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Supreme Court of California
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Supreme Court No. S277518

**In The Supreme Court
of the
State of California**

DELMER CAMP,
Plaintiff and Appellant,

v.

HOME DEPOT U.S.A., INC.,
Defendant and Respondent.

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*After a Decision of The Court of Appeal
Sixth Appellate District
Case No. H049033*

APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF OF THE RETAIL LITIGATION CENTER, INC. IN SUPPORT OF DEFENDANT AND RESPONDENT

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APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF DEFENDANT AND RESPONDENT

Pursuant to California Rule of Court 8.520(f), the Retail Litigation Center, Inc. hereby requests permission to file the attached brief as amicus curiae supporting Defendant and Respondent Home Depot U.S.A., Inc. This application is timely made within 30 days of the filing of the last party brief.

The Retail Litigation Center, Inc. (RLC) is a unique public policy organization that identifies and contributes to legal proceedings affecting the retail industry. The RLC's members include many of the country's most innovative retailers, ranging in size from some of the largest retailers in the country to smaller businesses. Since its founding in 2010, the RLC has filed well over 200 amicus briefs in a variety of courts, including the California Supreme Court and the U.S. Supreme Court, in order to provide the retail industry's perspectives on important legal issues and highlight the potential industry-wide consequences of significant pending cases, such as this one.

No party or counsel for a party has authored any part of the attached brief. Likewise, no party or counsel for any party has made a monetary contribution intended to fund the preparation or submission of this brief.

DATED: October 20, 2023 Respectfully submitted,

MCGUIREWOODS LLP

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TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE 7

INTRODUCTION 8

ARGUMENT 9

I. Time rounding policies can be good for employees and employers. 9

A. Employers understand the clear rules for lawful timekeeping systems. 9

B. Statistics from case law demonstrate that neutral rounding practices often favor employees. 13

C. Neutral rounding is a simple and easy system that benefits both employees and employers. 14

II. Regulators have long approved time-rounding policies. 17

III. There is no reason for the California judiciary to change the current “neutrality” standard. 20

A. The Court of Appeal’s decision impacts all forms of rounding, not just Home Depot’s specific rounding practice. 20

B. Banning neutral time-rounding practices would impose new administrative burdens, especially on small businesses. 21

C. Given the clear acceptance of rounding by the federal system and other states, it makes no sense for the California judiciary to change course. 22

D. The Court of Appeal’s rejection of neutral time-rounding practices encroaches upon the policymaking authority of the legislature and the DLSE. 23

CONCLUSION 25

CERTIFICATE OF COMPLIANCE 26

PROOF OF SERVICE 27

TABLE OF AUTHORITIES

Page(s)

Cases

AHMC Healthcare v. Superior Court,
(2018) 24 Cal. App. 5th 1014 .... 13, 18

Alvarado v. Dart Container Corp. of California,
(2018) 4 Cal. 5th 542, *as modified* (Apr. 25, 2018)................. 18

Austin v. Amazon.com, Inc.,
(W.D. Wash., May 10, 2010, No. 2:09-CV-1679)
2010 WL 1875811 13

Camp v. Home Depot U.S.A., Inc.,
(Cal. Super., Feb. 24, 2021, No. 19CV344872)
2021 WL 9794563, *rev'd in part* (2022)
84 Cal. App. 5th 638 24

Chao v. Self Pride, Inc.,
(D. Md., June 14, 2005, No. 1:03-CV-03409)
2005 WL 1400740 11

Clark v. Bally's Park Place, Inc.,
(D.N.J. 2014) 298 F.R.D. 188 12

Corbin v. Time Warner Ent.-Advance/Newhouse P'ship,
(9th Cir. 2016) 821 F.3d 1069.. 10

David v. Queen of Valley Medical Center,
(2020) 51 Cal. App. 5th 653 18

Eyles v. Uline, Inc.,
(N.D. Tex., Sept. 4, 2009, No. 4:08-CV-577)
2009 WL 2868447, *aff'd* (5th Cir. 2010) 381 F. App'x 384...... 11

Ferra v. Loews Hollywood Hotel, LLC,
(2019) 40 Cal. App. 5th 1239, *rev'd on other grounds*
(2021) 11 Cal. 5th 858... 18

Kirtsaeng v. John Wiley & Sons, Inc.,
(2013) 568 U.S. 519...7

Schneider v. Union Hosp., Inc.,
(S.D. Ind., Oct. 14, 2016, No. 2:15-CV-204)
2016 WL 6037085 10

See's Candy Shops, Inc. v. Superior Court,
(2012) 210 Cal. App. 4th 889 .... 10, 11, 13, 18

South Dakota v. Wayfair, Inc.,
(2018) 138 S. Ct. 2080 7

Troester v. Starbucks Corp.,
(2018) 5 Cal. 5th 829, *as modified on denial of reh'g*
(Aug. 29, 2018) 15

Utne v. Home Depot U.S.A., Inc.,
(N.D. Cal., Dec. 4, 2017, No. 3:16-CV-01854)
2017 WL 5991863 .... 10, 11

Statutes

Lab. Code, § 510 19

Other Authorities

29 C.F.R. § 778.101 19

29 C.F.R. § 785.48 .... 16, 19

Administrative Policy of the Washington Department of
Labor and Industries, ES.D.1 (revised Apr. 6, 2023)............. 22

Advisory Opinion of the Nevada Labor Commissioner
(June 21, 2023) 22

IWC Order No. 5-2001 (effective Oct. 1, 2000) 17

Mont. Admin. R. 24.16.1012 22

The 2002 Update of the DLSE Enforcement Policies and
Interpretations Manual (Revised) § 47.4 (Aug. 2019) 16, 18

U.S. Department of Labor Opinion Letter FLSA2019-9,
2019 WL 2914105 (July 1, 2019) 19

INTEREST OF AMICUS CURIAE

The Retail Litigation Center, Inc. ("RLC") represents national and regional retailers, including many of California's largest and most innovative retailers and smaller businesses across a breadth of retail verticals. The RLC's members employ millions of people throughout California, provide goods and services to millions more, and account for tens of billions of dollars in annual sales within the state. The RLC offers courts retail-industry perspectives on important legal issues and highlights the industry-wide consequences of significant cases. Since its founding in 2010, the RLC has filed more than 200 amicus briefs on issues of importance to the retail industry. *See, e.g.*, *South Dakota v. Wayfair, Inc.* (2018) 138 S. Ct. 2080, 2097 (citing the RLC's brief); *Kirtsaeng v. John Wiley & Sons, Inc.* (2013) 568 U.S. 519, 542 (citing the RLC's brief).

The RLC has a particular interest in this case because many of its retail members employ hourly, non-exempt employees in California and, in accordance with both state and federal laws, these retailers are required to calculate the amount of time worked by their hourly, non-exempt employees. The legality of using a neutral time rounding system to calculate employees' time worked in California is thus an important question of law that will impact California-based retailers and their employees.

INTRODUCTION

The question posed in this case is whether this Court should ban a widely-accepted timekeeping practice that has been approved by the state Division of Labor Standards Enforcement (DLSE), the U.S. Department of Labor, and many federal and state courts for decades. The answer is no. Radical changes to wage-and-hour law should come from the legislature, not from courts suddenly re-interpreting laws that have not been revised in many years.

Clock time rounding—the practice of mathematically rounding an employee's time punches to the nearest five, ten or fifteen-minute interval—has existed for as long as wage-and-hour regulations, if not longer. Neutral rounding (done in a way that neither favors the employer nor employee over time due to the law of averages) has been allowed for decades. California appellate courts, in particular, recognized the legality of the practice many years ago. The rules that govern it are straightforward and robustly enforced.

