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**Docket: 1784CV03796-BLS1**

**Date: December 18, 2019**

**Parties: Galloway v. SimpliSafe, Inc., et al.**

**Judge: /s/Brian A. Davis Associate Justice of the Superior Court**

Decision and Order Regarding: (1) Defendants' Motion for Summary Judgment (Docket Entry No. 25.0); and (2) Plaintiffs' Motion for Partial Summary Judgment (Docket Entry No. 28.0):

This case presents the increasingly less-novel question of whether Internet-based employers operating in Massachusetts must comply with the same statutory wage requirements as employers running brick-and-mortar businesses. Plaintiffs Lauren Galloway ("Ms. Galloway"), Ryan Costello ("Mr. Costello"), and Abraham Zamcheck ("Mr. Zamcheck" or, collectively with Ms. Galloway and Mr. Costello, "Plaintiffs") work as Customer Support Representatives ("CSRs") for defendant SimpliSafe, Inc. ("SimpliSafe" or the "Company"). SimpliSafe sells and maintains its own brand of home security systems. Plaintiffs work at the Company's corporate call center in Boston, Massachusetts (the "Call Center"), where their job duties include, but are not limited to, assisting SimpliSafe users with the installation and operation of their home security systems and selling new systems and system components directly to customers. SimpliSafe's Call Center is open seven days a week. As a result, Plaintiffs frequently are required to work on Sundays. Unlike most brick-and-mortar retail stores, however, SimpliSafe does not pay its CSRs premium pay for work performed on Sundays ("Sunday Premium Pay") as required by G.L. c. 136, § 6 (the "Sunday Pay Statute").<sup>[1]</sup>

Plaintiffs filed this case as a putative class action in November 2017. The named defendants are SimpliSafe and its President and Chief Executive Officer, Charles Laurans ("Mr. Laurans" or, collectively with SimpliSafe, "Defendants"). Plaintiffs claim that SimpliSafe's failure to pay CSRs premium pay for work performed on Sundays violates the Massachusetts Wage Act, G.L. c. 149 (the "Wage Act"). Plaintiffs also allege that SimpliSafe violates the Wage Act by conducting mandatory "growth sessions" for incoming employees and "volunteer day" events for current employees for which attendees are not compensated and/or paid overtime.

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[1] The Sunday Pay Statute exempts from the general ban on Sunday business activities imposed by G.L. c. 136, § 5, "[t]he keeping open of a store or shop and the sale at retail of goods therein, ... and the performance of labor, business, and work directly connected therewith on Sunday," provided that any such "store or shop ... which employees more than a total of seven persons, including the proprietor," must pay Sunday Premium Pay to its employees. G.L. c. 136, § 6(50). The statutory premium associated with Sunday Premium Pay traditionally has been "not less than one and one-half times the employee's regular rate." See G.L. c. 136, § 6(50), prior to amendment by 2018 Mass. Acts c. 121, § 5. Effective January 1, 2019, the Legislature began reducing the amount of the premium associated with Sunday Premium Pay, on an annual basis, by one-tenth of the employee's regular rate until statutory premium disappears entirely. See 2018 Mass. Acts c. 121, § 5. Thus, effective January 1, 2023, the requirement of Sunday Premium Pay no longer will exist.

The case presently is before the Court on SimpliSafe's Motion for Summary Judgment on all of Plaintiffs' claims ("Defendants' Motion"), and

Plaintiffs' Motion for Partial Summary Judgment on Count I of their complaint alleging that SimpliSafe's failure to pay them and other CSRs Sunday Premium Pay constitutes a violation of Sections 148 and 150 of the Wage Act ("Plaintiffs' Motion"). The Court conducted a hearing on both motions on September 10, 2019. All parties appeared and argued. Upon consideration of the written submissions of the parties and the oral arguments of counsel, Defendants' Motion is ALLOWED IN PART, and Plaintiffs' Motion is ALLOWED for the reasons discussed below.

Factual Backuround[2]

The undisputed facts, as revealed by the summary judgment record, are as follows:

SimpliSafe

SimpliSafe is a Delaware corporation that maintains its principal place of business at 294 Washington Street, Boston, Massachusetts. SimpliSafe designs, manufactures, and sells state-of-the-art wireless home security systems that are intended to be self-installed by system users. SimpliSafe also contracts with third-party professional monitoring services that can respond to activated alarms and dispatch local police, fire, or medical services if necessary.

The central component of every SimpliSafe home security system is the "base station," which serves as the system hub and alarm panel. SimpliSafe base stations incorporate cellular and Wi-Fi connections to communicate with the Company's external alarm servers. SimpliSafe also sells various types of sensors that connect wirelessly to its base stations and are designed to detect potentially harmful events or conditions. For example, SimpliSafe sells entry sensors for doors and windows, motion sensors for interior spaces, smoke detectors, and CO2 sensors. If a system sensor is activated for any reason, an audible alarm sounds and a signal is sent over the Internet to SimpliSafe's servers. If a customer has purchased monitoring services from SimpliSafe, a third-party monitoring company retained by SimpliSafe will attempt to contact the SimpliSafe customer about the activated sensor and may dispatch emergency responders to the customer's home, if appropriate.

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[2] The undisputed facts recited herein are taken from the parties' respective Statements of Facts filed in conjunction with their summary judgment motions. In some instances, a party's response to particular facts, while lengthy, does not directly address whether the all of the facts stated are "disputed" or "undisputed." In such instances, the Court has deemed any facts that are not expressly controverted as admitted for purposes of deciding the parties' summary judgment motions. See Superior Court Rule 9A(b) (5) (iii) (A) ("For purposes of summary judgment, each fact set forth in the moving party's statement of facts is deemed to have been admitted unless properly controverted in the manner forth in this Paragraph....").

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SimpliSafe sells its home security systems directly to consumers through its Internet website (simplisafe.com), by telephone, and through third-party retailers such as Best Buy and Amazon. SimpliSafe does not own or operate any traditional brick-and-mortar retail outlets of its own. Overall, approximately ninety percent (90%) of SimpliSafe's product sales are made directly through the Company's website. The remaining product sales are made through customer communications with SimpliSafe's Call Center or through third-party retailers.

Simplisafe's Call Center

SimpliSafe's Call Center is located on the third, fourth, and ninth floors of the Company's headquarters at 294 Washington Street in downtown

Boston. The Call Center operates seven days a week from 9:00 a.m. to 12:00 a.m. EST/EDT. Simplisafe's Call Center and the interior of 294 Washington Street are not physically accessible by the general public. The lobby/security desk at 294 Washington Street does not have a SimpliSafe sign or logo, an hours of operation sign, or a display case for SimpliSafe products. Nor does Simplisafe maintain any cash registers or sales counters at 294 Washington Street or the Call Center. All sales that Simplisafe makes through its Call Center take place over the telephone, and all purchasers are required to pay by credit card. SimpliSafe pays sales tax to the Commonwealth of Massachusetts on all product sales made through its website or Call Center. Products sold by SimpliSafe through its website or the Call Center are shipped to the purchaser from SimpliSafe's warehouses in Braintree and Charlestown, Massachusetts.

Simplisafe's Call Center is staffed predominantly by CSRs. Each CSR is assigned either to a sales team, a technical support team, or, on occasion, an email team. All of the teams are situated together in the same physical space within the Boston Call Center. At any given time, approximately eighty percent (80%) of CSRs working at the Call Center are assigned to technical support teams, and roughly twenty percent (20%) are assigned to sales teams.

The duties and responsibilities of the CSRs who staff SimpliSafe's sales teams and technical support teams differ somewhat, but have significant overlap.[3] The primary responsibility of CSRs who are assigned to technical support teams is to provide real-time troubleshooting assistance to SimpliSafe customers who are experiencing problems of one type or another with their home security systems. The primary responsibility of CSRs who are assigned to sales teams is to assist actual or prospective SimpliSafe customers

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[3] David Martineau, a SimpliSafe "Growth Advisor" who helps run a "squad" of "eight to ten [CSR] teams," testified at his deposition in this action that "both tech and sales is just explaining what the product does and explaining a lot of what wireless means to a customer," and that there is not a "huge difference" between the responsibilities of a sales team member and a tech support team member. See Transcript of Deposition of David P. Martineau ("Martineau Depo."), appended to Plaintiffs' Joint Appendix as Exhibit 3, at 7-8, 74.

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in purchasing a new SimpliSafe home security system or additional components for an existing SimpliSafe system. All CSRs, however, are expected to have sufficient technical abilities to "[r]espond promptly, courteously, and knowledgeably to customer service inquiries for issues such as troubleshooting, installation, or product usage questions," and sufficient sales expertise to "[p]rocess orders and special shipments such as replacement parts." See SimpliSafe job posting for position of "Customer Support Representative," appended to the Joint Appendix to Plaintiffs' Motion ("Plaintiffs' Joint Appendix") as Exhibit 2. In practice, CSRs assigned to technical support teams routinely sell additional SimpliSafe products to customers who call in for assistance. Indeed, it is undisputed that the named Plaintiffs in this action collectively have made more than 400 sales of SimpliSafe products worth more than \$32,000.00 to SimpliSafe customers while working on one or more of the Company's technical support teams. See Order Summary, appended to Plaintiffs' Joint Appendix as Exhibit 16.

#### CSR Work Hours and Compensation

SimpliSafe employs Plaintiffs as full-time technical support CSRs at its Call Center. As CSRs, Plaintiffs are paid \$15.00 per hour, with no sales commissions. All CSRs are expected to work approximately forty (40) hours

per week, which includes periodic weekend shifts. SimpliSafe does not currently pay Sunday Premium Pay to CSRs, although it previously did so. In or about September 2016, SimpliSafe changed its compensation policies to eliminate Sunday Premium Pay for CSRs. SimpliSafe made the change, at least in part, because it was having difficulty getting a sufficient number of CSRs to work on Saturdays and it wanted "to be able to have an even [pay] rate [between Saturdays and Sundays] so that [it] would have balanced staffing levels...." See Transcript of Deposition of Charles H. Laurans, appended to Plaintiffs' Joint Appendix as Exhibit 8, at 98-100. SimpliSafe's Vice President of Operations consulted Mr. Laurans, the Company's President and Chief Executive Officer, before eliminating Sunday Premium Pay for CSRs, but there is no evidence in the summary judgment record that anyone at SimpliSafe consulted legal counsel before making the change.

#### SimpliSafe's CSR Training Program and "Growth Sessions"

All incoming CSRs go through the same SimpliSafe corporate onboarding and training process. As an initial step, any person who wishes to be employed as a SimpliSafe CSR attends an unpaid "growth session." At the growth session, the prospective employee is provided with information and shown a PowerPoint presentation on a number of topics, including background information on SimpliSafe's history and business, information about open opportunities at the Call Center, and information about SimpliSafe's work expectations for CSRs. Attendees do not receive any job training at the growth session, however, and they are free to leave the session at any time.

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After the growth session, SimpliSafe schedules interviews with attendees who express an interest in working at SimpliSafe on a full-time basis. Not every person who attends a growth session is given an interview, however. For example, if an attendee falls asleep or leaves during a growth session, he or she may not be offered an interview by SimpliSafe.

Prospective employees who get past the interview stage next participate in a forty-hour, paid corporate training program (the "Training Program"). The Training Program effectively constitutes SimpliSafe's onboarding process for new Call Center employees. During the Training Program, SimpliSafe educates trainees about their job duties and responsibilities, collects writing samples, and conducts "ice breakers." SimpliSafe also provides technical support training and an introduction to SimpliSafe sales procedures. Trainees listen in while employees conduct live telephone calls with customers, and they directly participate in live phone calls under the supervision of SimpliSafe employees. SimpliSafe does not make offers of full-time employment to prospective employees until after they have completed the Training Program. On average, approximately one half of the people who participate in SimpliSafe's Training Program become full-time SimpliSafe employees.

#### SimpliSafe's Team-Building Events

Sometime between March 26, 2017 and April 8, 2017, Mr. Zamcheck and other CSRs attended a SimpliSafe team-building event at the Greater Boston Food Bank (the "Food Bank Event"). At the Food Bank Event, Mr. Zamcheck and his co-workers boxed up food for distribution. The Food Bank Event took place on Mr. Zamcheck's day off and not during his normal scheduled working hours at SimpliSafe. SimpliSafe paid Mr. Zamcheck for eight hours of work at his regular hourly rate for attending the Food Bank Event. Plaintiffs allege, however, that SimpliSafe required Mr. Zamcheck and his co-workers to attend the Food Bank Event, and should have, but did not, pay them at the statutory overtime rate for the hours they spent working there.

#### Discussion

Summary judgment is appropriate when, viewing the evidence in the light most favorable to the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Mass. R. Civ. P. 56(c); *Cargill, Inc. v. Beaver Coal & Oil Co.*, [424](#)

[Mass. 356](#), 358 (1997). A party who does not bear the burden of proof at trial may demonstrate the absence of a genuine issue of material fact either by submitting affirmative evidence negating an essential element of the nonmoving party's case, or by showing that the non-moving party has no reasonable expectation of proving an essential element of his or her case at trial. See *Kourouvacilis v. General Motors Corp.*, [410 Mass. 706](#), 716 (1991).

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#### Defendants' Motion

Turning first to Defendants' Motion, Defendants seek summary judgment in their favor on all counts of Plaintiffs' First Amended Complaint (Docket Entry No. 15.0) on essentially five grounds. Fairly summarized, Defendants argue that: (1) Plaintiffs have no private right of action for unpaid Sunday Premium Pay under the Wage Act; (2) SimpliSafe has no obligation to pay Sunday Premium Pay to CSRs who work at its Call Center because the Call Center is not a "store or shop" at which SimpliSafe conducts "the sale at retail of goods therein" for purposes of Section 6(50) of the Commonwealth's Sunday Pay Statute; (3) SimpliSafe has no obligation to pay Sunday Premium Pay to Plaintiffs and the other tech support CSRs who are employed at its Call Center on Sundays because their work is not "directly connected" with SimpliSafe's sales activities; (4) SimpliSafe is not required to compensate prospective employees for attending one of the Company's "growth sessions" because attendees are "not employees engaged in compensable working time" at such sessions; and (5) SimpliSafe is not required to compensate current employees for attending one of the Company's "team-building events" because, once again, time spent at such events does not constitute "compensable working time." The Court separately addresses each of the arguments put forth by SimpliSafe as follows.

#### 1. Plaintiffs' Alleged Lack of a Private Right of Action.

SimpliSafe asserts, in the first instance, that Plaintiffs' claim under the Wage Act for unpaid Sunday Premium Pay necessarily fails as a matter of law because the Massachusetts Attorney General's Office (the "AGO") is the "state agency expressly and exclusively charged with prosecuting and enforcing Sunday premium pay violations." Defendants' Memorandum of Law in Support of Their Motion for Summary Judgment ("Defendants' Memo.") at 7-8. The Court disagrees. The Massachusetts Supreme Judicial Court ("SJC") has held that "[t]he purpose of the Wage Act is to prevent the unreasonable detention of wages." *Melia v. Zenhire, Inc.*, [462 Mass. 164](#), 170 (2012) (internal quotation marks and citation omitted). The Act applies, by its terms, to "[e]very person having employees in his service." G.L. c. 149, § 148. As such, an employee aggrieved by his or her employer's payment practices is empowered under the Wage Act "to bring a private civil action ninety days after filing a complaint with the Attorney General, or sooner if the Attorney General assents to such suit, for injunctive relief, damages, and any lost wages and other benefits." *Fernandes v. Attleboro Housing Auth.*, [470 Mass. 117](#), 126 (2014) ("Fernandes"). This is true even when the alleged violation is not expressly prohibited by, or recognized in, the provisions of the Wage Act.[4] As the SJC stated in *Fernandes*, supra, in holding that a

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[4] Some provisions of the Wage Act grant express private rights of action for particular types of employment violations. See, e.g., G.L. c. 149, § 27 (employee aggrieved by violation of prevailing wage law may initiate civil action after filing complaint with Attorney General); G.L. c. 149, § 150, as amended through St. 2014, c. 505, § 2 (employee aggrieved by violation of G.L. c. 149, §§ 33E, 52E, 148, 148A, 148B, 148C, 150C, 152, 152A, 159C, or 190, or by violation of G.L. c. 151, § 19, may "institute and prosecute in his own name and on his own behalf

... a civil action for injunctive relief, for any damages ... , and for any lost wages" after filing complaint with Attorney General); and G.L. c. 149, § 185(d) (employee subject to retaliation may bring a civil action in Superior Court).

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housing authority employee could bring suit under the Wage Act for his employer's alleged violations of the Commonwealth's civil service law, [a]lthough both the civil service law and the Wage Act address wrongful conduct arising in the employment context, they have distinct purposes and, as a consequence, provide different remedies for the violation of their statutory mandates. Notwithstanding the fact that Fernandes was a housing authority employee, we discern no intent on the part of the Legislature to preclude him from bringing an action in the Superior Court specifically to vindicate his rights under the Wage Act. Although the Commissioner of Labor and Industries is authorized under G.L. c. 121B, § 29, to "determine rates of wages" for each classification of work performed by laborers for a housing authority, neither that statutory provision nor G.L. c. 31, §§ 41-45, address the unlawful withholding of earned wages by an employer. It is the Wage Act that speaks to and provides remedies for such prohibited employer conduct. G.L. c. 149, §§ 148, 150.

470 Mass. at 126-127.[5] See also *Crocker v. Townsend Oil Co.*, [464 Mass. 1](#), 6-7 (2012) (holding that employee suing for overtime pay had claims under both Wage Act and the overtime statute, G.L. c. 151A, § 1A); *Donis v. American Waste Services, LLC*, [95 Mass. App. Ct. 317](#), 330 (2019) (recognizing that plaintiffs properly pled claims under both G.L. c. 149, § 27F, the Prevailing Wage Statute, and under the Wage Act); *Drive0-Rama, Inc. v. Attorney General*, [63 Mass. App. Ct. 769](#), 769-770 (2005) (concluding that employer's failure to pay time-and-a-half for work on legal holidays, as required by G.L. c. 136, § 13, violated the Wage Act); *Bassett v. Triton Technologies, Inc.*, No. 1684CV03475BLS2, 2017 WL 1900222, at \*2 (Mass. Super. Ct. Mar. 6, 2017) (Salinger, J.) (holding that "[t]he Wage Act requires prompt payment of all wages earned by an employee, including higher wages earned under G.L. c. 136, § 6(50), for work on

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[5] To the extent that Defendants rely upon the Massachusetts Appeals Court's more recent and arguably contrary decision in *Tortolano V. Lemuel Shattuck Hospital*, [93 Mass. App. Ct. 773](#), 778-780 (2018), this Court chooses to follow and apply the SJC's controlling holding in *Fernandes* (which, tellingly, is not distinguished or even mentioned in *Tortolano*).

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Sundays.... A failure to pay one and one-half times an employee's regular wage when such bonus pay is required by statute is therefore a violation of the Wage Act.").

Accordingly, for the reasons stated, the Court concludes that Plaintiffs have a private right of action under the Wage Act to seek compensation from SimpliSafe for any unpaid Sunday Premium Pay.

2. Whether SimpliSafe's Call Center is a "Store or Shop" for Purposes of the Sunday Pay Statute.

SimpliSafe next argues that it has no obligation to pay Sunday Premium Pay to CSRs who work at its Boston Call Center because the Call Center is not a "store or shop" at which SimpliSafe conducts "the sale at retail of goods therein" for purposes of Section 6(50) of the Commonwealth's Sunday Pay Statute. According to SimpliSafe, its Call Center,

bears not one of the hallmarks of a store or shop – it does not operate out of a storefront, it does not keep or deposit goods to be sold, and it does not sell products in a physical space open to the general public.

Defendants' Memo. at 13 (emphasis in original).

Plaintiffs, conversely, assert that "store or shop" means simply "any retail establishment," citing, in part, other language contained in Section 6(50) of the Sunday Pay Statute, which states that,

[n]o employee engaged in work subject to the provisions of this clause shall be required to perform such work, and refusal to work for any retail establishment on Sunday shall not be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty.

G.L. c. 136, § 6(50) (emphasis added).

In *Kramer v. Zoning Bd. of Appeals of Somerville*, [65 Mass. App. Ct. 186](#), 191-192 (2005) ("*Kramer*"), the Massachusetts Appeals Court set out what it described as the "standard principles" that the courts of this Commonwealth are required to apply when engaging in statutory construction. According to the Appeals Court,

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we look first to the language of the statute. [S]tatutory language is the principal source of the insight into legislative purpose.... When the words of a statute are clear, they are to be given their ordinary and natural meanings. If the meanings are unclear, the statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated.... In addition, a statute should be read as a whole to produce an internal consistency.... Moreover, [w]here the draftsmanship of a statute is faulty or lacks precision, it is our duty to give the statute a reasonable construction.... Courts also have a duty to view[ ] the statutory scheme as a whole; and [to] avoid[ ] a construction which would negate legislative intent or defeat its intended utility.

*Id.* at 192 (internal quotation marks and citations omitted).

Applying the foregoing rules of construction (as it must), the Court begins its analysis of the Sunday Pay Statute by examining the language of the statute itself. The terms "store" and "shop" are not statutorily defined in G.L. c. 136, § 6, but ordinary definitions of these terms are plentiful. Webster's II New College Dictionary, for example, defines a "store" as "[a] place where merchandise is offered for sale," and a "shop" as "[a] small retail store or a specialty department in a large store ... a business establishment." Webster's II New College Dictionary, 1020, 1087 (1999). Similarly, the Pocket Oxford American Dictionary defines a "store" as "a retail establishment selling items to the public," Pocket Oxford American Dictionary & Thesaurus, 763 (3rd ed. 2010), while Black's Law Dictionary defines a "shop" as "[a] business establishment or place of employment; a factory, office, or other place of business," Black's Law Dictionary (11th ed. 2019).

Massachusetts appellate decisions defining the words "store" or "shop" are less abundant, but include the SJC's vintage decision in *Commonwealth v. Annis*, 81 Mass. 197, 199 (1860) ("*Annis*") (describing as "perfectly correct" trial court jury instruction which defined a "shop" as "a place where goods were sold by retail"), the SJC's somewhat less ancient decision in *Commonwealth v. Moriarty*, [311 Mass. 116](#), 119 (1942) (defining a "shop" as a "place kept and used for the sale of goods"), and the Appeals Court's

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comparatively recent decision in *Coco Bella LLC v. Town of Hopkinton Bd. of Appeals*, 92 Mass. App. Ct. 1102, 2017 WL 3297449, \*2 (2017) (Rule 1:28) ("*Coco Bella*") (defining a "retail store" as "a place of business ... in which merchandise is sold primarily to ultimate consumers," quoting Webster's Third New International Dictionary 1936 (1993)).

The definitions cited support the conclusion, which this Court draws, that SimpliSafe's Call Center is a "store" and/or "shop," as those terms ordinarily are understood, for purposes of the Sunday Pay Statute. It is, for example, beyond dispute that the Call Center is a "place" at which SimpliSafe home security systems and system components are "sold by retail" to customers via telephone. Thus, according to the SJC, the Call Center is, at the very least, a "shop." See *Annis*, 81 Mass. at 199. Similarly, it is beyond dispute that the Call Center is a "place of business" at which SimpliSafe's "merchandise is sold primarily to ultimate consumers." Thus, according to the Massachusetts Appeals Court, the Call Center also qualifies as a "retail store." See *Coco Bella*, 92 Mass. App. Ct. at 1102. No linguistic torture is required to fit the Call Center squarely within these terms according to their ordinary and natural meanings. See *Kramer*, 65 Mass. App. Ct. at 192.

SimpliSafe nonetheless contends, as previously noted, that its Call Center does not qualify as a "store or shop" because it "does not operate out of a storefront, ... does not keep or deposit goods to be sold, and ... does not sell products in a physical space open to the general public." Defendants' Memo. at 13. Nothing in the Sunday Pay Statute, however, mandates that a "store or shop" possess a "storefront" or a "physical space open to the general public" in order to be subject to its requirements, nor would it be logical in this technology-driven day and age to imply such a mandate. As the United States District Court for the District of Utah astutely observed in *Selz v. Investools, Inc.*, 2011 WL 285801 (D. Utah Jan. 27, 2011) (Stewart, J.),

[t]oday, nearly every retail establishment offers its products for sale via the Internet. Additionally, the Internet has made it possible for small start-up companies to market their products and services at a minimal cost and to a broader group than was previously possible. In sum, the Internet has fundamentally changed what is considered a "retail or service establishment"....

*Id.* at \*4. Nor does the Sunday Pay Statute mandate that a retail seller physically:keep or deposit [the] goods to be sold" on its premises in order to qualify as a "store or shop." The statute refers only to the "keeping open of a store or shop and the sale at retail of goods therein," which, on its face, simply means that the "sale" must take place within the "store or shop," which certainly is true with respect to the product sales transactions that

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routinely are carried out at SimpliSafe's Call Center.[6] See *Commonwealth v. Slome*, [321 Mass. 713](#), 716 (1947) ("Every statute, if possible, is to be construed in accordance with sound judgment and common sense, so as to make it an effectual piece of legislation.").

Consideration of other standard principles of statutory construction only gives additional credence to the conclusion that SimpliSafe's Call Center is a "store or shop" for purposes of the Sunday Pay Statute. For example, such a construction reads the Sunday Pay Statute "as a whole to produce an internal consistency" in that the statute also makes express reference to "any retail establishment." See G.L. c. 136, § 6(50) (an employee's "refusal to work for any retail establishment on Sunday shall not be grounds for discrimination, dismissal, discharge, reduction in hours, or any other penalty"). To construe the isolated terms "store" and "shop" narrowly, as suggested by SimpliSafe, would be inconsistent with the

considerably broader phrase "any retail establishment," the latter of which undeniable encompasses the Call Center. See, e.g., Plaintiffs' Consolidated Statement of Material Facts ("Plaintiffs' SOF"), ¶46 (acknowledging as "[u]ndisputed" that "either Tech. Support CSRs or Sales Team Members" at SimpliSafe's Call Center "can make sales on Sundays"). Such a construction also furthers "the cause of [the Sunday Pay Statute's] enactment, [and] the mischief or imperfection to be remedied," which the SJC has described as "creating an 'economic disincentive' for employers and providing additional compensation to employees with respect to work done on Sunday." *Sullivan v. Sleepy's LLC*, [482 Mass. 227](#), 235 n.16 (2019); *Kramer*, 65 Mass. App. Ct. at 192.

Lastly, the conclusion that SimpliSafe's Call Center is a "store or shop" for purposes of the Sunday Pay Statute is effectively mandated by other language in Chapter 136, which is statutorily defined as the "Common Day of Rest Law." G.L. c. 136, § 1. Sections 5 and 6 of Chapter 136, read together, generally prohibit all business proprietors in Massachusetts from "open[ing] [a] shop, warehouse, factory or other place of business," "sell[ing] foodstuffs, goods, wares, merchandise or real estate," or engaging in "any manner of labor, business or work, except works of necessity and charity" on a Sunday, unless the business or activity falls within one of the fifty-odd exceptions that are enumerated in Section 6. This means that, in order for SimpliSafe to legally operate its Call Center on Sundays, the Call Center must fit within at least one exception set out in Section 6. A thorough examination of Section 6, however, reveals that the only exception that arguably applies to the Call Center is the "store or shop" exception contained in

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[6] The Court can and does take judicial notice in this context of the fact that numerous classic retail "store[s] and shop[s]" in this Commonwealth, including many furniture stores and appliance stores, sell products that they do not necessarily keep on site, but rather ship to the customer, after a purchase has been made, from the seller's warehouse or other storage facility. See *Town of Nantucket v. Beinecke*, [379 Mass. 345](#), 352 (1979) (court may take judicial notice of matters that are "indisputably true"). See also *Sullivan v. Sleepy's LLC*, [482 Mass. 227](#), 228 (2019) ("*Sleepy's*") (construing and applying Sunday Pay Statute to retail seller of mattresses).

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Section 6(50). No other exception even comes close.[7] Thus, SimpliSafe must concede, and the Court must conclude, that SimpliSafe's Call Center is a "store or shop" for purposes of the Sunday Pay Statute if the Call Center is to legally operate on Sundays. See G.L. c. 136, §§ 5 and 6.

Unbowed, SimpliSafe argues that treating its Call Center as a "store or shop" for purposes of the Sunday Pay Statute is inconsistent with the Court's prior decision in *Bassett v. Triton Technologies, Inc.*, 34 Mass. L. Rptr. 670, 2018 WL 1863627 (Mass. Super. Ct. Feb. 13, 2018) (Sanders, J.) ("*Triton II*"). The Court held in *Triton II* that defendant Triton Technologies, Inc.'s ("*Triton*") Massachusetts "call-in center," which fielded telephone calls from people seeking to purchase products advertised by the call-in center's clients, did not qualify as a "store or shop" under the Sunday Pay Statute. *Id.* at \*2. The workers at Triton's call-in center, however, did not "sell" anything. As noted by the Court,

[b]ased on the undisputed facts, this Court ... fails to see how a call center with employees that are performing essentially ministerial tasks for the actual seller (Triton's Clients) could be called a "store" or a "shop" as those words are commonly understood. The call center itself

consists of rows of workstations and is accessible only to the employees who work there. As to the work that is done, those employees read from scripts developed by Triton's Clients, who develop and market the goods. Although Triton takes payment information, it does not actually process those payments or receive any funds from the sales. It does not participate in the

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[7] SimpliSafe valiantly tries to squeeze its Call Center into the exception set out in G.L. c. 136, § 6(5), for "[t]he making of emergency repairs for the purposes of immediate and necessary protection of persons, or property including realty, or the towing of any motor vehicle or boat for such purpose." Defendants' Memo. at 18-20. SimpliSafe's efforts in this regard are for naught. While it is undisputed that Call Center CSRs often are called upon to help customers "troubleshoot" problems or issues with their SimpliSafe security systems (Defendants' SOF, § 81), it strains credulity to characterize such activities as "emergency repairs," particularly when the Call Center is closed and completely unresponsive to what SimpliSafe claims are customer "emergenc[ies]" between the hours of midnight and 9:00 a.m. each day (id., § 33). Moreover, even if Section 6(5) applied to SimpliSafe's Call Center, it would not authorize or exempt the sale of SimpliSafe products by CSRs working at the Call Center on Sundays, which conduct forms the crux of Plaintiffs' claims in this case. The Court pays little heed to SimpliSafe's further argument that, because its "Braintree and Cambridge warehouses load and unload SimpliSafe products for shipment," those facilities fall within the exception for "[t]he transport or delivery of goods in commerce" contained in G.L. c. 136, § 6(31) (see Defendants' Memo. at 20-21), for the obvious reason that all of the Plaintiffs in this action work at SimpliSafe's Call Center in Boston, not at its warehouses in Braintree and Cambridge. There is, moreover, no support in the record for the proposition that SimpliSafe itself is engaged in the "transport or delivery of goods in commerce."

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transfer of the goods, since Triton's Clients handle the shipping. Significantly, Triton does not collect or pay any sales tax. Id. (emphasis added). SimpliSafe's Call Center is different. CSRs working at SimpliSafe's Call Center are responsible for, among other things, marketing and selling SimpliSafe's proprietary brand of home security systems for SimpliSafe's direct benefit. See, e.g., Martineau Depo., appended to Plaintiffs' Joint Appendix as Exhibit 3, at 73 (acknowledging that CSRs on SimpliSafe's tech support teams and sales teams are expected "to handle both types of calls"). In doing so, CSRs interact with actual or potential customers over the telephone and, if the customer decides to purchase a SimpliSafe product, the attending CSR completes the sale by taking the customer's credit card information, processing the transaction, and charging the customer's account. Plaintiffs' SOF, ¶38. SimpliSafe, unlike Triton, also pays sales tax to the Massachusetts Department of Revenue on each such sale. Id., ¶9. Thus, Call Center personnel undeniably engage in "the sale of retail goods," which employees at Triton's call-in center did not. See G.L. c. 136, § 6(50). In this way, Triton II supports, rather than contradicts, the Court's reasoning in this case.

Consequently, the Court concludes that SimpliSafe's Call Center is a "store or shop" for purposes of the Sunday Pay Statute.

3. Whether the Work of Tech Support CSRs Who Are Employed at the Call Center on Sundays Is "Directly Connected" with SimpliSafe's Sales

Activities.

As previously noted, the Sunday Pay Statute generally applies to a "store or shop and the sale at retail of goods therein, ... and the performance of labor, business, and work directly connected therewith on Sunday...." G.L. c. 136, § 6(50). SimpliSafe reads the phrase "work directly connected therewith" as limiting its obligation to pay Sunday Premium Pay only to CSRs who are employed on the Company's sales teams, as opposed to CSRs who are employed on the Company's tech support teams (such as Plaintiffs). See Defendants' Memo. at 16-18. This argument, however, ignores the undisputed fact that CSRs who are employed on the Company's tech support teams routinely sell SimpliSafe products to customers who contact the Call Center for whatever reason. Indeed, the summary judgment record clearly establishes that these Plaintiffs have sold more than \$32,000.00 worth of SimpliSafe products to customers while working as tech support CSRs. See Order Summary, appended to Plaintiffs' Joint Appendix as Exhibit 16. Nothing is more "directly connected" with the "sale of retail goods" than the actual act of selling.

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Consequently, the Court concludes that the work of Plaintiffs and the other tech support CSRs who are employed at SimpliSafe's Call Center on Sundays is "directly connected" with Simplisafe's sales activities for purposes of the Sunday Pay Statute.

4. Whether SimpliSafe Is Required to Compensate Prospective Employees for Attending One of the Company's "Growth Sessions".

SimpliSafe asserts that it has no legal obligation to compensate prospective employees for time they spend attending one of the Company's initial "growth sessions," which are a required part of SimpiSafe's hiring process. See Defendants' Memo. at 21-23. The Court agrees. The Wage Act, at its most basic, requires "[e]very person having employees in his service [to] pay weekly or bi-weekly each such employee the wages earned by him ...." G.L. c. 149, § 148. An employer's duty to compensate its "employees" is echoed in the Commonwealth's minimum wage regulations, which define compensable "working time," in relevant part, as,

all time during which an employee is required to be on the employer's premises or to be on duty, or to be at the prescribed work site or at any other location, and any time worked before or after the end of the normal shift to complete the work.

454 Code Mass. Regs. § 27.02.

It is undisputed in this proceeding, however, that the uncompensated attendees at SimpliSafe's growth sessions are not "employees" of the Company. They are, instead, people who "are interested in working in SimpliSafe's call center...." Defendants' SOF, ¶34 (emphasis added). Attendees engage in no productive exercises or activities. Id., ¶41. Rather, SimpliSafe provides candidates who attend its growth session with basic information about SimpliSafe and the responsibilities of a CSR, and they are given the opportunity "to opt out of the position if not interested." Plaintiffs' Joint Appendix at Exhibit 34. SimpliSafe makes no offers of employment to candidates before they attend a growth session, and not all attendees go on to work at the Company. Defendants' SOF, ¶¶47-48. A candidate receives an offer of full-time employment (if at all) only after he or she has participated in SimpliSafe's subsequent, forty-hour, paid training/interview program. Id., ¶48. Given these facts, it is neither unreasonable, nor unlawful for SimpliSafe to not compensate job candidates who attend one of its growth

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sessions because they simply are not "employees" of the Company.[8] See G.L. c. 149, § 148.

Accordingly, for the reasons stated, the Court concludes that SimpliSafe has no legal obligation to compensate prospective employees for time they spend attending one of the Company's growth sessions.

5. Whether SimpliSafe Is Required to Compensate Employees for Attending the Company's "Team-Building Events". SimpliSafe further asserts that it has no legal obligation to compensate Mr. Zamcheck, or any other SimpliSafe employee, for attending the Company's "team-building events," such as the one held at the Greater Boston Food Bank in the spring of 2017 (the "Food Bank Event"), because the events are voluntary and "not compensable working time." Defendants' Memo. at 24. The only team-building event about which the parties have offered evidence on summary judgment is the Food Bank Event. Whether SimpliSafe required Mr. Zamcheck and other SimpliSafe employees to attend that event constitutes a disputed issue of material fact that cannot be resolved on summary judgment. See Transcript of Deposition of Abraham Zamcheck, appended to Plaintiffs' Joint Appendix as Exhibit 31, at 190 ("I remember one [team building exercise] at the food bank in Boston I was required to attend, and I wasn't paid time and a half for that meeting time."). See also *Goodman v. Aetna Cas. & Sur. Co.*, [412 Mass. 807](#), 811 (1992) ("Summary judgment ... is not appropriate, and the question of law cannot be resolved, if the record fails to demonstrate that there is no dispute of material fact.").

Consequently, the Court makes no determination at this time as to whether SimpliSafe has a legal obligation to compensate Mr. Zamcheck, or any other SimpliSafe employee, for attending the Company's team-building events.

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[8] Plaintiffs argue that participation in a growth session constitutes legally compensable working time because "if Plaintiffs, or any other person, wanted to continue working for SimpliSafe, they needed to participate fully in the growth session." Plaintiffs' Opposition to Defendants' Motion for Summary Judgment ("Plaintiffs' Opp.") at 17. This argument, of course, assumes that job candidates who attend a growth session already are "working for SimpliSafe," which is contrary to the undisputed facts. See Defendants' SOF, 1 48 ("Offers of full-time employment, if any, are made at the completion of [SimpliSafe's] 40 hour paid training/interview program."). Moreover, taken to its logical extreme, Plaintiffs' argument would require employers to compensate job candidates for all steps in the hiring process, including, for example, filling out a job application form, because completion of an application typically is a mandatory step in obtaining employment. Plaintiffs fail to cite, and this Court is unable to find, any reported Massachusetts decision that has extended Wage Act protection to a prospective employee in such circumstances. This decision and order will not relieve that drought.

Plaintiffs' Motion

Plaintiffs' Motion is, in effect, a mirror image of Defendants' Motion with respect to the question of whether SimpliSafe is legally obligated to pay Sunday Premium Pay to CSRs who work at its Boston Call Center. The Court having already decided that: (1) Plaintiffs have a private right of action under the Wage Act to seek compensation from SimpliSafe for any unpaid Sunday Premium Pay; (2) SimpliSafe's Call Center is a "store or shop" for purposes of the Sunday Pay Statute; and (3) the work of Plaintiffs and the other tech support CSRs who are employed at SimpliSafe's Call Center on Sundays is "directly connected" with Simplisafe's sales activities for purposes of the Sunday Pay Statute, no additional discussion or analysis is necessary. Plaintiffs have demonstrated, as a matter of law, that SimpliSafe is required to pay Sunday Premium Pay to CSRs who work at its Call Center,

and that SimpliSafe's failure to do so since September 2016 violates the Wage Act. See G.L. c. 149, § 148. See also *Fernandes*, 470 Mass. at 126-127. Order

For the foregoing reasons, IT IS HEREBY ORDERED THAT:

1. Defendants' Motion for Summary Judgment (Docket Entry No. 25) is ALLOWED IN PART solely as to that portion of Plaintiffs' claims under Counts I and II that seek compensation for Plaintiffs' attendance, or the attendance of other persons, at a SimpliSafe "growth session." In all other respects, Defendants' Motion is DENIED; and

2. Plaintiffs' Motion for Partial Summary Judgment (Docket Entry No. 28) is ALLOWED as to Plaintiffs' claim under Count I that SimpliSafe's failure to pay Sunday Premium Pay to CSRs who work at the Company's Call Center violates the Massachusetts Wage Act, G.L. c. 149, § 148.

/s/Brian A. Davis Associate Justice of the Superior Court