to pay him for the *brief* time he spent closing up the store after he clocked out," such as "the time he spent *walking out of the store* after activating the security alarm, [] the time he spent *turning the lock* on the store's front door, and [] the time he spent occasionally *reopening the door* so that a co-worker could retrieve a coat." (1 ER 1, emphasis added.)

Applying a *de minimis* test set forth in *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 692, and *Lindow v. U.S.* (9th Cir. 1984) 738 F.2d 1057, 1063, for wage claims brought under the Fair Labor Standards Act (FLSA), the district court concluded that the test equally

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[2] Starbucks also argued that the "closing" tasks that Troester performed only *rarely*—namely, occasionally allowing a co-worker to reenter the store to retrieve a coat, spending time with co-workers outside the store who were waiting for rides, and retrieving forgotten patio furniture—were not compensable "work" because Troester *chose* to perform them and/or Starbucks had no knowledge of them. (2 ER 26-30, 42-45, 90-91, 94-101.) For example, Troester admittedly waited with co-workers for rides not because his managers asked him to do it or knew about it, but because he felt he should. (2 ER 44, 96-98, 120, 127.) However, these and other alternative arguments raised are not at issue here. Nor did the district court reach them. (1 ER 7.)

applies to claims under the California Labor Code, and that these brief periods of time need not be paid. (1 ER 6 ["Through the de minimis defense, the law recognizes that '[s]plit-second absurdities are not justified by the actualities of working conditions.'"], quoting *Anderson, supra*, 328 U.S. at p. 692.)

In granting summary judgment for Starbucks, the district court applied the three factors courts consider in determining whether work time is *de minimis*: (1) the practical administrative difficulty of recording the time; (2) the aggregate amount of time; and (3) the regularity of the additional time. (1 ER 4, citing *Lindow, supra*, 738 F.2d at p. 1063.)

The district court first examined the second *Lindow* factor—the "aggregate amount of compensable time"—and cited with approval authority holding that "daily periods of approximately 10 minutes are de minimis." (1 ER 4, citations omitted.) The court analyzed "the undisputed facts" to determine how long it took Troester to perform each allegedly compensable task after clocking out: run the "close store" function and activate the alarm (about 1 minute)[3]; exit the store (30 seconds); lock the door (15 seconds to 2 minutes); and walk co-workers to their cars (45 seconds). (1 ER 5.) The court also found that other tasks—waiting with co-workers for rides, letting them back into the store, or bringing in patio furniture that Troester forgot to retrieve before clocking out— occurred on "rare" occasions and in any event took only "a few minutes." (*Ibid.*) The court concluded that, "[e]ven assuming that all of this time otherwise would be compensable 'work,' it generally totaled less than four minutes, and nearly always was less than 10 minutes." (*Ibid.* ["The duration of

[3] The undisputed evidence showed that, on average, Troester activated the alarm approximately one minute after clocking out; that he did so within two minutes on 90% of his shifts, and within 5 minutes on every shift. (1 ER 5.)

Troester's post-closing activities is *even briefer* than the time periods found de minimis in [other cases]."], emphasis added.)

In considering the first factor, the court held that the "'administrative difficulty of recording the additional time' also favors applying the de minimis defense." (1 ER 5.) The court held that Starbucks timekeeping system "could not feasibly capture the time at issue in this case." (1 ER 6.) This was in part because the software Starbucks used allegedly required Troester to clock out before initiating the store closing procedure—a task "which lasted one minute on average." (*Ibid.*) Moreover, the court found that it would be "impracticable" for Starbucks to capture the tasks Troester performed after completing the store closing procedure. (*Ibid.*) For example, employees "could not set the alarm prior to clocking out because the alarm became activated within one minute and would be triggered if the employees did not immediately exit the store." (*Ibid.*) Moreover, employees must "necessarily" clock out before they walk out of the store, lock the front door, and walk co-workers to their cars—tasks that took "minimal time." (*Ibid.*)

As to the third factor, the court agreed with other authority that the *de minimis* rule can be applied "even when a plaintiff alleges uncompensated time every day" where the first two *Lindow* factors are satisfied. (1 ER 6.)

