SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER

MINUTE ORDER

DATE: 12/05/2025 TIME: 09:00:00 AM DEPT: CX101

JUDICIAL OFFICER PRESIDING: William Claster
CLERK: G. Hernandez
REPORTER/ERM: Carol Lynn Cox CSR# 5128
BAILIFF/COURT ATTENDANT: . None, None

CASE NO: **30-2022-01264317-CU-OE-CXC** CASE INIT.DATE: 06/10/2022
CASE TITLE: **Knott vs. Albertsons Companies, Inc**
CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 74579688
EVENT TYPE: Motion for Summary Judgment and/or Adjudication
MOVING PARTY: The Vons Companies, Inc., Kevin M. Curry, Albertsons Companies, Inc
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment/Adjudication, 09/15/2025

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MOVING PARTY: The Vons Companies, Inc., Kevin M. Curry, Albertsons Companies, Inc
CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment/Adjudication, 09/15/2025

EVENT ID/DOCUMENT ID: 74627104
EVENT TYPE: Status Conference

APPEARANCES
Natalie Mirzayan, from Mirzayan Law, APC, present for Plaintiff(s).
Mara Curtis, from Reed Smith LLP, present for Defendant(s).

Defendants Albertsons Companies, Inc. and the Vons Companies, Inc's Motion for Summary Judgment or, in the alternative, Summary Adjudication

Hearing held with participants appearing remotely and in person.

Privately retained court reporter appearing remotely.

Tentative Ruling posted on the Internet.

The Court hears oral argument. The Court's ruling is attached hereto and incorporated herein by reference.

A proposed judgment is to be submitted for the Court's review.

Court orders clerk to give notice.

Before the Court are two motions for summary judgment or adjudication, one filed by Albertsons Companies, Inc. and The Vons Companies, Inc., and one filed by Kevin M. Curry. On both motions, summary judgment in favor of the moving parties is GRANTED.

PROCEDURAL ISSUES

I. Plaintiff's Request for a Continuance

Rather than arguing the merits, Plaintiff Glenn Knott's opposition asks for a continuance under CCP § 437c(h), which provides: "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication, or both, that facts essential to justify opposition may exist but cannot, for reasons stated, be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just." The statute's reference to "any other order as may be just" contemplates "an exercise of discretion." (*Rodriguez v. Oto* (2013) 212 Cal.App.4th 1020, 1038 fn. 7.) "In exercising its discretion, the court may properly consider the extent to which the requesting party's failure to secure the contemplated evidence more seasonably results from a lack of diligence on his part." (*Id.*, at p. 1038.)

The declaration supporting a requested continuance should include the following information: (1) facts establishing a likelihood that relevant evidence may exist and why that evidence is essential to supporting the motion; (2) the specific reasons this evidence cannot be presented at the present time; (3) an estimate of the time necessary to obtain the evidence; and (4) the specific steps the requesting party intends to utilize to obtain the evidence. (Weil, et al., *Cal. Practice Guide: Civil Procedure Before Trial* (The Rutter Group 2025) ¶ 10:207.15.)

As explained in *Lerma v. County of Orange* (2004) 120 Cal. App. 4th 709, the reason for this "exacting requirement" is to prevent "every unprepared party who simply files a declaration stating that unspecified essential facts may exist from using the statute "as a device to get an automatic continuance." (*Id.* at 715.) "The party seeking the continuance must justify the need, by detailing both the particular essential facts that may exist and the specific reasons why they cannot then be presented." (*Id.* at 716.) Plaintiff's counsel undoubtedly was on notice of these requirements inasmuch as her request for a continuance in response to an earlier motion for summary adjudication in this case was denied due to a lack of compliance with the requirements of CCP § 437c(h). (ROA 307)

Plaintiff's counsel declares that Defendants have yet to provide sufficient responses to discovery served in January 2025. (Mirzayan Decl. (ROA 451) ¶ 3.) These discovery requests are Plaintiff's first set of requests for production and special interrogatories directed to Vons. (*Id.*, Exs. 1-2.) Notably, these requests are directed to Vons alone, not to Albertsons or Curry. Counsel never explains why Vons' discovery responses are essential to opposing Albertsons' or Curry's motions, which are grounded in part on the argument that they never employed Plaintiff.

Moreover, the Court finds Plaintiff's failure timely to obtain this evidence is a result of Plaintiff's lack of diligence. This action was filed in June 2022, but Plaintiff served *set one* of his discovery requests two-and-a-half years later. Except for a four-month general stay from July 14, 2023 to November 27, 2023 (ROA 157, 169), and a limited stay on obtaining class contact information from February 23, 2024 to August 16, 2024 (ROA 216, 307), Plaintiff could have served this discovery at any time. Counsel provides no explanation for the delay in taking discovery. And while the Court appreciates Plaintiff's willingness to resolve the parties' discovery disputes without court intervention, the Court does not understand why Plaintiff failed to request an IDC or file a motion to compel as soon as possible after Defendants filed their summary judgment motions. When the Court asked Plaintiff's counsel about this at the December 2, 2025 IDC (held three weeks after she filed her opposition), she had no answer for why she waited 77 days after the MSJs were filed to seek the Court's assistance on a long standing discovery matter. This, too, indicates a lack of diligence on Plaintiff's part.

Plaintiff's supporting declaration also fails to establish why the discovery sought is essential to opposing the present motions. Rather than identifying specific discovery requests that are highly relevant to opposing the motions, counsel generally directs the Court to the requests—some 241 in total across two sets. Much of the discovery at issue is class discovery, which is irrelevant to motions directed toward Plaintiff's individual claims. (The same is true of the ongoing *Belaire West* process.) In any event, it isn't the Court's job to comb through numerous discovery requests and determine which ones are essential to opposing the present motions.

Finally, the Court questions the credibility of Plaintiff's supporting declaration. At paragraph 6, counsel testifies that Defendants didn't produce their expert report on the seating claim until November 5, 2025. But the expert's declaration, which includes his report, is exhibit 21 to Defendants' compendium of evidence (ROA 397), which was filed together with the motions on September 15, 2025. It appears counsel may have neglected to review the moving papers carefully.

For these reasons, the Court denies Plaintiff's request for a continuance.

II. Failure to File Opposing Separate Statement

As noted, Plaintiff's opposing papers only request a continuance. Plaintiff doesn't address the merits at all, nor did he file an opposing separate statement of disputed material facts. As a result, all facts set forth in Defendants' separate statements are undisputed. The Court's role, then, is to decide whether these undisputed facts entitle Defendants to summary judgment or adjudication.

GROUNDS FOR RULING

I. Albertsons/Vons Motion

A. Albertsons as Plaintiff's Employer

All of Plaintiff's claims are based on an employer-employee relationship. Albertsons may be liable only if it was Plaintiff's employer at the relevant times.

In terms of formal employment, Albertsons had no non-exempt hourly employees in California during the relevant time period. (UMF 54.) Plaintiff, for his part, worked at a Vons-branded store in Gardena. (UMF 2.2.) Plaintiff testified at deposition that he understood Vons to be his employer, had no reason to believe that Albertsons was his employer, and never communicated with employees of Albertsons. (UMF 51-53.) Plaintiff's new hire documentation, termination documentation, and disciplinary paperwork all reflect employment with Vons and were processed by Vons employees. (UMF 57-59.)

In terms of de facto employment (i.e., Albertsons exercising control over Plaintiff's work or Albertsons suffering or permitting Plaintiff to work), Plaintiff's employment was governed by a collective bargaining agreement (CBA) between Vons and several United Food & Commercial Workers locals. (UMF 2.3.) The CBA set the wage scales according to which Plaintiff was paid. (UMF 2.4.) The CBA also governed wages, hours, and working conditions. (UMF 2.13.) On a day-to-day level, the working conditions agreed to in the CBA were implemented in Plaintiff's Vons store by Services Operations Manager Belinda Byrd and Store Director Jorge Smith, both Vons employees. (UMF 56.)

The undisputed facts show Plaintiff wasn't a formal employee of Albertsons. They also show Albertsons lacked control over Plaintiff's wages, hours, or working conditions, and that Albertsons neither suffered nor permitted Plaintiff to work. He was engaged to work by Vons at a Vons-branded store, and his working conditions were governed by a CBA implemented by Vons managers. Accordingly, summary judgment is granted in Albertsons' favor.

B. Overtime

Plaintiff's overtime claim is based solely on the alleged miscalculation of the regular rate of pay.

As noted above, Plaintiff's wages were paid according to scales negotiated in the CBA. Over his employment, his standard hourly rate ranged from $12.10 per hour to $14.30 per hour, with basic overtime rates ranging from $18.15 per hour to $21.45 per hour. (UMF 3.5.) Plaintiff's employment overlapped with the early stages of the COVID-19 pandemic. During this time, Vons paid three separate items of additional compensation: "Appreciation Pay" of $2 per hour from March 15, 2020 to June 12, 2020, a one-time "Neighborhood Superhero Award" of $4 per hour based on average weekly hours from March to June 2020 paid on June 25, 2020, and a "Frontline Hero Award" equal to $5 per hour based on average weekly hours from September to November 2020 paid on December 10, 2020. (UMF 3.6-3.8.)

Plaintiff received all three items of additional COVID-related compensation. In addition, he received other items of additional compensation from time to time as provided in the CBA. He earned COVID-related compensation in three pay periods with alleged overtime or meal break violations. He earned other additional compensation in five pay periods with overtime. (UMF 3.9-3.11.) In all of these pay periods, his overtime rate was calculated with the additional items of compensation included in the regular rate. (UMF 3.12.) As a result, Defendants are not liable for overtime violations.

C. Meal and Rest Breaks

Vons' meal break policy provided that employees working shifts longer than 5 hours were entitled to a 30-minute meal break that had to be taken no later than 5 hours after the start of the shift. (UMF 5.15.) Vons' rest break policy provided that employees working shifts of 3.5-5 hours were entitled to one 10-minute rest break, employees working shifts of 5-6 hours were entitled to one 15-minute rest break, and employees working shifts of more than 6 hours were entitled to two 10-minute rest breaks. (UMF 5.15, 6.16.) Plaintiff signed off on this policy. (UMF 5.16, 6.17.) These policies are facially compliant with the law.

At deposition, Plaintiff testified Vons was "strict" about compliance with these policies and described them as "mandatory." He also testified that he was generally provided timely meal breaks when working break-eligible shifts. (UMF 5.20.) Undisputed evidence shows that Plaintiff received a total of six meal break premiums during his employment, and that he was disciplined twice for failure to take his meal breaks in accordance with Vons policy. (UMF 5.21-5.22.) Undisputed evidence also shows that Vons gave Plaintiff 15-minute rest breaks, and that while Plaintiff sometimes failed to take a second rest break, Vons management would remind him to take a second break if it became aware he'd missed it. (UMF 6.23.) Vons' break policy provides that if an employee is coerced or forced to miss a break, he or she is to contact employee relations or call a Vons hotline. Employees are specifically trained on this policy. There is no record that Plaintiff ever reported a complaint about missed breaks. (UMF 5.25-5.27, 6.25-6.27.)

The employer need only provide the employee off-duty meal and rest breaks. The employer has no obligation to police the break time provided, ensuring the employee in fact performs no work. (See *Brinker Restaurant Corporation v. Superior Court* (2012) 53 Cal.4th 1004, 1040.) Under this standard, the undisputed evidence establishes that there are no triable fact issues about Plaintiff's meal and rest break claims, including his being paid for the six admitted meal break violations noted above. Vons has facially compliant break policies that Plaintiff concedes are strictly observed, and there is no evidence he ever complained internally of being coerced to miss breaks.

As to the six meal break violations, Vons paid Plaintiff a premium as required by law. (UMF 5.21.) One of those premiums was paid in a period where Plaintiff earned no additional compensation, so there was no need to recalculate the regular rate. (COE, Ex. 4, at p. 302.) The other five premiums were paid in a period where Plaintiff earned additional compensation that had to be included in the regular rate. However, as explained in the table at page 12 of Defendants' opening memorandum (which cites the relevant pay stubs), Plaintiff was indeed paid at the properly calculated regular rate. As a result, there are no triable fact issues about these six meal break violations. Accordingly, Plaintiff's meal and rest break claims fail.

D. Derivative Claims

Plaintiff's wage statement, waiting time, injunctive relief, and UCL claims are derivative of the overtime, meal break, and rest break claims. Because those claims fail, the derivative claims fail as well.

E. PAGA (Equal Pay Act)

Following prior motion practice, Plaintiff has a surviving claim for PAGA penalties based on violation of the Equal Pay Act. Plaintiff, who is Black, contends he and other aggrieved employees were paid less than other employees because of their race.

Labor Code § 1197.5(b) provides, in relevant part: "An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions."

However, the employer may pay different wages if it satisfies a four-part test. First, the wage differential must be based on a factor such as a seniority system, a merit system, a system based on the quantity or quality of production, or a bona fide factor such as education, training or experience. Second, the factor must be applied reasonably. Third, the factor must account for the entire wage differential. Fourth, the wage differential cannot be based on the employee's prior salary. (See *ibid.*) Payment in accordance with wage scales in a CBA can satisfy this test. (See, e.g., *Goins v. United Parcel Service* (N.D.Cal. 2024) 2024 WL 3331655, at *26 (no Equal Pay Act violation where plaintiff was paid less than employees with a different job title because "the jobs required different skill levels and were categorized by the CBA accordingly").)

As discussed above, Plaintiff was paid according to wage scales set forth in the CBA between Vons and the UFCW. (UMF 16.3-16.5.) As set forth in the CBA, the rates of pay are based on the length of an employee's tenure. (COE Ex. 1 at pp. 72-73, Ex. 2 at pp. 172-174, Ex. 3 at pp. 271-273.) Because Plaintiff was paid according to the CBA scales, and because those scales are based on seniority, Plaintiff's PAGA claim based on violation of the Equal Pay Act fails.

F. <u>PAGA (Seating)</u>

Labor Code § 2699.3(a)(1)(A) provides that a PAGA suit may not be commenced before "[t]he aggrieved employee or representative . . . give[s] written notice by online filing with the Labor and Workforce Development Agency and by certified mail to the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation." An employee's burden when filing a PAGA notice is not particularly heavy, but the employee must at least provide more than "a string of legal conclusions that parrot[s] the allegedly violated Labor Code provisions." (*Brown v. Ralphs Grocery*

Co. (2018) 28 Cal.App.5th 824, 837.)

Here, Plaintiff's PAGA notice states, in relevant part:

> A[n Industrial Wage] Commission wage order provides that employees shall be provided suitable seating, if reasonable, during the performance of their duties. Defendants are in violation of the Industrial Wage Order by failing to provide Plaintiff's and Aggrieved Employees with suitable seating even though providing such seating is reasonable during the performance of their duties, therefore, Defendants have violated Lab. Code § 1198. (COE, Ex. 15 at p. 504.)

This is exactly the sort of PAGA notice found lacking in *Brown*. Plaintiff paraphrases the language of the relevant wage order, then says Defendants violated the wage order by failing to comply with the paraphrased language. (Compare *Brown*, *supra*, 28 Cal.App.5th at p. 837 (PAGA notice insufficient when it stated the defendant "failed to pay [plaintiff] and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204").) Plaintiff simply says that Defendants violated the wage order by violating the wage order. This is insufficient to exhaust his pre-filing requirements. As a result, his PAGA claim fails insofar as it is based on seating violations.

Defendants also provide evidence that the nature of Plaintiff's job did not reasonably permit the use of seats. (UMF 28-40) Because there is no evidence to the contrary, this provides an additional basis for summarily adjudicating this claim.

G. Conclusion on Albertsons/Vons Motion

The undisputed evidence shows Albertsons did not employ Plaintiff. Furthermore, each of Plaintiff's claims against Albertsons and Vons fails for the reasons discussed above. As a result, the Court grants summary judgment in favor of Albertsons and Vons.

II. Curry Motion

A. Curry as Employer

Unless Labor Code § 558.1 applies, Curry is liable only if he is Plaintiff's employer. The undisputed evidence establishes he was not.

First, Curry exercised no control over Plaintiff's wages, hours, or working conditions. As discussed above, Plaintiff's wages, hours, and working conditions were governed by the CBA, as implemented on a day-to-day level by store management. Plaintiff testified that he never received assignments or work instructions from Curry, could not identify any decision by Curry that affected his wages, could not identify any decision by Curry that affected his working conditions, and was not aware of any policies created by Curry that affected his wages. (UMF 9-13.) In fact, Plaintiff has never spoken to Curry, has no idea who Curry is, and has no idea what Curry's job duties are. (UMF 6-8.)

Second, Curry neither engaged Plaintiff nor suffered or permitted him to work. As discussed above, Plaintiff understood Vons to be his employer, and all documentation relating to his hiring, termination, and discipline reflects the involvement of Vons and his store-level supervisors. Curry had no involvement in this. (UMF 16, 18, 20-21.)

B. Curry's Liability Under Labor Code § 558.1

Section 558.1 imposes personal liability on an "other person acting on behalf of an employer, who violates, or causes to be violated" various provisions of the Labor Code. This requires the "other person" to be personally involved in the violations or to have sufficient participation with those responsible for the violations to be considered a contributor to the violations. (See *Usher v. White* (2021) 64 Cal.App.5th 883, 896-897.)

In addition to the undisputed evidence of Curry's lack of control discussed above, the evidence shows that Curry did not decide which items of compensation were included in the regular rate, did not draft or review the meal and rest break policies at issue, did not draft or review the overtime policy at issue, did not decide when to pay Plaintiff following his termination, did not decide what items to include on wage statements, did not decide whether Plaintiff would be given a chair or other seating on the job, and did not determine the wage rates set in the CBA. (UMF 22-28.) The undisputed evidence thus shows that Curry did not violate the Labor Code or otherwise cause it to be violated, at least with respect to Plaintiff.

C. Conclusion

There are no factual issues regarding Curry's status as Plaintiff's employer or his liability under § 558.1. Furthermore, Curry joins in the Albertsons/Vons motion. Accordingly, for the reasons set forth above, and for the reasons set forth in the discussion of the Albertsons/Vons motion (incorporated here by reference), the Court grants summary judgment in favor of Curry.