No. **S234969**

Ninth Circuit No. 14-55530

In the

Supreme Court of California

DOUGLAS TROESTER, et al.,

Plaintiff – Appellant – Petitioner,

vs.

STARBUCKS CORPORATION, et al.,

Defendants – Appellees.

ON GRANT OF REQUEST TO DECIDE ISSUE PURSUANT TO CALIFORNIA RULES OF COURT, RULE 8.548

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
HON. GARY ALLEN FEESS, PRESIDING
DISTRICT COURT CASE NO. 2:12-CV-07677-GAF-PJW

PETITIONER'S REPLY BRIEF ON THE MERITS

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I. INTRODUCTION

In his Opening Brief, Petitioner/Plaintiff Douglas Troester demonstrated that a *de minimis* excuse to the obligation to pay all wages for all hours worked does not apply to violations of California wage and hour law:

- California's statutory and regulatory requirements mandate payment for ***all*** hours worked, not ***almost all*** hours worked. Lab. Code §§ 510, 1197; Wage Order No. 5 §§ 3(A)(1) and (4)(A). The Fair Labor Standards Act, 29 U.S.C. 201, *et seq.* ("FLSA"), in contrast, contains no similarly broad requirement, instead mandating payment for all hours worked only in specific instances.
- As this Court has often held, federal law is only incorporated into California's wage and hour regulatory framework when the IWC *expressly* intends that result. *See, e.g., Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal. 4th 833, 843 (2015). For example, in Wage Order 5's definition of "hours worked," the IWC states, "Within the health care industry, the term 'hours worked' means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, ***as interpreted in accordance with the provisions of the Fair Labor Standards Act.***" (Emphasis added.) If the IWC wanted to follow the FLSA in other ways, it would have said so.
- California law already incorporates a clearly-defined mechanism that effectively prevents the risks identified by Defendant Starbucks Corporation ("Starbucks"): It is only when (1) employees are under an

employer's control or (2) the employer knew or should have known that the work was occurring that an employer incurs an obligation to pay. *Morillion v. Royal Packing Company*, 22 Cal. 4th 575, 585 (2000) ("The words 'suffer' and 'permit' as used in the statute mean 'with the knowledge of the employer.'").

- The public policy of the State of California, as declared by the Legislature and the IWC, is the protection of employees. *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal. 5th 257, 262 (2016). The California Legislature has, in numerous ways, implemented stronger employee protections than the FLSA's, precluding importation of federal standards that would weaken California's employee protections.

Defendant failed to refute these propositions that are dispositive of the Question Presented for Review. Lacking any means to directly address the Legislature's enactments, the IWC's regulations, and this Court's decisions, Defendant, instead, touts federal law, claiming that California Courts look to federal law for guidance *where there is no conflict between state and federal law*. But here, California has implemented an employee-protection framework that exceeds federal protections and defines the obligation to compensate to negate the need for a judicially created *de minimis* defense to wage payment obligations.

To support its claim that California Courts look to federal law for guidance, Defendant asserts that the policies embodied by the FLSA are as protective of employees as those existing under California law. However, Defendant was unable to identify any relevant provision of the FLSA that is not surpassed by protections

present under California law, and many of the protections existing under California law are nowhere found under federal law. For example, the FLSA, unlike California's Labor Code, does not contain within its text a blanket requirement of payment for all hours worked in all industries. Rather, the only such obligation found anywhere in the FLSA is explicitly limited to certain employment contracts, collective bargaining agreements, and seamen on American vessels. FLSA §§ 206(a)(3), 207(b)(2), and 207(f)(1). Had the United States congress wanted to require payment for all hours worked in all industries, it would not have confined such language to such specifically enumerated categories of employees. Moreover, Defendant also relies on *non-binding* DOL regulations to make claims about what the FLSA provides, rather than the FLSA itself. The federal *de minimis* excuse has never been "a backbone" of California wage and hour law, and federal wage and hour laws are substantially weaker than those implemented by California.

Next, Defendant chastises Plaintiff for arguing that the FLSA's *de minimis* defense is a creature of federal law, saying it also existed in California "since at least the adoption of the Civil Code in 1872." (Respondent's Answer, at 17-18.) Defendant then recounts California cases decided over the years that address a *de minimis* concept without ever noting that the "broad range of cases" mentioned do not include *any* decision addressing claims arising under the Labor Code. In short, Defendant misconstrues Plaintiff's argument. The question before this Court is specifically whether the *de minimis* excuse applies to the wage payment provisions of the California Labor Code – not California law in general, or even the entire Labor Code.

Defendant does not cite a single California State wage and hour decision that applies the *de minimis* excuse to the obligation to pay all wages owed pursuant to the Labor Code or IWC Wage Orders. Even if California law generally acknowledges a concept of "trifles" under Civil Code § 3533, no California case has decided that time amounting to hours of work in the aggregate is a trifle under the California Labor Code, just as a rule of trifles is rejected in other contexts under California law. And, fatal to Defendant's entire argument about California's treatment of "trifles," it has long been recognized that Civil Code § 3533 does not apply in instances where permanent rights are at issue and even nominal damages will carry costs. *Kenyon v. Western Union Tel. Co.*, 100 Cal. 454, 458-59 (1893).

Starbucks persists, claiming that California Courts have applied the *de minimis* rule in California wage and hour disputes. Yet, Defendant only lists one California State appellate decision as proof of this "backbone" of the California Labor Code to support its premise that California wage and hour law includes the *de minimis* defense. Defendant's lone citation, *Gomez v. Lincare*, considered a *de minimis* defense to a claim for *promissory estoppel*, not a claim under the California Labor Code. *Gomez v. Lincare, Inc.*, 173 Cal. App. 4th 508, 526-528 (2009). In short, Defendant would have this Court hold that a generalized maxim of jurisprudence, Civil Code § 3533, reflects a Legislative intent to apply the FLSA's *de minimis* defense to the unwaivable obligation to pay for all hours worked, supplanting the comprehensive body of statutes, regulations, and interpreting Court decisions that make up California's wage and hour framework. And Defendant would have this Court so hold, despite the fact that wage and hour-specific defenses and limitations

have been enacted as part of various Labor Code provisions whenever the Legislature concluded that such limitations or defenses are appropriate.

Defendant also argues that the DLSE's non-controlling opinion about a *de minimis* excuse should control despite contrary California law. But, as Defendant tacitly acknowledges, the DLSE's construction cannot supplant clear laws, regulations, and binding constructions of them. *Tidewater Marine Western Inc. v. Bradshaw*, 14 Cal. 4th 557, 574 (1996); *Mendiola,* 60 Cal. 4th at 848. The DLSE derives its *de minimis* excuse from *Lindow*, not from published California State decisions. *See* DLSE Enforcement Manual §§ 46.6.1, 47.2.1, 47.2.1.1, 48.1.9, and 48.1.9.1. The DLSE fails to offer any reasoning for why it has done so. Thus, it provides no reason for this Court to conjure the *de minimis* excuse from the contrary express language of the Labor Code and the IWC. That the DLSE was wrong in this instance for quite some time does not change the outcome.

Even assuming, *arguendo*, that Defendant was correct that the FLSA had the same express requirement to pay for all hours worked, it is understandable that Justice Scalia would question whether there is a *de minimis* test under federal law at all. It is not an absurd result for an employee to expect payment of wages for all time worked that an employer can track, whether it is a few hours or even a few minutes. In the aggregate, small amounts of unpaid time every day can add up to a significant sum of money that an employee is entitled to expect from the employer. Defendant does not dispute that Plaintiff may not have been paid for time aggregating to hours, based on all of time he spent on short tasks over the course of his employment. (*See* Respondent's Answer, at 10, n. 1.) Plaintiff does not sue over "split second"

increments as Defendant suggests. (Respondent's Answer, at 13.) The trial court acknowledged in the summary judgment proceedings that Troester's closing tasks took minutes to perform at times. Indeed, Defendant concedes that many of Troester's closing tasks involved up to 10 minutes to complete. Answering Brief, at 11. On other days, Troester spent less time on closing tasks. However, it makes no difference that the tasks, considered one at a time, took a relatively small amount of time to perform. California law calls for payment of "all time" worked and does not exempt arguably short periods from this rule.

The trial court's finding that Starbucks "could not feasibly capture the time at issue" was refuted by the record. In opposition to Defendant's summary judgment motion, Plaintiff supplied evidence that, late in the relevant time period, Starbucks had changed its timekeeping apparatus to capture the time periods in question, separating out two previously interdependent systems. (3 ER 437, 442-443, 474-475, 503-509; 4 ER 574-575, 577-578, 691, 755-760). As it was possible to capture the time, there is no rational basis for such work periods to go unpaid, whether the periods were "incidental" or "inevitable."

Finally, having no clear way to deny the laws that define California's wage and hour obligations, Defendant decries the "absurdities" that would result if it actually had to pay its employees for all of the time it controlled them or knew that they were working. Defendant just ignores the cumulative effect of withholding minutes of pay every day from employees, instead pejoratively characterizing such payments as mere trifles or "seconds," even after admitting elsewhere in its Answering Brief that more than mere seconds are at issue in this case. California's

"control" or "knew or should have known" standards prevent the nonsensical outcomes that Defendant attempts to conjure.

As explained in Plaintiff's Opening Brief, and not refuted by Defendant, California's wage payment statutes and Wage Orders are clear. There is no basis for creating an exception to those requirements, undermining the policies embodied by statute and regulation, while injecting needless complexity into an employee's attempt to ascertain what work is entitled to compensation. The Labor Code and the Wage Orders already include a bright line rule – employers must pay for all hours worked. This Court should hold, consistent with Labor Code §§ 510, 1194, and 1197, consistent with the IWC Wage Orders, and consistent with this Court's many decisions, that there is no *de minimis* excuse to claims for unpaid wages under California law.

II. DISCUSSION

A. Defendant Failed to Identify Any California Court Decision Applying the *De Minimis* Excuse to California's Wage and Hour Laws and Regulations

In its Answering Brief, Starbucks claims that a *de minimis* rule exists, fully formed, as part of California's wage and hour law and that the *de minimis* rule arising under the FLSA that is applied by federal courts adjudicating wage and hour claims is not a federal rule at all, citing numerous "California" cases that use the term "*de minimis*." But, not one of the cases identified by Defendant considered wages owed pursuant to California's Labor Code. Instead, Defendant cites cases concerning jury deliberations (*People v. Armstrong*), union representation (*Claremont Police Offers*

Ass'n v. City of Claremont), construction defects (*Connell v. Higgins*), real property (*Wolf v. Prosser*), vehicle sales (*Bermudez v. Fulton Auto Depot, LLC*), community property (*In re Marriage of Crook*), damages arising from opening junk mail (*Harris v. Time, Inc.*), prejudgment interest (*Overholser v. Glynn*), and commercial contracts for the sale of eggs (*Nye & Nisson v. Week Lumber Co.*). Missing from Defendant's list is *any* decision by a California Court applied to a claim arising under California's Labor Code.

Defendant then builds an argument based upon a false premise. First Defendant argues, "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." (Answering Brief, at 19.) However, as established by Plaintiff's Opening Brief, and not rebutted, there is no omnibus "*de minimis* rule" under California law.

Next, Defendant cites a list of court decisions which purport to be examples of where "many courts have applied the *de minimis* rule to wage and hour claims under California law." But, immediately evident is the fact that all but one of the cited cases are *federal court* decisions. And the only California court decision in Defendant's list of "many courts" does not apply the *federal de minimis* excuse arising under the FLSA to any California wage and hour claim. Rather, *Gomez v. Lincare* rejects a *de minimis* defense in a discussion entitled, "Seventh Cause of Action—Promissory Estoppel." *Gomez,* 173 Cal. App. 4th 508 at 526. Moreover, the only authority cited within that portion of the opinion is the federal decision of *Lindow*, showing that there is no independent *de minimis* defense under California law that applies to wage and

hour claims.

Even if *Gomez* had applied a *de minimis* defense to a California wage and hour claim, which it indisputably did not do, *Gomez* is not controlling for multiple reasons. First, *Gomez* did not address a contention that California does not recognize a *de minimis* defense. "Cases are not authority for propositions not decided." *Machado v. Superior Court*, 148 Cal.App.4th 875, 881 (2007). Second, other Courts of Appeal are free to disagree with *Gomez* and would be bound only by a decision from this Court. *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal. 2d 450, 455 (1962). Third, federal courts are not bound by the decisions of intermediate appellate courts if there is reason to believe that the state's highest court would rule differently. *E.g., In re KF Diaries, Inc. & Affiliates*, 224 F.3d 922, 924 (9th Cir. 2000): "Our decision is solely guided by California law as we believe the California Supreme Court would apply it." As the Ninth Circuit noted in the certification order, this Court has repeatedly cautioned against importing less protective federal standards into California wage and hour law. *E.g., Mendiola*, 60 Cal.4th at 842-43.

Where Defendant argues that a *de minimis* rule already exists under California law, what Defendant really seeks is a determination that a generalized maxim of jurisprudence, Civil Code § 3533, reflects a clear Legislative intent to create a defense to the unwaivable obligation to pay for all hours worked and supplants California's meticulous wage and hour framework. Even if California law generically acknowledges a concept of "trifles" under Civil Code § 3533, no California case has decided that time worked is a trifle under the California Labor Code. This is simply one of many specific contexts where that rule does not apply. For example, the

"maxim that the law will not be concerned with trifles does not, ordinarily, apply to violation of a contractual right." *Sweet v. Johnson*, 169 Cal. App. 2d 630, 632 (1959), citing *Kenyon v. Western Union Tel. Co.*, 100 Cal. 454 (1893). That contract law disregards the general maxim regarding trifles is particularly instructive, as the payment of wages has much in common with contractual obligations.

Another context where the concept of "trifles" is not controlling is found in the realm of real property. In that context, this Court has recognized for more than a century that small values are not always *de minimis* to the injured plaintiff:

> The value of the omitted land, upon the basis of the purchase price, respondent points out is $83; but ***we cannot agree with respondent that, because these are the facts, equity will treat the omitted land as a minute discrepancy of no material importance***. The price or value of omitted lands is, of course, an element in determining whether or not equity will take cognizance of a suit to recover the omitted portion. Backus v. Jeffrey, 47 Mich. 127, 10 N. W. 138. But in a suit for land, it is by no means the all-controlling and determinative consideration. The omitted land may be of great importance to the value of plaintiff's remaining land. ***It may have a peculiar value, pretium affectionis, in plaintiff's eyes***.

Danielson v. Neal, 164 Cal. 748, 750–51 (1913) (emphasis added). And in the realm of taxes, this Court has held that a sale to the State of California for $0.50 more than was owed in taxes was void and did not convey title. *Hall v. Park Bank of Los Angeles*, 165 Cal. 356, 359 (1913).

Beyond just contractual obligations, *Kenyon* explains the uniting thread that defeats Defendant's theory. *Kenyon* reasoned that, in addition to the fact that the *de minimis* concept normally has no application in the arena of contract law, the *de miminis* concept does not apply where a permanent right is infringed and an award of even nominal damages would carry costs. *Kenyon*, 100 Cal. at 458-59. In the

contexts of wages, real property transactions, tax obligations, and contractual obligations, permanent rights exist, and even nominal damage awards carry costs. Thus, in the context of the obligation to pay all wages for all hours worked, the concept of trifles must similarly be rejected because the Legislature and IWC have concluded that such a concept is inappropriately applied here, where the prevailing employee is entitled to recover fees *and* costs in any suit to recover an unpaid wage.

The very foundations of Defendant's arguments are faulty; this Court should expressly hold that California's standard for when employee activity constitutes compensable work time is not the same as federal law, is not controlled by the federal *de minimis* excuse, and cannot be controlled by the generic concept stated in Civil Code § 3533, which does not apply in instances where permanent rights are at issue and even nominal damages will carry costs.

B. Defendant Incorrectly Suggests That California Follows the FLSA as Its Default Rule

Defendant asserts that this Court must look to federal law for guidance on issues of *state* wage and hour law, stating, "[T]here 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." (Answering Brief, at 20.) As explained below, Defendant is simply wrong as to its premise that California and federal law are not in conflict as to the payment of *all* wages for *all* hours worked.

1. The FLSA Is Not Helpful Due to Conflicts Between State and Federal Wage and Hour Laws.

Defendant incorrectly suggests that the text of the FLSA itself contains a broad requirement that all hours worked must be compensated. (Answering Brief, at 21,

citing 29 U.S.C. § 207(b)(2).) In fact, the FLSA, unlike California's Labor Code, does ***not*** contain within its text a blanket requirement of payment for all hours worked in all industries. Instead, the only instances where the FLSA *explicitly* requires payment for "all" hours worked are found in clauses concerning certain employment contracts, collective bargaining agreements, and seamen on American vessels. FLSA §§ 206(a)(3), 207(b)(2), and 207(f)(1). Had the United States congress wanted to require payment for *all* hours worked in *all* industries, it would not have expressly limited the requirement. The federal wage and hour laws are substantially weaker than those implemented by California, placing them in conflict with the greater protections imposed under California law.

Instead, in support of its claim that California and federal law are not in conflict as to the payment of wages, Defendant cites to federal regulations, which are not controlling authority under federal law, to support its argument that both the FLSA and California contain identical requirements to pay for "all" hours worked. Citing 29 C.F.R. § 778.223, Defendant quotes from a fragment of the regulation in a parenthetical. (Answering Brief, at 21 ["an employee must be compensated for *all* hours worked"].) But Defendant omits that 29 C.F.R. § 778.223 was effective on ***January 23, 1981***, as issued in 46 Fed. Reg. 7313, long after *Anderson v. Mt Clements Pottery Co.*, 328 U.S. 680 (1946) was decided, creating a *de minimis* defense as part of the FLSA. Thus, when 29 C.F.R. § 778.223 was issued, the Department of Labor was bound by the *Anderson* decision and the *federal* regulation was necessarily constrained. But no such decision constrained the IWC's implementation of Labor Code provisions in the Wage Orders.

Defendant also ignores the fact that the *de minimis* doctrine has been expressly included in federal regulations at 29 C.F.R. § 785.47:

> In recording working time under the Act, insubstantial 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 courts have held that such trifles are de minimis. (*Anderson* v. *Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946)) This rule applies only where there are uncertain and indefinite periods of time involved of a few seconds or minutes duration, and where the failure to count such time is due to considerations justified by industrial realities. ***An employer may not arbitrarily fail to count as hours worked any part, however small, of the employee's fixed or regular working time or practically ascertainable period of time he is regularly required to spend on duties assigned to him.***

29 C.F.R. 785.47 (Emphasis added).[1] Nothing analogous exists within California's Labor Code or the IWC's Wage Orders. It is therefore incorrect to suggest that "all" means the same thing under state and federal law. Thus, it is necessarily wrong to contend that there is no conflict between state and federal law in this regard, which renders Defendant's plea that "this Court should look to federal law – *Anderson* and *Lindow* – for guidance on adopting and applying a de minimis rule" a nullity.

Even Defendant's supposedly supportive citations leave it hoist by its own petard. For example, at page 20 of its Answering Brief, Defendant quotes *See's Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889 (2012), from its discussion about the propriety of timeclock rounding, as saying, "***In the absence of controlling or conflicting California law***, California courts ***generally*** look to federal regulations under the FLSA for ***guidance***." *See's Candy*, at 903 (emphasis added).

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[1] In Appellant's Opening Brief, the regulation was erroneously cited as 24 C.F.R. 785.47.

But here, since California law conflicts with the weaker obligation to pay for ***non-de minimis*** hours worked under federal law, the FLSA (which imposes a lesser standard of employee protection) must not be consulted for guidance as it has none to offer.

2. The Basis for the Court's Decision in *See's Candy* Is Also a Basis to Reject the *De Minimis* Defense.

Defendant's Answering Brief focuses on innocuous excerpts from *Anderson* and *Lindow* which, construing the federal standard, concluded that employees could not be paid for time worked work by application of the *de minimis* excuse even though the time was "otherwise" compensable. (Answering Brief, at 21.) Compensable means: "Being such as to entitle or warrant compensation." American Heritage Dict. (5th ed. 2017). Compensation, in turn, means: "Something, such as money, given or received as payment or reparation, as for a service or loss." *Id.* If time worked is not the same as time paid by operation of the federal *de minimis* excuse, then it also seems true that the time not paid is not literally compensable, and the definition of compensable carries a different meaning under federal law. There is no basis in the Labor Code or the IWC Wage Orders to conclude that such a distinction is appropriate or was intended under California law.

Nevertheless, Defendant persists, arguing that the *de minimis* excuse is not concerned with whether the time is compensable. Rather, the *de minimis* excuse is concerned with whether short periods of [otherwise] compensable time must be paid. To buttress this elusive distinction, Defendant relies on *See's Candy* to claim 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." (Answering Brief, at 22.) But *See's Candy* said:

> Assuming a rounding-over-time policy is neutral, ***both facially and as applied***, the practice is proper under California law because its net effect is to permit employers to efficiently calculate hours worked ***without imposing any burden on employees***.

See's Candy, at 903 (emphasis added). The Court went on to state:

> 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.*

See's Candy, at 905. Clearly, the court was concerned that any rounding system must ensure *all* wages are paid "without imposing any burden on employees." Applying such logic, there is no room for application of the *de minimis* excuse to payment of wages for time worked, deny wages for "all hours worked," and as a result, lay a burden on workers, however slight.

In spite of the contrary objectives of the *de minimis* excuse and California rounding jurisprudence, Defendant conflates the two concepts to permit an employer to deny wages for *compensable* time. Such an outcome flies against the logic of *See's Candy* and is nonsensical because, if worktime need not be paid, it is not compensable And, if it is not compensable, it need not be paid. Rounding, as conceived of by *See's Candy* at least, is one *practical* method to ensure that workers are paid for *all* of their work (if the rounding system is neutral both facially ***and*** as applied). While one policy behind rounding is to pay for all hours worked, the *de minimis* excuse advocated by Defendant contravenes it. In fact, Defendant's *de minimis* excuse would directly contradict the purpose underlying the *See's Candy* court's analysis of

rounding.

C. Defendant's Efforts to Explain Away This Court's Prior Precedent Regarding the IWC Wage Orders Are Unpersuasive

"We have observed 'that where the IWC intended the FLSA to apply to wage orders, it has specifically so stated.'" *Mendiola*, 60 Cal. 4th at 847 n. 17, citing *Morillion*, 22 Cal. 4th at 592.

1. This Court Recognizes That "The IWC Knows How to Expressly Incorporate Federal Law and Regulations When It Desires to Do So."

On the differences between the degrees of protection for employees under federal and state wage and hour law, *Mendiola* said:

> Federal regulations provide a level of employee protection that a state may not derogate. Nevertheless, California is free to offer greater protection.

Mendiola, 60 Cal. 4th at 843. But, Defendant simply dismisses this Court's repeated recognition that California habitually exceeds federal standards, contending that, in *Mendiola*, this Court *only* declined to find a federal standard incorporated into a Wage Order because the IWC "expressly incorporated federal standards in some wage orders but not in Wage Order 4. . . ." (Answering Brief, at 24.) Defendant ignores other reasons stated by this Court, which also said, "[O]ther language in Wage Order 4 demonstrates that the IWC knew how to explicitly incorporate federal law and regulations when it wished to do so." *Mendiola*, 60 Cal. 4th at 843; *see also Mendiola*, 60 Cal. 4th at 847 n. 17 ("***Wage Order 4 itself demonstrates that the IWC knows how to expressly incorporate federal law and regulations when it desires to do so***."). In other words, even limited to the Wage Order at issue, *Mendiola* observed

that the IWC did, in fact, expressly indicate when it intended to incorporate any element of federal law as a guiding standard under California wage and hour law. Defendant's attempt to distinguish away *Mendiola* requires willful blindness towards the clearest of observations – that "the IWC knew how to explicitly incorporate federal law and regulations when it wished to do so." *Ibid.* Concluding the discussion, *Mendiola* said:

> The language chosen by the IWC does not support CPS's argument that a broad importation was intended. Indeed, it supports the contrary conclusion: The IWC intended to import federal rules only in those circumstances to which the IWC made specific reference.

Ibid. Defendant has identified nothing in either the Labor Code or the governing IWC Wage Order that suggests the IWC intended to import a defense that would significantly reduce protections provided to employees under California law. No such presumption exists if it would in any way lessen employee protection:

> Because application of part 785.22 would "eliminate[ ] substantial protections to employees," we decline to import it into Wage Order 4 by implication.

Mendiola, 60 Cal. 4th at 847. Furthermore, just as *Mendiola* held, a "contrary result would have a dramatic impact" in California, where periods of time up to ten minutes or more per day that employers were previously obligated to pay for would suddenly become uncompensated work time.

2. <u>This Court Recognizes That Similarities Between State and Federal Wage and Hour Laws Are Not Grounds to Impair the State's Stronger Employee Protections</u>

Ramirez v. Yosemite Water Co., 20 Cal. 4th 785 (1999) also recognizes that California wage and hour laws frequently provide greater protections than those supplied under the FLSA: