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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ERIC CHAVEZ,  
Plaintiff,  
v.  
CONVERSE, INC.,  
Defendant.

Case No. 15-cv-03746-NC

**ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT**

Re: Dkt. No. 169

In this chapter of his employment class action, plaintiff Eric Chavez moves for partial summary judgment as to whether defendant Converse, Inc.'s retail store employees were under its control when they underwent security checks before leaving. See Dkt. No. 169 at 6; see also Dkt. No. 174 at 4. Because Converse's employees were required to submit to security checks between July 10, 2011, and November 19, 2019, the Court GRANTS Chavez's motion for partial summary judgment as to claims one, three, four, five, six, and seven.

**I. Background**

**A. Factual Background**

Converse operates 20 stores in California. See Dkt. No. 169-1, Ex. B ("May Depo.") at 24:16–18. At each store, Converse installs time clocks in back rooms for their employees to clock in and clock out. See *id.*, Ex. A ("Kiefer Depo.") at 41:13–22. Converse's stores typically have a single point of exit and entry, located at the front of the store away from the break room. See *id.* at 43:18–24.

1           Whenever an employee leaves a store, they are subject to an exit search. See *id.* at  
2 65:2–66:25; see also *id.*, Ex. 3, 4. Under Converse’s exit search policy, “[i]f an employee  
3 refuses to cooperate, interferes, or hinders the search in any way . . . that employee may be  
4 suspended pending further investigation which may include termination. *Id.*, Ex. 4 at 1.  
5 Exit searches take place “closest to the point of exit,” which is typically near the front  
6 door. *Id.* Searches are conducted visually. See *id.* at 73:21–25. Employees will typically  
7 flash the pockets of their jackets or sweatshirts to demonstrate that they are empty. *Id.* at  
8 73:24–74:4. If an employee brings a bag, they are required to open the bag for inspection.  
9 *Id.* at 64:18–24.

10           As of November 19, 2019, Converse no longer requires its employees to submit to  
11 an exit search. See Dkt. No. 179-1, Ex. A (“Ziegler Decl.”) at 16:23–25, 23:11–17.

12           **B. Procedural History**

13           Chavez filed his first amended complaint on December 4, 2015, for various  
14 violations of the California Labor Code stemming from Converse’s alleged failure to  
15 compensate its employees for time spent on exit searches. See Dkt. No. 28. On September  
16 22, 2016, the Court certified a class of “[a]ll current and former non-exempt retail store  
17 employees of Converse who worked in California during the period from July 10, 2011, to  
18 the present.” See Dkt. No. 89.

19           On October 11, 2017, the Court granted summary judgment in favor of Converse  
20 based on the federal *de minimis* doctrine. See Dkt. No. 144. Chavez appealed. See Dkt.  
21 No. 146. Shortly after, the California Supreme Court decided *Troester v. Starbucks Corp.*,  
22 5 Cal. 5th 829 (2018) and held that the federal *de minimis* doctrine did not apply to wage  
23 claims under California law. In light of *Troester*, the Ninth Circuit reversed and remanded  
24 this case for further proceedings. See Dkt. Nos. 156, 168.

25           Chavez now moves for partial summary judgment. See Dkt. No. 169. The sole  
26 issue in Chavez’s motion is whether Converse exercises control over its employees when  
27 they undergo an exit search. Pending before the Court is Converse’s own motion for  
28 summary judgment, which is set for hearing on March 4, 2020. See Dkt. No. 179. This

1 order does not resolve that motion.

2 **II. Legal Standard**

3 Under Federal Rules of Civil Procedure 56(a), a court “shall grant summary  
4 judgment if the movant shows that there is no genuine dispute as to any material fact and  
5 the movant is entitled to judgment as a matter of law.” Under Rule 56, the moving party  
6 bears the initial burden to demonstrate the absence of a genuine issue of material fact.  
7 Once the moving party meets its burden, then the non-moving party must cite “particular  
8 parts of materials in the record” showing that there is a genuine issue for trial. Fed. R. Civ.  
9 P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). A “genuine issue” exists if a  
10 reasonable jury could find for the non-moving party. E.g., *Open Text v. Box, Inc.*, No. 13-  
11 cv-04910-JD, 2015 WL 428365, at \*1 (N.D. Cal. Jan. 30, 2015). On summary judgment,  
12 the Court does not make credibility determinations or weigh conflicting evidence, as these  
13 determinations are left to the trier of fact at trial. *Bator v. State of Hawaii*, 39 F.3d 1021,  
14 1026 (9th Cir. 1994).

15 **III. Discussion**

16 California law requires employers to pay employees at least minimum wage for all  
17 hours worked. See 8 Cal. Code Regs. § 11090. This includes “all time in which an  
18 employer exercises control over the employee.” *Ridgeway v. Walmart*, \_\_\_ F.3d \_\_\_,  
19 Case Nos. 17-15983, 17-16142, 2020 WL 55073, at \*8 (9th Cir. Jan. 6, 2020) (citing  
20 *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 581–84 (2000)). The only issue here is  
21 whether Converse “exercises control over” its employees when conducting exit searches.

22 In *Ridgeway*, the Ninth Circuit “boil[ed] down” the issue of control to “whether the  
23 employee may use break or non-work time however he or she would like.” 2020 WL  
24 55073, at \*9 (citations omitted). “[T]his case-specific approach focuses on the level of the  
25 employer’s control on employees, not necessarily whether the employer requires certain  
26 activities.” *Id.* Thus, in *Ridgeway*, “the mere fact that Wal-Mart require[d] its employees  
27 to take layovers” was not dispositive of the control issue. *Id.* Rather, the Ninth Circuit  
28 was persuaded that Wal-Mart’s written policy suggested that Wal-Mart controlled its

1 drivers during layovers because (1) drivers were required to gain preapproval before taking  
2 a layover at home, (2) drivers were required to record at-home layovers; and (3) drivers  
3 could be subject to disciplinary action for taking unauthorized layovers at home. Id.

4 Likewise, the California Supreme Court concluded in *Morillion* that a company  
5 “controlled” its employees by requiring them to take company buses to travel to their work  
6 sites. 22 Cal. 4th at 584. The company’s employees “were foreclosed from numerous  
7 activities in which they might otherwise engage if they were permitted to travel to the  
8 fields by their own transportation.” Id. at 586. By contrast, control is absent if employees  
9 were “offered a benefit or service that [they] could choose, but were not required to take  
10 advantage of.” *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952, 957 (9th Cir. 2018) (citing  
11 *Morillion*, 22 Cal. 4th at 588); see also *Silva v. See’s Candy Shops, Inc.*, 7 Cal. App. 5th  
12 235, 253 (2016) (employees not under the employer’s control during “grace periods” when  
13 “they could (and did) engage exclusively in personal activities” during those periods).

14 Converse requires its employees to submit to an exit search when leaving. See  
15 Kiefer Depo. at 65:2–66:25. Its policy states:

16 **Store Exit Search 5.01**

17 • **Overview:**

18 Anytime an employee or vendor leaves the store for any reason they are  
19 subject to a bag search. It is the responsibility of the employee leaving the  
20 store to have a member of the Management team inspect their belongings.  
21 This includes breaks, lunches, and when an employee is in the store on a  
22 scheduled day off.

23 If an employee refuses to cooperate, interferes, or hinders the search in any  
24 way or if illegal contraband, unpaid Converse merchandise or weapons are  
25 found, that employee may be suspended pending further investigation which  
26 may include termination.

27 Id., Ex. 4. The policy also provides for “Coat and Jacket Searches” and requires “[a]ll  
28 coats/jackets . . . be carried to the exit.” Id.

1 Under the exit search policy as written, Converse exercises control over its  
2 employees during exit searches. Employees are required to make sure a manager inspects  
3 their belongings. See *id.* (“It is the responsibility of the employee leaving the store to have  
4 a member of the Management team inspect their belongings.”). Failure to comply with  
5 exit searches could have significant consequences including termination. And employees  
6 are foreclosed from numerous activities during searches. Employees are, for example,  
7 required to carry and not wear their coats and jackets during the inspections. See *id.* (“All  
8 coats/jackets should be carried to the exit.”). Nor can employees barge through the exit  
9 and ignore store management.

10 Converse raises a few arguments in response. First, Converse points out that the  
11 exit search policy does not require employees to spend any amount of time undergoing exit  
12 searches. But just as the search policy permits zero-second searches, it also permits exit  
13 searches that last several minutes. And for the duration of the search, Converse’s  
14 employees are not free to do whatever they wish. The mere possibility that zero-second  
15 searches can happen does not mean Converse’s employees are free from its control.

16 There is a dispute of material fact as to whether exit searches took any amount of  
17 time or if searches were even conducted when employees did not bring a bag. See, e.g.,  
18 Dkt. No. 172-1, Ex. C (“Cano Depo.”) at 65:7–17 (describing zero-second visual  
19 inspection of employees); Dkt. No. 172-1, Ex. D (“Chau Depo.”) at 9:24–10:5 (stating that  
20 employees did not need to undergo a check if they did not bring a bag). That dispute,  
21 however, goes to damages. If Converse’s employees spent literally no time getting  
22 searched, then there is simply no time for Converse to compensate. But if Converse’s  
23 employees spent some time getting searched or waiting for store management, then that  
24 time may be compensable.<sup>1</sup>

25 \_\_\_\_\_  
26 <sup>1</sup> Notably, the California Supreme Court left open whether “there are wage claims  
27 involving employee activities that are so irregular or brief in duration that employers may  
28 not reasonably be required to compensate employees for the time spent on them.”  
Troester, 5 Cal. 5th at 848 (emphasis added); see also *id.* at 849 (“[T]here is room for a  
rule of reason to avoid a situation forcing employers to monitor every fraction of every  
second of employee time.”) (Cuéllar, J., concurring).

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Converse also argues that employee exits necessarily include “walking time” and its employees are not subject to their control during that time. Chavez, however, has disclaimed “walking time” as part of exit searches. See Dkt. No. 174 at 6–7 (“Plaintiff seeks a ruling that class members are subject to Defendant’s control while waiting for and undergoing the security inspection. Thus, Defendant’s walk-time argument is completely irrelevant.”) (emphasis added).

Finally, Converse contends that its employees were not under their control because they could avoid incurring additional time in connection with exit searches by choosing to not bring a bag, coat, or jacket. However, even if Converse is correct, their own expert opined that employees spent an average of 9.2 seconds waiting for or engaging in exit inspections and only 5.4 seconds of that time is attributable to bag checks. See Dkt. No. 118-3 (“Crandall Decl.”) ¶¶ 111, 120. In other words, the fact that some exit search time can be avoided does not help Converse.

**IV. Conclusion**

The Court GRANTS Chavez’s motion for partial summary judgment. As to claims one, three, four, five, six, and seven, the Court finds as a matter of law that Converse exercised control over its employees when it subjected its employees to exit searches.

**IT IS SO ORDERED.**

Dated: January 15, 2020

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge