UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-7677 GAF (PJWx)	Date	March 7, 2014
Title	Douglas Troester v. Starbucks Corporation et al		

Present: The Honorable	**GARY ALLEN FEESS**	
Stephen Montes Kerr	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None	None	

Proceedings: **(In Chambers)**

ORDER RE: MOTION FOR SUMMARY JUDGMENT

I.
INTRODUCTION

Plaintiff Douglas Troester ("Plaintiff") claims that Defendant Starbucks Corporation ("Defendant" or "Starbucks") violated the California Labor Code by failing to pay him for the brief time he spent closing up the store after he clocked out at the conclusion of certain shifts. He urges, for example, that Starbucks neglected to pay him for the time he spent walking out of the store after activating the security alarm, for the time he spent turning the lock on the store's front door, and for the time he spent occasionally reopening the door so that a co-worker could retrieve a coat. Based on this alleged uncompensated time worked, Plaintiff brings this putative class action against Starbucks, asserting claims under the California Labor Code for failure to pay minimum and overtime wages, failure to provide accurate written wage statements, and failure to timely pay all final wages. (Docket No. 1 [Notice of Removal ("Not.")], Ex. A [Compl.].) He also alleges a claim for unfair competition under California Business and Professions Code §§ 17200, et seq. (Id.)

Defendant now moves for summary judgment. (Docket No. 28 [Motion for Summary Judgment ("Mem.")].) Defendant argues that, among other things, Plaintiff's first claim for unpaid wages fails as a matter of law because the time he spent in and around the store after clocking out was de minimis. (Id. at 1.) And because Plaintiff's remaining claims are derivative of this unpaid wages claim, Defendant argues that they too must fail as a matter of law. (Id.) The Court agrees.

Accordingly, and as explained in greater detail below, Defendant's motion for summary judgment is **GRANTED**.

II.
BACKGROUND

The following facts are undisputed or without substantial controversy.

Plaintiff worked as a shift supervisor for Starbucks from June 2008 until the end of his employment in January 2011. (Docket No. 34-1 [Plaintiff's Separate Statement of Undisputed Facts ("PSUF")] ¶ 1.) While employed at Starbucks, Plaintiff was aware that the company maintained the policy: "time worked equals time paid." (Docket No. 28-1 [Defendant's Separate Statement of Undisputed Facts ("DSUF")] ¶ 3.) One of Plaintiff's job responsibilities was to accurately record his work time using the point-of-sale ("POS") system so that Starbucks could pay him for all of his time worked. (Id. ¶ 5.) The POS system was part of Starbucks' System to Automate Retail ("STAR") software. (PSUF ¶¶ 12-13.) In addition to the POS registers at the front of the store, the STAR system included a computer in the backroom, commonly referred to as the Manager's Workstation ("MWS"). (Id. ¶ 13.)

Plaintiff claims that he performed unpaid work during shifts at the end of the business day—"closing" shifts—but not when he worked shifts in the morning or in the afternoon. (DSUF ¶ 11.) According to Plaintiff, at the end of a closing shift, he was responsible for using the store computer (the MWS) to transmit sales data to Starbucks headquarters, a process called the "close store procedure." (Id. ¶ 13.) The close store procedure consisted of selecting "close store" with the computer's mouse or keyboard, entering a password, and then pressing the "Y" key. (Id. ¶ 14.) Immediately after running the close store procedure, Plaintiff set the store alarm by typing a numeric code on the alarm panel located near the computer. (Id. ¶ 15.) Plaintiff contends that the STAR software required that he clock out on the POS system before initiating the close store procedure. (Id. ¶ 16.) Plaintiff performed this routine during his closing shifts from approximately December 2008 to October 2010, when Starbucks replaced the STAR software with the Simphony system, which eliminated the requirement that an employee initiate the close store procedure after clocking out for the day. (PSUF ¶¶ 16-17, 34.)

According to Plaintiff, the store close procedure typically lasted "one minute to two minutes" before he activated the alarm. (DSUF ¶ 17.) After activating the alarm, Plaintiff exited and locked the front door of the store. (Id. ¶ 23.) The store's alarm system required that the employees leave the store within one minute of setting the alarm. (Id. ¶ 22.) In compliance with Starbucks' safety guidelines, Plaintiff would walk his co-workers to their cars and stay

outside the store with a co-worker who was waiting for a ride. (Id. ¶¶ 26, 31.) He also insists that every couple of months, after clocking out and exiting the store, he would have to bring the store's patio furniture inside. (Id. ¶ 29.) Additionally, Plaintiff occasionally would have to reopen the store after clocking out and leaving if another employee forgot a personal belonging inside the store. (Id. ¶ 30.)

On January 6, 2011, Plaintiff was terminated from his employment at Starbucks. (Id. ¶¶ 48, 50.) At this time, he received his final wage statement. (Id. ¶ 50.) Based on the above facts, Plaintiff filed this action in Los Angeles County Superior Court on August 6, 2012. (Id. ¶ 49; Compl.) Starbucks removed the case to this Court on September 7, 2012. (Not.)

III.
DISCUSSION

A. SUMMARY JUDGMENT STANDARD

Summary judgment is proper where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). Thus, when addressing a motion for summary judgment, the Court must decide whether there exist "any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial, which it can meet by presenting evidence establishing the absence of a genuine issue or by "pointing out to the district court . . . that there is an absence of evidence" supporting a fact for which the non-moving party bears the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). Where the moving party bears the burden of persuasion at trial, it will meet its burden of persuasion on summary judgment only if it can show "that the evidence is so powerful that no reasonable jury would be free to disbelieve it." Shakur v. Schriro, 514 F.3d 878, 890 (9th Cir. 2008) (internal quotation marks omitted); see also S. Cal. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003) ("As the party with the burden of persuasion at trial, the [moving party] must establish beyond controversy every essential element of its . . . claim." (internal quotation marks omitted)). In other words, the moving party "must come forward with evidence which would entitle it to a directed verdict if the evidence went uncontroverted at trial." Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987 (9th Cir. 2006) (internal quotation marks omitted). However, "the moving party need not disprove the other party's case." Id. (citing Celotex, 477 U.S. at 325).

Once the moving party has carried its burden, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Celotex, 477 U.S. at 324; Fed. R. Civ. P. 56(e)(2). To defeat summary judgment, the non-moving party must put forth "affirmative evidence" that shows "that there is a genuine issue for trial." Anderson, 477 U.S. at 256-57. This evidence must be admissible. See Fed. R. Civ. P. 56(c), (e). The non-moving party cannot prevail by "simply show[ing] that there is some metaphysical doubt as to the material facts." Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). Rather, the non-moving party must show that evidence in the record could lead a rational trier of fact to find in its favor. Id. at 587. In reviewing the record, the Court must believe the non-moving party's evidence, and must draw all justifiable inferences in its favor. Anderson, 477 U.S. at 255.

B. APPLICATION

1. PLAINTIFF'S CLAIM FOR UNPAID WAGES FAILS AS A MATTER OF LAW BECAUSE ANY UNPAID TIME WAS DE MINIMIS

Defendant moves for summary judgment with respect to Plaintiff's first claim for unpaid wages under the California Labor Code, arguing that "[e]very task for which [Plaintiff] now seeks compensation . . . was de minimis." (Mem. at 5.) Contrary to Plaintiff's assertion in his opposition, the "de minimis doctrine" is a defense to wage claims asserted under the California Labor Code. See, e.g., Cervantez v. Celestica Corp., 618 F. Supp. 2d 1208, 1217-19 (C.D. Cal. 2009); DLSE Enforcement Policies & Interpretations Manual § 46.6.4. Under this doctrine, alleged working time need not be paid if it is trivially small: "[A] few seconds or minutes of work beyond the scheduled working hours . . . may be disregarded." Anderson v. Mt. Clemens Pottery Co., 328 U.S. 680, 692 (1946), superseded by statute on other grounds as stated in IBP, Inc. v. Alvarez, 546 U.S. 21, 25-26 (2005).

To determine whether work time is de minimis, courts consider: "(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 v. United States, 738 F.2d 1057, 1063 (9th Cir. 1984); see also Rutti v. Lojack Corp., Inc., 596 F.3d 1046, 1056-57 (9th Cir. 2010). Applying these standards, numerous courts have held that daily periods of approximately 10 minutes are de minimis. Lindow, 738 F.2d at 1062 (collecting cases); see also Busk v. Integrity Staffing Solutions, Inc., 713 F.3d 525, 532-33 (9th Cir. 2013) (concluding that five minutes daily spent passing through security clearance on way to lunch break was de minimis); Gillings v. Time Warner Cable LLC, 2012 WL 1656937, at *1, 4 (C.D. Cal. Mar. 26, 2012) (rejecting a plaintiff's claim for unpaid wages because the six minutes that it took each

day to log in to a computer program was de minimis and would be "arduous" to monitor and record); Farris v. County of Riverside, 667 F. Supp. 2d 1151, 1166 (C.D. Cal. 2009); Alvarado v. Costco Wholesale Corp., 2008 WL 2477393, at *3-4 (N.D. Cal. June 18, 2008) (holding that the plaintiff was not entitled to compensation for time spent waiting for security checks at the end of closing shifts because the "several minutes" that the plaintiff had to wait to be let out of the building was de minimis); Abbe v. City of San Diego, 2007 WL 4146696, at *7 (S.D. Cal. Nov. 9, 2007) ("Here, it is undisputed that donning and doffing protective gear . . . takes less than 10 minutes. . . . Therefore, time spent donning and doffing safety gear is de minimis and non-compensable as a matter of law.").

The duration of Troester's post-closing activities is even briefer than the time periods found de minimis in the foregoing authorities. The undisputed facts show that, on average, Plaintiff activated the alarm approximately one minute after he clocked out. (See Docket No. 28-17 [Declaration of Jonathan Slowik] ¶¶ 3-4; Docket No. 28-13 [Partner Time Punch Report]; Docket No. 28-16 [Alarm Records].) Moreover, he did so within two minutes on 90% of the shifts and within five minutes on every shift. (Id.) Once he set the alarm, Plaintiff needed to exit the store within one minute to avoid triggering the alarm. (Docket No. 28-4 [Deposition of Douglas R. Troester ("Troester Dep.")] at 123:3-5.) And Plaintiff testified that it took 30 seconds to walk out of the store. (Id. at 150:14-20.) He then locked the door, which took 15 seconds to "a couple minutes," and walked his co-workers to their cars, which took 35 to 45 seconds. (Id. at 148:7-13, 152:7-19, 153:13-23.) On rare occasions—once every "couple of months"— Plaintiff spent a few minutes letting co-workers back inside the store or bringing in patio furniture that he forgot to retrieve before clocking out. (Id. at 149:15-22, 157:8-14, 159:1-7.) Even 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. As such, the amount of time at issue favors a finding that the alleged work was de minimis. See Farris, 667 F. Supp. 2d at 1165 ("10 minutes is the standard threshold for determining whether something is de minimis").

The "administrative difficulty of recording the additional time" also favors applying the de minimis defense. This factor weighs in favor of the defense when the employer's time-keeping system cannot be practically configured to capture the alleged off-the-clock work. See Alvarado 2008 WL 2477393, at *3-4 (holding that time employees spent submitting to bag checks upon leaving store was de minimis, rejecting plaintiff's argument that employer should endeavor to record that time by "repositioning the time clock close by the exit door"); Gillings, 2012 WL 1656937, at *4-5 (holding that time spent booting up computer to log into time clock software was de minimis, and employer was not required to capture this time by installing a time clock at front door).

Here, Starbucks could not feasibly capture the time at issue in this case. According to Plaintiff, the STAR software required him to clock out on the POS registers before initiating the close store procedure on the MWS. (Troester Dep. at 167:23-169:2, 172:18-175:2.) Thus, in order for the software to function, the close store procedure—which lasted one minute on average—had to occur after Plaintiff clocked out. Additionally, it would be impracticable for Defendant to capture the tasks that Plaintiff performed after completing the close store procedure. He 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. Similarly, the minimal time that Plaintiff spent walking out of the door, locking the door, walking co-workers to their cars, and letting co-workers back in the store necessarily occurred after he clocked out, and is not practical to record. Therefore, this factor weighs in favor of granting Defendant's de minimis defense.

Where, as here, the first two factors under Lindow are satisfied, courts routinely apply the de minimis defense, even when a plaintiff alleges uncompensated time every day. See Busk, 713 F.3d at 532 (holding that the time employees spent "passing through the security clearance on the way to lunch" was de minimis, even though they did so on a daily basis); Farris, 667 F. Supp. 2d at 1165-66 (explaining that "the daily time involved in an activity is the chief concern in determining whether it is de minimis" and holding that 10 minutes of daily unpaid time was not compensable); accord Abbe, 2007 WL 4146696, at *7; Gillings, 2012 WL 1656937, at *4-5; Waine-Golston v. Time Warner Entm't-Advance/New House P'ship, 2013 WL 1285535, at *6 (S.D. Cal. Mar. 27, 2013); Alvarado, 2008 WL 2477393, at *3-4; Cervantez, 618 F. Supp. 2d at 1217-18. Thus, although Plaintiff claims that he performed off-the-clock work during every closing shift to which he was assigned, which was not every shift that he worked, these facts are consistent with a finding that the time spent closing the store was de minimis.

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. Through the de minimis defense, the law recognizes that "[s]plit-second absurdities are not justified by the actualities of working conditions." Anderson, 328 U.S. at 692. Rather, 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." Id. The few minutes that Plaintiff spent closing the store at the end of his shift were far from substantial and fall well within the 10-minute de minimis benchmark. Accordingly, the de minimis defense applies here and prevents Plaintiff from surviving Defendant's motion for summary judgment with respect to his first claim for unpaid wages.

2. PLAINTIFF'S REMAINING DERIVATIVE CLAIMS ALSO FAIL AS A MATTER OF LAW

Plaintiff's remaining claims for failure to provide accurate written wage statements, failure to timely pay all final wages, and unfair competition are all derivative of his first claim for unpaid wages and accordingly must also fail as a matter of law. Specifically, Plaintiff claims that, as a result of Defendant's failure to compensate him for his off-the-clock work, his wage statements were inaccurate and his final wages upon termination were deficient. (See Compl. at 10-13; Docket No. 34 [Opposition to Motion for Summary Judgment ("Opp.")] at 19-24.) These alleged violations of the California Labor Code form the basis of Plaintiff's claim for unfair competition under California Business and Professions Code §§ 17200, et seq. (See Compl. at 13-14; Opp. at 24.) Accordingly, because Plaintiff's first claim for unpaid wages fails as a matter of law, so too do his remaining derivative claims.

IV.
CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment is **GRANTED**. The Defendant is ordered to prepare a Judgment consistent with this Order for the Court's signature on or before March 17, 2014. The hearing presently scheduled for March 10, 2014, is **VACATED**.

IT IS SO ORDERED.