Neutral rounding also comes with plenty of benefits. Among them, as the facts of this case show, employees often see direct financial benefits. It is undisputed here that Home Depot devised a rounding system that is neutral, both facially and as-applied. And, studies undertaken during this litigation show that 57 percent of all shifts involved rounding that favored Home Depot's employees, adding up to a total of more than 339,000 minutes that Home Depot paid its employees for time they were not even clocked in, much less working.

Other benefits exist as well. Rounding policies help small businesses avoid complex, individualized math equations that would otherwise be necessary to compensate employees minute-to-minute. Rounding policies also help organize shifts of workers—that is, employees have leeway on clock-in time, but all begin actually working at 8:00, when the prior shift steps away. Similarly, rounding policies provide employees with consistent paychecks despite tiny variations in their clock time, and help employers plan their exact payroll expenses ahead of time. Abolishing the system of neutral time rounding by a sudden judicial turnabout is both unnecessary to protect workers and disruptive to workplaces that use the practice.

ARGUMENT

I. Time rounding policies can be good for employees and employers.

A. Employers understand the clear rules for lawful timekeeping systems.

Neutral time-rounding practices are firmly grounded in both federal and California law. The U.S. Department of Labor first confirmed the legality of neutral time-rounding practices more than 60 years ago. Since then, many states, including California, have expressly embraced this practice through legislative action, regulatory approval, and judicial decisions, largely tracking the language and rationales of the federal rounding regulation.

The rules about rounding are very clear. Rounding must be fair and equitable. Consistent with this guiding principle,

California and federal courts have long held that time-rounding practices are lawful if they are neutral, "both facially and as applied." *E.g.*, *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal. App. 4th 889, 903 ("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."); *Corbin v. Time Warner Ent.-Advance/Newhouse P'ship* (9th Cir. 2016) 821 F.3d 1069, 1079 ("We join the consensus of district courts that have analyzed this issue . . . . Mandating that every employee must gain or break even over every pay period . . . vitiates the purpose and effectiveness of using rounding as a timekeeping method.").

The test for neutrality has two components. First, facial neutrality means that the rounding practice must round both up and down. *See Utne v. Home Depot U.S.A., Inc.* (N.D. Cal., Dec. 4, 2017, No. 3:16-CV-01854) 2017 WL 5991863, at *3 ("The rounding policy rounds both up and down, and is thus facially neutral."). This is a critical feature of any neutral rounding practice because, otherwise, the rounding would not average out over time. One-directional rounding would always skew the result in favor of either the employer or the employee.

Employers know not to use one-directional time-rounding that consistently rounds employees' time entries down, and courts have not hesitated to call out policies that are not facially neutral. *See, e.g*, *Schneider v. Union Hosp., Inc.* (S.D. Ind., Oct. 14, 2016, No. 2:15-CV-204) 2016 WL 6037085, at *10

(conditionally certifying FLSA collective action because plaintiffs provided evidence that rounding was always done in the hospital's favor and never in the employee's favor, and a sampling of time-clock data for the putative class showed that the hospital "always benefit[ed] from the rounding policy, and the employees never did"); *Eyles v. Uline, Inc.* (N.D. Tex., Sept. 4, 2009, No. 4:08-CV-577) 2009 WL 2868447, at *4 (entering judgment for the plaintiff on claims of unpaid overtime because the employer's rounding policy "encompasse[d] only rounding down, so that over time, plaintiff was not paid for all the time actually worked"), *aff'd* (5th Cir. 2010) 381 F. App'x 384; *Chao v. Self Pride, Inc.* (D. Md., June 14, 2005, No. 1:03-CV-03409) 2005 WL 1400740, at *6 (granting summary judgment for plaintiff because the employer's practice was to always round time downwards, thus the rounding did not "average[] out" over time). This body of case law clearly shows that enforcement of the current "neutrality" standard works.

Second, rounding must also be neutral "as applied." "As applied" neutrality focuses on the "net effect" of the time-rounding practice, meaning that on average, a neutral time-rounding practice should not favor overpayment or underpayment of wages to employees because, over an extended period of time, the rounding should mathematically average out. *See's Candy*, 210 Cal. App. 4th at 903 (noting that "rounding practices [that are] neutral over time do not violate California labor law since their net effect does not withhold wages"); *Utne*, 2017 WL 5991863, at *3 ("[The fact] that rounding results in net

undercompensation of some employees during a given time period does not render the practice unlawful as long as it averages out in the long-term.”).

Courts across the country, including in California, have fine-tuned this analysis of “neutrality,” striking down rounding practices when the data show that the net effect of the rounding practice was to the detriment of employees. This can occur when an employer combines a facially neutral rounding practice with a different policy that affects how and when employees clock-in or clock-out. For example, employers that enforce strict tardy policies to deter employees from clocking-in late may unwittingly induce employees to consistently clock-in a few minutes before their scheduled start time. In such a scenario, the result would be that the rounding will be done in a direction that consistently disfavors the employee, causing them to lose a few minutes of clocked-in time for each time they choose to punch-in early to avoid being late.

Again, the current “neutrality” standard enforced by courts has proven to be very effective at detecting and stopping such rounding practices that are not applied in a neutral manner. Courts are well-equipped under the current “neutrality” standard to detect when a facially neutral rounding practice is applied in a manner that results in consistent underpayment of wages to employees. *See Clark v. Bally’s Park Place, Inc.* (D.N.J. 2014) 298 F.R.D. 188, 196 (certifying wage and hour class action based on employer’s neutral time-rounding practice combined with requirement to attend pre-shift meetings before clocking in); *see*

also Austin v. Amazon.com, Inc., (W.D. Wash., May 10, 2010, No. 2:09-CV-1679) 2010 WL 1875811, at *3 (the FLSA regulation "does not contemplate the situation where an employer allows rounding . . . but disciplines the employee when the rounding does not work to the employer's advantage").

B. Statistics from case law demonstrate that neutral rounding practices often favor employees.

Judicial enforcement of the current "neutrality" standard has incentivized many employers to design systems that err on the side of favoring employees. The case law is replete with such examples.

- In *See's Candy*, an expert analyzed time punch records for a group of 9,000 employees over a five-plus year period and concluded that, as a result of the facially neutral rounding policy, the employees in total gained 2,749 hours of compensable time, and that 67% of the employees were either not affected or experienced a net gain in compensable time. 210 Cal. App. 4th at 896.

- In *AHMC Healthcare v. Superior Court*, an expert analyzed time records of over 3,000 employees for a four-year period at two different facilities. At one facility, 50.5% of the employees experienced a net gain or were unaffected by the rounding practice, and the employees in total gained 1,378 hours of compensable time. At the other facility, 47.9% of the employees experienced a net gain or were unaffected by the rounding practice, and the employees gained in the aggregate 3,875 compensable hours. (2018) 24 Cal. App. 5th 1014, 1018.

- In this case, a study in the record of more than 4 million shifts at Home Depot found that the employees in 57 percent of shifts either gained time

> or lost none. Collectively, the employees were paid for nearly 6,000 hours more than they would have been paid if Home Depot had not rounded their time. (CT42-43, 79-80, 117.)

These results make intuitive sense because employees who are aware of the rounding practice will be incentivized to take steps to become net "winners" rather than net "losers." Assuming that employers apply the rounding practice in a truly neutral fashion, self-interested behavior by employees often tips the scales in the employees' favor in the aggregate.

C. Neutral rounding is a simple and easy system that benefits both employees and employers.

With the Division of Labor Standards Enforcement's ("DLSE's") regulatory stamp of approval, a range of California employers have incorporated neutral time-rounding practices into their timekeeping systems for practical reasons that benefit both employees and employers.

Neutral time rounding systems allow employers to establish a more flexible clocking-in and clocking-out process for employees. With rounding in place, employees can clock-in or -out a few minutes early or late without concerns about receiving different wages than anticipated, losing benefits eligibility, or inadvertently working unauthorized overtime. From the employer's perspective, neutral time-rounding mitigates the employer's incentive to require employees to begin working immediately after clocking-in or to immediately clock-out after the work shift ends. Instead, neutral time-rounding encourages employers to adopt more flexible, employee-friendly pre-shift and

post-shift practices so that employees would not be under the employer's "control" during those non-working periods. Employees who arrive to work early benefit from this flexible approach because they can first clock-in to get that mundane task out of the way, and then still have time before their shift starts to engage in various personal pursuits, such as making a personal telephone call or completing some online shopping. Employees who arrive to work a few minutes late would also benefit because the rounding would likely be in their favor and result in higher pay than they would have received under an unrounded system. Allowing for such flexibility decreases the burden and pressure on both employers and employees to perfectly align their clock-in and clock-out times with their time spent "actually working." This is likely to produce a more relaxed pre-shift and post-shift work environment.

Additionally, if employees are permitted to perform certain unexpected tasks before or after their shift starts or ends on an occasional basis (e.g., answering a retail customer's question while the employee is personally shopping just before or after clocking in or out), it would be unreasonable "to require the employer to account for" such "periods of time that are so brief, irregular of occurrence, or difficult to accurately measure or estimate." *See Troester v. Starbucks Corp*. (2018) 5 Cal. 5th 829, 855, *as modified on denial of reh'g* (Aug. 29, 2018) (Kruger, J.) (concurring). Indeed, even the *Troester* majority, despite holding that the federal body of case law on the *de minimis* rule is not applicable to the California Labor Code, acknowledged that

California has its own *de minimis* rule, which, like its federal counterpart, stands for the principle that "mere trifles and technicalities must yield to practical common sense and substantial justice." *Id.* at 843.

As these examples show, among the beneficial uses of rounding is addressing the practical situation where an employee's exact clock time is not identical to the time actually *worked*. After all, both federal regulations and the DLSE Manual acknowledge the possibility of important "[d]ifferences between clock records and actual hours worked." 29 C.F.R. § 785.48(a); The 2002 Update of the DLSE Enforcement Policies and Interpretations Manual (Revised) § 47.4 (Aug. 2019) ("DLSE Manual")[1] (specifically allowing employers to "disregard" an "early or late clock punching" if the employee is not actually working while clocked in and adding that "[a]ctual facts must be investigated.").

California law does not require employers to pay their employees for all of their time spent merely clocked-in. In fact, the DLSE recognizes that "[m]inor differences between the clock records and actual hours worked cannot ordinarily be avoided," especially when employees "voluntarily come in before their regular starting time or remain after their closing time." *Id.* Even when employers choose to use time clocks, California law only requires employers to pay employees for "actual hours worked."

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[1] Available at https://www.dir.ca.gov/dlse/DLSEManual/dlse_enfcmanual.pdf.

Id.; *see also* IWC Order No. 5-2001 (effective Oct. 1, 2000)[2] ("Every employer shall pay to each employee wages . . . for all hours worked . . . .") (emphasis added). A neutral time-rounding practice is simply a pragmatic tool for accurately calculating the "actual hours worked" in order to ensure that employees receive "all wages" earned without imposing any extra administrative burdens on either the employer or employee.

A neutral time-rounding practice also facilitates the equitable treatment of all employees. Under the Court of Appeal's decision, an employee who clocks-in five minutes early would receive more pay than an employee who clocks-in one minute early, even if both employees arrived to work at the same time and were not subject to the employer's control until their shift-start time. Allowing neutral time-rounding practices ensures that all shift-based employees receive the same pay for working the same hours under the same schedule, and any meaningful deviation from that schedule (e.g., leaving work early, or working after the normal shift-end time) would still be accounted for by the timekeeping system.

II. Regulators have long approved time-rounding policies.

For at least two decades, California employers have relied on interpretative guidance from the DLSE to implement neutral time-rounding practices that comply with their legal obligations to pay their employees "for all time they have ***actually worked.***"

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[2] Available at https://www.dir.ca.gov/iwc/Wageorders2000/iwcarticle5.pdf.

DLSE Manual § 47.3 (emphasis added). Employers had good reason to rely on this guidance, as it is well-established that the California judiciary, including the California Supreme Court, respects the DLSE Manual as strong, persuasive authority. *See Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 567, *as modified* (Apr. 25, 2018) ("[A]lthough we do not defer to the DLSE's enforcement policy, we do consider it to the extent we find it persuasive, keeping in view the DLSE's expertise and special competence, as well as the fact that the DLSE Manual evidences considerable deliberation at the highest policymaking level of the agency.").

This uncontroversial acceptance of neutral time-rounding practices, consistent with practically every jurisdiction in the United States, was enshrined in the Fourth District Court of Appeal's decision in *See's Candy* and subsequently approved time and time again by several other Courts of Appeal. (210 Cal. App. 4th 889; *see also AHMC Healthcare,* 24 Cal. App. 5th 1014; *Ferra v. Loews Hollywood Hotel, LLC* (2019) 40 Cal. App. 5th 1239, 1253, *rev'd on other grounds* (2021) 11 Cal. 5th 858; *David v. Queen of Valley Medical Center* (2020) 51 Cal. App. 5th 653, 655.)[3]

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[3] At the federal level, the U.S. Department of Labor re-affirmed its position on the legality of neutral time-rounding policies in a 2019 opinion letter, concluding that an employer's rounding practice was lawful because "its rounding practice is neutral on its face" and it "appears to average out so that it fully pays its employees for all of the time that they actually work" and "will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked."

Plaintiff goes to great lengths to characterize this extensive body of California jurisprudence as somehow all wrongly decided because *See's Candy* referenced the federal rounding regulations as persuasive authority. But that *See's Candy* viewed the federal rounding regulation as persuasive authority does not change the fact that *See's Candy* and its progeny were all statements of California law that California employers justifiably relied upon to implement neutral time-rounding practices for over a decade.

Indeed, referring to federal regulations as persuasive authority makes particular sense here because the relevant statutory and regulatory language under federal and state law is substantially similar. *Compare* Lab. Code, § 510 (requiring overtime pay for "any work in excess of 40 hours in any one workweek" or "any work in excess of eight hours in one workday") *with* 29 C.F.R. § 778.101 (requiring overtime pay for "hours worked in excess of the statutory maximum in any workweek"). Neither Plaintiff nor the Court of Appeal can point to any meaningful difference between the statutory language in the Labor Code and IWC Wage Orders when compared to the text of the FLSA and related federal regulations. There is no textual basis to interpret California law differently than the near-identical federal rule. Plaintiff's theory boils down to an assertion that everyone has misread both California and federal law for many decades.

U.S. Department of Labor Opinion Letter FLSA2019-9, 2019 WL 2914105, at *2 (July 1, 2019) (citing 29 C.F.R. § 785.48(b)). The rounding regulation itself, 29 C.F.R. § 785.48, has remained unchanged since 1961.

III. There is no reason for the California judiciary to change the current "neutrality" standard.

A. The Court of Appeal's decision impacts all forms of rounding, not just Home Depot's specific rounding practice.

In his Answering Brief, Plaintiff acknowledges the existence of "theoretically lawful" forms of rounding and attempts to articulate a distinction between the "mathematical practice" of rounding and the "effects" of rounding. According to Plaintiff, the practice of rounding can be lawful as long as the effects of the practice do not result in a single employee receiving less pay than the amount to which their unrounded clocked-in time would otherwise entitle them.

However, this self-serving standard is *impossible* to meet because it is inevitable that, for some employees, their aggregate rounded time will be slightly less than their aggregate unrounded time. Inherent in any neutral rounding system is the fact that sometimes rounding goes up and sometimes down.[4] Indeed, the only way to ensure that aggregate rounded time will never fall below aggregate unrounded time for even a single employee is to always round the time in favor of the employee (i.e., one-

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[4] By way of example, it is well-accepted that the probability of flipping a coin and landing on heads or tails is a 50-50 proposition. Despite those even odds, flipping a coin ten times does not always result in five heads and five tails, and flipping a coin 100 times does not always result in 50 heads and 50 tails. Inevitably, there will be instances where the actual outcome slightly deviates from the probable outcome. But the mere fact that the actual outcome was not perfectly 50-50 does not mean the coin was biased or unfair.

directional rounding). This would defeat the purpose of rounding and essentially require all employers who use rounding to provide a consistent windfall to all employees subject to the rounding practice, an outcome that is simply not contemplated under any law.

Plaintiff's version of lawful "rounding" would essentially require employers to conduct an actuarial analysis, for each pay period and for each employee, to ensure that the "effects" of rounding did not negatively impact any single employee. Plaintiff's version of a lawful rounding practice essentially eliminates all of the practical benefits of rounding, and moreover, could only be used when the employer's actuarial analysis confirmed that the rounding did not reduce any single employee's clocked-in time. This is a far cry from the fair and practical, neutral "rounding" approved by the DLSE as well as *See's Candy* and its progeny. It is clear that Plaintiff's arguments on appeal constitute a full-frontal attack on neutral time-rounding practices, despite his attempt to characterize them differently.

B. Banning neutral time-rounding practices would impose new administrative burdens, especially on small businesses.

Another benefit of neutral time-rounding practices is that they help employers enhance predictability with respect to payroll costs, aid in their budgeting efforts, and reduce their administrative burdens. Small businesses, in particular, often lack the financial means to invest in electronic timekeeping systems and thus rely on manual timecards completed by their employees. According to recent surveys, approximately 38% of

U.S.-based employers still use manual systems like punch cards, paper timesheets, and time cards.[5]

Typically, employers using manual timecards do not have a sophisticated, electronic timekeeping system that directly links to payroll. As such, employers who manually track time also have to calculate their payroll manually. If rounding were eliminated, such employers could be forced to calculate each employee's total time worked each day, down to the minute.

C. Given the clear acceptance of rounding by the federal system and other states, it makes no sense for the California judiciary to change course.

Besides California, many other states have expressly adopted the federal rounding regulations as applicable to their state wage and hour laws. Several states in close proximity to California, including Washington, Nevada, and Montana, have expressly embraced the federal approach to rounding. *See* Advisory Opinion of the Nevada Labor Commissioner (June 21, 2023);[6] Administrative Policy of the Washington Department of Labor and Industries, ES.D.1 (revised Apr. 6, 2023);[7] Mont. Admin. R. 24.16.1012.

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[5] *See* https://quickbooks.intuit.com/time-tracking/resources/time-attendance-stats/ (last accessed Oct. 18, 2023).

[6]https://labor.nv.gov/uploadedFiles/labornvgov/content/About/AO%20Time%20Clock%20Rounding%20to%20Calculate%20Employee%20Pay.pdf (last accessed Oct. 18, 2023).

[7] https://lni.wa.gov/workers-rights/_docs/esd1.pdf (last accessed Oct. 18, 2023).

Multi-state employers in particular would bear a significant burden if this Court suddenly changed California's course now. Because neutral rounding is perfectly legal under federal law and accepted in almost every jurisdiction in this country, employers that do business in multiple states often use the same timekeeping policies and procedures, including those neutral rounding, for all of their employees nationwide. Requiring multi-state employers to structure their payroll practices differently for employees in California would be disruptive, costly, and unnecessarily confusing when there is no textual basis under California law to require this change.

D. The Court of Appeal's rejection of neutral time-rounding practices encroaches upon the policymaking authority of the legislature and the DLSE.

Neutral time-rounding practices are common because employers have justifiably relied on decades of guidance from federal and state regulators concluding that such practices are lawful as long as employees in the aggregate are not consistently underpaid. Knowledgeable employers recognize that this practice has been widely accepted to be both legal and pragmatic. Some employers even conduct periodic audits of their rounding practices in order to ensure they are applied in a neutral fashion.

The Court of Appeal's attempt to abolish this long-standing practice without any change in the statute or regulation language would have severe consequences. California employers deserve clear guidance on how to implement their timekeeping practices in full compliance with any new legal standard and without the

uncertainty of an avalanche of lawsuits or enforcement actions when the employer has been operating within the bounds of understood and established law. The judiciary is not a policymaking body, nor is it designed to provide employers with *prospective* guidance on how to implement a legally compliant timekeeping practice. Rather, it should be up to the legislature to pass laws, and up to the DLSE to promulgate regulations, to guide employers on how to implement or change their timekeeping practices in order to comply with any new legal standard. Moreover, the California legislature is aware of *See's Candy's* recognition of the validity of neutral rounding under the statute and regulations, and has not passed legislation invalidating neutral rounding.

The Court of Appeal tried to avoid an outright rejection of all neutral time-rounding practices, and instead, purported to limit its "analysis to the specific facts before us"—i.e. "where Home Depot could and did track the exact time in minutes that an employee worked each shift and those records showed that Camp was not paid for all the time he worked." (Opn. 2-3.) But in doing so, the Court of Appeal necessarily rejected a longstanding and common employer practice that net favors employees to the tune of thousands of hours and tens of thousands of dollars. *See Camp v. Home Depot U.S.A., Inc.* (Cal. Super., Feb. 24, 2021, No. 19CV344872) 2021 WL 9794563, at *1 ("In total, employees in the 10% class sample analyzed were paid for 339,331 more minutes than if Defendant did not round time."), *rev'd in part* (2022) 84 Cal. App. 5th 638.

The judiciary should defer to the policymaking functions of the Legislature and the DLSE and refrain from drastically altering the legal landscape with respect to neutral time-rounding practices, especially when the current legal framework has shaped how California employers and retailers have implemented their timekeeping systems for decades.

CONCLUSION

For these reasons, amicus respectfully requests that this Court reverse the judgment of the Court of Appeal.

DATED: October 20, 2023

Respectfully submitted,

MCGUIREWOODS LLP

/s/ Sabrina A. Beldner
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CERTIFICATE OF COMPLIANCE

Under Rule 8.520(c)(3) of the California Rules of Court, I hereby certify that this brief contains 4,438 words, including footnotes but excluding those portions excludable pursuant to Rule 8.520(c)(3). In making this certification, I have relied on the word count of the computer program used to prepare the brief.

DATED: October 20, 2023

Respectfully submitted,

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PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1800 Century Park East, 8th Floor, Los Angeles, CA 90067-1501.

On October 20, 2023, I served a copy of the within document(s) described as **APPLICATION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND [PROPOSED] BRIEF OF THE RETAIL LITIGATION CENTER, INC.** on the interested parties as follows:

SEE ATTACHED LIST

☒ **BY MAIL as noted on attached service list:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing with the United States Postal Service. Under that practice, it would be deposited with the United States Postal Service that same day in the ordinary course of business. Such envelope(s) were placed for collection and mailing with postage thereon fully prepaid on that same day following ordinary business practices. (C.C.P. § 1013 (a) and 1013a(3))

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On October 20, 2023, I submitted to TrueFiling an electronic copy of the document to the California Supreme Court, which also satisfies any service requirement to the California Court of Appeal.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 20, 2023, at Los Angeles, CA.

Matthew D. Whitney

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