Accordingly, the court dismissed the claim for unpaid wages, as well as the derivative claims for failure to provide accurate wage statements, failure to timely pay all final wages, and unfair competition. (1 ER 7.) The district court concluded:

> The brief moments that Plaintiff spent in and around the store after clocking out are an inevitable and incidental part of closing up any store at the end of business hours. There will always be some unaccounted-for seconds spent on setting an alarm, physically leaving the store, locking the door, and

> walking out at the end of a closing shift. But not every second can be or need be recorded and compensated.

(1 ER 6.)

D. The Ninth Circuit Requests That This Court Decide Whether The *De Minimis* Rule Applies To California Wage And Hour Claims.

Troester appealed the summary judgment decision and the Ninth Circuit held oral argument. Afterward, the Ninth Circuit asked this Court to decide whether the *de minimis* rule, as stated in *Anderson* and *Lindow*, applies to claims for unpaid wages under the California Labor Code. This Court granted the Ninth Circuit's request.

III. ARGUMENT

The *de minimis* rule was first adopted in FLSA cases in *Anderson*:

> When the matter in issue concerns only a few seconds or minutes of work beyond the scheduled working hours, such trifles may be disregarded. Split-second absurdities are not justified by the actualities of working conditions or by the policy of the Fair Labor Standards Act. It is only when an employee is required to give up a substantial measure of his time and effort that compensable working time is involved.

(*Anderson, supra,* 328 U.S. at p. 692.)

Relying on *Anderson*, the courts developed a three factor test to "determin[e] whether otherwise compensable time is *de minimis*": "(1) the practical administrative difficulty of recording the additional time; (2) the aggregate amount of compensable time; and (3) the regularity of the additional work." (*Lindow, supra*, 738 F.2d at p. 1063; see also, e.g., *Carlsen v. U.S.* (Fed. Cir. 2008) 521 F.3d 1371, 1380-1381 [following *Lindow*]; *De Asencio v. Tyson Foods, Inc.* (3d Cir. 2007) 500 F.3d 361, 374-375 [same]; *Reich v. N.Y.C. Transit Auth.* (2d Cir. 1995) 45 F.3d 646, 652 [same].)

As *Lindow* observed, the "*de minimis* rule concerns 'just plain everyday practicality.'" (*Lindow, supra,* 738 F.3d at p. 1063, quoting

Veech & Moon, *De Minimis Non Curat Lex* (1947) 45 Mich.L.Rev. 537, 551.) While "[m]ost courts have found daily periods of approximately 10 minutes *de minimis,*" "[t]here is no precise amount of time that may be denied compensation as *de minimis*." (*Id.* at p. 1062.) "No rigid rule can be applied with mathematical certainty. Rather, common sense must be applied to the facts of each case." (*Ibid.*)

This common sense and practical approach, "justified by industrial realities," is also embodied in the Code of Federal Regulations. (29 C.F.R. § 785.47 ["[I]nsubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded."].)

The *Lindow* test "reflects a balance between requiring an employer to pay for activities it requires of its employees and the need to avoid 'split-second absurdities' that 'are not justified by the actuality of the working conditions.'" (*Rutti v. Lojack Corp.* (9th Cir. 2010) 596 F.3d 1046, 1057, quoting *Lindow, supra*, 738 F.2d at p. 1062.) As Judge Posner of the Seventh Circuit has stated, the rule is often applied when "the harm is small but measuring it for purposes of calculating a remedy would be difficult, time-consuming, and uncertain, hence not worthwhile given that smallness." (*Mitchell v. JCG Industries, Inc.* (7th Cir. 2014) 745 F.3d 837, 841.)

These common sense principles, as explained below, apply equally to wage claims under the California Labor Code.

A. The *De Minimis* Rule Has Long Been A Central Component Of California Law, So It Is Not A Federal Rule.

Troester argues that this Court should reject application of a "federal" *de minimis* rule, assuming the *de minimis* rule is a *federal* rule. It is not. It "is a maxim of ancient origins, 'old' even in the infancy of the

nation," and it even informs whether rights under both the United States and California Constitutions have been violated. (*Gerawan Farming, Inc. v. Lyons* (2000) 24 Cal.4th 468, 514 [despite differences between the rights to freedom of speech under the First Amendment of the United States Constitution and under article I of the California Constitution, the *de minimis* rule applies to article I "as well"].)

The *de minimis* rule is "part of the established background of legal principles against which all enactments are adopted, and which all enactments (absent contrary indication) are deemed to accept." (*Wisconsin Dept. of Revenue v. Wrigley Co.* (1992) 505 U.S. 214, 231 (*Wrigley*).) In *Wrigley*, the Supreme Court interpreted 15 U.S.C. § 381, which "confers immunity from state income taxes on any company whose 'only business activities' in that State consist of 'solicitation of orders' for interstate sales." (*Id.* at p. 223.) Relying on the word "only," Wisconsin argued that the "plain language" of Section 381 bars "recognition of a *de minimis* exception" and thus a company loses its tax immunity if it conducts *any* in-state activities that go beyond "solicitation." (*Id.* at p. 231.) The Court disagreed, finding that such an interpretation "ignores" the fundamental and "established" nature of the *de minimis* rule and would lead to absurd results. (*Ibid.* ["Wisconsin's reading of the statute renders a company liable for hundreds of thousands of dollars in taxes if one of its salesmen sells a 10-cent item in state."].)

The rule is grounded in the "venerable maxim *de minimis non curat lex* ('the law cares not for trifles')." (*Wrigley, supra*, 505 U.S. at p. 231.) This maxim has been codified in California law since at least the adoption

of the Civil Code in 1872. (Civ. Code, § 3533 ["The law disregards trifles."].)[4]

California courts have long applied this rule in a broad range of cases. (See, e.g., *People v. Armstrong* (2016) 1 Cal.5th 432, 452 [where juror "looked at a book and a cell phone 'one or two times' for 'a few minutes[,]' [s]uch de minimis references . . . do not support a determination that [she] was refusing to deliberate"]; *Claremont Police Officers Ass'n v. City of Claremont* (2006) 39 Cal.4th 623, 638-639 [city not required to confer with union before requiring officers to document race and ethnicity of persons subject to vehicle stops because it took officers only several minutes per shift to fill out the forms, and thus "the impact on the officers' working conditions was *de minimis*"]; *Connell v. Higgins* (1915) 170 Cal. 541, 556 [where contractor has substantially performed his contract, recovery of the price is not defeated by "trivial defects or imperfections in the work performed"]; *Wolf v. Prosser* (1887) 73 Cal. 219, 219-220 [where "property to be sold and the proceeds divided in a specified way" and the amount in dispute "amounted to only ten dollars[,] [w]e think this is a proper case for the application of the maxim, *De minimis [non curat lex]*"]; see also *Lueras v. BAC Home Loans Servicing, LP* (2013) 221 Cal.App.4th 49, 79 ["Time and effort spent assembling materials for an application to modify a loan is the sort of nominal damage subject to the maxim de minimis non curat lex . . . ."]; *Bermudez v. Fulton Auto Depot, LLC* (2009) 179 Cal.App.4th 1318, 1325 [fact that auto dealer overcharged buyer by two dollars for vehicle license fees was a "trifle[]"]; *In re Marriage of Crook* (1992) 2 Cal.App.4th 1606, 1608-1609 & fn. 2 [in determining spousal share of a community property pension, "[w]e do not modify the

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[4] Troester argues that the Legislature specifically adopts a defense when it intends for a defense to apply. (AOB 16-17.) Section 3533 shows that it did so.

$2.38 per month discrepancy since it is de minimis"]; *Harris v. Time, Inc.* (1987) 191 Cal.App.3d 449, 458-460 [unfair advertising lawsuit "'de minimis' in the extreme" and "absurd waste of the resources of this court" where "plaintiffs' real complaint is that they were tricked into opening a piece of junk mail, *not* that they were misled into buying anything"], original emphasis; *Overholser v. Glynn* (1968) 267 Cal.App.2d 800, 810 [one additional month of prejudgment interest, while improper, was "de minimis and not sufficient ground for modifying the judgment"]; *Nye & Nisson v. Weed Lumber Co.* (1928) 92 Cal.App. 598, 607-608 ["To permit the cancellation of a contract for 750 cases of processed eggs merely because a minimum number thereof arrived at their destination unfit for use would violate the spirit of the legal maximum *de minimis non curat lex*."].)

Thus, the *de minimis* rule is a fundamental part of California law—not an import from federal law. Troester completely ignores this.

B. The *De Minimis* Rule Applies To California Wage Claims.

1. Courts Have Regularly Applied The *De Minimis* Rule To California Wage Claims.

Given California's longstanding adoption of the *de minimis* rule, it is not surprising that many courts have applied the *de minimis* rule to wage and hour claims under California law. (*Gomez v. Lincare, Inc.* (2009) 173 Cal.App.4th 508, 527-528 [applying *Lindow* test to California wage claim]; accord *Corbin v. Time Warner Ent't-Advance/Newhouse P'ship* (9th Cir. 2016) 821 F.3d 1069, 1081-1082 & fn. 11; *Gillings v. Time Warner Cable LLC* (9th Cir. 2014) 583 F.App'x 712, 714; *Cervantez v. Celestica Corp.*, (C.D.Cal. 2009) 618 F.Supp.2d 1208, 1216-1217; *Alvarado v. Costco Wholesale Corp.* (N.D.Cal., June 18, 2008, No. C 06-04015 JSW) 2008 WL 2477393, at *3-4; *Cornn v. UPS, Inc.* (N.D.Cal., Aug. 26, 2005, No. C03-2001 TEH) 2005 WL 2072091, at *4.) This Court should do the same.

2. California Courts Regularly Look To Federal Guidance Where There Is No Conflict.

"Federal decisions have frequently guided our interpretation of state labor provisions the language of which parallels that of federal statutes." (*Building Material, supra*, 41 Cal.3d at p. 658 ["consider[ing] federal . . . precedents" to construe statutory obligation to bargain collectively under California law where that obligation was the same as under the National Labor Relations Act]; *See's Candy Shops, Inc. v. Superior Court* (2013) 210 Cal.App.4th 889, 903 ["In the absence of controlling or conflicting California law, California courts generally look to federal regulations under the FLSA for guidance."].)

This Court has looked to federal law in determining what "hours worked" means unless California law conflicts with it. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 584-585 [relying on federal regulations and case law to interpret meaning of the phrase "suffered or permitted to work," as that phrase appears in both the FLSA and California definitions of "hours worked"]; *id.* at p. 593 [declining to follow federal guidance on the compensability of travel time because "federal and state law regarding travel time are *dissimilar*"], emphasis added.) Here, despite Troester's assertions to the contrary, there is no conflict between state and federal law, so this Court should look to federal law—*Anderson* and *Lindow*—for guidance on adopting and applying a *de minimis* rule.

Troester argues that the *de minimis* rule conflicts with the plain language of California law, which requires that "any" or "all" hours worked be compensated. (AOB 1-3, 13-16.) But his argument assumes that federal law differs in this regard. It does not. (*Bamonte v. City of Mesa* (9th Cir. 2010) 598 F.3d 1217, 1220 ["'It is axiomatic, under the FLSA, that employers must pay employees for *all* hours worked.'"], quoting *Alvarez v. IBP, Inc.* (9th Cir. 2003) 339 F.3d 894, 902, *aff'd on other grounds sub*

nom. IBP v. Alvarez (2005) 546 U.S. 21, emphasis added; 29 C.F.R. § 778.223 ["an employee must be compensated for *all* hours worked"], emphasis added; see also 29 U.S.C. § 207(b)(2) [employees subject to collective bargaining agreements must still "receive compensation for *all* hours guaranteed or worked"], emphasis added.)

The cases applying the *de minimis* rule similarly acknowledge that the FLSA requires payment for *all* hours worked. (*Anderson, supra*, 328 U.S. at pp. 690-691 [compensable time "includes *all* time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed workplace . . . ."], emphasis added; *id.* at pp. 691-694 [finding minutes spent "walking" from time clocks to work areas and performing preliminary tasks to be compensable, but remanding case for determination of how much of the time may be "disregarded" under *de minimis* rule]; *Lindow, supra*, 738 F.2d at p. 1062 ["As a general rule, employees cannot recover for *otherwise compensable* time if it is *de minimis*."], emphasis added.)

Because California law is the same as federal law in this respect, "federal precedents . . . furnish reliable authority in construing" what it means to pay for "all" of the "hours" worked by California employees. (*Building Material, supra*, 41 Cal.3d at p. 658.)

See's is instructive. The defendant argued that a federal standard should guide whether a California employer may "round" employee work times "for purposes of computing and paying wages . . . ." (*See's, supra,* 210 Cal.App.4th at p. 900.) Because "there [wa]s no California statute or case law specifically authorizing or prohibiting this practice," the court found that the "federal[] standard is the appropriate standard." (*Id.* at p. 901.)

Moreover, like here, the California Division of Labor Standards Enforcement (DLSE) endorsed the standard (discussed in § III.B.3, below),

the Legislature never acted by amendment or otherwise to indicate that the DLSE's position was incorrect, and there was "no conflicting California law" such that resorting to federal guidance would be improper. (*See's, supra*, 210 Cal.App.4th at pp. 902-903, 905.) The court reasoned that time-rounding, like the *de minimis* rule, is grounded in practicality and efficiency, designed to compensate employee hours as precisely as possible without imposing an undue burden on employers, even if that means not every employee will ultimately be paid for every single minute that she works. (*Id.* at pp. 903, 908 & fn. 7 [it is "questionable" whether employees who "had a net loss of a *minimal amount* . . . would be entitled to a recovery for these wages . . . ."], emphasis added.)

See's also rejected an argument like Troester makes, namely, that rounding employee work times somehow conflicted with the statutory obligation to pay "'*[a]ll* wages'" or pay overtime for "*[a]ny work* in excess of eight hours in one workday . . . ." (*See's, supra,* 210 Cal.App.4th at pp. 904-905, citing Lab. Code, §§ 204, 510, original emphasis); compare AOB 1-4, 13-16, 18-20 [arguing that the *de minimis* rule conflicts with the plain language of Sections 204 and 510, *inter alia*, which require that "any" and "all" hours be compensated].)

However, Sections 204 and 510 "h[ave] nothing to do with" how an employer may "measure[]" or "calculat[e]" worktime. (*See's, supra*, 210 Cal.App.4th at p. 905.) Rather, for example, Section 510 simply "sets the multiplier for the rate at which 'Any' overtime work must be paid." (*Ibid.* ["Fundamentally, the question whether *all* wages have been paid is different from the issue of how an employer calculates the number of hours worked and thus *what wages are owed.*"], original emphasis.)

Troester's cited authorities are distinguishable. As stated above, *Morillion* declined to import federal standards on the compensability of compulsory travel time because they *conflicted* with the plain language of

the California Wage Orders. (*Morillion, supra*, 22 Cal.4th at pp. 589-590, 594 ["[W]e conclude that the relevant portions of the FLSA and Portal-to-Portal Act *differ substantially* from Wage Order No. 14-80 and related state authority. Therefore, Royal's reliance on federal authority, and the Court of Appeal's deference to it, are not persuasive."], emphasis added.)

Troester's reliance on *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, and *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, is misplaced for the same reason. In *Ramirez*, this Court found that "where the language or intent of state and federal labor laws *substantially differ*, reliance on federal regulations or interpretations to construe state regulations is misplaced." (*Ramirez, supra*, 20 Cal.4th at p. 797, emphasis added; *id.* at pp. 793, 797 [noting "fundamental conflict" between California definition of outside salesperson, which focuses on "how much work time is spent selling," and federal definition, which does not].) And in *Armenta*, defendant's reliance on the federal minimum wage standard was improper because it "contravenes" the California Labor Code. (*Armenta, supra*, 135 Cal.App.4th at p. 323.)

Here, no such conflict or difference—much less a "substantial" difference—exists because *both* federal law and state law require compensation for "all" "hours" worked. Thus, this Court may properly look to federal guidance in determining what those two words reasonably mean. (*Building Material, supra*, 41 Cal.3d at p. 658; see also *Ramirez, supra*, 20 Cal.4th at p. 795 [California law only "sometimes" departs from federal law or "provide[s] greater protection than is provided under the [FLSA]"]; *Gillings, supra*, 583 F.App'x at p. 714 [rejecting argument that