

1 Kimberly A. Kralowec (CA Bar No. 163158)
kkralowec@kraloweclaw.com
2 Kathleen Styles Rogers (CA Bar No. 122853)
krogers@kraloweclaw.com
3 **KRALOWEC LAW, P.C.**
4 750 Battery Street, Suite 700
San Francisco, California 94111
5 Tel: (415) 546-6800
6 Fax: (415) 546-6801

7 Lee Shalov (admitted *pro hac vice*)
lshalov@mclaughlinstern.com
8 Brett Gallaway (admitted *pro hac vice*)
bgallaway@mclaughlinstern.com
9 Jason Scott Giaimo (admitted *pro hac vice*)
jgiaimo@mclaughlinstern.com
10 **McLAUGHLIN & STERN, LLP**
11 260 Madison Avenue
New York, New York 10016
12 Tel: (212) 448-1100
13 Fax: (212) 448-0066

14 *Attorneys for Plaintiffs and the Class*

15 **UNITED STATES DISTRICT COURT**
16 **NORTHERN DISTRICT OF CALIFORNIA**

17 AMANDA FRELKIN, TAYLOR KALIN, AARON
18 GREGOROFF, SETH DOWLING, and DEBRA
19 SPEICHER, on behalf of themselves and all others
similarly situated,

20 Plaintiffs,

21 v.

22 APPLE INC., a California corporation,

23 Defendant.
24

Case No. C 13-cv-03451 WHA (lead)
Case No. 13-cv-3775 (consolidated)
Case No. 12-cv-4727 (consolidated)

**DECLARATION OF KIMBERLY A.
KRALOWEC IN SUPPORT OF
MOTION FOR AWARD OF
ATTORNEYS' FEES AND
LITIGATION COSTS; AND IN
SUPPORT OF MOTION FOR
SERVICE AWARDS FOR CLASS
REPRESENTATIVES AND NAMED
PLAINTIFF AMANDA FRLEKIN**

25 Date: July 7, 2022
26 Time: 8:00 a.m.
27 Place: Ctrm. 12, 19th Floor
28 Judge: Hon. William Alsup

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3 I, Kimberly A. Kralowec, declare as follows:

4 1. I am an attorney licensed to practice law in the State of California and this Court. I
 5 am the principal and owner of Kralowec Law, P.C., co-counsel of record for plaintiffs Amanda
 6 Frlekin, Seth Dowling, Aaron Gregoroff, Taylor Kalin, Debra Speicher, and the certified class in the
 7 above-referenced action. I have personal knowledge of the matters stated below, and if called on to
 8 testify, would do so truthfully.

9 **I. OVERVIEW AND SUMMARY**

10 2. After eight-and-a-half years of hard-fought litigation, including three published
 11 appellate opinions,¹ this class action has settled for \$29.9 million. The settlement, if approved by the
 12 Court, represents 90% to 160% of the class members’ average estimated unpaid wages plus pre-
 13 judgment interest, with no reversion and no requirement for the class members to submit a claim
 14 form. Such a settlement is an excellent result by any measure. It could not have been accomplished
 15 without a substantial commitment of time and effort by my firm, Kralowec Law, P.C., over the
 16 course of many years of litigation. I have been heavily involved in this case since its inception, and
 17 my firm was appointed by this Court to serve as Class Counsel when class certification was granted
 18 in 2015. My firm has worked on all aspects of the litigation and has been most heavily involved
 19 since February 2014. From 2016 through 2020, I functioned as lead appellate counsel in the
 20 proceedings in the Ninth Circuit and the California Supreme Court. I personally drafted all of the
 21 appellate briefs and I presented the oral arguments in both Courts. In 2020, I was named by the
 22 *Daily Journal* as one of the Top Labor & Employment Lawyers in California in recognition of my
 23 victory in the California Supreme Court in this case. The *Daily Journal* described *Frlekin* as “one of
 24 the most significant wage and hour outcomes of 2020 so far in which the state Supreme Court held
 25 that workers are entitled to be paid for undergoing mandatory security searches of their bags and
 26

27 ¹ *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1045-57 (2020); *Frlekin v. Apple, Inc.*, 979 F.3d 639,
 28 644 (2020); *Frlekin v. Apple, Inc.*, 870 F.3d 867 (2017).

1 tech devices.” I am extremely proud of the successes I have achieved for my clients in this litigation
2 in the Ninth Circuit, in the California Supreme Court, and before this Court.

3 3. To achieve outstanding results requires an unwavering commitment of resources,
4 including legal ability, professional time, and out-of-pocket expenses. From July 9, 2013 through
5 March 14, 2022, a period of almost nine years, my firm performed approximately 5,386 hours of
6 work in this matter for a lodestar of approximately \$4.76 million.² In addition, the firm has incurred
7 approximately \$39,547.69 in unreimbursed expenses, as set forth in more detail below.

8 **II. KRALOWEC LAW’S EXTENSIVE EXPERIENCE HANDLING COMPLEX CLASS
9 ACTION LITIGATION AND HIGH-LEVEL APPELLATE WORK**

10 4. My firm and I are highly experienced in handling complex plaintiff-side litigation,
11 including wage and hour class actions such as this case. I have been practicing law since 1992, and
12 have specialized in plaintiff-side class action litigation, including wage and hour class actions, since
13 2001. Over the course of my 29-year career, I have developed extensive experience handling
14 complex appellate matters. As mentioned above, I earned a CLAY award for my work as lead
15 appellate counsel in *Brinker*, which has become the foremost California precedent on meal periods
16 and rest breaks, as well as the leading California Supreme Court decision on the legal standards
17 governing class certification under California law. *Brinker* has been cited in over 900 appellate
18 opinions since 2002 and in thousands of briefs.³ I personally developed the appellate theories,
19 conducted the necessary research, including a review and analysis of the archival records of the
20 California Industrial Welfare Commission (“IWC”). I then drafted the appellate briefs and argued
21 *Brinker* before the California Supreme Court. As a result of my efforts, the class was certified and
22 the case subsequently settled for \$56.5 million.

23 5. I brought this experience to bear in representing my clients before the Ninth Circuit
24 and the California Supreme Court in the *Frlekin* matter. As I had done in *Brinker*, I conducted an
25 extensive review and analysis of the IWC’s archival records, including the historical wage orders

26 _____
27 ² These figures do not include time spent on issues related to this motion or to the
accompanying motion for service awards for the named plaintiffs.

28 ³ These figures come from a Keycite search of the *Brinker* decision in Westlaw.

1 dating back to 1916. In so doing, I uncovered that before 1947, the Wage Orders had defined
2 compensable “hours worked” as time during which employees were “required” to be on the premises
3 or ready to perform work. In 1947, the IWC abandoned that test and replaced it with the “control”
4 test, which remains the operative test today. I developed the argument that by replacing the word
5 “required” with the word “control,” the IWC intended to broaden the definition of compensable
6 time. I drafted a detailed argument on the plain language of the “control” test and its regulatory
7 history, in particular the 1947 amendment.⁴ I also drafted a step-by-step breakdown of why Apple’s
8 security search procedure met the “control” test.⁵

9 6. During the oral argument, which I presented before the California Supreme Court in
10 Los Angeles on December 4, 2019, I vigorously argued that the search time was compensable under
11 the Wage Orders. In the words of the *Daily Journal*, during the argument I “stood pat as justices
12 peppered [me] with hypotheticals meant to undermine that interpretation.” “State high court hears
13 arguments on Apple Store employee bag checks,” *Daily Journal* (Dec. 5, 2019).⁶

14 7. Ultimately, the California Supreme Court agreed with my analysis: “The history of
15 the ‘hours worked’ definition in Wage Order 7 indicates that the IWC purposely abandoned the
16 narrower standard of compensating only ‘required’ activities more than 70 years ago. The changes
17 made in 1947 suggest that the IWC intended to make compensable the time ‘during which’
18 employees are ‘control[led],’ even if such time is not required.” *Frlekin*, 8 Cal.5th at 1048. The
19 Court also adopted my three-step breakdown of Apple’s “controls” during the searches. *Id.* at 1047.

20 8. I also faced the task of distinguishing the main decision on which Apple had relied in
21 seeking summary judgment, *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000). Before *Frlekin*,

22 ⁴ Opening Brief on the Merits (“OBM”), filed Dec. 19, 2017, at 17-24 (Exhibit L, attached).

23 ⁵ *Id.* at 24-28; see also Reply Brief on the Merits (“RBM”), filed Jun. 8, 2018 at 14-20 (Exhibit
24 M, attached).

25 ⁶ See also “Apple’s Denying Pay to Workers for Bag Search Questioned,” *Bloomberg Law*
26 (Dec. 4, 2019) (“The key is employer control ..., said Kimberly Kralowec ‘There are other ways to
27 deal with the potential issue of retail theft than to burden the employees,’ Kralowec said.”); “Calif.
28 Justices Weigh Wages For Bag Checks In Apple Case,” *Employment Law360* (Dec. 4, 2019)
 (“Kimberly Kralowec ... argued the time is compensable because the workers are under the control of
 the employer and Apple has a written policy that says workers who don’t agree to checks are subject
 to disciplinary actions and could be fired.”).

1 *Morillion* was the leading California Supreme Court case construing the “control” test. In a lengthy
2 argument section, I explained why *Morillion* and its progeny actually supported the conclusion that
3 the security search time was compensable.⁷ Again, the Supreme Court agreed with and adopted my
4 analysis. *Frlekin*, 8 Cal.5th at 1049-57.

5 9. In support of Apple, amicus curiae briefs were filed by eight powerful employer-side
6 organizations, including the Washington Legal Foundation, the U.S. Chamber of Commerce, the
7 National Retail Federation, the California Chamber of Commerce, and the California Employment
8 Law Council. A main argument advanced in those briefs was that if the California Supreme Court
9 held that bag check time was compensable, employers across the state would immediately ban
10 employees from bringing their bags to work. I drafted a lengthy consolidated answer to those
11 amicus curiae briefs, in which I comprehensively responded to this argument (among many others).⁸
12 After the Supreme Court ruled, I successfully opposed Apple’s rehearing petition.

13 10. I have handled many other appeals in my lengthy career. I have drafted well over 100
14 appellate briefs and have argued repeatedly in the Ninth Circuit and the California appellate courts.
15 In addition to *Frlekin*, my other recent appellate successes include: *Wilmot v. First Am. Title Co.*,
16 2020 WL 502646 (Cal. Ct. App. Jan. 31, 2020) (reversing order denying class certification of UCL
17 “unlawful” and “unfair” prong claims); *Candelore v. Tinder, Inc.*, 19 Cal.App.5th 1138 (2018),
18 *review denied*, S247527 (May 9, 2018) (holding that dating app’s age-based price differential
19 violates the Unruh Civil Rights Act); and *Robinson v. OnStar, LLC*, 721 Fed.Appx. 704 (9th Cir.
20 2018) (reversing order granting motion to dismiss in favor of individual arbitration).

21 11. I have been named by the *Daily Journal* as one of the Top Women Lawyers in
22 California and three times as one of the Top Labor & Employment Lawyers in California. I have
23 been named a Northern California Super Lawyer every year since 2011. Before I turned to plaintiff-
24 side work, I was a partner in a large defense firm in San Francisco, where I defended financial
25 institutions in class action matters. I served for five years on the Executive Committee of the
26

27 ⁷ OBM at 28-40; RBM at 20-29.

28 ⁸ Answer to Amicus Curiae Briefs, filed Oct. 9, 2018, at 29-32 (Exhibit O, attached).

1 Antitrust and Unfair Competition Law Section of the State Bar of California and, since 2003, I have
 2 been the author of *The UCL Practitioner*, a legal weblog on California's Unfair Competition Law
 3 and class action practice, which is regularly relied on by judges and attorneys in California.

4 12. A true and correct copy of my current firm resume, summarizing the experience of
 5 each of the firm's current and former professionals, is attached as **Exhibit A**.

6 **III. SUMMARY OF KRALOWEC LAW'S WORK PERFORMED, HOURS, AND 7 **LODESTAR****

8 13. The total number of hours reasonably expended by Kralowec Law in this matter
 9 during the eight-and-a-half-year period from July 9, 2013 through February 28, 2022 is
 10 approximately 5,368 hours (not including time spent preparing this declaration or otherwise
 11 pertaining to the motion for attorneys' fees and costs or the motion for approval of proposed class
 12 representative and service payments to the named plaintiffs). The total lodestar for my firm at
 13 current rates is \$4,766,063.50, as follows:

Name of Professional	Title	Hours	Current Rate	Lodestar at Current Rates
Kimberly A. Kralowec (1992 admittee)	Principal	1,606.9	\$1,045	\$1,679,210.50
Kathleen Styles Rogers (1986 admittee)	Of Counsel	2,559.2	\$985	\$2,520,812.00
Chad A. Saunders (2008 admittee)	Associate (Former)	347.5	\$695	\$241,512.50
Elizabeth I. Newman (2008 admittee (with one less year of practice experience than Mr. Saunders))	Associate (Former)	71.8	\$650	\$46,670.00
Gary M. Gray (29 years of practice experience)	Senior Litigation Paralegal	782.7	\$355	\$277,858.50
TOTALS:		5,368.1		\$4,766,063.50

14 14. In addition to the hours summarized in the chart above, my firm expended
 15
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 27
 28 approximately 184 hours of professional time on matters pertaining to the motion for attorneys' fees

1 and costs (including this declaration) and the motion for approval of proposed class representative
2 and service awards to the named plaintiffs, as follows:

Name of Professional	Title	Hours	Current Rate	Lodestar at Current Rates
Kimberly A. Kralowec (1992 admittee)	Principal	66.0	\$1,045	\$68,970.00
Kathleen Styles Rogers (1986 admittee)	Of Counsel	94.1	\$985	\$92,688.50
Gary M. Gray (29 years of practice experience)	Senior Litigation Paralegal	24.0	\$355	\$8,520.00
TOTALS:		184.1		\$170,178.50

11 15. The figures stated in the two charts above were prepared from the contemporaneous
12 computerized time records regularly prepared and maintained by my firm in the ordinary course of
13 business. Time entries are recorded in 0.1-hour increments. These records reflect all hours worked
14 and tasks performed throughout the litigation. In reviewing the firm's detailed time records in
15 preparation for filing this declaration, I exercised reasonable billing judgment and determined to
16 remove certain time and certain entries from the totals stated above and summarized below. In
17 addition, throughout the litigation, I worked with McLaughlin & Stern LLP to coordinate our efforts
18 and assign tasks between our firms so as to minimize inefficiencies or duplication of effort.

19 16. The firm's detailed time report, reflecting the work performed by my firm from July
20 9, 2013 through March 14, 2022, including each individual time entry with a description of the work
21 performed and the hours expended, is attached hereto as **Exhibit B**. The report includes minor
22 redactions for attorney-client privilege and work product. The work reflected in the detailed time
23 report is further described and summarized in Section V of this declaration, below. Section V is a
24 chronological narrative summary of the tasks performed and hours expended.

25 **IV. EVIDENTIARY SUPPORT FOR STATEMENT OF FACTS SECTION OF BRIEF**

26 17. This Court's first scheduling order was issued in October 2013, setting a series of
27 case deadlines. In order to meet the deadlines, during the four-month period from October 2013 to
28

1 January 2014, deposition notices were taken and responded to, eleven depositions were taken or
2 defended, initial disclosures and amended disclosures were served, fifteen sets of written discovery
3 were served and answered, and over 3,300 pages of documents were produced. From approximately
4 March 2014 through March 2015, fifteen more depositions were taken; further sets of written
5 discovery were propounded and answered; initial disclosures were repeatedly amended, and over
6 62,500 more pages of documents were produced by Apple. Apple's amended disclosures, answers,
7 document productions, and production of witnesses for noticed depositions were the result of
8 plaintiffs' substantial efforts over these months to meet and confer by written correspondence and
9 telephone conferences. Apple's production exceeded 65,000 Bates-stamped pages and hours of
10 video footage, all of which was reviewed and analyzed for purposes of the summary judgment
11 motions and the class certification motion. The deposition transcripts were carefully reviewed and
12 culled and relevant excerpts included with the summary judgment and class certification briefing.

13 18. After the Court granted class certification in July 2015, Apple challenged that
14 decision by filing a Rule 23(f) petition in the Ninth Circuit. Class Counsel prepared and filed a
15 detailed answer on August 12, 2015, a true and correct copy of which is attached hereto as **Exhibit**
16 **C**. The petition was summarily denied on October 21, 2015.

17 19. After the judgment in Apple's favor was entered in November 2015, and after filing a
18 bill of costs seeking over \$60,000 in litigation costs against my clients, Apple offered to settle the
19 case for a waiver of costs in exchange for dismissing the appeal. This offer was declined.
20 Ultimately, the Court awarded \$34,859.12 in litigation costs against the named plaintiffs.

21 20. Substantial work followed in the Ninth Circuit. For the Court's convenience, a true
22 and correct copy of the complete Ninth Circuit docket is attached hereto as **Exhibit D**.

23 21. True and correct copies of the following materials filed by Class Counsel in the Ninth
24 Circuit proceedings are attached hereto:

- 25 a. **Exhibit E**: Appellants' Opening Brief, filed June 27, 2016;
- 26 b. **Exhibit F**: Excerpts of Record, filed June 27, 2016 (table of contents only);
- 27 c. **Exhibit G**: Motion for Judicial Notice, filed June 27, 2016 (exhibits omitted);
- 28 d. **Exhibit H**: Appellants' Reply Brief, filed Dec. 23, 2016;

1 e. **Exhibit I**: Motion for Judicial Notice, filed Dec. 23, 2016 (exhibits omitted).

2 22. As part of my work on the Ninth Circuit appeal, I consulted with potential amicus
3 curiae supporters. As a result of my efforts, an amicus curiae brief of the California Employment
4 Lawyers Association was filed on July 5, 2017. The appeal was orally argued on July 11, 2017. I
5 presented the argument. The oral argument video is available at this link:
6 <https://www.ca9.uscourts.gov/media/video/?20170711/15-17382/>.

7 23. On August 16, 2017, the Ninth Circuit issued an opinion referring the central legal
8 question to the California Supreme Court for decision. Extensive work was then done in the
9 California Supreme Court. For the Court's convenience, a true and correct copy of the California
10 Supreme Court's complete docket is attached hereto as **Exhibit J**.

11 24. True and correct copies of the following materials filed by Class Counsel in the
12 California Supreme Court are attached hereto:

- 13 a. **Exhibit K**: Letter to California Supreme Court, filed Sept. 1, 2017;
- 14 b. **Exhibit L**: Opening Brief on the Merits, filed Dec. 19, 2017;
- 15 c. **Exhibit M**: Reply Brief on the Merits, filed Jun. 8, 2018;
- 16 d. **Exhibit N**: Motion to Augment the Record, filed Jun. 8, 2018 (exhibits
17 omitted);
- 18 e. **Exhibit O**: Answer to Amicus Curiae Briefs, filed Oct. 9, 2018;
- 19 f. **Exhibit P**: Supplemental Brief, filed Aug. 28, 2019;
- 20 g. **Exhibit Q**: Supplemental Reply Brief, filed Sept. 11, 2019;
- 21 h. **Exhibit R**: Answer to Rehearing Petition, filed Mar. 9, 2020.

22 25. I presented oral argument before the California Supreme Court on December 4, 2019.
23 The video is available here: https://jcc.granicus.com/player/clip/1384?view_id=12. Attorney
24 Theodore J. Boutrous, Jr. of Gibson Dunn and Crutcher LLP handled the oral argument for Apple.
25 Mr. Boutrous appeared for and filed all of Apple's briefs in the California Supreme Court.

26 26. After the California Supreme Court issued its opinion, proceedings resumed in the
27 Ninth Circuit. First of all, Class Counsel asked the Ninth Circuit to reverse the judgment in favor of
28 Apple and enter judgment on liability in favor of the class. The Ninth Circuit directed further

1 briefing. A true and correct of the supplemental brief filed by Class Counsel in the Ninth Circuit on
2 June 25, 2020 is attached hereto as **Exhibit S**. Class Counsel also filed a motion for judicial notice
3 and supplemental excerpts of record. When Apple filed a rehearing petition, Class Counsel
4 answered it on October 9, 2020 (true and correct copy attached as **Exhibit T**).

5 27. I am informed and believe that the Settlement Administrator appointed by the Court
6 completed the notice to the class in the manner required by this Court's order granting preliminary
7 approval filed December 16, 2021 (Dkt. 431) and the Settlement Agreement. I am further informed
8 that to date, no objections have been received to the settlement or to any term thereof, including the
9 proposed awards of attorneys' fees, litigation costs, and service awards for the named plaintiffs.
10 Attached hereto as **Exhibits U** through **X** are true and correct copies of the final class notices,
11 which a paralegal acting at my direction downloaded from the Settlement Administrator's website.

12 28. As mentioned above, I represented the certified class in *Brinker*. A true and correct
13 copy of relevant pages from the order awarding attorneys' fees of 41.8% of the settlement fund in
14 *Brinker* is attached hereto as **Exhibit Y**. *Hohnbaum v. Brinker Rest. Corp.*, San Diego Super. Ct.,
15 no. CIG834348, Order filed Dec. 12, 2014.

16 **V. DETAILED BREAKDOWN OF KRALOWEC LAW'S WORK PERFORMED,
17 HOURS AND LODESTAR**

18 29. The work performed by my firm in this matter from inception through February 28,
19 2022, and detailed in the report attached hereto as **Exhibit B**, is further summarized as follows:

20 **A. July 2013 through December 2013: Commencement of the Litigation, Two Rounds of
21 Summary Judgment Motions, Class Certification, Class Notice, and Judgment**

22 30. **July 2013 through December 2013:** Before the action was filed in on July 25, 2013,
23 my firm evaluated the proposed legal theory, conferred with the clients, researched and drafted
24 portions of the complaint relating to California law, and conducted docket research on whether any
25 similar actions had been filed. My firm handled the filing of the original complaint, dealt with
26 various matters associated with commencing a new action, and advised co-counsel on local
27 procedures and rules. After the case was filed, my firm conducted numerous interviews with putative
28 class members and drafted intake memoranda. We evaluated the possible expansion of the action to
cover other states and handled the filing of the related *Kilker* action. As of October 2013, when the

1 Court issued its first scheduling order, we worked on discovery and initial disclosures and began
2 work to prepare to take and defend upcoming depositions. My firm expended approximately **185.1**
3 **hours** of professional time on these tasks during this period.

4 31. **January 2014 through February 2014:** During this period, my firm performed work
5 on the response to Apple's evidentiary objections to plaintiffs' motion for conditional collective
6 action certification under the FLSA; drafting plaintiffs' evidentiary objections to Apple's extensive
7 evidence filed in opposition to that motion; and on the supplemental brief in support of that motion
8 related to appointment of interim co-lead and liaison counsel. We performed research and other work
9 related to the reply brief in support of the collective action motion, which was filed on January 25,
10 2014, and the motion to strike Apple's improper evidentiary objections, filed on January 17, 2014
11 (Dkt. 117). My colleague, Kate Rogers, and I prepared for and appeared with co-counsel for the
12 comprehensive hearing that took place before the Court on February 20, 2014. Thereafter, we
13 evaluated next steps in view of the Court's comments during the hearing, consulted with co-counsel
14 on strategy, and immediately began work on the supplemental filing due in March. My firm
15 expended approximately **208.4 hours** of professional time on these tasks during this period.

16 32. **March 2014:** My firm performed extensive work on the supplemental filing due on
17 March 27, 2014 in response to comments made during the hearing. The work included close review
18 and analysis of the deposition transcripts of the named plaintiffs and unnamed class member
19 declarants; comparison of the transcripts with the declarations filed in support of the collective action
20 motion; drafting the detailed charts attached to the supplemental brief; drafting many of the
21 substantive sections of the brief; and reviewing and commenting on the supplemental declarations
22 filed with the brief. We also evaluated the impact of the grant of cert. in *Busk* and strategized with
23 co-counsel regarding next steps, including the stay motion filed on March 24, 2014. The
24 comprehensive supplemental brief was filed on March 27, 2014 (Dkt. 153, 153-1). My firm
25 expended approximately **183.4 hours** of professional time on these tasks during this period.

26 33. **April 2014 through August 2014:** Apple had been directed to move for summary
27 judgment on all plaintiffs' individual claims by April 10, 2014. This motion was filed, including a
28 section in response to our supplemental brief. My firm immediately began evaluating the motion and

1 working on the opposition. Ms. Rogers of my firm drafted the section related to Apple's evidence
2 and the section in response to Apple's arguments on our supplemental brief. This work required
3 extensive further review of the evidence Apple filed with the motion. She also worked with one
4 putative class member on her declaration to be filed in opposition to the motion. The opposition was
5 filed on May 5, 2014. My office then worked with co-counsel to prepare for the hearing on the
6 summary judgment motion, which took place on May 22, 2014. Ms. Rogers attended the hearing and
7 provided assistance to Mr. Shalov of McLaughlin & Stern during the hearing. The motion was
8 denied on May 30, 2014, and on the same day the Court directed that the case be stayed except for
9 discovery on the California claims. Over the next three months, my firm assisted with discovery-
10 related work. Ms. Rogers took the lead in negotiating the ESI production protocol with Apple's
11 counsel and participated in numerous "meet and confer" calls with defense counsel and co-counsel
12 regarding this issue. My firm expended approximately **175.6 hours** of professional time on these
13 tasks during this period.

14 34. **September 2014 through October 2014:** During these two months, extensive work
15 on discovery continued, including setup of a document review platform for review of Apple's
16 extensive production. Ms. Rogers continued to work on "meet and confer" issues with defense
17 counsel regarding deficiencies in Apple's production, and began preparation to defend the deposition
18 of putative class member Claudia Wright, including negotiations with defense counsel regarding the
19 date, permitted subjects of examination, and other matters. She also began preparation to depose
20 Larry Verter, the General Manager of one of Apple's San Francisco stores, which entailed extensive
21 document review and preparation of the subjects of examination in a deposition outline. She also
22 assisted with responses to the many sets of written discovery propounded by Apple during this
23 period. The responses were served on October 31, 2014. The Court had set a deadline in December
24 2014 for expert reports, so we also began work with co-counsel to assess whether expert testimony
25 would be needed and on what subjects. My firm expended approximately **175.5 hours** of
26 professional time on these tasks during this period.

27 35. **November 2014 through December 2014:** Ms. Rogers prepared for and took the
28 deposition of Larry Verter on November 4, 2014. She prepared for and defended the deposition of

1 putative class member Claudia Wright on November 13, 2014, organized production of Wright's
2 documents, and my firm reviewed and prepared confidentiality designations for the transcript. She
3 worked with co-counsel on meeting and conferring with Apple regarding its ESI production, and on
4 plaintiffs' motion to compel Apple to produce documents in conformance with the filed ESI Order,
5 filed November 6, 2014 (Dkt. 179). She also prepared for and participated in the Court-ordered
6 hearing on Apple's motion to compel plaintiff Amanda Frlekin to serve further responses to certain
7 interrogatories. (Dkt. 184) on November 20, 2014, which required extensive preparation on all issues,
8 during which the Court required counsel to go into a room and continue conferring about the
9 discovery disputes (many of which were resolved), and then held a hearing on the record in which it
10 denied Apple's motion to compel, and ordered Apple to produce its class list to plaintiffs which it
11 previously had withheld. She worked with co-counsel to coordinate production of client documents
12 with the assistance of paralegal Gary Gray. She pursued Apple's production of its class list pursuant
13 to the Court's order at the November 20 hearing and reviewed it for compliance; and worked with co-
14 counsel to coordinate electronic review of Apple's ESI productions. Ms. Rogers reviewed Apple's
15 discovery responses for evidence to include in plaintiffs' supplemental responses. When the U.S.
16 Supreme Court handed down its *Busk* decision on December 9, 2014, my firm immediately evaluated
17 its impact and conferred with counsel on the impact on the case and the next steps in the litigation. In
18 late December 2014, the Court dismissed the non-California claims and directed plaintiffs to move
19 for leave to file a consolidated amended complaint in early January. Ms. Rogers began working with
20 co-counsel on amended complaint My firm expended approximately **165.7 hours** of professional
21 time on these tasks during this period.

22 36. **January 2015 through February 2015:** During this period, Ms. Rogers performed
23 extensive work drafting responses to the lengthy sets of contention interrogatories propounded by
24 Apple on plaintiff Amanda Frlekin. Preparing these responses required extensive analysis of our
25 legal theories and factual support. We also worked with co-counsel on the consolidated amended
26 complaint and motion for leave to amend. In early January, Apple filed a bill of costs, and my firm
27 worked on strategy related to opposing it. Ms. Rogers continued to pursue Apple's ESI production
28 and reviewed Apple's further discovery responses and over 44,000 pages of documents produced in

1 this period, as well as its privilege logs. Ms. Rogers also began preparation for the depositions of
2 witnesses Barandon and Paczka. On February 2, 2015, the Court set a May deadline to move for
3 class certification, so work began on that project as well. Ms. Rogers met and conferred with Apple
4 regarding production of its employee declarations and comprehensive issues with Apple's discovery
5 responses. She also worked with co-counsel to revise plaintiffs' discovery plan and determine expert
6 issues. My firm expended approximately **435.4 hours** of professional time on these tasks during this
7 period.

8 **37. March 2015 through May 2015:** With the assistance of Mr. Saunders, Ms. Rogers
9 prepared for and took the depositions of witness Barandon on March 9, 2015. She defended the
10 depositions of witnesses Ferenc Paczka and Masch-Al Malek on March 12, 2015. She also analyzed
11 Apple's store video evidence and met and conferred by letter and telephone with Apple regarding
12 comprehensive discovery issues including Apple's production of 30(b)(6) witnesses and production
13 of further, requested documents for class cert issues.] We also performed extensive work on the
14 motion for class certification, filed on May 11, 2015, and assisted with the expert disclosures made
15 on March 2, 2015. Ms. Rogers analyzed Apple's expert report of Dr. Hall and worked on further
16 discovery to rebut. My firm expended approximately **483.0 hours** of professional time on these tasks
17 during this period.

18 **38. June 2015 through July 2015:** Ms. Rogers drafted and filed plaintiffs' motion to
19 strike the report of Apple's video expert, Randolph Hall cited in Apple's opposition to class cert and
20 worked with co-counsel on the reply to Apple's opposition to class cert and to prepare for the July
21 2, 2015 hearing. Ms. Rogers appeared at the hearing and assisted co-counsel in presenting
22 argument. The Court granted class certification on July 16, 2015 and ordered the parties to send
23 notice to the class, and also to file cross-motions on summary judgment by October 1, 2015 (Dkt.
24 297). We worked with co-counsel on our damages model and our settlement demand, required
25 before the conference. We received and evaluated Apple's Rule 23(f) petition, which was filed on
26 July 30, 2015. My firm expended approximately **270.2 hours** of professional time on these tasks
27 during this period.

28

1 39. **August 2015 through September 2015:** I assisted with the answer to the Rule 23(f)
2 petition, filed on August 12, 2015. During this period, Ms. Rogers and I worked with co-counsel and
3 defense counsel on matters related to the completion of class notice on the timeframe the Court had
4 directed. Notice was made on September 10, 2015. Ms. Rogers continued to work with co-counsel
5 and consulting expert on plaintiffs' damages model and drafted plaintiffs' settlement conference
6 statement. Ms. Rogers and I, together with co-counsel, attended the Court-ordered settlement
7 conference before Magistrate Judge Spero on September 30, 2015, along with two of the class
8 representatives. In addition, extensive work ensued on preparing our motion for summary judgment,
9 which was filed on October 1, 2016. My firm expended approximately **160.5 hours** of professional
10 time on these tasks during this period.

11 40. **October 2015 through December 2015:** After completing the summary judgment
12 motion filing on October 1, 2015, we immediately began review and analysis of Apple's cross-
13 motion, filed the same day. Ms. Rogers worked extensively with co-counsel on plaintiffs' opposition
14 to Apple's motion, prepared a motion to strike Apple's expert report, and performed extensive work
15 on evidentiary objections. The opposition and motion to strike were filed on October 14, 2015. Mr.
16 Rogers also worked extensively on plaintiffs' reply papers which were filed on October 22, 2015.
17 The hearing on the cross-motions for summary judgment took place was on November 7, 2015. My
18 office performed extensive preparation for the hearing, including creating the demonstrative boards
19 used during the hearing. Ms. Rogers appeared at the hearing and assisted with the argument. After
20 the Court granted Apple's summary judgment motion on November 7, 2015, we began to assess
21 possible grounds for appeal. We also worked on limited settlement discussions with Apple. The
22 notice of appeal was filed on December 3, 2015, and the work began on the appeal. Ms. Rogers
23 assisted co-counsel to file objections to object to Apple's bill of costs on December 4, 2015 (Dkt.
24 343). She also worked on transcript designations for the appeal. My firm expended approximately
25 **205.4 hours** of professional time on these tasks during this period.

1 **B. January 2016 through September 2017: Extensive Work on the Ninth Circuit Appeal,**
2 **Including Appellate Brief Drafting and Oral Argument, Culminating in the Ninth**
3 **Circuit’s First Opinion**

4 41. **January 2016 through May 2016:** On January 25, 2016, costs in the amount of
5 \$34,859.12 were awarded to Apple. Apple demanded immediate payment of the costs despite the
6 pending appeal. Accordingly, research was performed on this issue and negotiations took place
7 with Apple’s counsel. Meanwhile, the Ninth Circuit assigned the case to its appellate mediation
8 program. Significant work was performed related to the mediation, including communications with
9 the mediator and clients. Among other tasks, I consulted with ethics counsel regarding our duties to
10 the certified class members with respect to potential settlement at this stage of the case. Several
11 extensions of the opening brief deadline were obtained from the appellate mediator in order to
12 facilitate settlement discussions. My office also began work on compiling the appellate record in
13 anticipation of preparing and filing the opening brief and I began reaching out to potential amicus
14 curiae supporters. My firm expended approximately **44.0 hours** of professional time on these tasks
15 during this period.

16 42. **June 2016:** During this period, I wrote the opening brief on appeal to the Ninth
17 Circuit. This task involved a thorough review of the complete record below; selection of the
18 portions to be included in the excerpts of record; analysis of the strongest arguments in favor of
19 reversal and the most effective way to present the arguments; evaluation, in consultation with co-
20 counsel, of the decision to ask the Ninth Circuit to refer the central question of law to the California
21 Supreme Court for decision; extensive additional legal research, including research on the historical
22 development of the definition of “hours worked” in the IWC’s Wage Orders dating back to 1916;
23 extensive work on the actual drafting of the brief, including factual sections with citations to the
24 record and legal argument sections. I was able to conduct an analysis of the historical Wage Orders
25 because I had previously obtained copies of all of them from the official records of the California
26 Department of Industrial Relations during my work on the *Brinker* case. Paralegal Gary Gray
27 performed extensive work compiling the excerpts of record and performing other tasks related to
28 completion of the appellate brief. Ms. Rogers assisted with strategy analysis, legal research,
reviewing and commenting on drafts of the brief, and drafting the motion for judicial notice of the

1 historical Wage Orders and other relevant materials. The 60-page opening brief was filed on June
2 27, 2016, together with four volumes of excerpts of record (600 pages) and a motion for judicial
3 notice of 40 pages of historical IWC material. (Exhibits E-G, attached.) My firm expended
4 approximately **190.2 hours** of professional time on these tasks during this period..

5 43. **July 2016 through September 2016:** After the opening brief was filed, I continued
6 working on obtaining amicus support. Those efforts included correspondence and discussions with
7 the amicus curiae committee of the California Employment Lawyers Association (“CELA”), of
8 which I have been a member for many years. I developed a list of potential points of discuss for an
9 amicus curiae brief and reviewed drafts of the proposed CELA brief, which was filed on July ____,
10 2016. Together with co-counsel, I also monitored new decisional law for any relevant new
11 authorities and assessed whether to file supplemental authority notifications regarding certain new
12 decisions. We began work in anticipation of receiving Apple’s answer brief on the merits and
13 drafting the reply brief. When Apple’s brief was filed on September 26, 2016 along with
14 supplemental excerpts of record (9th Cir. Dkt. 29, 30), we immediately began the necessary review
15 and evaluation of points to be made in reply. My firm expended approximately **26.9 hours** of
16 professional time on these tasks during this period..

17 44. **October 2016 through December 2016:** Extensive work continued in preparation
18 for filing the reply brief, including high-level analysis of the most persuasive points to be argued in
19 the reply brief, with the assistance of Ms. Rogers and co-counsel. I performed extensive additional
20 legal research and I drafted the reply brief. I received from the California Office of Administrative
21 Law additional historical materials previously requested that were relevant to the regulatory history
22 argument made in the opening brief, and my office prepared a motion for judicial notice of these
23 materials. The reply brief and motion for judicial notice were filed on December 23, 2016 (Exhibits
24 H, I, attached). My firm expended approximately **122.5 hours** of professional time on these tasks
25 during this period.

26 45. **January through May 2017:** As of December 2016, the appeal was fully briefed.
27 During this period, I monitored new decisions and pending cases for any relevant supplemental
28 authorities and I began evaluating my points for oral argument. One of the pending cases I was

1 actively monitoring was *Troester*, which led to the California Supreme Court’s landmark “de
2 minimis” decision in 2018, a crucial decision for the class claims in this case. My work related to
3 the *Troester* case is summarized below. In early May, 2017, the Ninth Circuit issued an order
4 scheduling oral argument for July 11, 2017. Oral argument preparation then began in earnest. My
5 firm expended approximately **22.0 hours** of professional time on these tasks during this period (not
6 including the *Troester* time, which is separately summarized below).

7 46. **Work Performed in the Interim, for the Benefit of the *Frlekin* Class, in *Troester***
8 ***v. Starbucks Corp.***: As mentioned above, in order to protect the interests of my clients and the
9 certified class in this case, I had been monitoring developments in *Troester*. In that case, the district
10 court held that the federal “de minimis” defense applied to California’s Wage Orders and defeated
11 the claims asserted in that case for unpaid “hours worked.” *Troester v. Starbucks Corp.*, No. CV
12 12–7677 GAF, 2014 WL 1004098 (C.D. Cal. Mar. 7, 2014). An appeal had been filed to the Ninth
13 Circuit, and in August 2016, the California Supreme Court agreed to accept the central “de
14 minimis” question for decision. Cal. Sup. Ct. Case No. S234969. I was well aware that the
15 Supreme Court’s resolution of this question in *Troester* could be outcome-determinative for the
16 class members’ claims in this case. Apple had repeatedly asserted a “de minimis” defense, arguing
17 that the security search time, including the wait time, was too short to be compensable. *E.g.*, Dkt.
18 255. This Court had also expressed the view that the “de minimis” defense applied to California
19 wage claims, and that “sixty seconds” “might wind up being the *de minimis* threshold.” Dkt. 297 at
20 11-12. I determined that it would be in the best interests of the named plaintiffs and the certified
21 class in *Frlekin* for me to assist plaintiffs’ counsel in *Troester* and to provide amicus curiae support.

22 a. **June, August, and October 2016:** During this period, I conferred with
23 plaintiffs’ counsel in *Troester* regarding the status of their appeal and arguments to be presented. I
24 also reviewed and provided substantive comments on a draft of the opening brief in *Troester*. I
25 spent **3.8 hours** on these tasks during this period.

26 b. **February 2017 to May 2017:** During this period, I analyzed the merits
27 briefs and determined that additional argument was necessary on the historical development of the
28 Wage Order language on which the “de minimis” defense rested. This additional argument was

1 especially needed, in my judgment, given the points made in the amicus curiae briefs filed by
2 numerous defense-side organizations. I coordinated with the amicus curiae committees of
3 Consumer Attorneys of California (“CAOC”) and CELA and began working on a joint amicus
4 curiae brief of CAOC and CELA. Once again, I evaluated the IWC archive materials and tracked
5 the language back to the earliest Wage Orders. I developed an argument, based on the Wage
6 Orders’ plain text, that the IWC intended that “any” and “all” time worked should be compensable,
7 and that the IWC purposely declined to adopt the “de minimis” defense developed under federal
8 law. Attached hereto as **Exhibit Z** is a true and correct copy of the sections of CELA’s amicus
9 brief that I drafted (Parts I, IIA, IIB, and III). The brief was filed on May 31, 2017, and the
10 Supreme Court granted the motion for leave to file it on June 9, 2017. I decided to do this
11 additional work in order to protect the interests of the *Frlekin* class and because I had access to the
12 IWC archive materials needed to develop the arguments. My firm expended approximately **93.9**
13 **hours** of professional time on these tasks during this period.

14 c. The California Supreme Court handed down its opinion in *Troester* on July
15 26, 2018. *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). The Court held that under California
16 law, any “de minimis” defense is significantly narrower than under federal law, and is inapplicable
17 to “regularly reoccurring activities,” including activities required by the employer “on a regular
18 basis or as a regular feature of the job.” *Id.* at 847, 848. I believe that my amicus curiae work was a
19 material factor in this outcome. In analyzing the IWC’s intent, the Court stated: “Although
20 *Anderson* [the leading federal authority on the “de minimis” defense under the FLSA] has been the
21 law for 70 years and has been incorporated into the Code of Federal Regulations for over 50 years,
22 neither the Labor Code statutes nor any wage order has been amended to recognize a de minimis
23 exception. [Defendant] cites no statutory or regulatory history, *and we have found none*, that
24 indicates an intent by the IWC or the Legislature to impliedly adopt such a rule. [W]e will not
25 presume the IWC intended to incorporate a less protective federal rule without evidence of such
26 intent, *and we see no sign of such intent here.*” 5 Cal.5th at 841 (emphasis added).

27 d. *Troester* was decided in time for me to cite it extensively in my consolidated
28 answer to the amicus curiae briefs filed in the California Supreme Court on October 9, 2018 (as

1 discussed below). *See* Exhibit O, attached, at 24-25, 31-32, 38-39. I also cited *Troester* on remand
2 in this Court, after Apple opposed entry of summary judgment on liability, citing the “de minimis”
3 defense. Dkt. 388 at 10-12. *Troester* would have been central to the damages phase of the case had
4 we proceeded to trial, and the precedent, in my opinion, materially strengthened our position in
5 settlement negotiations with Apple.

6 **47. June 2017 through July 2017:** As soon as we received the Ninth Circuit’s order in
7 May 2017 setting an oral argument date, I began extensive work preparing to argue the appeal. I
8 drafted numerous outlines of my argument, re-read the record and incorporated cites into my
9 outline, conferred with co-counsel and Ms. Rogers on points for the argument, attended and
10 observed two Ninth Circuit arguments before our argument date, and organized and participated in
11 several moot courts with Ms. Rogers, Mr. Gray, co-counsel, and other attorneys who served as
12 mock “justices.” Mr. Gray assisted me in my argument preparation and created a statutory
13 reference sheet for my use during the argument. I continued my preparation and presented the oral
14 argument before the Ninth Circuit on July 11, 2017. My firm expended approximately **105.6 hours**
15 of professional time on these tasks during this period.

16 **48. August 2017 through September 2017:** On August 16, 2017, the Ninth Circuit
17 issued a published opinion in which it asked the California Supreme Court to decide the central
18 question of whether the security search time is compensable “hours worked” under California law.
19 The California appellate rules permit the submission of letters in support of accepting such
20 questions, so I immediately began work on drafting this letter and on seeking additional letters from
21 amicus curiae supporters. The letter, which I drafted with input from Ms. Rogers and co-counsel,
22 was submitted on September 1, 2017. On September 20, 2017, the California Supreme Court
23 agreed to decide the question. The order indicated that the question would be restated, but the text
24 of the question was not, in fact, restated. I noticed this, reached out to the clerk on how to address
25 it, and prepared and submitted a further letter requesting clarification of the question. This letter
26 was submitted on September 28, 2017. Thereafter, as discussed below, extensive work ensued in
27 the California Supreme Court. My firm expended approximately **47.8 hours** of professional time
28 on these tasks during this period.

1 **C. October 2017 through April 2020: Proceedings in the California Supreme Court,**
2 **Including Briefing and Oral Argument, Leading to the Supreme Court’s Opinion**

3 49. **October 2017 through December 2017:** During this period, I drafted the opening
4 brief on the merits filed in the California Supreme Court on December 19, 2017. This work
5 involved extensive further review of the record, additional legal research, and significant analysis of
6 strategy and the best way to present our positions so as to be persuasive to the California Supreme
7 Court. I also worked with possible amicus curiae supporters to enlist them to file briefs in support
8 of our positions. My firm expended approximately **190.2 hours** of professional time on these tasks
9 during this three-month period.

10 50. **January 2018 through April 2018:** During this period, I continued working with
11 possible amicus curiae supporters, whose briefs would be due after completion of merits briefing. I
12 continued monitoring the decisional law for any relevant new authorities, including the California
13 Supreme Court’s impending opinion in *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.4th
14 903 (2018). ADD RE MJN FILED Apple filed its answer brief on the merits on March 18, 2018.
15 Work began on evaluating that brief and developing arguments for the reply brief. My firm
16 expended approximately **57.6 hours** of professional time on these tasks during this period.

17 51. **May 2018 through June 2018:** During this period, I performed extensive work
18 researching and drafting the reply brief, which was filed on June 8, 2018 (Exhibit M, attached). Ms.
19 Rogers assisted with this work. We also evaluated the record and determined that a motion to
20 augment the record was indicated in order to fully respond to Apple’s arguments. This was because
21 Apple’s answer brief cited documents that were part of this Court’s record, but had not been
22 included in the excerpts of record filed in the Ninth Circuit. Ms. Rogers compiled the additional
23 portions of the record needed for our reply brief and prepared a motion to augment the record, filed
24 on June 8, 2018 (Exhibit N, attached (exhibits omitted)). My firm expended approximately **177.1**
25 **hours** of professional time on these tasks during this period.

26 52. **July 2018 through August 2018:** During this period, I continued working with
27 potential amicus curiae supporters, and four amicus curiae briefs were filed in support of our
28 positions in July 2018. Additionally, four defense-side amicus curiae briefs were filed on behalf of

1 eight organizations during this period. I continued to monitor new decisions for possible
2 supplemental authorities. A supplemental authority letter was filed by a defense-side amicus on
3 July 19, 2018 addressing a new Ninth Circuit decision, *Rodriguez v. Taco Bell*, which I reviewed
4 and evaluated for purposes of developing a response regarding that decision. My firm expended
5 approximately **32.3 hours** of professional time on these tasks during this period.

6 53. **September 2018 through December 2018:** The next task was to file a consolidated
7 answer to all of the defense-side amicus curiae briefs. I drafted this consolidated answer. The work
8 involved legal research, analysis and organization of the points made in the eight separate defense
9 side briefs, developing the best arguments in response, and drafting the brief. The brief was filed on
10 October 8, 2018, and included argument on the *Rodriguez v. Taco Bell* decision as well as numerous
11 other points (Exhibit O, attached). With this filing, the matter was fully briefed in the California
12 Supreme Court. During the rest of 2018, I reviewed Apple's consolidated answer to the plaintiff-
13 side amicus briefs and continued to monitor new decisions. My firm expended approximately **123.4**
14 **hours** of professional time on these tasks during this period.

15 54. **January 2019 through July 2019:** During this period, we were waiting for the case
16 to be scheduled for oral argument. I continued to monitor new decisions, and Mr. Gray assisted
17 with the preparation of the pro hac vice application for co-counsel Lee Shalov. My firm expended
18 approximately **11.0 hours** of professional time on these tasks during this period.

19 55. **August 2019 through October 2019:** On August 14, 2019, the California Supreme
20 Court issued an order granting my request to restate the certified question to include technology
21 checks and ordered supplemental briefing on the compensability of technology check time in
22 particular. I drafted our supplemental brief, which was filed on August 28, 2019 (Exhibit P,
23 attached). The work involved re-review of the excerpts of record to pinpoint those specifically
24 related to technology checks, drafting a fact section with additional record cites, and drafting an
25 argument section. Apple filed its supplemental brief on the same day. I then drafted and filed our
26 supplemental reply brief on September 11, 2019 (Exhibit Q, attached). In addition, during this
27 period, an issue came up related to one of the named plaintiffs, which Ms. Rogers and I addressed
28 with that client. On September 20, 2019, the Supreme Court advised the parties that the matter

1 would soon be scheduled for oral argument. Preparation for the argument began after that notice
2 was received. My firm expended approximately **58.5 hours** of professional time on these tasks
3 during this period.

4 **56. November 2019 through December 2019:** During this period, I performed
5 extensive work preparing to argue the appeal. By order dated November 13, 2019, the case was set
6 for argument on December 4, 2019 at 9:00 a.m. in Los Angeles. I drafted revised outlines of my
7 argument, evaluated and drafted an outline of responses to anticipated questions from the justices,
8 conferred with co-counsel and Ms. Rogers on points for the argument, organized and participated in
9 several moot courts with Ms. Rogers, Mr. Gray, co-counsel, and other attorneys who served as
10 mock “justices,” and rehearsed my delivery repeatedly. I continued my preparation, traveled to Los
11 Angeles, and presented the oral argument before the California Supreme Court on December 4,
12 2019. My firm expended approximately **88.2 hours** of professional time on these tasks during this
13 period.

14 **57. January 2020 through February 2020:** After the case was argued and submitted, I
15 continued my usual work of monitoring the decisional law for relevant new authorities. In January,
16 the Ninth Circuit handed down a decision, *Ridgeway*, reversing one of the district court rulings
17 relied on by Apple’s amicus curiae supporters. I evaluated this decision and prepared and filed a
18 supplemental authority letter on January 29, 2020. On February 13, 2020, the California Supreme
19 Court handed down its opinion. In a complete victory for the certified class, the Court held that the
20 security search time was compensable. We reviewed and evaluated the opinion and began
21 determining next steps. My firm expended approximately **38.4 hours** of professional time on these
22 tasks during this period.

23 **58. March 2020 through April 2020:** On March 1, 2020, Apple filed a petition for
24 rehearing in the California Supreme Court. I evaluated the petition, developed arguments for the
25 answer, and drafted the answer, which was filed on March 9, 2020 (Exhibit R, attached). Work
26 began in March and April 2020 in preparation for proceedings on remand. Ms. Rogers began
27 working on a detailed memorandum on the class members’ available theories of recovery in
28

1 anticipation of potential settlement discussions. My firm expended approximately **82.0 hours** of
2 professional time on these tasks during this period.

3 **D. May 2020 through October 2020: Further Briefing in the Ninth Circuit, Leading to the**
4 **Ninth Circuit’s Second Published Opinion; Settlement Negotiations with Apple**

5 59. **May 2020 through June 2020:** The California Supreme Court summarily denied
6 Apple’s rehearing petition on May 13, 2020. I conferred with co-counsel regarding strategy and
7 next steps, and drafted a short brief, filed with the Ninth Circuit on May 15, 2020, asking the Court
8 to reverse the prior judgment in Apple’s favor and enter a new order granting summary judgment in
9 favor of the certified class on liability. Apple filed a response on May 18, and on May 28, 2020, the
10 Ninth Circuit ordered further briefing. Apple’s supplemental brief was filed on June 11, 2020. I
11 reviewed and developed the arguments for the response, which I drafted (Exhibit S, attached). I
12 determined that a request for judicial notice and supplemental excerpts of record were needed, both
13 of which my firm drafted and compiled. This filing was completed on June 25, 2020. In addition,
14 during this period, we were contacted by Apple’s counsel to discuss settlement. Preparation for
15 settlement negotiations continued, including analysis of possible settlement structures, damages
16 projections, and work on our mediation brief. My firm expended approximately **174.9 hours** of
17 professional time on these tasks during this period.

18 60. **July 2020 through August 2020:** During this period, work continued to reach an
19 agreement on a mediator acceptable to all parties. Ms. Rogers continued her work on her
20 memorandum on theories of recovery, including potential defenses, in preparation for mediation.
21 The memorandum addressed issues that Apple had raised such as minimum wage vs. contract wage
22 and a “good faith” defense to certain theories of recovery. (This memorandum was used throughout
23 the settlement discussions and in connection with the preliminary approval motion filed in
24 November 2021.) My firm expended approximately **73.2 hours** of professional time on these tasks
25 during this period.

26 61. **September 2020 through October 2020:** On September 2, 2020, the Ninth Circuit
27 issued an opinion holding that summary judgment on liability should have been granted in favor of
28 the class. My firm reviewed and evaluated this decision and worked with counsel on strategy and

1 next steps. Mr. Gray took the lead on preparing the appellate costs bill triggered by this opinion,
2 which was filed in the Ninth Circuit on September 15, 2020. Apple filed a rehearing petition on
3 September 17, 2020. I evaluated this filing, developed the arguments for the response, and drafted
4 the answer, which was filed by my office on October 9, 2020. On October 29, 2020, the Ninth
5 Circuit issued a slightly revised opinion. Meanwhile, Ms. Rogers continued working on settlement
6 and mediation preparation, working with co-counsel on negotiations regarding the data production
7 needed from Apple for settlement discussions, and other related tasks. My firm expended
8 approximately **199.1 hours** of professional time on these tasks during this period.

9 **E. November 2020 through December 2021: Proceedings in this Court on Remand from the**
10 **Ninth Circuit through Preliminary Approval**

11 62. **November 2020 through December 2020:** The Ninth Circuit issued its mandate on
12 November 6, 2020. This Court set a case management conference for December 16, 2020.
13 Meanwhile, the parties had agreed to mediation, and participated in their first mediation session on
14 December 12, 2021. In preparation for the mediation, my firm assisted co-counsel with the
15 mediation brief and Ms. Rogers completed her detailed analysis of available remedies under each
16 theory in the complaint for purposes of developing an appropriate settlement demand. We also
17 worked on the joint statement filed on December 9, 2020 for this conference, and I attended the
18 conference with co-counsel. During the conference, the Court directed plaintiffs to formally move
19 for entry of judgment on liability based on the Ninth Circuit's opinion; to make a formal motion if
20 we wished to expand the class damages period; and to move for approval of a proposed notice and
21 claim form plan. Work began on these tasks shortly after the conference. My firm expended
22 approximately **100.8 hours** of professional time on these tasks during this period.

23 63. **January 2021 through March 2021:** My firm took the lead on drafting the motion
24 for entry of summary judgment on liability; negotiating with Apple regarding the class damages
25 period; and drafting the motion to expand the damages period. These motions were filed on January
26 21, 2021, together with a formal request for judicial notice of the three appellate opinions. After
27 further negotiations with Apple's counsel, we formed the stipulation filed with the Court on
28 February 3, 2021, and Apple produced documents related to the date on which it contended it

1 discontinued its unpaid security search policy. Apple's opposition to our motion for entry of
2 summary judgment was filed on February 4, 2021; I reviewed and drafted the reply brief, which
3 was filed on February 11, 2021. On February 26, 2021, Apple filed an administrative motion for
4 leave to file a sur-reply in opposition to plaintiffs' summary judgment motion. I drafted and filed a
5 detailed opposition to the administrative motion on March 2, 2021, together with a supporting
6 declaration and proposed order. I prepared for the hearing, appeared and presented argument on
7 March 3, 2021. Thereafter, work continued on issues related to the notice and claim form, as well
8 as further work related to settlement negotiations and mediation. My firm expended approximately
9 **219.3 hours** of professional time on these tasks during this period.

10 64. **April 2021 through May 2021:** On April 14, 2021, this Court granted plaintiffs'
11 motion for summary judgment on liability and directed a detailed notice and claims process. Work
12 began on complying with the Court's directives. Meanwhile, my firm and co-counsel were still
13 engaged in negotiations with Apple to participate in another mediation session with a different
14 mediator. Once the parties agreed to a further mediation, I worked on an updated mediation brief,
15 prepared for the mediation, and participated in the mediation, together with Ms. Rogers and co-
16 counsel, in May 2021. After several post-mediation calls with the mediator, a settlement in
17 principle was reached as of approximately May 13, 2021, the date on which the Court was advised
18 of the settlement. Work immediately began on negotiating the terms of a formal memorandum of
19 understanding. My firm expended approximately **76.4 hours** of professional time on these tasks
20 during this period.

21 65. **June 2021 through September 2021:** My firm performed extensive work, together
22 with co-counsel, on the formal memorandum of understanding, which was executed on
23 approximately July 29, 2021. Thereafter, we performed extensive work, together with co-counsel,
24 on the long-form settlement agreement and the exhibits. Many drafts were exchanged with Apple
25 and I participated in many telephone conferences to go over different provisions of the agreement
26 and exhibits. My firm also began work on the preliminary approval motion. My firm expended
27 approximately **100.1 hours** of professional time on these tasks during this period.

28

1 **66. October 2021 through December 2021:** During this period, my firm continued
2 working on the long-form settlement agreement and exhibits, which was finally completed on or
3 about November 8, 2021. Additional extensive work was done on the preliminary approval motion,
4 which was filed on November 11, 2021. Ms. Rogers coordinated with co-counsel to complete the
5 required LWDA notice. The Court requested a supplemental joint statement and supporting
6 declarations, which were prepared and submitted on December 1, 2021. Thereafter, I prepared for
7 the preliminary approval hearing, and appeared and presented argument before this Court on
8 December 16, 2021. The Court's detailed order was issued on December 28, 2021, including an
9 order directing that class notice be completed by January 11, 2022. We immediately began
10 evaluating the next steps needed to comply with the Court's order, including coordination with the
11 Court-approved Settlement administrator. My firm expended approximately **179.5 hours** of
12 professional time on these tasks during this period.

13 **F. January 2022 through March 2022: Work Related to Settlement Notice, Class Member**
14 **Inquiries and Settlement Administration Issues**

15 **67. January 2022:** During this period, the necessary work was done in order to meet
16 the Court-ordered notice deadline of January 11, 2022, including assessing the requirements of the
17 Court's preliminary approval order, working with the Settlement Administrator to finalize the
18 notices, reviewing the text for the settlement website, arranging for the notices to be posted on my
19 firm's websites, as directed by the Court, and other matters related to the notice. We also
20 negotiated with defense counsel on certain notice-related issues, such as what return address should
21 be indicated on the notice envelope. After notice was made, my firm began receiving
22 communications from class members, and we continued to work with the Settlement Administrator
23 on various administration issues. My firm expended approximately **29.6 hours** of professional time
24 on these tasks during this period.

25 **68. February 2022 through March 14, 2022:** During this period, more class member
26 communications were received and more coordination was done with the Settlement Administrator,
27 including reviewing the Administrator's regular reports and evaluating any issues raised therein and
28 decision whether any action was indicated. We also communicated with defense counsel regarding

1 administration-related issues. My firm expended approximately **30.7 hours** of professional time on
2 these tasks during this period.

3 **G. Work Related to Attorneys' Fees, Costs, and Service Awards**

4 69. The work described above, and reflected in the chart in paragraph 13, does not
5 include any of the time spent on issues related to attorneys' fees, including work drafting the brief
6 in support of the motion for attorneys' fees and litigation costs; work drafting this declaration; and
7 work on the motion for class representative a0nd service payments filed herewith. The chart in
8 paragraph 14, above, reflects the work performed by Kralowec Law, P.C. on issues related to fees,
9 costs, and class representative and service payments through March 14, 2022. The bulk of this
10 work was performed in late 2021 and early 2022.

11 **H. Anticipated Future Work, March 15, 2022 and Forward**

12 70. During this period, I anticipate that my firm will perform significant further work
13 associated with settlement approval. I expect that my firm will receive and respond to more class
14 member inquiries about the settlement, and I expect to perform work on the motion for an order
15 granting final approval of the settlement, which is due on April 19, 2021. If final approval is
16 granted, significant additional work will be needed in order to calculate class members' pro rata
17 shares, as well as work to be done with Angeion on distribution of checks and issuance of the
18 reminder notice called for by the settlement agreement. Assuming final approval is granted on the
19 currently-scheduled hearing date, these tasks will extend into at least the fall of 2021. All of these
20 tasks will require many more hours of work by my firm for the benefit of the class members.

21 **VI.**

22 **KRALOWEC LAW'S HOURLY RATES ARE REASONABLE**

23 71. The hourly rate of each of my firm's current and formal professionals, as stated in
24 the charts above, is the usual and customary hourly rate charged for their services in similar
25 complex litigation. Based on my 29 years of practice experience, most of which has involved
26 handling similar complex and class action litigation, I believe the rates are reasonable and in line
27 with the rates charged for similar work by professionals with similar levels of experience and
28 expertise and with comparable reputations. The rates stated above were determined by me, as the

1 owner of Kralowec Law, in the ordinary course of business, and they apply equally to all of the
2 firm's litigation, consultation and appellate matters, both hourly and contingency. They are the
3 rates we claim in our fee applications in all of our contingency-fee cases. The rates contain no
4 premium for the contingency nature of our practice.

5 72. It is my responsibility as the owner of Kralowec Law to determine the firm's hourly
6 rates each year. In determining my firm's hourly rates in the ordinary course of business, I consider
7 a variety of factors, including but not limited to: (a) my knowledge of this market, in which I have
8 been practicing since 1996, including my knowledge of the rates established for me and other
9 attorneys and paralegals by the law firms in California for which I have previously worked; (b) my
10 review of publicly-filed declarations of other attorneys in California plaintiff-side class action firms
11 with whom my firm competes, setting forth their rates; (c) review of publicly-available information
12 regarding prevailing rates, such as reports in legal newspapers; (d) review of the rates charged by
13 other firms with whom my firm has associated or co-counseled in its litigation matters; (e) review
14 of reported decisions and fee rulings reflecting other firms' hourly rates; and (f) the willingness of
15 prospective hourly clients to agree to pay my firm's regular hourly rates.

16 73. I established my firm's initial rates in 2010 based on the factors outlined above. The
17 firm's rates have been periodically increased since then in accordance with the same factors. As of
18 January 1, 2022, the firm's current hourly rates are \$1,045 for myself (a 1992 admittee); \$985 for
19 Ms. Rogers (a 1986 admittee); \$695 for Mr. Saunders (a 2008 admittee); \$650 for Ms. Newman (a
20 2008 admittee); and \$355 for Mr. Gray (a highly experienced litigation paralegal with more than 29
21 years' complex litigation experience). Based on my experience and the factors outlined above, my
22 2022 rates are reasonable and consistent with prevailing rates in the markets in which we practice.

23 74. One of the sources I considered in setting my firm's current rates are those approved
24 last year as reasonable in the class action *Kang v. Wells Fargo Bank, N.A.*, No. 17-cv-06220-BLF,
25 2021 WL 5826230 (N.D. Cal. Dec. 8, 2021). In *Kang*, the Court (Judge Freeman) approved rates
26 for senior attorneys in the range of \$950 for partners including a rate of \$1,150 for "experienced
27 appellate counsel." *Id.* at *7.

28

1 75. Another source I considered in setting my firm’s current rates is a declaration filed in
2 the class action *Kim v. Tinder, Inc.*, C.D. Cal. Case No. 2:18-CV-03093-JFW. The declaration
3 included 2021 hourly rates of \$1,025 for a 1992 law school graduate (the same year as myself and
4 six years less experience than Ms. Rogers); \$920 for a 2001 law school graduate (nine years less
5 experience than me and 15 years less experience than Ms. Rogers); and \$900 for a 2008 law school
6 graduate (same year as Ms. Newman and Mr. Saunders). The Court later approved these rates as
7 “reasonable” in an order filed on March 4, 2022.

8 76. Another source I considered in establishing my firm’s current rates included the rates
9 submitted by counsel in the class action *Perez v. Wells Fargo Bank, N.A.*, N.D. Cal. Case No. 17-
10 cv-00454-MMC. In *Perez*, the fee application included a 2020 hourly rate of \$950 for a 2001 law
11 school graduate (that is, an attorney with nine years’ less experience than myself, a 1992 graduate,
12 and 15 years’ less experience than Ms. Rogers, a 1986 graduate) and a 2020 hourly rate of \$850 for
13 a 2004 law school graduate (that is, an attorney with 12 years’ less experience than me and 18
14 years’ less experience Ms. Rogers). Several expert declarations were filed in *Perez* attesting to the
15 reasonableness of these rates. One expert declaration was that of a 1994 law school graduate stating
16 that his current (2020) hourly rate was \$950 per hour. Another expert declaration was that of a
17 1998 law school graduate stating that his current (2020) hourly rate was \$925 per hour. The fee
18 application was granted in full. The *Perez* declarations and order fully support my firm’s 2022
19 hourly rates, in particular my own rate of \$1,045 per hour for a 1992 law school graduate and Ms.
20 Rogers’ rate of \$985 for a 1986 law school graduate.

21 77. Another source I considered in setting my current rates is the expert Declaration of
22 Richard M. Pearl filed in April 2019 in support of the fee application in *Bartoni v. American*
23 *Medical Response* (Alameda County Sup. Ct. Case No. RG08382130), a class action in which I
24 served as class counsel. A true and correct copy of this declaration (without exhibits) is attached
25 hereto as **Exhibit AA**. Mr. Pearl opined that my firm’s 2018 hourly rates, which I have used as a
26 baseline in establishing my rates since 2019, were “well within the range of the non-contingent
27 market rates charged for reasonably similar services by San Francisco Bay Area attorneys of
28 reasonably similar qualifications and experience.” Pearl Decl., ¶11. Based on my review of Mr.

1 Pearl's declaration, I observed that many of the comparable rates approved by other Courts as
2 reasonable, as well as comparable rates established by other law firms practicing complex litigation,
3 were substantially higher than my firm's 2018 rates. For example, Mr. Pearl cited:

- 4 a. a historical 2018 rate of \$860 for a 1994 graduate (two years less experience
5 than myself; eight years less than Ms. Rogers) (Pearl Decl. at 10:24);
- 6 b. a historical 2018 rate of \$875 for a 1992 graduate (equal to my own
7 experience at that time; six years less experience than Ms. Rogers) (Pearl
8 Decl. at 20:22)
- 9 c. a historical 2018 rate of \$950 for an attorney with 22 years' experience (four
10 years less experience than myself at that time; ten years less experience than
11 Ms. Rogers) (Pearl Decl. at 27:14);
- 12 d. a historical 2017 rate of \$905 for a 1995 bar admittee (three years less
13 experience than myself; nine years less than Ms. Rogers) (Pearl Decl. at
14 12:1);
- 15 e. a historical 2017 rate of \$905 for an attorney with 22 years' experience (three
16 years less experience than myself at that time; nine years less than Ms.
17 Rogers) (Pearl Decl. at 23:6);
- 18 f. a historical 2017 rate of \$860 for an attorney with 25 years' experience (equal
19 to my own level of experience at that time; six years less experience than Ms.
20 Rogers) (Pearl Decl. at 11:12);
- 21 g. a historical 2017 rate of \$870 for an attorney with 28 years' experience (equal
22 to my current level of experience, for a rate charged four years ago; six years
23 less experience than Ms. Rogers) (Pearl Decl. at 13:27);
- 24 h. a historical 2017 rate of \$862 for a 1996 graduate (four years less experience
25 than myself) (Pearl Decl. at 14:12);
- 26 i. a historical 2015 rate of \$875 for an attorney with 22 years' experience (one
27 year less experience than myself at that time; seven years less than Ms.
28 Rogers) (Pearl Decl. at 18:17);

1 legal arguments, drafting complex appellate and trial-court-level briefs, and orally arguing my
2 clients' positions, as demonstrated by my many recent appellate wins, including this case.

3 **VII. KRALOWEC LAW TOOK ON SIGNIFICANT CONTINGENCY RISK AND**
4 **DECLINED OTHER REMUNERATIVE WORK IN ORDER TO PURSUE THIS MATTER**

5 82. My firm undertook this litigation on a pure contingency basis. In order to devote
6 time and resources to pursuing this litigation, we have turned down hourly work as well as co-
7 counseling opportunities in other contingency-fee class actions. We have spent hours working on
8 this case instead of on other pending cases in which attorneys' fees have been or are expected to be
9 awarded. My firm currently has two attorneys and one paralegal, and at all times during the course
10 of this litigation, has never had more than three full-time attorneys. The more than 5,360 hours
11 billed by my firm in this matter represent a very significant proportion of our resources, especially
12 considering that we have worked on this case without compensation for almost nine years.

13 83. When I decided at the end of 2015 to take on the appeal, the procedural status was
14 that judgment on the merits had been entered in Apple's favor. The odds of achieving a reversal of
15 a judgment in the Ninth Circuit are always low, given historical reversal rates. My decision to take
16 a chance and devote thousands of additional hours to the case was a big one for my very small firm.
17 What is more, I decided to ask the Ninth Circuit to refer the question to the California Supreme
18 Court because I believed that strategy would be in the best interests of the certified class. However,
19 I knew that if this request were granted, several more years and thousands more hours of work
20 would be needed to get through the appellate phase of the case. I decided to commit to doing that
21 work on a pure contingency basis, with no guarantee of winning the appeal, let alone ever being paid.
22 This was a substantial commitment of resources for my two-attorney firm.

23 84. As noted by Judge Carter, "small firms with fewer than fifteen attorneys ... face
24 even greater risks in litigating large class actions with no guarantee of payment. The Court finds
25 that the considerable risk in this case due to the uncertain legal terrain, coupled with Counsel's
26 contingency fee arrangement, weigh in favor of an increase from the benchmark rate." *Boyd v.*
27 *Bank of America Corp.*, No. SACV 13-0561-DOC, 2014 WL 6473804, *10 (C.D. Cal. Nov. 18,
28 2014) (awarding one third of the common fund in attorneys' fees).

VIII. LITIGATION COSTS INCURRED BY KRALOWEC LAW

85. The total litigation costs incurred by Kralowec Law in connection with the prosecution of this litigation during the eight-and-a-half-year period from July 2013 through February 2022 amount to \$39,547.69, broken down as follows:

<u>Cost Category</u>	<u>Amount</u>
Court Costs/Filing Fees	\$10.50
Messenger Services	\$1,266.70
Postage/U.S. Mail	\$542.55
Legal Research (Westlaw)	\$23,878.03
Legal Research (PACER)	\$423.50
Legal Research (Other)	\$397.76
Copies – In House	\$8,168.50
Copies – Outside	\$824.51
Process Servers	\$650.70
Hearing Transcripts	\$436.25
Experts/Consultants	\$455.00
Travel – Local	\$430.08
Meals – Local	\$39.95
Travel – Non-Local – Transportation (Deposition travel expenses)	\$264.86
Travel – Non-Local – Hotels (Deposition travel expenses)	\$492.52
Travel – Non-Local – Meals (Deposition travel expenses)	\$50.51
Travel – Non-Local – Transportation (Hearing travel expenses)	\$777.64
Travel – Non-Local – Hotels (Hearing travel expenses)	\$417.80
Travel – Non-Local – Meals (Hearing travel expenses)	\$20.33
TOTAL:	\$39,547.69

86. All of the costs set forth above are the firm's usual and customary charges for the expenses it incurred in this litigation, and no surcharge has been added to any cost or expense. The costs and expenses set forth above are also reflected in the books and records of the firm. These books and records are prepared from expense vouchers, check records, receipts and other source materials and accurately reflect the expenses incurred. All costs and expenses stated above are unreimbursed from any source. All such costs and expenses would have been billed to the client(s) if this had been a non-contingency matter.

87. The firm's costs are further explained as follows:

a. **Messenger Services:** These expenses were primarily for the purpose of filings in the California Supreme Court, which at the time still required paper filings. Messengers

1 were also used to deliver required paper copies of briefs and excerpts of record to the Ninth Circuit
2 as required by its rules.

3 **b. Westlaw:** Kralowec Law calculates Westlaw charges by determining the
4 pro rata share of the searches performed for each of the firm's matters during the relevant billing
5 period. That pro rata share of each monthly Westlaw bill is then charged to each client, without
6 markup. Numerous other courts have approved and awarded such Westlaw expenses. The states
7 cost represents extensive legal research performed in this case, including on appeal, over more than
8 eight years of litigation.

9 **c. PACER:** PACER costs were incurred to search for and pull copies of filings
10 in pending federal court matters that counsel deemed relevant to the litigation. PACER costs are
11 passed through without markup and are routinely approved by other courts.

12 **d. Copies – In House and Outside:** In-house photocopies are charged at the
13 rate of \$0.25 per page, and color copies, representing a small fraction of the total sum stated, are
14 calculated at the rate of \$0.50 per page. Numerous other courts have approved and awarded such
15 expenses. Outside copies are passed through at cost without markup.

16 **e. Experts/Consultants:** The sum stated is for advice received from the firm's
17 outside ethics counsel on matters related to settlement negotiations that took place in late 2015 and
18 early 2016 after the judgment was entered in Apple's favor.

19 **f. Travel – Non-Local (Depositions and Hearing Travel Expenses):** These
20 costs were primarily incurred for travel to Los Angeles for the California Supreme Court argument
21 in December 2019. The costs included airfare, hotel, ground transportation to and from the airports
22 in both directions, and related travel expenses. Travel costs, including mileage and hotel costs,
23 were also incurred for Ms. Rogers to take and defend several depositions outside of San Francisco
24 including a putative class member in San Luis Obispo.

25 **g. Travel – Local:** These figures include local travel (cab, parking) incurred
26 for late work by professionals of the firm on critical motions and other filings in this litigation and
27 for travel to the courthouse in San Francisco for appearances and locally for depositions.

28

1 **IX. SUMMARY OF PLAINTIFFS' COUNSEL'S COMBINED HOURS, LODESTAR AND**
 2 **LITIGATION COSTS**

3 **A. Summary of Plaintiffs' Counsel's Combined Hours and Lodestar**

4 88. For the Court's convenience, the following paragraphs summarize the total hours
 5 and lodestar claimed by all firms who represented plaintiffs and who have submitted declarations in
 6 support of this motion for attorneys' fees and litigation costs.

7 89. Together, the firms' declarations reflect a total of 11,402.6 combined hours of
 8 professional time on this matter, for a combined lodestar, at current rates, of \$9,904,627.00. (Time
 9 spent on issues related to attorneys' fees and costs are not included in these figures.) These figures
 10 represent a blended hourly rate of \$868.63 per hour. If this motion is granted in full and fees of
 11 \$9,966,666.67 are awarded, the lodestar multiplier would be 1.0063 and the blended hourly rate
 12 would be \$873.79.

13 90. The following chart summarizes the total hours and lodestar figures (at current rates)
 14 reported by each firm in its respective declaration, excluding time spent on attorneys' fees, costs,
 15 and named plaintiff service awards:

Firm	Hours through Approximately March 14, 2022	Lodestar through Approximately March 14, 2022
Kralowec Law, P.C.	5,368.10	\$4,766,063.50
McLaughlin & Stern, LLP	4,613.75	\$4,045,219.75
Law Firm of Louis Ginsberg, P.C.	532.50	\$316,125.00
Blanchard Law Group, APC	445.50	\$389,812.50
Peter K. Dion-Kindem, P.C.	442.75	\$387,406.25
TOTALS:	11,402.60	\$9,904,627.00

22 91. The following chart summarizes the total hours and lodestar figures (at current rates)
 23 reported by each firm in its respective declaration as having been expended on attorneys' fees,
 24 costs, and named plaintiff service awards:

Firm	Hours through Approximately March 14 or 23, 2022	Lodestar through Approximately March 14 or 23, 2022
Kralowec Law, P.C.	184.10	\$170,178.50
McLaughlin & Stern, LLP	131.50	\$125,393.75
Law Firm of Louis Ginsberg, P.C.	2.00	\$1,500.00

Firm	Hours through Approximately March 14 or 23, 2022	Lodestar through Approximately March 14 or 23, 2022
Blanchard Law Group, APC	16.25	\$14,218.75
Peter K. Dion-Kindem, P.C.	13.00	\$11,375.00
TOTALS:	346.85	\$322,726.00

92. The following chart summarizes the total hours and lodestar figures (at current rates) reported by each firm in its respective declaration, including all time:

Firm	Hours through Approximately March 14, 2022	Lodestar through Approximately March 14, 2022
Kralowec Law, P.C.	5,552.20	\$4,936,242.00
McLaughlin & Stern, LLP	4,745.25	\$4,170,613.50
Law Firm of Louis Ginsberg, P.C.	534.50	\$317,625.00
Blanchard Law Group, APC	461.75	\$404,031.25
Peter K. Dion-Kindem, P.C.	455.75	\$398,781.25
TOTALS:	11,749.45	\$10,227,293.00

B. Summary of Plaintiffs' Counsel's Combined Litigation Costs

93. For the Court's convenience, the following chart summarizes the total litigation costs reported by all firms in their declarations. The combined costs total \$372,143.84, as follows:

Cost Category	Amount
2015 Class Notice and Administration Costs	\$94,586.85
Court Costs/Filing Fees	\$3,514.28
Courier and Messenger Costs	\$1,668.38
Attorney Service Costs	\$202.68
Postage/U.S. Mail	\$1,927.93
Computerized Research (Westlaw/LEXIS)	\$63,585.48
Computerized Research (PACER)	\$423.50
ESI Discovery Hosting Costs	\$1,382.18
Research (Other)	\$8,892.84
Copies – In House	\$18,922.70
Copies – Outside	\$841.40
Service of Process	\$970.70
Hearing Transcripts	\$1,145.10
Experts/Consultants	\$47,767.90
Mediation Costs (for multi-day mediation sessions)	\$34,591.69
Deposition Costs (excluding travel)	\$27,711.58

Cost Category	Amount
Appellate Costs	\$7,473.27
Travel – Local	\$932.49
Meals – Local	\$190.58
Travel – Non-Local – Transportation (Deposition travel expenses)	\$19,924.84
Travel – Non-Local – Hotels (Deposition travel expenses)	\$6,896.24
Travel – Non-Local – Meals (Deposition travel expenses)	\$746.44
Travel – Non-Local – Transportation (Hearing travel expenses)	\$20,859.61
Travel – Non-Local – Hotels (Hearing travel expenses)	\$5,438.62
Travel – Non-Local – Meals (Hearing travel expenses)	\$1,537.56
Total Costs:	\$372,134.84

X. EXTRAORDINARY SERVICES OF THE CLASS REPRESENTATIVES

94. I fully support the proposed service awards of \$10,000 for each of the five named plaintiffs. The awards are appropriate in view of their extraordinary commitment to pursuing this case to a favorable conclusion for the class, as well as the specific contributions made by each as described in their declarations accompanying the service award motion. It would have been easy for any of them to accept Apple's offer to waive costs in exchange for dropping their appeal, but they believed that they and the class members were entitled to compensation for the security search time, and they stood firm throughout the lengthy appellate process. Without their firm commitment, the *Frlekin* opinion would not exist. As discussed in the accompanying motion for attorneys' fees (see Part III.A.2(a)-(b)), the *Frlekin* precedent has benefited not only the class in this case, but employees working across California in many different industries. Such strong commitment should be rewarded and encouraged as a policy matter.

95. In my professional judgment, the full participation of all five named plaintiffs was and has been critical to success in this case, because Apple alleged from the beginning that it implemented its security search policy differently from store to store. This was one of Apple's main arguments in opposition to class certification. The five named plaintiffs were employed in four different California Apple stores at different times during the class period and their collective knowledge and experience proved essential to pursuing discovery, formulating case strategy, and rebutting Apple's allegations. It was also important to have multiple class representatives to protect

1 the class in a case of this size and magnitude. The *Brinker* case had five class representatives, and it
2 is generally advisable to have multiple plaintiffs in case one or more become unable to serve for any
3 reason (such as death, health issues, etc.). In *Brinker*, the Court approved service awards of
4 \$25,000 to the lead named plaintiff, Adam Hohnbaum, whose name is forever attached to the
5 litigation, and \$20,000 each to the other four named plaintiffs who also stood firm throughout the
6 lengthy appellate process in that case.

7 **XI. CONCLUSION**

8 96. Based on my familiarity with the facts of this case, and in light of the substantial
9 litigation risk and the outstanding result achieved, the motion for an award of attorneys' fees and
10 reimbursement of out-of-pocket litigation expenses should be granted, and the motion for service
11 awards to each of the named plaintiffs should also be granted.

12 I declare under penalty of perjury under the laws of the United States of America that the
13 foregoing is true and correct and that this declaration was executed on March 25, 2022 at San
14 Francisco, California.

15
16 

17
18 _____
Kimberly A. Kralowec

EXHIBIT A



KRALOWEC LAW, P.C.
750 BATTERY STREET, SUITE 700
SAN FRANCISCO, CA 94111
TEL: (415) 546-6800

Kralowec Law, P.C. was founded in 2010 by attorney Kimberly A. Kralowec. The firm’s practice focuses on plaintiffs’ class action litigation (antitrust, consumer fraud, wage and hour, and civil rights) in state and federal courts. A list of representative matters handled by attorneys of the firm appears below.

THE FIRM’S PROFESSIONALS

Kimberly A. Kralowec, Principal. During her 28-year career as a litigator, Ms. Kralowec has handled class action matters involving antitrust (price-fixing and monopolization), employment (wage and hour and misclassification), consumer finance (mortgage and auto), retail products (mislabeling and nondisclosure), and civil rights (Unruh Act). She has also handled numerous class actions alleging violations of California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*) (“UCL”) and Consumers Legal Remedies Act (Cal. Civ. Code §§1750 *et seq.*) (“CLRA”).

Ms. Kralowec served as lead appellate counsel for the certified class in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), in which the California Supreme Court provided important clarifications of California class action law, and in *Frlekin v. Apple, Inc.*, 8 Cal.5th 1038 (2020), in which the California Supreme Court broadly construed the concept of compensable “hours worked.” Ms. Kralowec has been named by the *Daily Journal* as one of the Top 100 Women Lawyers in California and one of the Top 100 Labor & Employment Lawyers in California, and received a 2013 *California Lawyer* Attorney of the Year (“CLAY”) Award in recognition of her work on *Brinker*. She has been selected for inclusion in *Northern California Super Lawyers* each year from 2011 to 2021.

Ms. Kralowec publishes and lectures widely. Her past speaking engagements include “25th Anniversary Retrospective and Prospective Views on California Antitrust and Unfair Competition Law” (State Bar of California Antitrust and Unfair Competition Law Section, October 2015) (with the Hon. Susan Illston, moderator); “Aggregate Proof or ‘Trial by Formula’” (The Impact Fund, February 2013); “The U.S. Supreme Court Redirects Class Action Defense” (American Bar Association, March 2012); “State Consumer Protection Laws: Enforcement and Litigation Trends in California” (American Bar Association, Section of Antitrust Law, May 11, 2011); “The Potential Impact of *Dukes* on Class Certification in Antitrust and UCL Cases in the Ninth Circuit” (State Bar of California Antitrust and Unfair Competition Law Section, July 22, 2010); and “Antitrust Institute 2010: Developments & Hot Topics” (Practising Law Institute, May 21, 2010).



Her publication credits include “Supreme Court probing ‘pay-for-delay,’” *Daily Journal* (March 17, 2015); “*Dukes* and Common Proof in California Class Actions,” *Competition* (Summer 2012); “Evidentiary Extrapolations in California Class Actions: Guidance from *Brinker*,” *California Litigation* (July 2012); and “UCL Class Actions After *In re Tobacco II*,” *CAOC Forum* (September/October 2009).

Ms. Kralowec is the author of *The UCL Practitioner* (<http://www.uclpractitioner.com>), the first and only weblog on California’s Unfair Competition Law and California class actions. Created in 2003, *The UCL Practitioner* is visited an average of 250 times per business day and is used as a research and reference tool by judges, research attorneys, and practicing lawyers. In 2008, Ms. Kralowec was recognized by *American Lawyer* as one of 20 “Strong Female Voices in the Legal Blogosphere.” She is regularly quoted in the press as an expert on the UCL, CLRA, and class action practice. See <http://www.uclpractitioner.com/press.html>.

In 1992, Ms. Kralowec graduated from the University of California, Davis, School of Law, where she served as Senior Articles Editor of the *U.C. Davis Law Review*. Her law review article, “Estoppel Claims Against ERISA Employee Benefit Plans,” 25 *U.C. Davis L. Rev.* 487 (1992), earned the Patrick J. Hopkins Memorial Writing Award for best student article of the year. In 1989, she graduated from Pomona College in Claremont, California with a B.A. in English (*cum laude*). While at Pomona College, she received the F.S. Jennings Prize in Expository Writing and was a three-time Pomona College Scholar. In 1992-1993, she served as a judicial clerk for Judge David Mannheimer of the Alaska Court of Appeals.

Ms. Kralowec is a former partner of Severson & Werson, P.C., a 100-attorney San Francisco litigation firm, where she regularly defended class action and UCL matters (2000-2001; Associate, 1996-2000). From 2001 through the present, Ms. Kralowec’s practice has focused almost exclusively on plaintiff-side class action litigation, first as Of Counsel to The Furth Firm LLP in San Francisco, and later as a partner with Schubert Jonckheer Kolbe & Kralowec LLP, before founding her own firm in March 2010.

Ms. Kralowec served as a member of the Executive Committee of the Antitrust and Unfair Competition Law Section of the State Bar of California from 2008 through 2013, most recently as Vice President of the Section. She is an active member of the amicus curiae committee of Consumer Attorneys of California, on whose Board of Governors she served from 2007-2012. She drafted the amicus curiae brief of CAOC in *In re Cipro Cases I & II*, 61 Cal.4th 116 (2015), in which the California Supreme Court addressed the legality of “pay-for-delay” agreements under California antitrust law.

Ms. Kralowec is admitted to practice in California, the United States Courts of Appeals for the Ninth, Fifth, and Eleventh Circuits, the federal district courts in California, and the United States Supreme Court.



Kathleen Styles Rogers, Of Counsel. Ms. Rogers’ diverse legal career includes over 30 years’ experience practicing antitrust and other complex business litigation, as well as 6 years’ experience as Senior Counsel for MCI Telecommunications Corp. Her litigation experience includes class action matters involving antitrust, employment and unfair competition law (California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§17200 *et seq.*).

Ms. Rogers received her B.A. from the University of California, Santa Barbara, and her J.D. from the University of Santa Clara, School of Law, where she served as the first Articles Editor of Santa Clara’s *Computer & High-Technology Law Journal*. During law school, Ms. Rogers served as a judicial extern for Justice Edward A. Panelli during his tenure on the California Court of Appeal, First Appellate District.

Ms. Rogers formerly was Of Counsel to San Francisco complex litigation firms including The Furth Firm LLP and Hausfeld LLP and was Partner in a general litigation firm with former Congressman Paul N. “Pete” McCloskey, Jr.

Ms. Rogers is admitted to practice in California, the United States Court of Appeals for the Ninth Circuit and federal district courts in California.

Gary M. Gray, Senior Paralegal and Administrator. Mr. Gray was educated at the University of California, Santa Cruz, and has over 30 years’ experience as a litigation paralegal, first with The Furth Firm LLP and its predecessors and more recently with the Chicago firm of Miller Law LLC. He has had intensive involvement, from pre-filing research through trial and post-trial settlement administration, in numerous antitrust and price-fixing cases, including *Kendall-Jackson v. Gallo* (trade dress), *Alakayak v. All Alaskan* (Bristol Bay Salmon Price-Fixing Litigation), *High Pressure Laminates Antitrust Litigation*, *Microcrystalline Cellulose Antitrust Litigation*, *Abid v. Grosvenor Bus Lines, Inc.*, Nurse Wages Cases (*Reed v. Advocate Healthcare, Inc.*), and *Apple iPhone/iPod Warranty Litigation*.

FORMER PROFESSIONALS OF THE FIRM

Chad A. Saunders, Associate. Mr. Saunders was an associate of the firm from December 2014 until March 2016. He has extensive experience with complex litigation matters, including taking a lead role in numerous class actions in California and Federal courts. Mr. Saunders received his J.D. from New College of California School of Law in 2008, and a B.A. in Philosophy from UMBC in 2001. In law school, he worked as a law clerk for the non-profit law firms Legal Services for Children and Disability Rights California. He is the President of the Board of P.E.E.R.S., an Oakland-based mental health advocacy organization, and a member of the Finance Committee of the Bay Area Chapter of the National Lawyers Guild. Mr. Saunders is admitted to practice in California, the Ninth Circuit Court of Appeals, and all California federal district courts.



Elizabeth I. Newman, Associate. Ms. Newman was an associate of the firm from June 2010 through July 2014. She graduated with a B.A. in History from the University of California, Berkeley in 1995, and a J.D. with a Business Law Specialization Certificate from Golden Gate University School of Law in 2007. During law school, Ms. Newman served as the Communications Clerk for Phi Alpha Delta and as an Executive Board member of the Public Policy Project. Ms. Newman received the Witkin Award for Securities Regulation, and the CALI Award for Contracts II and Appellate Advocacy. Ms. Newman was also an Appellate Advocacy Moot Court Competition semi-finalist. Prior to law school, Ms. Newman facilitated licensing agreements as a Contract Analyst for Oracle Corporation. Ms. Newman is admitted to practice in California.

Over the course of her career, Ms. Newman developed significant experience handling high-level discovery, including document review and analysis, in complex class action cases. From 2009 through 2012, she was a critical member of the document review, deposition preparation, and trial preparation teams in *In re TFT-LCD (Flat Panel) Antitrust Litigation*, M.D.L. 1827 (N.D. Cal.), pending before Judge Illston. Due to the high quality of her work, she was invited by lead counsel to join the team formed to oppose the defendants' FTAIA motion (the federal Foreign Trade Antitrust Improvements Act). The opposition was successful due in no small part to Ms. Newman's contributions, and soon after the ruling, the remaining defendants settled. The combined settlements in the indirect purchaser cases approached \$1 billion.

REPRESENTATIVE MATTERS

Antitrust Class Actions

In re TFT-LCD (Flat Panel) Antitrust Litigation (United States District Court, Northern District of California) (Judicial Panel on Multidistrict Litigation No. 1827). Co-counsel for nationwide and California classes of indirect purchasers of flat-panel displays (liquid crystal displays or "LCDs") including computer monitors, laptops, and televisions. Plaintiffs allege that defendants, who are among the major manufacturers of LCDs worldwide (including Samsung, Hitachi and LG Philips), engaged in a wide-ranging conspiracy to eliminate competition and to fix and inflate the prices of the displays, resulting in significant increased costs to consumers. Action settled for nearly \$1 billion.

3M Transparent Tape Cases (California Superior Court, City and County of San Francisco, Judicial Council Coordination Proceeding). While at a former firm, Ms. Kralowec served the functions of co-lead counsel for California indirect purchasers. Plaintiffs alleged that 3M unlawfully maintained a monopoly in the market for invisible and transparent home and office tape through various arrangements, contracts, agreements, trusts and combinations in restraint of trade designed primarily to restrict the availability of lower priced transparent tape products to consumers and to maintain high retail prices for its Scotch Brand retail products. Action settled for relief valued at approximately \$42 million.



In re Credit/Debit Card Tying Cases (California Superior Court, City and County of San Francisco, Judicial Council Coordination Proceeding). Co-counsel for plaintiffs in putative class action under California Unfair Competition Law alleging that credit card issuers (Visa and MasterCard) unlawfully tied their debit card services to their credit card services, resulting in inflated merchant exchange fees for debit card services that were passed on to the plaintiff retail customers. Action settled for \$31 million.

Abid v. Grosvenor Bus Lines, Inc., et al. (California Superior Court, City and County of San Francisco). While at a former firm, Ms. Kralowec served the functions of Lead Counsel for plaintiffs in antitrust class action on behalf of sales agents paid by commission for selling sightseeing bus tours of San Francisco and other nearby tourist destinations. Suit alleged that the three major San Francisco sightseeing tour operators agreed to price-fix the commissions they pay to the sales agents and to jointly lower the commissions to anticompetitive levels. Action settled for \$3.1 million and injunctive relief.

Mathews v. Bumble Bee Foods LLC, et al., Gore v. Bumble Bee Foods LLC, et al., and Moore v. Bumble Bee Foods LLC, et al. (United States District Court, Southern District of California). Co-counsel for nationwide and California class of indirect purchasers of canned tuna and other packaged seafood products. Plaintiff alleges that defendants, who are the top three U.S. producers of these products, entered into a price-fixing conspiracy. Actions pending.

In re Dynamic Random Access Memory (DRAM) Antitrust Litigation (United States District Court, Northern District of California). Co-counsel for nationwide class of indirect purchasers of DRAM. Plaintiffs allege that the defendants, who are among the world's largest manufacturers of DRAM, conspired to illegally fix the price of DRAM sold in the United States. The firm represents a client who assembled and sold specially-configured, high-performance computers in California during the class period. Action settled for \$310 million in aggregate settlements.

In re Optical Disk Drives Antitrust Litigation (United States District Court, Northern District of California). Co-counsel for nationwide class of direct purchasers of optical disk drives, including those installed in laptop computers and CD players. Plaintiffs allege that defendants, who are among the major manufacturers of optical disk drives worldwide, engaged in price-fixing and a conspiracy to eliminate competition. Settlements of over \$37.75 million approved to date.

In re Skelaxin (Metaxalone) Antitrust Litigation (United States District Court, Eastern District of Tennessee). Co-counsel for class of independent pharmacies who purchased branded Skelaxin, a muscle-relaxant drug, for resale. Plaintiffs allege that King Pharmaceuticals conspired with its competitors to delay market entry of a generic version of the drug. Action settled for \$2.1 million.

In re Fresh and Process Potatoes Antitrust Litig., (United States District Court, District of Idaho). Member of Executive Committee for direct purchasers of fresh and process potatoes. Plaintiffs allege that defendants engaged in a conspiracy to drive up prices of potatoes



nationwide by diminishing output through agreements to reduce acreage and other anticompetitive means. Action settled for \$19.5 million.

In re Microcrystalline Cellulose Antitrust Litigation (United States District Court, Eastern District of Pennsylvania). While at a former firm, Ms. Rogers served as Class Counsel for the Food Purchasers Class in an action alleging a conspiracy to fix prices among the manufacturers of microcrystalline cellulose, a common additive in foods and pharmaceuticals. Action settled for \$50 million.

In re Domestic Drywall Antitrust Litigation (United States District Court, Eastern District of Pennsylvania). Co-counsel for indirect purchasers in an action alleging a conspiracy to fix prices among manufacturers of gypsum wallboard. Action settled.

In re Domestic Airline Travel Antitrust Litigation (United States District Court, District of Columbia). Co-counsel for direct purchasers in an action alleging a conspiracy by major U.S. airlines to elevate prices of domestic airfares by keeping capacity artificially low. Action pending.

In re Disposable Contact Lens Antitrust Litigation (United States District Court, Middle District of Florida). Co-counsel for indirect purchasers of disposable contact lenses in an action alleging a conspiracy by the manufacturers to raise prices to supracompetitive levels by imposing resale price maintenance agreements on online and big-box retailers. Action pending.

In re Generic Pharmaceuticals Pricing Antitrust Litigation (United States District Court, Eastern District of Pennsylvania). Co-counsel for class of end-payer consumers who were overcharged for the generic drug Desonide. Plaintiffs allege that manufacturers Actavis, Perrigo, Sandoz and Taro conspired to fix and maintain the price of the drug. Action pending.

In re Musical Instruments Antitrust Litigation (United States District Court, Southern District of California). Co-counsel for nationwide class of direct purchasers of guitars and other musical instruments from Guitar Center. Plaintiffs allege a scheme involving Guitar Center, the National Association of Music Merchants, and various retailers and manufacturers to eliminate competition in the market for musical instrument products. Action concluded.

Nurse Wages Cases: Reed, et al. v. Advocate Healthcare, Inc. et al. (United States District Court, Northern District of Illinois). While at a former firm, Ms. Kralowec served as co-counsel for plaintiff RNs in a class action against healthcare providers for conspiring to fix and depress wages in violation of federal antitrust law. Action settled.

In re Static Random Access Memory (SRAM) Antitrust Litigation (United States District Court, Northern District of California). While at a former firm, Ms. Rogers served as co-counsel for nationwide class of indirect purchasers. Plaintiffs alleged that the defendants, who are among the world's largest manufacturers of SRAM, conspired to illegally fix the price of SRAM sold in the United States. Action settled for \$41.3 million.



Natural Gas Anti-Trust Cases I, II, III & IV (California Superior Court, County of San Diego). While at a former firm, Ms. Rogers served as co-counsel for direct and indirect purchasers in an action alleging a conspiracy to fix prices and supplies of natural gas during the 2001 energy crisis. Action settled for \$160 million.

In re Western States Wholesale Natural Gas Antitrust Litigation (United States District Court, District of Nevada). While at a former firm, Ms. Rogers served the functions of co-lead counsel for direct purchasers. Plaintiffs alleged a conspiracy to fix prices and supplies of natural gas during the 2001 energy crisis. Action settled for \$25.95 million.

In re Korean Air Lines Co., Ltd. Antitrust Litigation (United States District Court, Central District of California). While at a former firm, Ms. Rogers served the functions of co-lead counsel for nationwide class of indirect purchasers of air travel services. Action settled for \$65 million.

Consumer Class Actions

In re Apple iPhone/iPod Warranty Litigation (United States District Court, Northern District of California). Co-counsel in consumer class action on behalf of owners of iPhone and iPod touch devices alleging that Apple fails to honor its warranty obligations and uses faulty Liquid Submersion Indicators as a basis for improper denial of warranty coverage. Action settled for \$53 million.

Streit v. Farmers Group, Inc. et al. (California Superior Court, County of Los Angeles). Co-Lead Counsel in class action on behalf of policyholders alleging that defendant insurance company violated the Insurance Code when it calculated the return of unearned premium for mid-term policy cancellations. On appeal, obtained reversal of order sustaining demurrer without leave to amend. Action settled for \$20 million.

Fishman v. Tiger Natural Gas, Inc. (United States District Court, Northern District of California). Co-counsel in UCL class action alleging false advertising and fraudulent marketing practices with respect to a natural gas “price protection” program. Action settled.

Wilmot v. First American Title Co. (California Court of Appeal, Second Appellate District, Division Five). Appellate counsel in class action alleging violations with respect to escrow services and title insurance in connection with real property sales transactions. Project concluded.

Minton v. Herbalife International, Inc. et al. (California Superior Court, County of Los Angeles). Co-counsel in class action alleging unlawful and fraudulent “endless chain” scheme. Ms. Kralowec assisted in the class certification, settlement, and settlement approval phases of the case while at a former firm. Action settled for \$1.75 million.



Robinson v. OnStar, LLC (United States District Court, Southern District of California). Co-counsel in class action alleging that OnStar charged customers’ debit and credit cards for continuous OnStar service without the written and/or express authorization required by state and federal law, including the Electronic Funds Transfer Act, the Automatic Renewal Law, and the Unfair Competition Law. Action settled.

Ackerman v. Zynga Inc. (California Superior Court, City and County of San Francisco). Co-counsel in consumer UCL class action on behalf of purchasers of “Words With Friends” and other games. Plaintiff alleges that Zynga misrepresented in the Apple App Store that the paid versions of the games would be “ad-free” when they were not. As a result of lawsuit, the user interface of the games was changed to provide users with the “ad-free” gaming experience they paid for. Action concluded.

Levitte v. Google, Inc. (United States District Court, Northern District of California). Co-counsel in UCL class action alleging misrepresentations to AdWords customers regarding the types and quality of the websites on which advertisers’ ads would be placed. Denial of class certification reversed by Ninth Circuit. Action settled.

Watts v. Allstate Indemnity Co. et al. (United States District Court, Eastern District of California). Co-counsel in UCL, breach of contract and fraud class action against insurance company alleging improper payment of policy benefits. Action concluded.

Kent v. Avis Rent A Car System LLC (California Court of Appeal, Fourth Appellate District, Division Three). Appellate consultant in UCL and CLRA class action alleging improper administrative fee charges. Retained to assist with oral argument preparation. Action concluded.

Clawson v. Automobile Club of Southern California (California Superior Court, County of Orange). Consultant in UCL action alleging violation of California statute governing commission rates for auto insurance sales agents. Retained to assist with opposing demurrer; demurrer overruled. Action concluded.

Compassion Over Killing v. Cal-Cruz Hatcheries (California Superior Court, County of Santa Cruz). Co-counsel in UCL action for violation of California animal cruelty laws. Retained as UCL expert to assist with standing arguments. Action concluded.

Cobb v. BSH Home Appliance Corp. (United States District Court, Central District of California). Consultant in UCL, CLRA and breach of warranty action against product manufacturer. Retained as UCL expert to assist with opposing motions to dismiss; motions denied. Action concluded.

Quacchia v. DaimlerChrysler Corporation (California Superior Court, County of Alameda). While with a former firm, Ms. Kralowec served as co-counsel in UCL and CLRA class action alleging failure to disclose known safety defect in seat belt design. Action concluded.



Securities Class Actions

In re AOL Time Warner Securities Litigation (United States District Court, Southern District of New York). Co-counsel in securities class action alleging falsification of advertising revenues in public filings, improperly inflating stock price. Ms. Kralowec participated in high-level document review and analysis while at a former firm. Action settled for \$2.5 billion.

Herron v. Lark Creek Investment Management Co. et al. (California Superior Court, City and County of San Francisco). Co-Lead counsel for plaintiffs in derivative and class action litigation on behalf of investors in Madoff feeder fund. Action settled for \$3.66 million.

Herron v. CARE Market et al. (California Superior Court, City and County of San Francisco). Co-Lead counsel for plaintiffs in derivative action seeking clawback of mistakenly-paid false profits for benefit of Madoff feeder fund. Action concluded.

Wage & Hour and Employment Class Actions

Brinker Restaurant Corporation v. Superior Court (Hohnbaum) (California Superior Court, County of San Diego). Lead appellate counsel in class action alleging violations of California's meal period and rest break laws. Certified class consists of over 60,000 California employees of Brinker Restaurant Corporation, which operates Chili's, the Macaroni Grill, and other statewide restaurant chains. Action settled for \$56.5 million.

Bluford v. Safeway Stores, Inc. and Cicairos v. Summit Logistics, Inc. (California Superior Court, County of San Joaquin). Co-Lead counsel in class actions alleging violations of California's meal period and rest break laws. Actions settled for \$30 million.

Savaglio v. Wal-Mart Stores, Inc. (California Superior Court, County of Alameda). The Furth Firm LLP acted as lead counsel in this class action alleging failure to pay meal periods and rest breaks. Ms. Kralowec assisted with the briefing. Action resulted in jury verdict of \$172 million and settled while on appeal.

Thomas v. California State Automobile Association (California Superior Court, County of Alameda). While at a former firm, Ms. Kralowec served as co-counsel in wage and hour class action alleging misclassification of insurance adjusters as "exempt" employees in violation of the Labor Code. Action settled for \$8 million.

Salvas v. Wal-Mart Stores, Inc. (Supreme Judicial Court of Massachusetts). The Furth Firm LLP acted as lead counsel in this class action alleging failure to pay meal periods and rest breaks. Ms. Kralowec assisted with the appellate briefing. Action settled for \$40 million.



Frlekin v. Apple Inc. (United States District Court, Northern District of California). Class Counsel for approximately 13,000 Apple retail store employees seeking compensation for unpaid time spent engaging in employer-required security searches. Ninth Circuit certified questions to California Supreme Court, which issued an opinion holding that the security search time was compensable “hours worked” under California law. *Frlekin v. Apple, Inc.*, 8 Cal.5th 1038 (2020). Action subsequently settled for \$29.9 million.

Bartoni v. American Medical Response West (California Superior Court, County of Alameda). Co-lead counsel in wage and hour class action on behalf of putative class of California ambulance drivers, paramedics and dispatchers improperly denied their meal periods and rest breaks. Action settled for \$17 million.

Civil Rights Class Actions

Adler v. California Family Health LLC dba California Family Fitness (California Superior Court, County of Sacramento). Lead counsel in civil rights class action alleging that chain of gyms provided unequal facilities to its members on the basis of gender, in violation of the Unruh Civil Rights Act and other laws. As a result of lawsuit, single-sex workout areas of gyms were opened up to all members. Action settled.

Candelore v. Tinder, Inc. (California Superior Court, County of Los Angeles). Co-lead counsel in civil rights class action alleging price discrimination based on age, in violation of the Unruh Civil Rights Act and the UCL. Obtained published Court of Appeal opinion reversing trial court’s order sustaining defendant’s demurrer without leave to amend and reinstating Unruh Act and UCL claims. *Candelore v. Tinder, Inc.*, 19 Cal.App.5th 1138 (2018). Action pending.

EXHIBIT B

750 Battery Street, Suite 700
San Francisco, CA 94111

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March 25, 2022

Time Report: Inception - March 14, 2022

Professional Services

		<u>Hours</u>
7/9/2013	KAK Telephone conference with attorney Lee Shalov re potential new wage and hour matter against Apple	0.40
7/10/2013	GMG Search dockets in Santa Clara Superior and Northern District re cases against Apple involving underpayment of retail employees; review Popescu docket and email KAK re same	0.50
	KAK Prepare for and participate in conference call with attorney Lou Ginsburg re potential new matter; review relevant Ninth Circuit opinions; conference with KSR re same; review draft complaint circulated by attorney Lee Shalov and evaluate claims and participation in case; email to GMG re research on similar cases previously filed against Apple	2.10
	KSR Review draft complaint in Apple wage and hour matter. Email KAK regarding any potential conflict issues and research.	0.40
7/11/2013	KAK Prepare for and participate in call with attorneys Lee Shalov and Lou Ginsberg re potential new matter; review and forward relevant decisions (Oracle v. Sullivan and Kirby v. Immoos); began review of supporting documents to be attached to complaint as well as revised complaint adding claims under New York law	0.80
7/12/2013	GMG Review online articles, locate docket and available document list for Murphy v. CVS case and email KAK re same	0.40
	KAK Review docket from similar matter against CVS in which certification was granted; identify counsel for plaintiffs and contact them to request copy of ruling; review ruling; forward same to co-counsel Lou Ginsberg and Lee Shalov	0.80
7/17/2013	KAK Review voice mail messages from attorneys Lou Ginsberg and Lee Shalov and returned calls; telephone conference with attorney Lee Shalov	0.40
7/18/2013	GMG Confer with KAK and review emails re case status, preparation of documents and filing of complaint; review rules re filing in Northern District; email KAK re filing fee and likely venue; prepare draft civil cover sheet; prepare draft summons	1.90
	KAK Telephone conferences with clients regarding status and next steps; telephone conference with co-counsel Lou Ginsberg regarding California claims to be added to complaint; conference with GMG regarding steps to be taken to finalize and file complaint; review applicable local rules; email to co-counsel regarding proper formatting of pleadings; analysis of rules governing divisional assignments within district	1.30
7/19/2013	GMG Review files re Northern District pleading template and email KAK re same; begin to prepare draft complaint with proper formatting	3.00
	KAK Review revised draft of amended complaint circulated by co-counsel; email to GMG re preparation of properly-formatted pleading; further analysis of California claims to be pleaded in complaint, including review of relevant decisional law	0.70
7/22/2013	GMG Prepare formatted draft complaint and email KAK re same; draft certificate of interested parties and proof of service and email KAK re same; check CA business register re defendant name and email KAK and revise drafts re same	3.50

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		<u>Hours</u>	
7/22/2013	KAK	Continued analysis of California claims to be included in complaint; legal research re same, including possible breach of contract theory; email to co-counsel re current results of analysis	2.80
7/23/2013	GMG	Review files re exhibits to complaint and email KAK re same; revise proof of service, civil cover sheet, certificate of interested parties and summons per KAK instructions and email her re same	1.00
	KAK	Continued evaluation of appropriate California claims to plead in complaint; draft revised California claims for inclusion in complaint; draft additional revisions in redline; review drafts of civil cover sheet and summons and email to GMG re revisions; review and revise draft of certificate of interested persons; review applicable local rules; finalize and forward drafts to co-counsel for review and comment, along with transmittal email correspondence regarding matters for particular attention in draft complaint	5.80
7/24/2013	GMG	Revise complaint papers and confer with KAK re same; prepare final drafts for signature	0.50
	KAK	Review and respond to email correspondence from co-counsel re current draft of complaint and to schedule strategy call; prepare for and participate in co-counsel strategy call to make final decisions regarding complaint and claims; draft final revisions to complaint and re-circulate; email to GMG re finalization of all documents and preparation for filing	1.80
7/25/2013	GMG	Email KAK Court notice re San Jose assignments; prepare final signed documents and PDFs; arrange for filing of complaint in Northern District; review filed copies, prepare PDFs and email to co-counsel; call messenger service re service of complaint et al. in LA; review ECF filed documents, confer with KAK and email co-counsel re same; review service rules and identify all documents to be served; prepare revised draft proof of service and confer with KAK re same	4.50
	KAK	Review final versions of complaint, civil cover sheet, summons, and certification of interested persons; review local rules re filing requirements; conference with GMG re final revisions to documents; draft revisions to complaint regarding intradistrict assignment and email to co-counsel re same; review and analysis of rules governing method of service of process and email to GMG re same; analysis of next steps; review enotifications received from court re today's filing; review orders and other materials received from clerk; review bio information for assigned Magistrate Judge Laporte and email to co-counsel re same; gather preliminary information and forward same to co-counsel; confirm list of documents to be included in package of materials for process server and email to co-counsel re same	3.20
7/26/2013	GMG	Organize materials to be served and draft email to process server re same; arrange for service of complaint etc. in Los Angeles; review acknowledgment of service and email KAK re same	0.70
7/29/2013	GMG	Research re Magistrate Judge Elizabeth Laporte and email KAK and co-counsel re same; review completed certificate of service and email KAK re same	1.00
	KAK	Review additional research regarding Magistrate Judge Laporte; review proof of service received from attorney service and email to GMG re same; email correspondence with co-counsel regarding filing of additional opt-in forms; review email correspondence from unnamed class members; review some of the press coverage today	0.60
7/30/2013	GMG	Teleconference with co-counsel re strategy; review client questionnaire and consent form, revise draft consent form and email co-counsel re same; prepare Speicher consent form for filing, file via ECF and confer with KAK re same; review co-counsel	4.00

		<u>Hours</u>
	pro hac motions and email co-counsel re same; research re Rutter Guide and email KAK re same; find and save selection of articles re case and email KAK re same	
7/30/2013	EIN Participate in conference call with co-counsel to discuss case strategy including FLSA class member opt-in protocols and PAGA claim; discuss case with KAK.	0.50
	KAK Prepare for and participate in co-counsel conference call re status and next steps, including procedure for filing consent forms, responding to client contacts, press, and other matters; draft follow-up email to prospective client contact; forward additional emails to co-counsel and EIN for response; email to GMG re creation and maintenance of list tracking contacts; review press coverage and other online commentary on case; review questionnaire used by co-counsel for client intake and forward same to EIN; conference with GMG re ECF menu options for filing of consent forms and decide to use "notice (other)" and email to co-counsel re same; review summary of state labor laws received from co-counsel; review press release issued by co-counsel; telephone call from TV reporter requesting interview and declined same; email to co-counsel re same; review enotifications re filing of pro hac vice applications today and consent forms filed by GMG	3.70
7/31/2013	GMG Review email from potential client for related case and email KAK re same; prepare revised consent form and email to co-counsel; review revised proof of service and email KAK re same; prepare Beltzer consent for filing and file in the Northern District via ECF; file proof of service via ECF	2.00
	KAK Review voice mail message from another potential class representative; email to co-counsel re same; email to this class member; respond to most recent reporter inquiry; telephone conference with co-counsel Lou Ginsberg re same; review email from co-counsel re maintaining class member contact spreadsheet; review additional consent form and email to GMG re redacting and filing same; email to co-counsel regarding dealing with press contacts	0.80
8/1/2013	GMG Transcribe phone mail from potential client and email KAK re same; email co-counsel re final Word version of complaint	0.30
	KAK Review voice mail and email correspondence from class members and forward same to co-counsel and EIN for response; review enotifications re filing of corrected pro hac vice applications; email to co-counsel summarizing conversation with and materials received from attorney	0.40
8/2/2013	EIN Review/analyze complaint; review/analyze putative plaintiff questionnaire and emails from co-counsel re responding to class members.	1.50
	KAK Review additional contacts from prospective class members and forward same to co-counsel for response; email to EIN re status of responses to class member calls; review co-counsel email correspondence re possible additional class representatives	0.20
8/5/2013	GMG Review emails re class member contacts and revise online spreadsheet re same; prepare Gregoroff consent for filing and email KAK re same; search PACER re similar suits filed in Michigan or elsewhere and email co-counsel re same; review recent media coverage re case; file Gregoroff consent form via ECF	2.00
	EIN Review/analyze and respond to putative class member inquiries; review co-counsel plaintiff questionnaire and client intake memos; interview with putative class member; draft interview memo; forward same to KAK.	2.50
	KAK Telephone conference with former Apple employee Aaron Gregoroff; email to Gregoroff to forward opt-in form; email to group re following up to obtain further information about his work experiences; review and respond to email correspondence	0.50

		<u>Hours</u>
	from co-counsel re further employee contacts; review further consent form forwarded by co-counsel and email to GMG re filing today	
8/6/2013	GMG Review Idekaar consent and email KAK re same; review recent media coverage re case; prepare draft consent to proceed before magistrate	0.70
	KAK Review additional consent form filed by co-counsel today; email to co-counsel re redacting contact information from forms before filing; email to GMG re preparation of magistrate consent form; review voice mail received from prospective class member Claudia Wright and email to EIN re returning call; review interview notes from EIN re prospective class member Aaron Gregoroff; review and respond to email from prospective class member; email to EIN and KSR regarding applicable rules governing deadlines to file amended complaints	0.80
	KSR Research re time to amend pleading as of right under federal rules; email answer to KAK.	0.30
8/7/2013	GMG Prepare draft consent to magistrate and email KAK re same; revise consent form and email co-counsel re same; prepare Fisher consent form for filing and file via ECF; review recent media coverage re case	1.00
	EIN Review/analyze and respond to email and responses re NV and DC class reps and forward intake memo to co-counsel; review email from KAK and KSR re amended pleadings in federal court; review emails re additional opt-ins and filed forms missing redactions.	0.20
	KAK Review consent to magistrate form prepared by GMG; email to GMG re revisions; follow-up email to prospective client; email correspondence with co-counsel re status of additional clients	0.30
8/8/2013	GMG Prepare draft summons, civil cover sheet and certificate of interested persons for Kilker complaint and confer with KAK re same	0.50
	EIN Review/analyze emails from co-counsel re the second amended complaint and NV named plaintiff.	0.10
	KAK Review and respond to email from co-counsel transmitting draft of new complaint with additional state classes	0.10
8/9/2013	GMG Prepare comparison of Frlekin and draft Kilker complaints and email KAK re same; search PACER re similar cases and email KAK re same; revise draft summons, civil cover sheet and certificate of interested persons for Kilker complaint, prepare attachments for cover sheet and summons and confer with KAK re same	0.80
	KAK Review and respond to email correspondence from co-counsel with revised draft of second complaint; email to co-counsel requesting copies of signed retainer agreements for plaintiffs included in draft complaint	0.20
8/11/2013	KAK Review email correspondence from prospective DC plaintiff; email to co-counsel re same	0.10
8/12/2013	GMG Review emails and forward consent form to co-counsel; finalize summons, civil cover sheet and certificate of interested persons and prepare PDFs; email co-counsel re missing Kilker consent form; confer with KAK re filing complaint 8/13	1.20
	KAK Review papers prepared for filing of new complaint with additional state subclasses; draft revisions to new complaint; email correspondence to co-counsel re same; conferences with GMG re finalization of filing; review and respond to further email correspondence from prospective class member	1.50

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		<u>Hours</u>
8/13/2013	GMG	1.00
	Confer with KAK re filing Kilker complaint; prepare revised retainer agreement for Gregoroff and email KAK re same; search PACER for similar suits recently filed and email KAK re same; prepare Kilker and Dowling consent forms for filing and confer with KAK re same; file Kilker and Dowling consents in Frlekin case via ECF	
	EIN	0.20
	Review/analyze emails from KAK and co-counsel re retainer agreements and filing the amended complaint.	
	KAK	1.80
	Further email correspondence with co-counsel regarding client retainer agreements for new action with additional subclasses; prepare retainer agreement for client Aaron Gregoroff and forward by email	
8/14/2013	GMG	6.00
	Prepare revised Kilker-Fisher complaint, cover sheet, summons and certificate and confer with KAK re same; prepare final signed PDFs and arrange for filing in Northern District; research re available FLSA treatises and email KAK re same; prepare file-stamped PDFs and email co-counsel re same; prepare proof of service and serve consent to magistrate by mail; file proof of service via ECF and confer with KAK re same; prepare revised complaints	
	EIN	0.80
	Conduct interview with putative class member; draft email and forward consent form to same; draft interview memo documenting discussion.	
	KAK	2.00
	Review retainer agreement from client Kilker; call to prospective client Aaron Gregoroff and left message re retainer agreement; analysis of next steps re filing new complaint; final review of new complaint and related papers to be filed today; conference with GMG re finalizing and filing same; review rules governing related case motions and email to co-counsel re preparation of same; email to GMG re preparation and filing of proof of service by mail on Apple of consent to proceed before magistrate; telephone conference with prospective client Aaron Gregoroff	
8/15/2013	GMG	3.30
	Revise draft complaints and email KAK re same; revise related case motion, declaration and proposed order and email KAK re same; check ECF re Kilker complaint and email KAK re same; prepare draft retainer agreement for Beltzer and email KAK re same	
	KAK	1.80
	Review drafts of administrative motion to relate cases prepared by co-counsel; email to co-counsel regarding revisions; review new drafts prepare further revisions; review enotifications from counsel for Apple in original action; email correspondence with co-counsel re holding off filing of administrative motion and holding off service; co-counsel Lou Ginsberg will contact counsel for Apple re each issue; conference with GMG re same	
8/16/2013	GMG	0.90
	Prepare revised retainer agreement and email KAK re same; check ECF website and email ECF support re Kilker complaint, forward response to KAK; review brochure re filing complaints through ECF and email KAK re same	
	KAK	1.80
	Draft follow-up email to prospective class representative Aaron Gregoroff; review and respond to email correspondence from plaintiffs' counsel in <i>Busk v. Integrity</i> ; review enotification from court re impending reassignment of original action to district judge; review draft retainer agreement for prospective class representative and email to GMG re revisions; draft further revisions to agreement; finalize and forward to prospective representative ; legal research regarding FLSA procedure and collective action requirements; review email from co-counsel Lou Ginsberg re his conference with defense counsel re relating cases and accepting service	
8/19/2013	GMG	1.40
	Review enotifications re Kilker complaint and new Frlekin judge; research re Judge Alsup and circulate to co-counsel	

		<u>Hours</u>
8/19/2013	KAK Preliminary review of answer filed by defendant to original complaint; review order reassigning case from magistrate judge to Judge Alsup; email to GMG re compiling information re new judge; review available information re new judge and forward same to co-counsel; review enotification from court re filing of Kilker complaint; forward same to co-counsel; email to co-counsel re registering for enotifications and filing pro hac vice applications for this case; review and respond to inquiry from co-counsel regarding need to file pro hac vice applications if case is related to earlier-field case; review additional enotifications in Kilker matter, including ADR scheduling order, and forward same to co-counsel	0.90
8/20/2013	KAK Review email from Matt Cohen who said prospective client Gregoroff had forwarded signed retainer agreement; search for same but cannot locate such an email; follow-up email correspondence with prospective client Gregoroff who says he sent it; email to IT consultant regarding locating missing email; confirm with IT consultant that we have no record it ever hit our server; email to Gregoroff asking him to resend; review email from class member Elliot Beltzer regarding press coverage including his name and email to co-counsel re same; review and forward further correspondence from class member Beltzer	0.60
8/21/2013	EIN Review/analyze email from KAK and KSR re filing consent forms and complaints; review/analyze emails from co-counsel re next con call and strategy items.	0.20
	KAK Draft detailed email to EIN, GMG and KSR re handling of consent forms and proposed new named plaintiff complaints going forward and during my absence; draft email to co-counsel regarding need for strategy call to discuss numerous issues, including service of Kilker complaint, filing of related case motions, discovery, follow-up with class members, and other matters; review and respond to email from co-counsel Lou Ginsberg re same; analysis of appropriate next steps; follow-up email to class member; email to co-counsel Matt Cohen re status of contacting class member	1.20
	KSR Email correspondence with KAK regarding complaint and consent forms.	0.20
8/22/2013	GMG Email KAK re status of expenses invoice; review filed Meyer consent form and email KAK re same	0.20
	KAK Review further email correspondence from co-counsel Lou Ginsberg re status; review email from prospective class member; review enotification from court re filing of additional consent form	0.20
8/23/2013	KAK Review email from co-counsel Lou Ginsberg re status of contacts with defense counsel regarding stipulation to accept service of Kilker complaint and to relate actions; review enotification from court re order regarding class settlements; follow-up to co-counsel Matt Cohen re contacts with prospective client	0.20
8/26/2013	KAK Review order setting forth guidelines for approval of classwide settlements; review email with signature page from client; email to EIN re finalization of draft complaint for him; draft detailed email in response to questions from prospective client; review bill amending California's fee-shifting rules for wage claims and email to co-counsel re same; draft further revisions to administrative motion to relate cases and circulate same to co-counsel	1.20
8/27/2013	GMG Review and revise draft motion to relate cases, declaration and proposed order	0.30
	KAK Review email from co-counsel re final effort to contact defense counsel regarding related case stipulation and agreement to accept service; email to GMG re same; continued analysis of impact of change in law regarding fee-shifting for statutory wage claims under California law	0.40

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		<u>Hours</u>
8/28/2013	GMG	3.50
	Revise related case motion in Frlekin with declaration and proposed order, prepare for filing and confer with KAK re same; file motion and other papers via ECF; prepare Word version of proposed order and email court clerk re same; prepare chambers copies, post and mail; review Alsup standing order and email KAK re same; Draft consent to magistrate and proof of service in Kilker, file via ECF and email co-counsel re same; prepare service copy, post and mail; draft email to Western Messenger re service of Kilker complaint; review FRCP 16 and 26 re initial disclosures etc. and email KAK re same	
	EIN	0.40
	Review /analyze draft of AG complaint and forward redline to KAK.	
	KAK	0.80
	Revise administrative motion to relate cases to reflect defense counsel's refusal to stipulate; finalize and email to GMG re filing today; review and approval final versions; email to co-counsel re filing same today; conference with GMG re service of Kilker complaint; review scheduling order issued by court yesterday in Frlekin matter and email to GMG re deadlines and determination of other due dates; email to co-counsel to confirm that they will handle clients' data preservation pursuant to court's order	
8/29/2013	GMG	0.60
	Email co-counsel re service of Kilker complaint; review Gregoroff retainer and email KAK re same; check PACER re competing cases and email KAK re same; check SF Law Library catalog re FLSA treatise and email KAK re same	
	KAK	0.30
	Review and respond to email from GMG re completion of service on defendant's agent for service of process in Kilker matter; review email from GMG regarding lack of copy-cat cases in federal court today, per his PACER research and forward same to co-counsel; conference with EIN and GMG re status of client contacts, additional complaint, and next steps	
8/30/2013	KAK	0.90
	Draft follow-up email correspondence to prospective clients; email to co-counsel with strategy; email to EIN re preparation of draft of PAGA notice letter and responding to class member inquiries, including any follow up	
8/31/2013	KAK	0.10
	Email to GMG and EIN re preparing list of all upcoming deadlines in case; email to GMG re preparation of cost invoice	
9/5/2013	GMG	2.50
	Contact process server re Kilker proof of service; prepare draft certificate of service for filing with caption and document list; research re timing of filing of proof of service; prepare draft notice of appearance for EIN and email EIN re same; file EIN notice of appearance via ECF; email co-counsel re Kilker proof of service	
	EIN	0.20
	Draft/revise email to class member re consent form; review and approve notice of appearance	
9/9/2013	GMG	0.70
	Review proofs of service and Alsup standing order and email Cohen re same; review orders relating cases, reassigning Kilker case and Alsup standing order for Kilker, forward e-notifications and email co-counsel re same	
	EIN	0.10
	Review orders re wrong and then corrected CMC dates.	
9/10/2013	GMG	1.00
	Email co-counsel and call court clerk re e-notification with incorrect due date for CMC statement; email co-counsel re corrective notice; email Cohen re materials served on Apple; review consent form and email EIN re same	
	EIN	0.10
	Review and approve consent form	
9/11/2013	GMG	0.20
	Revise online client spreadsheet and email EIN re same	
9/13/2013	GMG	0.50
	Review detailed time and expense report, prepare report of billable and expenses and statement re same	

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		<u>Hours</u>	
9/16/2013	KAK	Review email correspondence from co-counsel re various developments in case over past two weeks, including scheduling Rule 26(f) conference with defendant, service of orders, and other matters; review and approve proof of service reflecting service of Kilker action and email to GMG with instructions to proceed with filing; review and respond to email from attorney Jeffrey Hogue forwarding contact from class member re our case	0.70
9/17/2013	EIN	Review/analyze and respond to email from KAK re similar case and contact with class member.	0.20
	KAK	Telephone conference with attorney re employment case against Apple; email to EIN re same; telephone conference re possible additional class representative for California subclass; conference with EIN and GMG re most recent developments in case; review Apple's opposition to motion to relate cases and analysis of impact of same; email to co-counsel to schedule strategy call	0.60
9/19/2013	KAK	Review discovery order forwarded by attorney in unrelated Apple case and email to him; review email from attorney and forward same to EIN; review notification from court re filing of answer by Apple in Kilker case	0.20
9/20/2013	GMG	Review FRCP discovery rules and Alsup orders and confer with KAK and EIN re deadlines, case status, upcoming projects and agenda for teleconference with co-counsel; add dates to calendar; email co-counsel re Apple answer in Kilker case	1.30
	EIN	Spoke with class member re receiving her consent form and that would be publicly filed; attend mtg with KAK and GMG to go over case scheduling and case status; research contact with class member and draft email to KAK re same; forward draft of meeting agenda to KAK; review emails from KAK re the San Diego Apple case.	1.50
	KAK	Analysis of status and next steps; conference with EIN and GMG regarding case deadlines and agenda for upcoming co-counsel call; follow-up email correspondence to co-counsel re scheduling strategy call	1.90
9/23/2013	GMG	Obtain and review standing order, local rules and guidelines referenced in Alsup Supplemental CMC orders and email co-counsel re same	0.50
	EIN	Review/analyze emails between co-counsel, court orders setting assigning Judge Alsup and setting initial case management order, and Supplemental CMC order in preparation for strategy call tomorrow.	3.20
	KAK	Co-counsel email correspondence to schedule strategy call	0.10
9/24/2013	GMG	Prepare for teleconference; call with Ginsberg, Shalov, Cohen, Gallaway, EIN and KAK re case strategy and deadlines and project assignments; obtain docket in Felczer case and email co-counsel re same; research and email KAK re same	3.00
	EIN	Review/analyze court orders setting assigning Judge Alsup, setting initial case management order and Supplemental CMC order in preparation for co-counsel strategy conference call; participate on case strategy conference call with KAK, GMG and co-counsel to discuss; review email correspondence regarding Felczer v. Apple.	1.50
	KAK	Review draft agenda prepared by EIN; draft revisions to same in anticipation of call this morning and circulate to co-counsel; prepare for and participate in co-counsel strategy call re Rule 26(f) conference, initial disclosures, joint CMC statement, coverage of CMC, contacts from other attorneys, including attorney handling other wage and hour case against Apple in San Diego, and other status-related matters; forward materials received and email to GMG; follow-up email	2.70

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			<u>Hours</u>
9/25/2013	GMG	Review materials and email KAK re same; email co-counsel re teleconference 10/2; review Felczer docket and available materials from San Diego Superior court, confer with KAK and email co-counsel re same; prepare chambers copies of EIN appearance and all consent forms filed to date and mail to court	1.50
	KAK	Review email from potential expert economist and forward same to co-counsel; email to GMG regarding pulling additional information and review same	0.20
9/27/2013	GMG	Prepare draft calendar and chart re deposition dates and email KAK re same; prepare PDFs of discovery served by Apple on 9/26	1.50
	KAK	Review correspondence from defense counsel with enclosed deposition notices and subpoenas; email to co-counsel re same; review chart prepared by GMG regarding proposed deposition dates and email to co-counsel re same; draft email to client regarding possibility that he may be served with subpoena and re scheduling deposition	0.70
9/30/2013	KAK	Follow-up email to co-counsel re subpoenas served last week	0.10
	EIN	Review/analyze emails between L.Shalov and KAK re accepting service of subpoenas; review and respond to GMG re forwarding complaint to co-counsel	1.00
10/1/2013	GMG	Email Gallaway re Word version of Frlekin and Kilker complaints; prepare new cover sheets for Frlekin, Kilker and Fisher ADR certifications and confer with KAK re same; file ADR certifications via ECF, prepare chambers copies; email filed ADR certifications to co-counsel	1.00
	KAK	Review email from co-counsel with executed ADR compliance statements; conference with GMG re revising and preparing these for filing today; review order setting deadline for filing these statements; review draft of ADR stipulation prepared by defense counsel and email with changes to same; review and approve revised draft; review and respond to email from defense counsel regarding proposed order to be filed with same; email to EIN re preparation of agenda for call	0.90
	EIN	Draft/revise agenda for conference call; review and calendar deposition schedule	0.20
10/2/2013	GMG	Prepare for and teleconference with co-counsel re conference with defendants and next steps; email recent filings in Kilker case to co-counsel; email co-counsel re next teleconference	1.50
	KAK	Review draft agenda for today's co-counsel strategy call prepared by EIN; revise same and circulate to group; prepare for and participate in call with co-counsel re Rule 26(f) conference, initial disclosures, joint CMC statement, deposition notices served by defendant, and other matters; draft follow-up email to client re deposition subpoena and preservation and production of documents; review draft of joint CMC statement prepared by co-counsel and previously forwarded to defense counsel; conference with GMG re tasks to be completed; email to EIN re further follow-up with prospective class members who have made contact with us; telephone call to attorney and left message; review notification from court regarding denial of ADR stipulation; review order and email to co-counsel re same; telephone conference with attorney and email to co-counsel re same	2.20
10/3/2013	GMG	Prepare detailed expense report and statement; prepare final PDF with receipts and email KAK re same; review Kilker order re settlement factors and email co-counsel re same	0.90
10/4/2013	GMG	Organize KAK's case materials and prepare case binder	0.70

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		<u>Hours</u>
10/7/2013	KAK Conference with EIN regarding contacts with putative class member; review correspondence between co-counsel Ginsberg and defense counsel re status of case management statements due this week	0.10
10/9/2013	KAK Email to co-counsel regarding status of filings due tomorrow and rescheduling of strategy call	0.10
10/10/2013	GMG Search files re sample scheduling orders in Northern District and email KAK re same; review joint status conference statements in Frlekin and Kilker and email co-counsel re same	0.80
	KAK Review draft of joint CMC statement in <i>Frlekin</i> matter circulated by co-counsel; draft redline with revisions; review version from defense counsel with their insertions; prepare detailed comments and email to co-counsel; draft revisions and prepare redline; telephone conference with co-counsel Ginsberg re scheduling matters raised in defendants' draft; final revisions to redline and circulate to defense counsel; review final version from defense counsel and approve same; review and edit draft statement from defense counsel for <i>Kilker</i> matter; telephone conference with co-counsel Ginsberg re same; finalize revisions and circulate redline with approval to file; email to GMG re identifying sample initial CMC orders in federal cases in the N.D. Cal.; review sample orders; review enotifications from court regarding filing today of both statements; locate Ninth Circuit decision construing Comcast and holding that Comcast did not change the ordinary rule that non-common damages questions do not defeat class certification and forward same to co-counsel Ginsberg and Shalov	4.80
10/14/2013	EIN Review/analyze email from opposing counsel following up re the deposition schedule of plaintiffs	0.10
	KAK Review and respond to co-counsel correspondence re finalization of initial disclosures due tomorrow, status of discovery, and meeting with defense counsel to discuss ESI issues; review email from defense counsel regarding meeting after hearing	0.20
10/15/2013	GMG Reformat draft Kilker initial disclosures, proofread and revise; prepare proof of service and email KAK re same; prepare final signed PDF and email to all counsel; prepare service copies	2.00
	EIN Review/analyze drafts of initial disclosures and redline to include additional class member; draft email to KAK re same; review/analyze email between KAK and co-counsel re additional information to include in initial disclosures and status of discovery requests	0.50
	KAK Review and evaluate draft of initial disclosures; check Judge Alsup's supplemental orders as well as applicable rules governing same; draft detailed email to co-counsel with revisions; email to EIN re additional witnesses, if any, to be included; review final Kilker disclosures and conference with GMG re filing same; review enotification from court regarding order changing start time for Thursday's CMC; review service emails from defense counsel and co-counsel serving Frlekin initial disclosures and Apple's initial disclosures; email to GMG re preparation of materials for CMC	1.20
10/16/2013	GMG Prepare CMC binders for Shalov and Ginsberg, deliver to their hotel and email co-counsel re same; review Pelle ADR certification, compare recently filed pro hac applications and email KAK re same; revise KAK case binder in anticipation of CMC; prepare chambers copies of ADR certification and relevant pro hac applications and forward to court; research local rules re form of papers to be filed and email KAK re same	3.50
	KAK Continued review of draft discovery; prepare redline of interrogatories and production requests and circulate to co-counsel; preparation for hearing tomorrow and for meeting with co-counsel; review enotifications re further pro hac vice filings by co-counsel and email to GMG re same; conference with GMG regarding courtesy	1.50

		<u>Hours</u>
	copies; email to GMG re pulling rules requiring lined pleading paper in N.D. Cal.; review rules and forward same to co-counsel with transmittal emphasizing need to comply with this requirement for all filings; began review of letter from defense counsel confirming matters discussed during Rule 26(f) conference	
10/17/2013	GMG Prepare revised initial disclosures for Frlekin case and confer with KAK, Shalov and Ginsberg re same; email amended disclosures to all counsel; email Word version to co-counsel; provide support for attorney meeting; review docket and complaint for related Kalin case and email KAK re same; revise requests for admissions in both cases; draft 30(b)(6) deposition notices for Frlekin and Kilker and confer with KAK re same; revise combined interrogatories and production requests for both cases and confer with Ginsberg re same; finalize production requests and serve all counsel via mail; prepare PDF image of discovery requests and email to all counsel; email searchable PDFs and Word versions to co-counsel	7.50
	KAK Prepare for and participate in meeting with co-counsel Shalov and Ginsberg regarding today's CMC, recent filing of copycat case and impact on our scheduling, status of written discovery to be served this week, and other matters; appear for and participate in CMC; participate in meeting with defense counsel regarding document custodians for evidence preparation and other matters; email to GMG re preparation of initial draft of Rule 30(b)(6) deposition notices; further conference with co-counsel regarding revisions to draft discovery; prepare revised drafts of interrogatories, production requests, and requests for admissions; review and edit draft Rule 26(b)(6) deposition notice; conference with GMG re finalization of all discovery and service today; draft revisions necessary to convert discovery for issuance in both cases and conference with GMG re same; review email from GMG serving courtesy copies of all discovery	6.40
10/18/2013	EIN Review and evaluate scheduling order	0.10
10/22/2013	KAK Review email from client; telephone conference with client re various issues; email to co-counsel re same	0.60
	EIN Draft/revise and forward email to class member re case status and opposing counsel's plan to depose all opt-ins	0.10
10/23/2013	KAK Review email from clerk to Magistrate Judge Spero regarding settlement conference; email correspondence with co-counsel regarding dates proposed by clerk; follow-up email to co-counsel regarding video preservation issue; review, evaluate and respond to co-counsel Shalov correspondence regarding filing amended complaint promptly and other issues related to amendment	0.40
	EIN Review/analyze motion to relate case and Apple's response to motion to relate Kilker case; draft email to KAK re correspondence with class member re filing consent form	0.20
10/25/2013	GMG Search files re sample PAGA notice letters and email KAK re same	0.40
	KAK Review and comment on draft of amended initial disclosures with rough damages estimates circulated by co-counsel; correspondence with co-counsel re coverage of today's telephonic conference with Magistrate Judge Spero; email to GMG re template for PAGA notice letter; review same and circulate to co-counsel	0.70
	EIN Review/analyze email granting extension for plaintiffs' responses to defendant's discovery requests; calendar same	0.10
10/28/2013	GMG Review Apple Initial Disclosures and email KAK re same; obtain cases cited in 10/16 letter from Apple counsel and prepare for KAK review	0.40

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			<u>Hours</u>
11/1/2013	GMG	File Wright consent form via ECF and confer with EIN re same; review amended deposition notice for Fisher and email KAK and EIN re same	0.50
	KAK	Review email correspondence from defense counsel regarding deposition scheduling; review enotification re filing of consent form for plaintiff Claudia Wright	0.10
	EIN	Review/analyze and respond to email from KAK re stores where putative class member worked; forward same class member interview/intake form to KAK	0.10
11/4/2013	KAK	Review and respond to correspondence from co-counsel regarding plaintiff Claudia Wright, whose consent form was filed last week; forward EIN memorandum regarding this plaintiff; review amended deposition notices for plaintiff Brendon Fisher and forward same to co-counsel	0.20
	EIN	Review/analyze and respond to co-counsel re class member contact interview and contact information	0.10
11/8/2013	KAK	Review email from co-counsel re cert. petition filed in <i>Busk v. Integrity Staffing</i> on compensability of bag and security search time; preliminary review of same	0.20
11/11/2013	KAK	Review correspondence from co-counsel circulating drafts of conditional certification motion and PAGA notice letter; email to GMG regarding circulating firm resume for certification motion as requested by co-counsel	0.20
11/12/2013	EIN	Review/analyze PAGA rules and review/analyze draft of PAGA letter and email co-counsel re same	0.20
	KAK	Review correspondence from co-counsel re draft PAGA notice letter and email to EIN regarding review of same	0.10
11/15/2013	GMG	Review amended deposition notices and email KAK re same; revise and update deposition calendar	0.50
11/18/2013	KAK	Review correspondence re amended briefing and hearing schedule for conditional class certification motion; correspondence to co-counsel re unavailability given current proposed dates	0.20
11/19/2013	GMG	Review Felczer docket and email KAK re filing of class certification motion	0.20
	KAK	Review correspondence and proposed stipulation regarding briefing and hearing schedule for motion for conditional certification; review correspondence from co-counsel regarding filing of class certification motion last week in another action; email to GMG re confirming this by checking docket; email to attorney requesting copy of filing	0.30
11/20/2013	GMG	Review Felczer class cert motion; forward FLSA certification papers to Felczer counsel	0.20
	KAK	Review and respond to correspondence from plaintiffs' counsel in another action; review docket in other matter; telephone conference with attorney and email to co-counsel re same; follow-up correspondence to co-counsel re delivery of PAGA notice letter; review final PAGA notice letter	0.40
11/22/2013	GMG	Prepare comparison of filed Frlekin complaint and draft second amended complaint and email KAK re same; review class certification memo in Felczer case and email KAK re same	1.00
	KAK	Review and respond to correspondence from co-counsel Shalov re amendments to complaint; telephone conference with Shalov re same; review California allegations in proposed amended complaint; evaluate same and draft redline with proposed	2.10

		<u>Hours</u>
	changes; review additional cited Labor Code provisions added to amended complaint and draft appropriate revisions; circulate same to co-counsel; review email from counsel for plaintiffs in other wage and hour case against Apple; further correspondence with attorney; review and forward briefing from <i>Duran</i> matter regarding number of meal period premium payments	
11/25/2013	GMG Compare current draft complaint against KAK redline and email KAK re same	0.80
	KAK Review correspondence from attorney circulating documents; forward same to co-counsel; follow-up correspondence; review email from co-counsel Gallaway to defense counsel circulating plaintiffs' proposed consolidated amended complaint	0.20
11/26/2013	GMG FEES - Prepare detailed expense report and statement and email KAK re same	0.30
	EIN Review/analyze draft of proposed stipulation re the amended complaint and consolidation of actions	0.10
	KAK Telephone conference with co-counsel Brett Gallaway re California claims to be asserted in amended complaint	0.10
11/27/2013	KAK FEES - Review statement regarding filing and service fees advanced when complaints were filed and forward to co-counsel Shalov for reimbursement	0.20
12/2/2013	KAK Review and respond to email from attorney Jeffrey Hogue in San Francisco who forwarded declarations filed by Apple in his wage and hour matter	0.10
12/3/2013	GMG Review orders to show cause re consolidation of cases and email KAK re same; review declarations from Felczer case, reduce file sizes and email co-counsel re same	0.70
	KAK Telephone conference with client Aaron Gregoroff regarding status and responding to discovery requested from him by Apple; review discovery request forwarded to him co-counsel Shalov's office; email to Gregoroff to assure him this is normal discovery and it is fine to talk with co-counsel regarding this; review and forward additional emails from attorney with documents in his case	0.60
12/4/2013	KAK Review correspondence from defense counsel regarding proposed amended complaint; review correspondence from attorney	0.10
12/5/2013	GMG Review email files for list of state wage laws from Gallaway and email KAK re same	0.40
	KAK Evaluate possible claims for Arizona and Utah classes and search for list of state wage and hour laws; email to GMG re locating same; review and evaluate list located by GMG	0.30
12/6/2013	GMG Review FLSA certification motion and email KAK re citations in same; review Ramirez opinion and email KAK re same; email Gallaway re password to access deposition transcript	0.40
	EIN Confer with KAK and KSR re Frlekin depositions	0.30
	KSR Email and discussion with KAK regarding availability to defend Claudia Wright depo. Email correspondence with KAK and EIN setting up meeting to discuss preparation and defense of Wright depo. Meeting to discuss Wright depo prep and scheduling.	1.10
	KAK Review correspondence regarding extensions of discovery response deadlines; forward same to GMG for calendaring; telephone conference with co-counsel Shalov and Gallaway regarding proposed amended complaint and request by counsel for Apple, including evaluation of impact; review and respond to email from Gallaway re possibly covering deposition of Claudia Wright, requested by Apple for later this month; conference with KSR and EIN re whether we can reorganize other obligations	0.90

		<u>Hours</u>
	to carve out time to prepare for and defend this deposition; email to co-counsel Shalov and Gallaway re scheduling this deposition for January and extending briefing schedule on collective action certification motion; review correspondence from defense counsel re inability to timely produce requested 30(b)(6) witnesses; review correspondence from defense counsel confirming mutual extensions of time for written discovery responses; review email from defense counsel circulating formal objections to recently-served 30(b)(6) deposition notices	
12/9/2013	GMG Email correspondence with Gallaway and reporting firm re access to deposition transcripts; review Dowling transcript and organize on network	0.80
	EIN Draft/revise email to class member re availability for deposition; confirm with KAK no receipt of same class member's deposition notice and subpoena; email co-counsel re same	0.10
	KAK Telephone conference with Kalin counsel; telephone conference with attorney regarding status of his wage and hour action against Apple; call to co-counsel Shalov and left message; email to co-counsel Shalov; review and respond to emails from Blanchard circulating the amended complaint and answer in Kalin matter; review and respond to email from EIN regarding Claudia Wright deposition	0.40
12/10/2013	EIN Correspond with class member re deposition details, dates and job status; discuss same with KAK	0.10
	KSR Email correspondence with KAK regarding scheduling depo of Claudia Wright.	0.10
	KAK Telephone conference with co-counsel Shalov re status of stipulation to file amended complaint and decision to omit meal period claim; locate and forward to co-counsel decision on relation back of PAGA claim to be added to amended complaint; review and evaluate revised draft of amended complaint with claim for shortened meal periods removed; email to and conference with with EIN re class member Claudia Wright and efforts to schedule her deposition for a mutually convenient time and place; email to KSR re coverage of same and to co-counsel	0.90
12/11/2013	EIN Continue corresponding with class member re deposition availability	0.10
	KAK Follow-up email to Kalin counsel regarding coordination and scheduling phone conference; review email from co-counsel Shalov to defense counsel circulating stipulation to file amended complaint and proposed amended complaint, and email from defense counsel agreeing to stipulate on conditions; review email notification regarding filing by defense counsel of motion to consolidate <i>Frlekin</i> and <i>Kilker</i> cases	0.10
12/12/2013	GMG Email KAK re consolidation motions; email Gallaway re original complaint; check docket and email KAK re 1/16 hearing time	0.40
	KAK Review and respond to correspondence from co-counsel regarding impact of Apple's formal motion to consolidate our two cases and Kalin matter; review motions and evaluate Apple's position regarding interim co-lead counsel appointment; correspondence with co-counsel re same; email to GMG re additional information needed re filings and deadlines in Kalin matter	0.30
12/13/2013	GMG Review Apple consolidation motion and Kalin docket, find consolidation ruling in <i>bernal v. netflix</i> and email KAK re hearing dates; review response to order to show cause and email KAK re same; find local rule against filing scanned documents and email KAK re same; review order re consolidation and first amended complaint and email KAK re same; review Apple responses to discovery served 12/11, organize on network and email KAK and EIN re same; attempt to open Apple document production and email Gallaway re same	1.50

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		<u>Hours</u>	
12/13/2013	KAK	Review correspondence between co-counsel and defense counsel re stipulation to amend complaint and consolidate; review enotification re filing of same and email from GMG re failure to comply with local rule re document formatting; email to co-counsel Gallaway re same; review enotification regarding order granting consolidation in response to stipulation filed today; review enotification re filing of amended complaint; follow-up email to EIN regarding scheduling of deposition of opt-in plaintiff Wright	0.30
12/16/2013	KAK	Review order approving stipulation to consolidate and file amended complaint; review amended complaint filed by co-counsel on Friday and forward same to attorney Blanchard	0.10
12/17/2013	KAK	Follow-up correspondence to EIN and co-counsel regarding scheduling of deposition of Claudia Wright	0.10
	EIN	Review email from KAK re schedule for Claudia Wright deposition	0.10
12/20/2013	GMG	FEES - Prepare draft KAK declaration in support of motion for appointment of co-lead in liaison counsel and email KAK re same; finalize KAK declaration and email co-counsel re same	2.30
	KAK	Call from plaintiffs' counsel in Kalin matter regarding possible coordination; telephone call to co-counsel Shalov re same; email to GMG re drafting declaration in support of motion for appointment of interim co-lead and liaison counsel; review and revise draft prepared by GMG; email to GMG with instructions to finalize and forward to co-counsel with exhibit attached	1.40
12/24/2013	GMG	Review Apple opposition to motion for FLSA certification and accompanying declarations; email KAK re deadline for reply re motion for FLSA certification	0.60
	KAK	FEES - Review and respond to correspondence from co-counsel Gallaway requesting hours figures for purposes of motion for appointment of interim co-lead and liaison counsel; email to GMG re same; review correspondence from co-counsel with proposal for cooperation with Kalin counsel; email to Kalin counsel re same and re deadline to respond to Apple's motion to consolidate	0.30
12/27/2013	GMG	Review cover letter from Apple and contents of enclosed DVD exhibits and email KAK re same	0.40
12/30/2013	KSR	Email from KAK regarding Lee Shalov's request for assistance to respond to Apple's opposition to the collective motion, and basis for response. Reply to KAK.	0.20
	KAK	Email correspondence with Shalov and KSR re possible assistance with reply brief in support of motion for FLSA collective action certification and possible continuance of the reply deadline to facilitate our participation	0.10
1/2/2014	GMG	Review cover letter and production file from Apple and email KAK and EIN re same	0.30
	EIN	Review/analyze Apple's Opposition to Motion for granting conditional certification of FLSA collective action; draft notes analyzing same	1.00
	KAK	Review and respond to correspondence from co-counsel regarding motion for appointment of interim co-lead counsel; review stipulation and proposed order extending briefing and hearing schedule and email to co-counsel re availability	0.20
1/3/2014	EIN	Review/analyze order granting stipulation for extending reply deadline and hearing; calendar accordingly; discuss projects with KAK and KSR re expert disclosures and objections	0.50

		<u>Hours</u>
1/3/2014	KAK Review and edit draft of motion for appointment of interim co-lead and liaison counsel; prepare redline and circulate to co-counsel; draft revisions to declaration in support thereof and re-circulate to co-counsel; review enotification from court and order granting extension of reply brief deadline and hearing on conditional certification motion; review local rules re timing of hearing on liaison counsel motion and email to co-counsel re same; telephone conference with co-counsel regarding logistics of this filing and other procedural matters; locate and forward sample application to shorten time; conference with EIN regarding drafting objections to defense expert declaration and other declarations filed with opposition to collective action motion; review enotification re filing to day of interim counsel motion	2.90
1/6/2014	KAK Review order regarding consolidation and requesting further briefing on lead counsel issues; correspondence with co-counsel regarding same and next steps	0.20
1/8/2014	KAK Review draft brief to be filed tomorrow per court's order regarding appointment of interim lead and liaison counsel; correspondence with co-counsel regarding revisions to same; locate and forward recent orders from the N.D. Cal. appointing co-lead and liaison counsel; conference with KSR re same	0.40
1/9/2014	GMG Review scheduling order and calendar dates re same; check Kalin docket and calendar for corresponding hearing and email KAK re same	0.30
	KAK Review enotifications re filings by defendant, co-counsel and Kalin counsel in compliance with court's order issued earlier this week; correspondence to co-counsel Shalov regarding projects to be completed in connection with reply brief on conditional certification due next week; review enotifications and court's order continuing all hearings; email to co-counsel re possible stipulation to continue reply brief filing deadline	0.20
1/10/2014	KAK Review correspondence from defense counsel agreeing to week's extension on reply brief in support of motion for conditional certification; conference with EIN re same	0.10
	EIN Confer with KAK re extended deadline for reply re FLSA motion	0.10
1/13/2014	GMG Check Kalin docket and calendar re CMC and email KAK re same; review proof of service from Apple counsel and email KAK re same; recheck Kalin docket and calendar re consolidation motion hearing and email KAK re same	0.40
	KAK Follow up email to co-counsel Shalov re extension of deadline for reply brief; email to GMG re re-checking for order continuing CMC in <i>Kalin</i> matter; correspondence to co-counsel re fact that CMC remains on calendar for Thursday of this week	0.20
1/15/2014	KAK Analysis of work needed to address evidentiary issues and prepare objections; conference with KSR regarding assistance with project; email to co-counsel Ginsberg to schedule call tomorrow to discuss project; email to GMG re confirming whether CMC in copycat <i>Kalin</i> matter has been continued; review stipulation forwarded by <i>Kalin</i> counsel	0.30
	KSR Participate in conference call to discuss preparation of reply in support of FLSA motion for conditional cert.	0.50
1/16/2014	KAK Review and evaluate defendant's objections to evidence, expert report, and brief in opposition to motion for conditional certification under FLSA; review decisions forwarded by co-counsel Shalov; analysis of work to be completed regarding evidentiary objections, including procedure and arguments to be advanced with respect to expert report and percipient witness declarations; conference with KSR re same; telephone conference with KSR and co-counsel Ginsberg re same; review depositions of which we have copies and email to co-counsel regarding obtaining copies of remaining depositions; telephone call to Kalin counsel Blanchard regarding	2.60

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		<u>Hours</u>
	possible assistance with evidence projects next week; email to co-counsel and KSR re same	
1/16/2014	KSR Review/analyze motion for conditional cert and opposition papers. Analyze defendants' evidentiary objections. Telephone conference call with KAK and Lee Shalov to discuss responding to Apple's evidentiary objections and drafting objections to Apple's expert declaration and other evidence in opposition. Further discussion with KAK.	1.50
1/17/2014	GMG Check Kalin calendar to confirm that 1/16 CMC has been postponed and email KAK re same; organize Beltzer, Dowling, Pelle, Gregoroff, Idakaar and Fisher deposition and exhibits on network; review Apple opposition brief and email Gallaway re missing depositions of Jordan, Frlekin and Speicher	1.40
	KAK Email to KSR and EIN re completion of evidentiary objection projects; review email from GMG regarding deposition transcripts and instruct him to determine which ones we still need and to contact co-counsel re same	0.20
1/20/2014	KSR Review/analyze allegations of First Amended Complaint in light of defendants' objections to plaintiffs' motion for conditional certification of the class. Analyze and draft responses to defendant's evidentiary objections to plaintiffs' declarations in support of motion. Email to KAK, Lee Shalov, Louis Ginsberg and Brett Gallaway regarding objections and responses and potential need for further declaration of one plaintiff.	4.40
1/21/2014	GMG Prepare draft chart for response to Apple's evidentiary objections and email KSR re same; email co-counsel re missing deposition transcripts and confer with KSR re same; email KSR re Frlekin declaration; review Apple opposition briefs #76 and 77, highlight differences and email KAK re same	3.20
	EIN Review/analyze email from KSR analyzing evidentiary objections; review and respond to KSR re Kalin counsel; begin researching objections dealing with web postings and blogs	5.10
	KAK Legal research regarding admissibility of expert testimony on the merits in context of stage-one collective action certification; review correspondence from co-counsel re status of evidence projects and email to KSR re same	2.20
	KSR Email from Lee Shalov to set up call to divide work for reply brief on plaintiffs' FLSA motion; further email correspondence and call to discuss. Respond to Lee Shalov re KAK work on responding to Apple's expert report and KSR draft of response to Apple's evidentiary objections. Continue review/analysis of plaintiffs' deposition testimony and declarations for responses to Apple's evidentiary objections in connection with plaintiffs' motion for conditional class certification under FLSA. Instructions to paralegal regarding format of response to evidentiary objections. Review/analyze draft of plaintiffs' reply re FLSA conditional cert motion circulated by Lee Shalov. Further email correspondence with Lee Shalov re handing off drafting of plaintiffs' objections to Apple's evidence to Kalin attorneys. Telephone call and email to Lonnie Blanchard regarding drafting objections to Apple's evidence in opposition to plaintiffs' FLSA motion. Instructions to paralegal regarding deposition transcripts required for responding to Apple's evidentiary objections. Instructions to paralegal regarding plaintiffs' declarations required to respond to Apple's evidentiary objections.	7.80
1/22/2014	GMG Email Apple opposition to FLSA motion with objections and declarations to Kalin counsel; email Gallaway re Frlekin, Speicher, Jordan and Monkowski deposition and organize same on network	0.70
	EIN Review/analyze and respond to email from KSR requesting research on evidentiary standards for FLSA conditional certification, cases where cert is denied on basis of number of named plaintiffs, and use of attorney declarations re expected number of	7.30

opt-ins; research same and forward email with findings to KSR; review/analyze email from KSR re local court rules requiring evidentiary objections be included within the body of the brief

1/22/2014	KAK	Correspondence with KSR re status of evidence-related projects in connection with reply brief filing due Friday; review correspondence from co-counsel Shalov circulating current draft of reply brief; review and evaluate draft reply and assess arguments made in draft; continued legal research in support of objections to submission of expert declaration in connection with first-stage collective action certification; review and respond to correspondence from Shalov re status; review and respond to correspondence from KSR regarding local rules governing procedural format of evidentiary rules; review rules and evaluate issue; conference with KSR re same; review correspondence from KSR to Shalov re same	1.80
	KSR	Email correspondence with KAK regarding responding to Apple's evidentiary objections and drafting objections to Apple's evidence in connection with plaintiffs' motion for conditional class certification under FLSA. Discuss website and blog objections with EIN. Telephone call from Lonnie Blanchard re objections to Apple's evidence and request for filings. Email to KAK. Email correspondence with Peter Dion-Kindem re due date for opposition brief and respond, re handing off objections to Apple's evidence. Draft responses to evidentiary objections. Research for responses and circulate local rules pertaining to briefing restrictions and prohibition on filing separate set of evidentiary objections, as Apple did. Discussion with KAK regarding strategy for addressing rule violation in brief.	5.80
1/23/2014	GMG	Review Apple discovery productions and cover letters and email KAK confirming the absence of video files in the productions; fill fact blanks on draft motion and email KAK re same; prepare draft proposed orders striking evidentiary objections and allowing response re same and email KAK and KSR re same	1.10
	KAK	Continued legal research regarding expert testimony in opposition to first-stage FLSA collective action motions; continued analysis of procedural problem with filing separate objections in violation of Local Rules; conference with KSR re same; telephone conference with co-counsel Shalov and KSR re same, and possibility of filing motion to strike objections and/or for leave to file separate response and more detailed objections ourselves; draft insert for brief with shortened version of objections to expert declaration; draft additional objections to potentially make, which may have problems; analysis of objection that expert relied on materials not produced in discovery and correspondence with Shalov re addressing this point in his declaration; correspondence with GMG re checking production of video footage relied upon by expert; draft section for brief with objection to Apple's separately-filed evidentiary objections, including legal research for cases in which the court refused to consider such objections filed in violation of Local Rules; forward draft to co-counsel Shalov for insertion into brief; correspondence with Kalin counsel regarding their work on objections to Apple's evidence and forward emails from Kalin counsel to Shalov; email to Kalin counsel re additional work needed; prepare draft of notice of motion to strike Apple's separately-filed evidentiary objections and points and authorities in support; analysis of proper procedure for this motion and review of rules related to administrative motions; circulate to co-counsel Shalov and KSR for review and comment; conference with GMG re preparation of draft of proposed order; prepare revised draft of insert for reply brief including list of declarants not disclosed in discovery and objections to attorney declaration filed by Apple; circulate to KSR and Shalov	7.40
	KSR	Discussion with KAK regarding local rules and strategy for responding to Apple's 14-page separate set of evidentiary objections in violation of local rules. Further discussion re basis for website and blog objections with EIN. Email to Lonnie Blanchard (Kalin plaintiff) and Peter Dion-Kindem (Kalin plaintiff) re objections based on Apple's failure to disclose witnesses, and forward case authorities; separate email to forward draft of Lee Shalov declaration; further email correspondence re Rule 26	8.90

disclosures and instructions to paralegal. Further research for evidentiary objections and circulate local rules pertaining to Apple's right to file evidentiary objections to new material in reply brief. Discussion with KAK regarding how to address in brief; telephone call to Lee Shalov to discuss. Email to Peter Dion-Kindem with Apple's initial disclosures and discovery responses, for evidentiary objections. Draft redlines to reply brief to include responses to evidentiary objections and case authorities refuting arguments in Apple's opp brief.

1/24/2014	GMG	Revise administrative motion to strike and proposed order and email KSR re same; call/email with McLaughlin paralegal re ECF outage; review reply brief and Shalov declaration re FLSA motion and arrange for filing via ECF; prepare chambers copies with labels, forward ECF notifications to KSR and confer re response dates; email Word file of proposed order to court	2.20
	EIN	Correspond with putative class member re deposition and case status; review/analyze Miller Wright chapter on FLSA actions and FLSA Procedural Pitfalls Article	1.00
	KAK	Conferences with KSR and co-counsel Shalov regarding various aspects of filing today of reply brief in support of collective action certification and motion to strike evidentiary objections; further correspondence to Kalin counsel regarding additional work needed on evidentiary objections, including additional case authority; review inadequate response thereto and email KSR re same; review drafts of proposed order granting motion to strike evidentiary objections, prepared by GMG for filing today; review correspondence between KSR and defense counsel regarding request for stipulation to withdraw improperly-filed evidentiary objections; review and respond to correspondence from defense counsel requesting deletion of internal analysis on issue inadvertently forwarded to us by email; locate and delete relevant emails per request of defense counsel	0.90
	KSR	Email correspondence with Lee Shalov regarding revisions to administrative motion to strike Apple's evidentiary objections filed in violation of local rules, and contacting Apple's counsel prior to filing motion. Email to Julie Dunne, Lara Strauss etc. (Defs' counsel, Littler) requesting stipulation to withdraw evidentiary objections or stip to order striking them. Telephone conference call with Kim Kralowec and Lee Shalov regarding drafting further objections to Apple's evidence for plaintiffs' reply brief, editing and finalizing reply brief, and further research required. Legal research in Westlaw for case law supporting that defendants' declarations need not be considered on FLSA first stage motion for conditional cert; email to Lee Shalov with case authorities stating defendants' competing witness declarations need not be considered on this motion. Email response from Lara Strauss to email request to withdraw evidentiary objections. Telephone call from Lara Strauss with request to delete email regarding objections on ground it contains privileged material, and discuss with Strauss evidentiary objections and plaintiffs' request to withdraw them. Email to Lee Shalov re discussion with Strauss. Discuss further with KAK. Email to Strauss regarding plaintiffs' intention to go ahead with motion to strike objections. Draft declaration in support of administrative motion to strike objections, and edit draft of motion. Finalize and prepare for filing. Telephone call to Lee Shalov regarding court's ECF filing system down and how to file reply and administrative motion. Instructions to paralegal and text to Lee Shalov re system back up and documents being filed. Discussion with KAK regarding size of exhibits to Shalov declaration and need to amend.	9.30
1/25/2014	KAK	Draft email to KSR regarding possible filing of corrected declaration of Lee Shalov with fewer attached pages of exhibits	0.20
	KSR	Email correspondence with KAK regarding need for amended Shalov declaration re depo excerpts.	0.30

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		<u>Hours</u>
1/27/2014	EIN	7.20
Continue Objections research and revise draft of reply to Apple's evidentiary objections; continue drafting section responding to Apple's objections to web blogs and online materials; research rule re making proper objections and discuss with KSR		
	GMG	2.10
Prepare chambers copies of reply brief and administrative motion and proposed order and arrange for delivery to Judge Alsup's chambers; review 12/13 consolidation order and email KSR re same; review email from judge Alsup's clerk and call him to discuss 12/13 order; email Gallaway and KSR re caption to use for amended Shalov declaration; email KSR re lack of courtesy copy of FLSA motion; prepare chambers copies of 11/14 FLSA motion and 11/13 Shalov declaration, draft cover letter to clerk and confer with KSR re same		
	KAK	0.30
Review and respond to question from co-counsel Shalov regarding whether a hearing date has been set on motion to strike improper objections, filed last Friday; review correspondence from clerk re case caption on pleadings filed Friday; email to co-counsel that the clerk seems to be wrong; review consolidation order, which addressed case caption going forward; conference with GMG re preparation and delivery of courtesy copies of materials filed on Friday and email to KSR re handling same		
	KSR	2.30
Email correspondence with Lee Shalov regarding case law supporting motion to strike and local rules related to administrative motions. Email from Brett Gallaway and telephone call with Gallaway regarding amending Shalov declaration filed with reply in support of plaintiffs' motion for conditional cert under FLSA. Telephone call with Brett Gallaway re need for amended declaration with depo excerpts. Research local rules to respond to Galloway questions re excerpts from depositions and send pertinent rules and recommendations. Email correspondence with Galloway and KAK regarding notice from clerk to add Kilkin matter to pleadings, in light of pending status of motion for consolidation. Instructions to paralegal regarding courtesy copies to chambers of underlying motion papers. Further email correspondence with Lee Shalov re case law supporting motion to strike.		
1/28/2014	GMG	1.90
Review order amending caption and email KAK and KSR re same; review amended Shalov declaration, prepare chambers copy and arrange for delivery and email KAK and KSR re unsearchable scan; organize documents in pleadings folder; prepare draft notice of appearance for KSR and email her re same		
	KAK	0.20
Review enotification re filing of amended declaration of Shalov in support of conditional certification motion; forward same to GMG and KSR with instructions to file notice of appearance; review enotification and order regarding caption to be used in consolidated actions going forward; review enotification re defendant's filing of opposition to motion to strike objections for violating Local Rules		
	KSR	2.30
Email correspondence with Brett Galloway and instructions to paralegal regarding case caption order from judge and delivery of courtesy copies and amended Shalov declaration in support of motion for conditional cert under FLSA. Follow up email. Instructions to paralegal. Email correspondence with KAK and GMG re filing formal notice of appearance. Review/analyze Apple's response to motion to strike. Email correspondence with KAK regarding necessity of reply to Apple's response to motion to strike evidentiary objections. Research.		
1/29/2014	GMG	0.80
Email/confer with KSR re Apple interim response to motion to strike; review ECF procedures re administrative motion and corrected/amended motions and confer with KSR re same		
	EIN	0.10
Review/analyze defendant's interim response to plaintiffs' motion to strike evidentiary objections Dock#120		

		<u>Hours</u>	
1/29/2014	KAK	Review and respond to email from KSR regarding opposition to motion to strike defendant's objections and next steps in response thereto	0.10
	KSR	Review/analyze Apple's interim opposition to plaintiffs' motion to strike Apple's evidentiary objections filed with its opposition to conditional class cert motion. Discussion with paralegal regarding ECF dates generated when administrative motion to strike filed. Research and discussion with KAK regarding strategy for responding to Apple's opposition. Email to Lee Shalov, etc. re recommendation to stip to noticed motion on motion to strike, to be heard with plaintiffs' class cert motion.	1.20
1/31/2014	GMG	Review meet & confer letter from Strauss and email KAK re same	0.20
	KSR	Telephone call from Lee Shalov to discuss motion to strike Apple's evidentiary objections; note to file.	0.20
2/5/2014	KSR	Discussion with GMG regarding plaintiffs' motion to strike Apple's evidentiary objections. Fact research regarding Apple's evidentiary objections. Telephone call to Lara Strauss regarding motion to strike. Draft and send email assessment to KAK and Lee Shalov regarding conversation with Strauss and effect of stipulation or no stipulation, and whether plaintiffs entitled to file reply brief. Instructions to paralegal to calendar reply brief date generated by ECF when motion filed.	1.30
2/6/2014	KSR	Review/analyze email from Lara Strauss (Defendant, Littler) requesting meet and confer on plaintiffs' request for production of Apple's database ESI responsive to plaintiffs' RFPs. Email correspondence with Lee Shalov, Brett Gallaway and KAK re meet and confer. Analyze discovery requests and other case background in preparation for call with Apple re ESI issues.	1.40
2/7/2014	GMG	Review opposition to motion to strike and email KSR and KAK re same; review order re evidentiary objections in Square 1 Bank v. Lo case and email KSR re same; check calendar and email KSR re reply date re motion to strike; finalize KSR notice of appearance and confer with KSR re same; file KSR notice of appearance via ECF	1.20
	KAK	Review correspondence between co-counsel and defense counsel regarding upcoming ESI call and correspondence with KSR re covering same; email to defense counsel re adding KSR to email string for case; review enotification re filing of opposition to motion to strike objections; review and respond to correspondence from co-counsel Shalov with comments re same; review enotification re filing of KSR notice of appearance	0.20
	EIN	Review/analyze opposition to plaintiffs motion to strike defendants evidentiary objections	0.40
	KSR	Review/analyze Apple's opposition to plaintiffs' motion to strike Apple's evidentiary objections. Review page limit violations alleged by Apple regarding plaintiffs' brief in support of motion for conditional certification. Circulate answer to KAK's email question re page limit. Research case law cited by Apple in opposition brief. Draft and circulate points for reply brief and email to Lee Shalov to coordinate drafting of reply. Calendar time for reply and begin draft of reply brief. Email correspondence with Brett Gallaway re meet and confer call with Lara Strauss on ESI discovery issues and setting up pre-call to discuss. Respond to Brett Gallaway with request for relevant meet and confer correspondence; receive and review. Calendar meet and confer call. Review/analyze meet and confer correspondence with Apple's counsel and begin drafting notes for pre-call with Gallaway and conference call with Strauss. Further email correspondence with KAK and Lee Shalov re Apple's allegations related to local rules. Review letter from Lara Strauss (Littler) regarding meet and confer on Apple's evidentiary objections. Instructions to paralegal regarding case authorities cited by Apple in opposition to plaintiffs' motion to strike Apple's evidentiary objections (re plaintiffs' FLSA motion).	4.90

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			<u>Hours</u>
2/10/2014	KSR	Email Brett Galloway regarding Thursday pre-conference call to discuss meet and confer with Apple on ESI discovery issues. Continue drafting reply in support of Plaintiffs' motion to strike Apple's separate evidentiary objections.	7.10
2/11/2014	KSR	Continue drafting reply in support of Plaintiffs' motion to strike Apple's separate evidentiary objections. Forward draft to KAK for comments.	6.20
2/12/2014	GMG	Proofread draft reply re motion to strike and email KSR re same; proofread revised reply, revise caption and circulate to co-counsel	0.90
	KAK	Review draft reply brief in support of motion to strike evidentiary objections; email to KSR with comments on same	0.10
	KSR	Email correspondence with Lee Shalov re reply brief in support of motion to strike Apple's evidentiary objections. Revise and finalize draft of reply brief; circulate draft to Lee Shalov, Lou Ginsberg, Brett Galloway, KAK for comments/edits. Review/analyze edits from Lee Shalov and revise draft of reply to add argument from Lee re Apple's focus on irrelevant standards of proof. Circulate new draft of reply brief re motion to strike Apple's evidentiary objections. Instructions to paralegal.	5.90
2/13/2014	GMG	Confer with KSR re reply re motion to strike; prepare final signed PDF and file in Northern District via ECF; prepare chambers copy and post/mail	0.80
	KAK	Conference with KSR and EIN re "meet and confer" call today on ESI protocols and possibility of hosting production on our server; review and respond to email from Kalin counsel re deposition notice served in that case	0.30
	KSR	Review and analyze plaintiffs' discovery requests and meet and confer correspondence with Apple in preparation for conference call with Apple to discuss ESI production. Telephone conference call with Brett Galloway to review ESI meet and confer correspondence and prepare for call with Apple to negotiate ESI protocol and Apple's responses to plaintiffs' RFPs. Email to Lee Shalov to confirm he will cover status conference. Email to Brett Galloway re email address for Apple to add to list in Strauss' letter that Apple will search for ESI production.	3.60
2/14/2014	GMG	Review Apple deposition notice to Kalin, calendar date and email KSR, KAK and EIN re same	0.30
	KAK	Review deposition notice directed to plaintiff Kalin and email KSR re providing copies of depositions	0.10
	KSR	Prepare for ESI meet and confer call with Apple counsel to negotiate ESI protocol and Apple's responses to plaintiffs' RFPs; participate in call; notes to file. Discussion with GMG and email correspondence with EIN re load files required to upload Apple's production to Concordance, in preparation for ESI meet and confer with Apple - Lara Strauss. Email to Brett Galloway regarding our firm hosting Concordance database of Apple's ESI productions, and required load files, in preparation for meet and confer call with Strauss.	2.20
	EIN	Review email from KSR re Apple ESI production	0.10
2/17/2014	KAK	Review and respond to correspondence from co-counsel Lee Shalov regarding coverage of argument on motion to strike improper objections at Thursday's hearing	0.10
2/18/2014	GMG	Prepare KAK hearing binder for 2/20 hearing; check time records and email KSR to confirm delivery of courtesy copies; arrange for conference room on 2/19	1.90

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		<u>Hours</u>	
2/18/2014	KAK	Review and respond to email from co-counsel Gallaway with question about delivery of courtesy copies; conference with GMG re hearing binder and materials needed for tomorrow's prep meeting	0.10
	KSR	Review Brett Gallaway's draft letter to Lara Strauss et al. following up on meet and confer call. Review notes of February 14 meet and confer call and draft section of meet and confer letter concerning format of document production by Apple. Email correspondence with KAK, Lee Shalov re arguing plaintiffs' motion to strike at hearing on plaintiffs' motion for conditional cert; respond re submitting on papers. Add redline ESI protocol section to Brett Gallaway's letter to Lara Strauss et al. Email to Brett Gallaway regarding suggestions for meet and confer letter to Strauss and separate ESI Protocol document. Email correspondence with Brett Gallaway, KAK and GMG re courtesy copies to court of reply brief re conditional class cert and motion to strike.	2.80
2/19/2014	GMG	Confer with KAK and email KSR re proposed orders; provide service and print/organize documents and cases for meeting with co-counsel; check court calendar and email KAK re other cases on docket; review Supreme Court docket for Busk v Integrity and email KAK re same	2.20
	KAK	Review and respond to co-counsel correspondence re meeting today in preparation for tomorrow's hearing; review enotification from Court re order granting administrative motion to file under seal; continued preparation for tomorrow's hearing, including review of all papers; conference with co-counsel Shalov and Ginsberg and KSR in preparation for hearing, including additional research on recent Ninth Circuit class certification decisions; careful review of additional post-Comcast and post-Leyva decisions pulled by KSR and email to co-counsel Shalov re same for use during hearing tomorrow	6.70
	KSR	Check with paralegal regarding submission of proposed orders to Judge Alsup for conditional cert motion and motion to strike. Email from Brett Gallaway with revised letter to Lara Strauss et al. and request that I add all ESI protocol provisions to letter. Draft further revisions to letter adding in ESI protocol paragraphs to govern Apple's production. Email correspondence coordinating meeting, and participate in meeting with Lee Shalov and Lou Ginsberg to prepare for hearing on motion for conditional class cert. Research post-Comcast decisions in 9th Cir. and circulate for prep for hearing. Telephone discussion with Brett Gallaway and further additions to letter to Lara Strauss to meet and confer on discovery, including ESI issues. Instructions to paralegal regarding proposed order.	9.10
2/20/2014	GMG	Confer with KAK re hearing and calendar relevant dates; review minute order, Frlekin and Kalin dockets and order setting hearing and email KAK and KSR re same; review scheduling order and confer with KSR re same	1.20
	EIN	Research caselaw supporting court's inherent powers to toll statute of limitations in FLSA cases; review order from today's hearing	0.50
	KAK	Continued preparation for hearing on FLSA conditional certification motion and case management conference; additional conferences with co-counsel and KSR regarding arguments and strategy; appear at hearing; further conference with co-counsel and KSR re arguments and strategy, including email to EIN and co-counsel Gallaway regarding case law supporting court's inherent power to toll the statute of limitations on FLSA claims; review decisions forwarded by EIN and Gallaway and conference with co-counsel regarding presenting cites during continued hearing; appear at CMC; detailed email to GMG and co-counsel confirming dates set orally during hearing; review and evaluate court's written ruling confirming most of the deadlines set during the CMC, but omitting our deadline to file supplemental brief in support of FLSA conditional certification motion; email to co-counsel re ordering hearing transcript; evaluation of next steps to be taken in case given problematic language of court's ruling	6.60

		<u>Hours</u>	
2/20/2014	KSR	Finalize revisions to ESI protocol letter to Lara Strauss and send to Brett Gallaway. Travel to and participate in hearing on motion for conditional cert. Research regarding Overton case cited by Apple and discussions with co-counsel to prepare for CMC and address further briefing on Apple's evidentiary objections, case law cited by Apple at hearing and equitable tolling, for continuation with hearing after court break. Participate in CMC hearing. Travel back to office; notes to file for supplemental brief. Discussion with KAK re hearing on FLSA motion and supplemental brief. Email correspondence with Brett Gallaway re hearing on motion for conditional cert and court-ordered/permitted supplemental briefing and defendants' motion for summary judgment on all claims. Review court's order following hearing on plaintiffs' motion for conditional cert, postponing rulings and setting schedule for Apple's summary judgment motion; email discussion with KAK regarding strategy after order. Email correspondence with KAK, Lee Shalov and Lou Ginsberg regarding ordering transcript of hearing and responding to all misrepresentations of law and evidence presented by Apple at the hearing; and further email correspondence to set up strategy call.	7.80
2/21/2014	GMG	Review and organize Apple filings of all deposition transcripts; prepare and file transcript order form via ECF; email court reporter re transcript estimate; email KAK re order re depositions of exempt Apple employees; email KAK re Kalin consolidation motion;	2.40
	KAK	Correspondence with co-counsel re next steps, need to schedule strategy call to discuss same, and ordering of hearing transcript; email to GMG re transcript and review ECF notification re filing of hearing transcript request; continued evaluation and correspondence with co-counsel re court's failure to include in his formal order the date set for our further brief in support of FLSA collective action motion; review correspondence from defense counsel re request to schedule deposition of Apple witness and email to co-counsel re putting this off until we are ready; continued evaluation of impact of judge's ruling yesterday and next steps that must be taken in case	0.70
	KSR	Email correspondence to set up strategy call and discussing supplemental brief in support of FLSA motion permitted by court. Review Apple's discovery letter brief and email discussion with KAK regarding further effort by Apple to urge stage 2 scrutiny of plaintiffs' motion for class certification. Review correspondence re schedule for Apple's 30b6 depo (Paul Benjamin). Review Law360 article regarding hearing on plaintiffs' FLSA motion and evidence cited by Apple. Review/analyze transcript of hearing in preparation for filing supplemental, court-permitted supplemental brief addressing misrepresentations of law and evidence by Apple at hearing on plaintiffs' FLSA motion.	0.50
2/22/2014	KAK	Continued evaluation of impact of court's comments and ruling and appropriate next steps; analysis of additional arguments to be made in supplemental briefing on FLSA collective action motion and make note of recent decisions on issue; review and respond to email from court reporter to confirm transcript order	0.80
2/23/2014	KAK	Continued evaluation of next steps in case; email to KSR regarding preparation of memorandum evaluating deposition testimony and declarations in preparation for drafting supplemental brief due on 3/27, as well as other components of 3/27 filing and preparation for tomorrow's strategy call; review and evaluate signed stipulation and order regarding depositions of "exempt Apple leaders"	0.60
	KSR	Email correspondence with KAK regarding analysis of evidence cited by Apple at hearing on plaintiffs' FLSA motion and depo schedule. Review court's order on stipulations related to depositions of exempt leaders.	0.30
2/24/2014	GMG	Confer with KAK re 2/20 hearing; email co-counsel re teleconference; receive transcript from 2/20 hearing and email co-counsel and KSR re same	0.60

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		<u>Hours</u>
2/24/2014	KAK	2.10
		Prepare for and participate in conference call with co-counsel and KSR regarding next steps, including brief to be filed on 3/27, discovery needed for summary judgment opposition, possible amended complaint or narrowing of claims, and other matters; began review of hearing transcript, received from court reporter today; review Supreme Court docket re status of Busk case and note that case has been relisted; email to KSR summarizing matters discussed during call
	KSR	0.70
		Prepare for call with Lee Shalov and Lou Ginsberg to discuss supplemental pleading in support of FLSA motion. Email from Lou Ginsberg regarding filing evidentiary objections and respond. Review/analyze protective order proposed and circulated by Todd Boyer for Apple. Email correspondence with KAK regarding supplemental brief, discovery and depo notices.
2/25/2014	GMG	0.20
		Review pleading file and email KSR re origin of plaintiff declarations
	EIN	0.10
		Review/analyze email from putative class member, forward same to KAK; review/analyze correspondence between co-counsel re same
	KAK	0.40
		Conference with KSR regarding matters discussed during yesterday's call and work to be done to prepare filing due on 3/27, which may include additional client declarations; review email from class member Claudia Wright re privileged matter; evaluate impact and next steps and email to co-counsel re same; review email from prospective class member and forward same to KSR for response
	KSR	8.90
		Email from Wade Wilkinson regarding pulling evidence together for supplemental brief in support of FLSA motion. Further email correspondence with Wilkinson setting up call to discuss and organizing protocol to put together evidence for supplemental filing. Discussion with KAK regarding call with Lee Shalov and Lou Ginsberg to discuss (1) preparation to oppose summary judgment, (2) supplemental brief on cases Apple cited at hearing as well as supplemental response to Apple's evidentiary objections filed in violation of the local rules and (3) supplemental response to Apple's representations regarding plaintiffs' evidence made during the FLSA motion hearing. Email from Apple employee forwarded by KAK; respond and set up time to discuss. Review/analyze blog regarding this litigation and FLSA motion hearing, apparently drafted by Apple management employee. Circulate comments. Telephone call with Wade Wilkinson to discuss preparation of supplemental filing re FLSA motion, and specific evidence in support. Review transcript of FLSA hearing and determine which points and evidence to address. Review client declaration for misrepresentations of evidence by Apple at FLSA hearing. Begin draft of supplemental brief in support of FLSA motion. Instructions to paralegal regarding hearing transcript.
2/26/2014	EIN	0.80
		Research forward client intake materials and forward to KSR; review/analyze emails re putative class member employment termination and draft response email to same class member re setting up call to discuss termination related events
	KAK	1.10
		Telephone conference with co-counsel Ginsberg re arguments to be made in brief due on 3/27, telephone conference to be conducted with class member who was just fired, responding to press coverage, and other work necessary to respond to court's comments and order; email to KSR re same and continued evaluation of next steps; email to EIN re setting up call with class member
2/27/2014	EIN	0.60
		Draft/revise email to KAK and KSR confirming call with class member; review same class member initial intake interview summary and draft follow-up questions and issues to address concerning privileged matter; circulate outlines to KAK and KSR
	KAK	0.30
		Review correspondence from unnamed class member and evaluate impact of Apple's agreement to toll the statute on the FLSA claim as well as potential Wisconsin claims of this person; email to co-counsel re same; email to KSR re response; continued preparation for tomorrow's call with prospective client

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		<u>Hours</u>
2/27/2014	KSR Set up call via email with putative class member Claudia Wright to address termination by Apple. Email correspondence with KAK regarding need for further consent forms given status of statute of limitations. Email correspondence with KAK re Wisconsin statute of limitations. Email correspondence with EIN to prepare for conference call with Claudia Wright.	0.50
2/28/2014	EIN Discuss putative class member issue with KSR; speak with same class member re details about employment and employment termination; begin drafting memo analyzing same situation	4.00
	KAK Review correspondence from co-counsel re possible Wisconsin law claims of putative class member who recently made contact with us; we will not be pursuing any Wisconsin law claims; further evaluation of statute of limitations claims under Nevada law of client and correspondence with co-counsel regarding possible need to file next month to protect these claims or seek tolling agreement from Apple; preparation for telephone conference with putative class member; review memorandum on prior call; evaluation of areas to be covered with her and email to EIN and KSR re same; correspondence to co-counsel Ginsberg to confirm that he will cover today's telephone conference with Magistrate Judge Spero	0.90
	KSR Review email from KAK to prepare for conference call with client. Telephone conference call with putative class member (and EIN) regarding privileged matter and evidence supporting plaintiffs' claims. Further discussion with EIN regarding meeting with client and evidence for plaintiffs' FLSA motion and supplemental brief to court. Review/analyze chart of state wage and hour laws from Wade Wilkinson in response to discussion of statutes of limitation. Email correspondence with KAK, Lee Shalov, et al. re Wisconsin statute of limitations and confirmation to putative class member regarding possible Wisconsin claims. Email correspondence with KAK re Nevada claims and tolling of statute. Email correspondence with KAK, Lee Shalov and Lou Ginsberg regarding scheduled teleconference with magistrate judge and proposed continuation of settlement conference. Circulate email suggestions regarding proposals to Apple to toll statutes. Continue draft of supplemental brief supporting plaintiffs' FLSA motion.	4.10
3/3/2014	KAK Review Supreme Court docket and confirm that cert. has been granted in <i>Busk v. Integrity Staffing</i> ; correspondence with co-counsel re same and next steps; review notification from court continuing settlement conference with Magistrate Judge Spero and review voice mail message from co-counsel Ginsberg re same; lengthy telephone conference with co-counsel Ginsberg and Shalov re impact of grant of cert. <i>Busk</i> and potential next steps in case, including possible request for a stay	1.90
	KSR Prepare for telephone interview with potential client regarding claims. Telephone interview with potential opt-in plaintiffs. Draft notes and discuss with Kim Kralowec. Email from KAK regarding USSC cert in <i>Busk</i> and proposed stay. Review <i>Busk</i> opinion in preparation for call with Lou Ginsberg and Lee Shalov. Telephone call with Lee Shalov and Lou Ginsberg to discuss case strategy in light of USSC granting cert in <i>Busk</i> . Further discussion with KAK re work on additional class cert filing court gave plaintiffs permission to file, and tolling of Nevada statute, to determine whether to propose stipulation to Apple on tolling. Research Nevada statute and review claims. Review notes of hearing on FLSA motion for additional filing; begin draft.	4.20
3/4/2014	KSR Continue draft of additional filing in support of FLSA motion. Legal research on Comcast and decisions following <i>Busk</i> for filing.	2.90
3/5/2014	GMG Review docket in Gauthier case and email co-counsel re granting of motion for stay	0.30
	KAK Review and respond to email from co-counsel Shalov suggesting that we proceed with asking Apple whether it intends to seek a stay pending resolution of <i>Busk</i> matter in U.S. Supreme Court; email to GMG re checking status of copycat state court action	0.20

		<u>Hours</u>
	and whether Apple's motion for a stay was granted; review email from GMG circulating docket and indicating that the stay motion was granted	
3/5/2014	KSR Review article about case circulated by Brett Gallaway. Email correspondence with Lee Shalov and KAK regarding communication with Littler about stay in light of USSC cert in Busk. Review/analyze cert order. Email correspondence with Brett Gallaway and KAK re copycat state court action and determination whether stay granted there based on Busk. Review/analyze order removing Orellana action to federal court. Review response from GMG regarding stay motion on LA Superior Court action.	0.40
3/6/2014	KSR Email from KAK regarding communication to prospective client that [PRIVILEGED], confirm telephone discussion and follow up in writing.	0.20
3/7/2014	KAK Correspondence with KSR re need to send email to potential class member confirming that [PRIVILEGED]	0.10
	KSR Research for and draft responses to evidentiary objections served by Apple relating to plaintiffs' FLSA motion.	4.60
3/9/2014	KSR Email from KAK regarding claims and respond. Draft and send email to prospective client regarding [PRIVILEGED]. Continue researching and drafting responses to Apple's evidentiary objections filed with opposition to plaintiffs' FLSA motion. Review deposition transcripts to respond to objections.	1.60
3/10/2014	KAK Review email from co-counsel Shalov to defense counsel re impact of grant of cert. in Busk; conference with KSR re status of work on supplemental brief due 3/27/14	0.20
	KSR Discussion with KAK regarding briefing of factual responses to Apple's evidence raised at hearing on plaintiffs' FLSA motion, and response to Apple's evidentiary objections. Continue drafting supplemental brief in support of plaintiffs' FLSA motion.	2.30
3/11/2014	GMG Prepare revised frame chart re Apple misrepresentations and email KSR re same	0.70
	KAK Review correspondence from plaintiffs' counsel in Kalin matter; correspondence with co-counsel re assisting in preparation for Kalin deposition next week	0.20
	KSR Discussion with KAK regarding briefing of factual responses to Apple's evidence raised at hearing on plaintiffs' FLSA motion, and response to Apple's evidentiary objections. Telephone conference call with Lou Ginsberg and Wade Wilkinson regarding supplemental briefing of evidence, responses to evidentiary objections and case authorities addressed by Apple at hearing on FLSA motion, in addition to explanations to be made in supplemental plaintiffs' declarations based on deposition testimony alleged to be conflicting with original declarations. Draft and circulate draft of supplemental brief in support of plaintiffs' FLSA motion (and addressing misrepresentations by Apple at hearing on motion). Email from Lonnie Blanchard regarding input for preparation of Kalin depo. Email correspondence with KAK regarding availability to take depo and supplying transcripts of prior plaintiffs' depositions to Blanchard for depo prep. Email to Gary Gray with instructions to reformat attachment to supplemental brief responding to Apple's evidentiary objections and responding to Apple's misrepresentations at hearing on plaintiffs' FLSA motion. Review drafts from Gary Gray and further instructions for revisions. Continue drafting attachments to supplemental brief in support of FLSA motion. Circulate to Lou Ginsberg, Wade Wilkinson et al. revised table concerning Apple's misrepresentations to the court at hearing on plaintiffs' FLSA motion.	6.20
3/12/2014	GMG Review ECF attorney list and email KSR re same; modify KSR ECF registration info and confer with KSR re same; review files and email KSR re lack of word versions of plaintiff declarations	0.40

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		<u>Hours</u>	
3/12/2014	KAK	Review and respond to correspondence from plaintiffs' counsel in Kalin re upcoming deposition of his client; conference with KSR re status of supplemental brief due on 3/27/14; review voice mail message from reporter from CBS News and correspondence with co-counsel re same; preliminary review of opinion on attorneys' fees issues and non-retroactivity of amendments to Labor Code section 218.5	0.50
	KSR	Telephone call from Paul Facey of CBS regarding request to interview client. Return call for particulars of interview and circulate email to Lee Shalov, Lou Ginsberg and KAK. Email from Lou Ginsberg re same request and reply asking for particulars of his response. Discussion with KAK regarding status of supplemental briefing and work with plaintiffs on supplemental declarations. Email to Wade Wilkinson requesting Word versions of plaintiffs' declarations in support of FLSA motion to highlight areas for supplemental declarations. Draft supplemental briefing supporting FLSA motion (responses to evidentiary objections). Email from Lee Shalov re press call to client and instructions. Follow up with Brett Galloway.	6.80
3/13/2014	KSR	Draft supplemental briefing supporting FLSA motion. Review deposition evidence contrary to Apple's contentions.	3.70
3/14/2014	EIN	Review/analyze client intake memo and deposition for exact employment dates per location; draft email to KAK re same	0.60
	KAK	Telephone conference with co-counsel Ginsberg re possible approaches to case going forward and immediate next steps in light of impending deadlines and grant of cert. in <i>Busk</i> , as well as statute issue; email to EIN re confirming dates of employment; conference with EIN re same and email to co-counsel; correspondence and telephone conference with client re same; draft email confirming that [PRIVILEGED]; email correspondence with KSR and co-counsel regarding coverage of Kalin deposition next week; email correspondence to co-counsel regarding recent relevant decision; conference with KSR regarding options discussed with co-counsel Ginsberg and next steps, including requesting that Apple agree to stay; evaluation of need to bring Kalin matter into these discussions; email to co-counsel Ginsberg and Shalov re same	2.30
	KSR	Email from Lee Shalov to cover Kalin deposition. Email correspondence with KAK and Brett Galloway to ensure transcripts of prior plaintiff depositions sent to Blanchard. Email to Blanchard requesting depo notice for Kalin depo. Draft supplemental briefing supporting FLSA motion (responses to evidentiary objections). Email correspondence with KAK re supplemental briefing for FLSA motion. Draft supplemental briefing supporting FLSA motion (responses to evidentiary objections). Further email correspondence with KAK re strategy for Kalin depo and proposed discussion with Blanchard to prepare. Review KAK notes of call with Lou Ginsberg regarding case strategy going forward. Email from Lonnie Blanchard re Kalin depo; call Blanchard per request, left message. Discuss with KAK call with Blanchard and discuss strategy proposals regarding stay of proceedings pending review in <i>Busk</i> . Review/analyze <i>Busk</i> and draft memo to KAK with language in <i>Busk</i> holding that Portal-to-Portal Act precludes compensation for activities Apple argued were analogous in Disney case cited at hearing on plaintiffs' FLSA motion. Email memo to KAK and email discussion re including it in motion for stay while <i>Busk</i> pending, if Apple won't stip. Email correspondence with KAK regarding conversation with client and Apple's allegations regarding his employment history in retaliation for action; further discussion regarding client declaration. Continue reviewing deposition testimony for responses to Apple's evidentiary objections.	7.50
3/17/2014	KAK	Telephone conference with co-counsel Ginsberg regarding next steps; correspondence to schedule strategy call with Kalin counsel	0.30

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		<u>Hours</u>
3/17/2014	KSR Email from Lou Ginsberg on California standard more liberal than Busk standard under FLSA. Review Busk standard and California authorities with respect to potential request for stay.	0.70
3/18/2014	KAK Review email from co-counsel Ginsberg circulating sample briefing on merits of claim under California law	0.10
3/19/2014	GMG Review Gauthier docket, check for available documents and email co-counsel re same; email Gauthier complaint and docket to Kalin counsel	0.40
	KAK Prepare for and participate in strategy call with co-counsel and Kalin counsel; review correspondence from defense counsel re stay proposal; follow-up correspondence to co-counsel and Kalin counsel re drafting of motion to stay	1.20
	KSR Review email correspondence from Lara Strauss regarding plaintiffs' inquiry re staying litigation in light of Busk. Email correspondence with Lee Shalov, Lonnie Blanchard, KAK etc. re motion to stay litigation based on USSC granting petition in Busk and divide work on motion for stay and 3/27 supplemental brief in support of FLSA motion. Further email correspondence with KAK re strategy for discussion with Apple counsel on stay proposal. Email correspondence with KAK, Lee Shalov and Lou Ginsberg re March 27 supplemental FLSA filing and motion for stay. Email from Lee Shalov regarding drafting stay motion. Continue research for and draft of plaintiffs' supplemental FLSA filing.	3.50
3/20/2014	KAK Follow-up correspondence to co-counsel re requesting stipulation to stay case pending resolution of Busk; follow-up email to co-counsel re new decision on two-way fee shifting under Labor Code section 218.5	0.20
	KSR Email from Lou Ginsberg to coordinate call to discuss status of draft supplemental brief in support of plaintiffs' FLSA motion (to address Apple's misrepresentations to the court). Email correspondence with KAK and Kalin attorneys re stays granted in any other actions pending decision in Busk, and drafting motion to stay pending Busk. Continue drafts of plaintiffs' responses to Apple's evidentiary objections and supplemental brief in support of FLSA motion.	3.50
3/21/2014	KAK Review report from co-counsel regarding status of completion of components of supplemental filing due next week re FLSA motion, as well as assignment of tasks; review email from Kalin counsel circulating materials obtained regarding Apple's stay motion filed in state court action	0.10
	KSR Complete notations to draft Exhibit B to plaintiffs' responses to Apple's evidentiary objections, indicating where plaintiffs may require supplemental declarations to address Apple's alleged discrepancies in plaintiffs' testimony; and circulate. Email to Lou Ginsberg, Wade Wilkinson and Brett Gallaway pre-call to re Comcast section for supplemental brief and section addressing case law cited by Apple and status of Busk case. Telephone call with Lou Ginsberg, Brett Gallaway and Wade Wilkinson to discuss status of supplemental filing supporting FLSA motion, including evidence addressing all of Apple's evidentiary objections. Email from Lou Ginsberg re Overton case cited by Apple at hearing on FLSA motion; research Overton and distinguishing cases and draft and circulate analysis of Busk decision regarding travel to work related to Overton decision, and well as discussion of Overton and distinguishing cases. Continue research for and drafting of full Exhibit B addressing Apple's evidentiary objections to evidence presented with plaintiffs' FLSA motion, including researching and distinguishing case authorities and researching and discussing alleged discrepancies in evidence. Email correspondence with Lou Ginsberg and Wade Wilkinson re supplemental FLSA filing and preparation of supplemental plaintiff declarations. Email from KAK re report on call to address supplemental FLSA filing. Email from Lou Ginsberg following up on call to assign drafts for supplemental FLSA	6.90

		<u>Hours</u>
	<p>filing on March 27. Review/analyze stay motion documents from Gauthier case circulated by Lonnie Blanchard, to support plaintiffs' motion for stay.</p>	
3/22/2014	KSR Continue drafting supplemental FLSA filing. Email to Wade Wilkinson re plaintiffs' declarations and deposition transcripts in connection with supplemental FLSA filing. Follow up email correspondence with Wilkinson.	3.30
3/24/2014	GMG Review plaintiff declarations received from Wilkinson, organize on network and email KAK and KSR re same	0.20
	KAK Telephone conference with co-counsel Ginsberg re Apple's refusal to agree to a stay pending resolution of Busk, arguments to be made in formal stay motion, and proposed supplemental declarations of class members as part of supplemental filing due Thursday; review draft of motion to stay and email to co-counsel Shalov re same; review enotification re filing today of stay motion; began drafting insert regarding Comcast, including legal research on post-Comcast decisions within the Ninth Circuit recognizing continued vitality of rule that individualized damages questions do not defeat class certification; review draft of insert on Busk and Disney decisions; email to co-counsel re revisions needed; began analysis of revisions needed; conference with KSR re status of project, including client declarations, and tasks needed for completion of all parts of filing; review edited draft of declaration of client Frlekin as revised by KSR and email to KSR re same	3.30
	KSR Continue drafting supplemental FLSA filing. Draft edits to supplemental declaration and discuss with KAK. Email requests to Wade Wilkinson and Matthew Cohen re plaintiff declarations for supplemental FLSA filing. Email correspondence with KAK and Louis Ginsberg regarding plaintiffs' terminology in original declarations and need for supplemental declarations consistent with explanations of terminology in depositions, to counter Apple's misrepresentations at hearing on plaintiffs' FLSA motion. Review/analyze draft supplemental declaration of client circulated by Wade Wilkinson; follow up email correspondence with KAK and Lou Ginsberg. Draft and circulate edits to supplemental declaration in support of supplemental brief in support of FLSA filing. Email correspondence with KAK regarding supplemental Frlekin declaration. Email to Wade Wilkinson to check client depo transcript re separate bag and technology checks to verify statements from client for her supplemental declaration. Forward research regarding Overturn, Busk and Cervantez cases to KAK for review. Draft suggested edits to client declaration to correct declaration per her statement that searches by managers vs. security guards. Further email correspondence on subject of tech vs. bag checks undergone by client, to ensure correctness of supplemental declaration. Review/analyze depo transcript to ensure consistent with supplemental declaration in support of plaintiffs' FLSA motion.	11.10
3/25/2014	GMG Prepare draft Shalov declaration and email KAK re same	0.90
	KAK Review and evaluate drafts of supplemental declarations of clients, to be filed as part of supplemental filing this week; draft revisions based on review of prior declarations and deposition testimony, and circulate; email to co-counsel Wilkinson and Cohen regarding additional revisions needed; prepare for and participate in co-counsel strategy calls to discuss status of components of filing and supporting declarations, as well as advisability of filing these declarations; review and revise draft of Shalov declaration attaching supporting evidence and other materials; review lengthy email from defense counsel unnecessarily detailing all the various reasons why they refuse to extend the supplemental brief filing deadline this week; telephone call from reporter regarding stay motion filed yesterday and declined comment; email to co-counsel re same; email to plaintiffs' counsel in Kalin matter requesting further assistance respecting stay motion; review inadequate response of Kalin counsel; proceed to do this work myself; analysis of rules and procedures for motion for an order shortening time; conference with GMG re filing logistics; draft detailed email to co-counsel Shalov	7.10

re these procedures; continued work drafting section of brief on *Comcast* and class certification

3/25/2014	KSR	Continue drafting supplemental FLSA filing. Draft edits to supplemental declarations. Telephone conference with Lee Shalov and KAK to discuss motion to stay and supplemental FLSA motion declarations. Telephone conference with Lou Ginsberg and Wade Wilkinson to discuss draft supplemental brief re FLSA motion and draft declarations. Telephone conference with Lou Ginsberg, Lee Shalov, KAK to further discuss strategy re submitting supplemental declarations. Continue drafting Exhibit B to supplemental FLSA Motion brief - response to Apple's evidentiary objections. Email from Matt Cohen re supplemental declaration and respond with Exhibit B table. Circulate draft of supplemental brief to address Apple's misrepresentations at hearing on plaintiffs' FLSA motion, with section assignments for each firm. Attach chart response to Apple's evidentiary objections. Draft and edit revisions to draft brief and re-circulate. Email from Wade Wilkinson with draft declaration of plaintiff to support plaintiffs' supplemental FLSA brief. Draft and circulate edits to supplemental declaration. Email from Lou Ginsberg regarding order of arguments in brief given motion to stay. Email from Lee Shalov regarding draft supplemental declaration; respond. Further email correspondence with Lou Ginsberg, KAK and Lee Shalov regarding necessity of filing supplemental declarations with FLSA motion. Draft revisions to chart responding to Apple's evidentiary objections, and circulate. Email from Matthew Cohen with draft of supplemental declaration. Email to Cohen to ensure it addresses depo testimony cited in exhibit chart responding to Apple's evidentiary objections. Email from Matthew Cohen with draft supplemental declaration and questions regarding inclusion in response chart.	13.80
	KSR	Further email correspondence with Cohen and KAK re necessity of supplemental declaration to support supplemental FLSA motion. Further email correspondence with KAK, Lee Shalov and Lou Ginsberg regarding deposition testimony and supplemental declarations. Draft and circulate redline version of supplemental declaration in support of supplemental FLSA brief. Draft and circulate edits to plaintiff supplemental declaration consistent with depo testimony and to address alleged inconsistencies misrepresented by Apple to the court. Review KAK draft redline. Draft further edits to supplemental declaration and circulate. Draft edits to response to Apple's evidentiary objections to evidence presented in support of plaintiffs' FLSA motion, circulate.	2.40
3/26/2014	GMG	Reformat plaintiff declarations and email co-counsel re same; emails to co-counsel re Frlekin and Speicher transcripts; prepare underlined deposition excerpts for plaintiffs Beltzer, Dowling, Fisher, Frlekin, Pelle and Speicher for use with Shalov declaration; revise declarations and email co-counsel re same; emails to co-counsel re Jordan, Monkowski and Bonnett transcripts and exhibits; review <i>Murphy v. CVS</i> docket and email KAK re same; revise declaration; email Fisher declaration to Cohen	5.60
	KAK	Prepare for and participate in telephone conference with co-counsel and KSR re status of components of filing due tomorrow, including client declarations, inserts for brief, and other matters; follow-up correspondence to co-counsel Shalov re status of motion for order shortening time to hear stay motion; review draft declaration of Shalov in support of this motion and email to Shalov with substantive comments; review and respond to email from Shalov regarding procedural question re this filing and need to contact court clerk; review notification re filing of motion for order shortening time; review notification and order already denying our motion to stay before any opposition was filed and co-counsel correspondence re same; email to GMG re additional materials to be filed as exhibits to Shalov declaration; continued work drafting insert on <i>Comcast</i> and class certification issues, including legal research, and circulate same to co-counsel for review and comment; review and evaluate insert prepared by co-counsel on <i>Disney</i> and <i>Busk</i> cases; draft significant revisions to insert, incorporate into <i>Comcast</i> insert, and circulate to co-counsel	12.30

		<u>Hours</u>
3/26/2014	EIN Review/analyze motion to stay	0.30
KSR	Continue drafting supplemental FLSA filing. Email to team to coordinate formatting of supplemental declarations. Draft edits to supplemental declarations with comments. Draft further edits to declarations and instructions to paralegal. Telephone conference with Lou Ginsberg and KAK to discuss motion to stay and supplemental FLSA motion declarations. Telephone conference with Wade Wilkinson to discuss supplemental declarations. Review motion to shorten time for motion to stay actions, circulated by Lee Shalov; draft edits and circulate. Continue drafting Exhibit B to supplemental FLSA Motion brief - response to Apple's evidentiary objections. Review draft of argument circulated by Lou Ginsberg addressing cases Apple cited at FLSA hearing, including Disney (Overton) as well as Cervantez case distinguishing Overton. Review and comment on KAK comments to motion to stay re strategy. Coordinate reformatting declarations and client review and signatures. Instructions to paralegal to pull relevant pages of plaintiffs' deposition transcripts cited in brief and response to evidentiary objections, to attach to Shalov declaration. Draft edits to and circulate supplemental declaration. Review/analyze and draft edits to motion to shorten time to file motion for stay, circulated by Shalov; circulate edits. Email from Matthew Cohen re edits to supplemental declaration. Email to Cohen and Lou Ginsberg regarding section of brief addressing Apple's misrepresentations to court at FLSA hearing. Review/analyze KAK comments re Apple's refusal to stip to motion to stay. Circulate further comments on strategy of motion to stay. Email correspondence with Matt Cohen regarding supplemental declaration. Review/analyze court's denial of motion for stay and comments from KAK. Review KAK email regarding discovery required in response to motion for summary judgment ordered by court.	14.80
KSR	Draft and circulate edits/corrections to supplemental Fisher declaration in support of plaintiffs' FLSA motion. Email to Lee Shalov to address last three of Apple's evidentiary objections. Draft and circulate revised version of plaintiffs' responses to Apple's evidentiary objections with cites to depo testimony and supplemental declarations. Email from Lou Ginsberg regarding court's ruling on motion for stay. Email to KAK and Lou Ginsberg regarding sections of draft supplemental brief re FLSA motions and case strategy. Email correspondence with KAK regarding draft of section of supplemental brief addressing Apple's misrepresentations at hearing on plaintiffs' FLSA motion. Email coordination with Shalov and KAK coordinating signatures on supplemental declarations and completion of brief.	5.70
3/27/2014	GMG Prepare signed plaintiff declarations and emails to co-counsel re same; revise exhibit A to brief and email KAK and KSR re same; proofread brief, check cites and quotes and draft table of authorities; prepare underlined deposition testimony for Shalov declaration exhibits and fix cites in brief and exhibit; prepare PDF of Shalov declaration exhibits and email KAK re same; revise exhibits per KAK instructions; prepare final PDFs of brief and Shalov declaration with exhibits; file in Northern District via ECF.	9.90
KAK	Email to Kalin counsel to advise them of yesterday's order denying motion to stay; continued work drafting supplemental brief in support of FLSA certification motion; conferences with KSR and GMG re various aspects of filing; review final declarations of all clients and correspondence with co-counsel re same; review and edit draft of supporting Shalov declaration; review and edit exhibits to supporting Shalov declaration; review and edit draft of Exhibit A to brief (list of responses to evidentiary objections); telephone conference with co-counsel Shalov re today's filing; conference with GMG re finalization of brief with Exhibit A and supporting declaration and completion of filing today	10.20
KSR	Email from KAK with revised insert regarding Comcast and revisions to section on Disney and Busk cases, for supplemental brief supporting plaintiffs' FLSA motion. Continue to draft section addressing Apple's misrepresentations to the court on plaintiffs' FLSA motion. Circulate new draft. Email from Lee Shalov regarding Apple's	9.70

evidentiary objections to plaintiffs' cite to website postings and email based on Parkinson and Heffelfinger. Circulate email regarding edit to supplemental declaration. Email coordination with KAK on additional sections to draft supplemental brief in support of plaintiffs' FLSA motion. Email discussion with KAK regarding necessity of separate objections to Apple's objections, despite local rules, matching Apple's submission. Email coordination with KAK re revisions to legal arguments regarding plaintiffs' time estimates for security checks. Email coordination with Wade Wilkinson re adding evidence cites to supplemental FLSA brief. Email discussion with KAK and Lou Ginsberg re USSC Sandifer decision and other cases cited by Apple at hearing on FLSA motion. Email request from Wade Wilkinson for current draft of response to Apple's evidentiary objections; circulate. Instructions to paralegal re brief formatting. Further email correspondence with Wilkinson regarding review of declarations and depositions to ensure accuracy of supplemental declarations. Email correspondence with KAK re coordinating filing of supplemental FLSA brief and supporting supplemental declarations. Review draft of Shalov declaration supporting supplemental FLSA brief, circulated by Gary Gray. Instructions to paralegal to add language to plaintiffs' response to Apple's evidentiary objections regarding website postings. Instructions to paralegal regarding cites to responses to evidentiary objections re tech card from client's deposition. Review cites to evidence from Wilkinson to add to supplemental FLSA brief.

3/27/2014	KSR	Email discussion with KAK re cites regarding t-shirt testimony. Coordinate with KAK re revisions to introduction. Draft edits to supplemental brief. Instructions to paralegal re checking cites to evidence. Per KAK, review and draft edits to supplemental declaration consistent with depo testimony. Instructions to paralegal regarding search for specific evidence in depo testimony for cites. Draft and circulate final draft of Exhibit A to supplemental FLSA brief - Plaintiffs' responses to Apple's evidentiary objections. Work with KAK on final organization and edits to brief. Instructions to paralegal Gary Gray re further evidentiary cites to add to brief. Review citations from Wilkinson to add to brief and incorporate. Email from KAK re cite for brief and response. Email discussion with KAK re further edits to brief.	5.80
3/28/2014	GMG	Review filed supplemental brief and Shalov declaration; prepare chambers copy, arrange for delivery to judge and confer with KAK re same	0.90
	KAK	Review and respond to correspondence from co-counsel Shalov re yesterday's filing and forward same to KSR and GMG; re-check final brief filed yesterday; conference with GMG re delivery of courtesy copies today; review and approve hard courtesy copies to be delivered to judge; review correspondence from co-counsel Shalov to defense counsel re deposition scheduling	0.40
	EIN	Review/analyze Supplemental Brief re Amended Motion to certify class	0.70
	KSR	Email correspondence with KAK and Lee Shalov regarding supplemental FLSA brief and next steps.	0.30
4/1/2014	KAK	Review enotification and order by Judge Alsup directing Apple's counsel to "explain why a distorted description of plaintiffs' declarations and deposition testimony was presented to the Court"; email to KSR and co-counsel Shalov re same; review email from defense counsel regarding deposition scheduling and serving amended initial disclosures	0.30
	KSR	Review/analyze judge's order for Apple to respond to plaintiffs' supplemental filing in support of FLSA motion (conditional cert) and address plaintiffs' claims of evidence misrepresented to the court. Email correspondence with Lee Shalov and KAK re court's ruling and double-checking evidence citations prior to Apple's response. Email from Todd Boyer in request to dates for 30(b)(6) depo. Review/analyze Apple's first amended initial disclosures. Review/confirm evidence citations in supplemental brief.	1.60

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			<u>Hours</u>
4/2/2014	KSR	Continue to check and confirm all evidence cited in supplemental brief re Plaintiffs' FLSA motion, per judge's order for Apple to respond to it.	1.50
4/7/2014	KAK	Call from reporter from Daily Journal re stay and declined to comment on the record; review email from co-counsel Ginsberg re argument to be made in opposition to anticipated summary judgment motion	0.20
	KSR	Email from Todd Boyer with dates for Apple 30(b)(6). Email from Lee Shalov regarding April 29 date for Apple 30(b)(6) as tentative date pending ruling on Apple's motion for summary judgment. Email from Todd Boyer re holding April 29 date for Apple 30(b)(6) requested by plaintiffs. Email from Lou Ginsberg re opposition to summary judgment; review memo forwarded by Lou.	0.70
4/8/2014	KSR	Instructions to paralegal to check cites in supplemental brief in support of FLSA motion, to which Apple will respond per order of Judge Alsup. Forward last cites from Wade Wilkinson via email for review. Further instructions to paralegal related to court's order.	0.40
	GMG	Check cites and quotes in supplemental brief re conditional certification and confer with KSR re same	0.30
4/10/2014	EIN	Review/analyze Apple's motion for summary judgment	0.60
	KSR	Review/analyze Apple's motion for summary judgment and compare evidence with citations in plaintiffs' supplemental brief re FLSA motion. Discuss and instructions to paralegal to check Apple's citations to new evidence for plaintiffs' opposition to MSJ.	0.40
4/11/2014	KAK	Review and respond to email from co-counsel Shalov re scheduling a conference call to defendants' summary judgment motion, served yesterday; conference with KSR regarding same, including allocation of work necessary to complete the opposition and whether to renew the stay motion; call to Shalov and left message; email to KSR re following up with Shalov next week	0.40
	KSR	Discussion with KAK re Apple's MSJ. Email from KAK re call to Lee Shalov re dividing responsibilities for opposing MSJ and strategy; respond. Email request from KAK to call Shalov regarding division of labor on opposition to Apple's motion for summary judgment, and renewing stay motion.	0.30
4/14/2014	GMG	Confer with KSR re case status and theory, and record citation verification project	0.50
	KSR	Telephone call to Lee Shalov re opposing Apple's MSJ, leave message and send email request to discuss. Email response from Shalov re will return call next day. Email from Todd Boyer regarding scheduling Apple's 30(b)(6) depo and response from Lee Shalov.	0.30
4/15/2014	GMG	Review record cites submitted by Wilkinson for supplemental brief, check against brief and deposition testimony and email KSR re same	1.20
	KSR	Email to Lee Shalov regarding coordinating filing of opposition to Apple's motion for summary judgment, and paralegal coverage on date due. Email request from Lee Shalov for conference call to discuss opposition brief. Review Apple's MSJ to prepare for call with Lee Shalov and Lou Ginsberg to discuss preparation of opposition brief; discussion of continuous workday doctrine, etc. Conference call with Lee and Lou; further discussion with Lou regarding substantive response, follow up email to Lee Shalov and notes to file. Review request from Lee Shalov to Apple's counsel regarding additional time to respond to MSJ and confirming date for Apple 30(b)(6) depo. Email from Lou Ginsberg with name of NY store manager deposed. Discussion with GMG regarding checking additional cites to evidence in plaintiffs' supplemental FLSA filing to address Apple's response to that filing in opposition to	2.80

		<u>Hours</u>
	Apple's MSJ. Email response from GMG regarding citations in plaintiffs' brief and confirmation of citations.	
4/16/2014	KSR Email and telephone call from Lee Shalov re opposition to Apple's MSJ. Discussion with paralegal regarding requirements for opposition to MSJ and filing schedule, request for additional days from Apple.	0.40
4/17/2014	GMG Email Shalov re 3/27 supplemental brief and declaration	0.10
	EIN Finish revising memo re putative class member's employment termination from Apple following opt-in, and circulate to KAK and KSR	2.50
	KSR Email from Todd Boyer (Littler) regarding date for 30b6 depo on payroll, timekeeping and overtime policies in U.S. (Paul Benjamin) and refusal to agree to extension for plaintiffs' opp to Apple's MSJ. Calendar depo date. Instructions to paralegal. Email correspondence with Lee Shalov and Lou Ginsberg to coordinate on drafting and filing opposition brief. Email confirmation from Lonnie Blanchard re Apple 30(b)(6) depo date. Begin draft of brief in opposition to Apple's MSJ.	2.50
4/18/2014	KSR Email from Todd Boyer (Littler) regarding date for 30b6 depo on payroll, timekeeping and overtime policies in U.S. (Paul Benjamin) and refusal to agree to extension for plaintiffs' opp to Apple's MSJ. Calendar. Email correspondence with Lee Shalov and Lou Ginsberg to coordinate on drafting opposition brief. Review ESI meet and confer correspondence. Email correspondence with Brett Gallaway to see whether Apple has responded to plaintiffs' proposals for production of Apple's responsive ESI; response from Gallaway and set up call to discuss and force response from Apple.	1.40
4/21/2014	KAK Review correspondence between co-counsel and defense counsel re upcoming depositions and other matters related to opposing the summary judgment motion; follow-up correspondence with co-counsel about filing renewed request for stay pending resolution of <i>Busk</i> ; review and respond to email correspondence regarding [PRIVILEGED]	0.40
	KSR Email correspondence with Lee Shalov, Lou Ginsberg and KAK to further coordinate on drafting opposition brief. Draft section of opposition brief. Review evidence relating to Apple's contention re lockers. Email from Brett Gallaway following up on request for call to discuss pending discovery requests re Apple's ESI. Email correspondence with KAK and Lee Shalov regarding tolling agreement on Nevada claims not necessary. Email discussion with KAK, Shalov and Ginsberg re renewal of motion for stay; response from Ginsberg.	2.30
4/22/2014	GMG Transmit Kalin deposition transcript and exhibits to Cohen	0.20
	KAK Review and respond to correspondence from co-counsel requesting copies of deposition transcripts; conference with KSR re strategy for renewed stay motion	0.20
	KSR Draft sections of brief in opposition to Apple's motion for summary judgment, addressing Apple's response re its misrepresentations of evidence Court ordered Apple to address in Court's April 1 Order. Discussion with KAK regarding strategy on motion to stay pending USSC decision in <i>Busk</i> . Email correspondence with Lee Shalov and Lou Ginsberg re statement of facts for opposition to MSJ. Email recommendation to KAK, Shalov, Ginsberg to wait until after ruling on Apple's MSJ to renew motion to stay, with mention in opposition brief. Email from Matt Cohen requesting plaintiff depo transcripts. Email from Lou Ginsberg re progress on de minimis section of brief in opposition to Apple's MSJ.	3.20
4/23/2014	KAK Review court's order denying prior stay motion without prejudice and evaluate co-counsel recommendations that we revisit possible stay motion until after pending summary judgment motion is fully briefed; preliminary review of defendants' summary	0.30

		<u>Hours</u>
	judgment motion and evaluation of correspondence between co-counsel and KSR re division of labor necessary to prepare opposition due next week	
4/23/2014	KSR Draft sections of brief in opposition to Apple's motion for summary judgment, addressing Apple's response re its misrepresentations of evidence Court ordered Apple to address in Court's April 1 Order.	3.60
4/24/2014	KAK Review enotification and application for extension of time to file opposition to motion for summary judgment; review enotification re court's order granting same; conference with KSR re same; conference with KSR re status of opposition and arguments to be made therein, including issue of whether motion is directed to named plaintiffs, all opt-ins or the putative class, and impact of simultaneous motion in related <i>Kalin</i> matter	0.30
	KSR Draft sections of brief in opposition to Apple's motion for summary judgment, addressing Apple's response re its misrepresentations of evidence Court ordered Apple to address in Court's April 1 Order. Review Shalov's motion for extension of time to file opposition to Apple's MSJ. Review order granting extension of time to file opposition to Apple's MSJ and discuss opposition brief with KAK. Email from Matt Cohen with transcript of Kalin deposition; review transcript of Kalin depo for opposition to Apple's motion for summary judgment and issues for discussion with client. Email from Matt Cohen re whether Apple's MSA concerns only plaintiffs or also opt-ins; respond. Email to Lee Shalov, Matt Cohen et al. re plaintiffs or also opt-ins addressed, need for declaration from client and coordinating filing of opposition brief.	4.10
4/25/2014	GMG Review docket and summary judgment motion in Kalin case and email KSR re same	0.30
	KAK Review correspondence from co-counsel regarding scope of summary judgment motion and possible need for client declarations; email to KSR re interfacing with opt-in plaintiff to obtain further declaration; review and respond to correspondence with co-counsel and KSR regarding how to deal with evidence and argument related to plaintiff Kalin, who is not a plaintiff in our case	0.40
	KSR Email response from Lou Ginsberg re add analysis on opt-ins regardless, and whether Wright declaration required. Email correspondence with KAK regarding contacting client for declaration. Draft sections of brief in opposition to Apple's motion for summary judgment, addressing Apple's response re its misrepresentations of evidence Court ordered Apple to address in Court's April 1 Order. Further email coordination with Lou Ginsberg and KAK re declaration for client. Email correspondence with Lou Ginsberg et al. re whether Apple included Kalin action in MSJ. Instructions to paralegal. Review de minimis section of opposition brief circulated by Lou Ginsberg. Email from Matt Cohen regarding plaintiffs' time estimates for bag and tech checks based on depo testimony, and how to address Kalin time estimates. Email from GMG re Apple's MSJ and dates to calendar in Kalin action. Email to Matt Cohen, Brett Gallaway, et al. regarding time estimates from Kalin and off-site breakroom in San Francisco store; responses from KAK and Matt Cohen. Further discussion with KAK and Matt Cohen re leaving out any discussion of Kalin in our brief in Frlekin action. Email from Ginsberg regarding separate opposition in Kalin action; email discussion with KAK. Email from Matt Cohen with draft sections of opposition to MSJ addressing Apple's de minimis time arguments and exhibits to Shalov declaration in support.	3.70
4/26/2014	KSR Draft section of brief in opposition to Apple's MSJ with reply to Apple's response to plaintiffs' supplemental brief on FLSA motion. Review de minimis section and draft edits.	1.70
4/27/2014	KSR Draft section of Opp to Apple's MSJ addressing reply to Apple's response to plaintiff's supplemental FLSA filing on Apple's misrepresentations to the court. Check all evidence cites.	2.80

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		<u>Hours</u>	
4/28/2014	KAK	Follow-up correspondence with co-counsel re coverage of PMK deposition scheduled for tomorrow in San Jose	0.10
	KSR	Draft sections of brief in opposition to Apple's motion for summary judgment, addressing Apple's response re its misrepresentations of evidence Court ordered Apple to address in Court's April 1 Order. Email coordination with Lou Ginsberg and KAK re declaration for client. Email discussion with KAK regarding covering Kalin deposition. Email correspondence with Lou Ginsberg et al. re whether Apple included Kalin action in MSJ. Instructions to paralegal.	7.90
4/29/2014	EIN	Review/analyze and respond to email from KSR re new client declaration; email class member to set up call; review/analyze other class member declarations and memos of client's statements and meet with KSR to prep for call; confer with class member to go over additional employment details that relate to the case and to the summary judgment opposition; review same class member's previous declaration filed in support of the FLSA certification motion; begin drafting Supplemental Declaration in support of summary judgment opposition motion	5.80
	KAK	Preliminary review of draft of legal argument section of summary judgment opposition, due next week; email to co-counsel re same	0.20
	KSR	Draft section of Opp to Apple's MSJ addressing reply to Apple's response to plaintiff's supplemental FLSA filing on Apple's misrepresentations to the court. Circulate draft. Email correspondence with EIN re need for declaration from opt-in plaintiff for opposition to MSJ. Summarize evidence raised by plaintiff in conference and instructions to EIN to draft declaration on particular points, to support opposition to Apple's MSJ. Email correspondence with Matt Cohen and Wade Wilkinson regarding sections of opposition brief. Email to Lou Ginsberg regarding whether draft prepared of client declaration, to prepare for conference call with client; response from Ginsberg regarding information in draft de minimis section of brief. Email to EIN regarding need for client declaration to be filed with opposition to Apple's MSJ, with issues to address. Response from EIN regarding setting up call with client, and forwarding interview notes. Pre-meeting with EIN to prepare for call with client. Participate in telephone conference with client. Email correspondence with Matt Cohen and Brett Gallaway regarding summary of time estimates and chart to address. Telephone interview with client to prepare her supplemental declaration in support of plaintiffs' opposition to Apple's MSJ. Email to KAK regarding useful facts from client to support plaintiff's opp brief (and information regarding discrimination claim). Review and revise EIN draft of supplemental declaration of client. Feedback from KAK on additional points to add to declaration from interview with client.	5.50
4/30/2014	GMG	Review, proofread and reformat Shalov sections of summary judgment opposition brief; combine with KSR sections, revise formatting and email KSR re same; email KSR re draft Wright declaration	1.20
	EIN	Finish drafting Supplemental Declaration and forward to KAK and KSR; correspond with KSR and KA and revise/edit accordingly	4.70
	KAK	Review email from Kalin counsel summarizing useful points gained from PMK deposition this week and forward same to KSR; review draft of supplemental declaration to be prepared in support of summary judgment opposition due 5/2/14 and email to EIN and KSR re same; conference with KSR re same	0.30
	KSR	Email to Lee Shalov re evidence from opt-in plaintiff's declaration. Email correspondence and telephone call with Lee Shalov to discuss coordination of brief in opposition to Apple's MSJ. Instructions to paralegal regarding brief format. Review chart circulated by Shalov regarding plaintiffs' time estimate for security checks. Review and draft edits to chart for opposition brief with duration of security checks and wages uncompensated; circulate. Review draft of supplemental declaration of client drafted by EIN; draft edits to declaration and circulate. Instructions to Shalov,	5.90

Cohen, Gallaway, Wilkinson to extract time estimates for chart from original declaration. Finalize supplemental declaration draft to send to client for approval and signature. Email from Lee Shalov with draft of opposition brief and request to edit and re-format. Instructions to paralegal re reformatting. Instructions to paralegal to retrieve draft of declaration lost in power outage, review and correct.

5/1/2014	EIN	Correspond with KSR re redline and additional edits to declaration; continue revising and reformatting same; forward final to class member	4.30
	KAK	Review correspondence from co-counsel Shalov regarding summary judgment opposition and work to be completed and response of KSR thereto; review email notification re transcript of PMQ deposition taken by Kalin counsel and forward same to GMG	0.10
	KSR	Revise and compile all sections of opp to Apple's MSJ and circulate for further team revisions. Email to Lee Shalov with evidence from opt-in plaintiff's declaration. Draft edits to supplemental declaration of client and forward to EIN. Coordination with EIN on final version of client declaration. Email correspondence and telephone call with Lee Shalov and KAK to discuss coordination of brief in opposition to Apple's MSJ. Instructions to paralegal regarding brief format. Review and draft edits to chart for opposition brief with duration of security checks and wages uncompensated; circulate. Review draft of supplemental declaration drafted by EIN; draft edits to declaration and circulate. Review current draft of brief in opposition to Apple's MSJ and draft and circulate edits. Email discussion with EIN re original declaration of client. Review original declaration and signature, discuss issue with EIN and request forward to client for review. Email to Lee Shalov with comments on draft brief and issue with client original declaration. Email from Brett Gallaway regarding further edits to brief and additional cites to evidence. Email from KAK regarding coordination of brief. Email correspondence with Brett Gallaway re edits to brief and mid-day court-ordered filing deadline. Email from Matt Cohen regarding time estimates in depo transcript for estimates chart in brief.	4.40
5/2/2014	EIN	Draft/revise declaration to include additional fact; forward new version to class member for approval along with her original declaration for reference; email same class member re opening zip file; review and respond to further email from class member re [PRIVILEGED]	2.40
	KSR	Draft edits to brief in opposition to Apple's MSJ. Email from Wade Wilkinson regarding edits and formatting to brief. Email coordination with Wade Wilkinson regarding cites to additional declarations for Shalov declaration, and inclusion of supplemental declaration of client. Email to EIN regarding text in brief supported by client supplemental declaration based on client interview, for review with client. Draft further edits to brief and coordinate with Wilkinson. Review new drafts of revised original and supplemental declarations of client in support of plaintiffs' FLSA motion and in opposition to Apple's MSJ. Draft edits and send to EIN to forward to client. Forward redline of section 1 of opposition brief to Wilkinson, with instructions and revisions to other section to follow separately. Further revisions to supplemental declaration re signature issue; review and approve EIN email to client re supplemental declaration revisions.	5.60
5/3/2014	KAK	Review correspondence from co-counsel; review and evaluate current draft of opposition to summary judgment motion, due Monday	0.20
	KSR	Email coordination with Wilkinson on cites to evidence. Email correspondence with Wilkinson regarding issues with original declaration.	0.30

		<u>Hours</u>
5/4/2014	KAK Preliminary review of current draft of brief in opposition to summary judgment motion; review correspondence from co-counsel regarding length and page limit issues; prepare revised draft with improved formatting adding three pages of briefing space and re-circulate to co-counsel	0.20
	KSR Email from Shalov re page limits and cut intro to brief in opp to Apple's MSJ. Email from KAK re formatting changes. Email from Shalov re add section back. Draft edits to brief in opposition to Apple's MSJ. Email coordination with Wilkinson on cites to evidence. Further email correspondence with Wilkinson regarding issues with client original declaration. Email to client regarding need for supplemental declarations to avoid summary judgment and request to review drafts. Draft further edits to opp brief, add comments regarding further revisions may be required to section 1, and circulate.	2.50
5/5/2014	KAK Correspondence with KSR re today's filing of opposition to summary judgment motion and corrected declaration of client in support thereof	0.20
	EIN Communicate with class member re editing drafts of declarations; discuss declarations with KSR; review/revise/finalize and circulate updated signed drafts to co-counsel; review/analyze response to motion for summary judgment; review emails between KSR and co-counsel re amended declaration and filing	3.00
	KSR Email from EIN regarding discussion re declaration and schedule for signature. Discussion with EIN re revisions to declarations supporting plaintiffs' motion for conditional certification and opposition to Apple's MSJ. Draft edits to declarations and discuss with EIN. Email correspondence with McLaughlin firm re filing of declarations with plaintiffs' opp to MSJ. Further correspondence with McLaughlin firm re basis to file amended declaration and research re attestation rules for electronic signatures. Email discussion with KAK regarding client declarations. Email to Wilkinson and Gallaway re Northern District of California rules re attestation required for non-attorney electronic signatures. Further email correspondence with Wilkinson re client declaration.	2.60
5/6/2014	KAK Follow-up correspondence to co-counsel regarding filing of amended declaration of class member; email to KSR re same	0.20
	KSR Email correspondence with Lee Shalov and KAK re filing of amended declaration.	0.30
5/7/2014	KAK Correspondence regarding coverage of hearing on defendants' summary judgment motion, allocation of work necessary to prepare for hearing, and setting up call to discuss same; review correspondence from defense counsel regarding additional video excerpts to be filed with their reply and email to KSR re same	0.20
	KSR Email from Shalov forwarding request from Todd Boyer to file Apple's store security footage under seal. Email correspondence with KAK regarding bases to object to footage. Email correspondence with Lee Shalov to coordinate presentations to court at hearing on Apple's motion for summary judgment and to set up call to prepare. Email correspondence with KAK re viewing Apple's security camera footage.	0.90
5/9/2014	KAK Evaluation of status and preparatory work needed for upcoming hearing on summary judgment motion; call to co-counsel Shalov and left message; conference with KSR re same; email to co-counsel Shalov and others re need reply brief due today and need to prepare evidentiary objections	0.60
	EIN Review/analyze Apple's Reply summary judgment brief	0.30
5/12/2014	KAK Review and respond to co-counsel email regarding objections to evidence submitted with reply brief; review local rule governing same and email to co-counsel	0.10

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		<u>Hours</u>
5/14/2014	KAK Telephone conference with co-counsel Lee Shalov re preparation for hearing on summary judgment motion next week, including coverage of hearing, prep. meeting, materials needed for hearing, and other matters; email to KSR re same; email to Shalov confirming that his office will prepare binders needed for hearing; review and respond to correspondence from co-counsel Gallaway regarding objections to evidence submitted on reply	0.70
5/15/2014	KAK Further correspondence with KSR re hearing coverage and preparation; review emails from co-counsel Gallaway re possible objection to reply evidence filed by Apple	0.20
5/19/2014	KSR Email to Lee Shalov to arrange for conference call to discuss preparation for hearing on Apple's motion for summary judgment. Conference call with Shalov to prepare for hearing on Apple's MSJ. Per Shalov request, summarize in email to Shalov arguments for hearing related to Apple's misrepresentations at hearing on FLSA motion. Response from Shalov.	2.80
5/20/2014	GMG Forward summary judgment opposition papers to Kalin counsel	0.10
	KAK Review and respond to email from counsel in <i>Kalin</i> matter requesting copy of our opposition to defendants' summary judgment motion; email to KSR and co-counsel Shalov re voice mail message received from plaintiffs' counsel in Busk matter pending in US Supreme Court and request that they return call	0.20
	KSR Email correspondence with Lee Shalov re preparation for hearing on Apple's MSJ. Review briefing and draft summary for Lee Shalov of Apple's argument and evidence regarding plaintiffs' time estimates for security searches. Further email correspondence with Lee Shalov re Brett Gallaway also appearing at hearing on Apple's motion. Email from KAK re call from Busk counsel and forward to Lee Shalov to handle. Email coordination with KAK re preparation for hearing on Apple's MSJ. Review pleadings and case law for meeting with Lee Shalov and Brett Gallaway to prepare for argument on Apple's MSJ.	3.60
5/21/2014	KSR Prepare for and meeting with Lee Shalov and Brett Gallaway to prepare for hearing on Apple's MSJ. Post-meeting preparation for hearing, to address evidentiary record. Email from KAK regarding call from reporter from The Recorder , Marisa Kendall, with interest in hearing. Review depo testimony and evidence to add material to chart Lee Shalov will use for argument at hearing. Draft time estimates table with declaration paragraphs, deposition testimony and background on each plaintiff, circulate to Lee and Brett for use at hearing.	6.70
	KAK Call from reporter with ALM re tomorrow's hearing; declined comment; email to co-counsel and KSR re same	0.10
5/22/2014	KAK Telephone conference with KSR re events at today's hearing on defendants' summary judgment motion, including comments of judge on both merits and certification; review enotifications from court including indication that Apple has ordered the transcript; email to co-counsel re placing similar order	0.40
	KSR Prepare for, travel to and participate in hearing on Apple's Motion for Summary Judgment. Discussion with Lonnie Blanchard re court's comments and potential stipulation regarding consolidation of issues, as suggested by court. Further discussion with Lee Shalov and Brett Gallaway re results of hearing. Telephone call with KAK to report on hearing. Email to Lee Shalov and Brett Gallaway re transcript of hearing. Review Law360 article re Apple hearing.	3.50
5/27/2014	KAK Review recent ruling by Judge Alsup holding that PAGA claims must be certified in federal court under Rule 23 notwithstanding Arias decision; forward same to co-counsel Shalov and KSR; further email to co-counsel Shalov and Gallaway re ordering the hearing transcript	0.20

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			<u>Hours</u>
5/27/2014	KSR	Email correspondence with KAK and Lee Shalov re returning call from Busk counsel. Discussion with KAK re case strategy.	0.20
5/28/2014	KAK	Further conference with KSR regarding issues raised by court during hearing on summary judgment motion last week; follow-up email to co-counsel Shalov re returning call received from plaintiffs' counsel in Busk	0.20
5/30/2014	KAK	Review enotification from court re filing of order denying summary judgment motion and staying case except as to discovery on California claims; review and evaluate ruling and assess impact on status; correspondence with KSR re same; analysis of possible next steps in view of order that California claims are not stayed, including development of discovery plan for California claims and proceeding with motion for class certification of those claims	2.00
	KSR	Review order from court denying Apple's MSJ and staying case pending USSC decision in Busk. Email correspondence with KAK regarding mandate that parties continue with discovery of state law claims and other aspects of order.	0.40
6/2/2014	KAK	Review press coverage in Recorder circulated by co-counsel; follow-up email to co-counsel re status of order for transcript of hearing of summary judgment motion	0.10
6/3/2014	KAK	Conference with KSR regarding strategy for pursuing California claims; email to co-counsel Shalov re same; review email from KSR regarding list of potential deponents; review correspondence between co-counsel Gallaway and defense counsel, and between Gallaway and KSR, regarding resumption of discovery related to California claims; review and respond to email from plaintiffs' counsel in CVS bag check case and forward recent summary judgment order; review and forward to co-counsel additional press coverage of favorable order	0.70
	KSR	Email correspondence with Brett Gallaway and Todd Boyer (Littler - Defendants) regarding status of discovery requests and call to discuss. Discussion with KAK regarding case status and requirements for discovery on California claims, including depositions. Email correspondence with Brett Gallaway re meet and confer with Boyer on ESI issues and discovery plan for California claims. Email correspondence with Brett Gallaway and Todd Boyer to arrange meet and confer call; calendar. Research related to depositions of Apple related to challenged security searches and email results to KAK. Review/analyze transcript from 5-22 hearing and notes to file. Review Daily Journal article regarding hearing on Apple's MSJ; email from KAK re call from CVS counsel re article. Email correspondence with Brett Gallaway and Todd Boyer to reschedule call to meet and confer on Apple's production of ESI responsive to plaintiffs' RFPs on California claims.	1.90
6/4/2014	KAK	Review and evaluate hearing transcript on summary judgment motion	0.70
	EIN	Review/analyze order denying summary judgment	0.50
	KSR	Email correspondence with Todd Boyer and Brett Gallaway to prepare for telephone meet and confer re Apple ESI. Prepare for telephone pre-conference call with Brett Gallaway to discuss modifications to ESI discussions with Apple's counsel to focus on California claims, per court's order denying MSJ. Review previous meet and confer correspondence and draft notes to file regarding points to raise with Apple. Research regarding Apple stores in California and appropriate Apple executives to depose. Email correspondence with Brett Gallaway regarding Apple stores in California.	2.90
6/5/2014	KAK	Review and respond to co-counsel email correspondence re continuing the upcoming telephone conference with the magistrate judge regarding settlement conference	0.10

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			<u>Hours</u>
6/5/2014	KSR	Email from Lou Ginsberg regarding mediation teleconference with Magistrate Judge Spero; respond. Further email correspondence with Ginsberg regarding mediation call. Further email correspondence with Brett Gallaway and Todd Boyer to arrange meet and confer call to address Apple ESI related to plaintiffs' RFPs.	0.30
6/6/2014	KAK	Draft detailed email to client regarding status of case, judge's recent decision, and steps going forward; review email from client in response; conference with KSR regarding current status and proceeding with call with defense counsel on ESI and other discovery	0.40
	KSR	Discussion with KAK regarding participation in meet and confer call with Apple's counsel to discuss scope of discovery and ESI production on California claims. Review meet and confer correspondence to further prepare for ESI call. Notes to file.	2.10
6/9/2014	KAK	Review correspondence re today's call with defense counsel regarding ESI issues and conference with KSR re same; voice mail message from co-counsel Shalov	0.20
	KSR	Prepare for telephone pre-conference call with Brett Gallaway to discuss scope of discovery including ESI productions with focus on California claims, per court's order denying Apple's MSJ. Conference call with Apple's Littler counsel Todd Boyer (San Jose), Josh Kienitz (S.F. office) and Paul Wiener (Philadelphia office), and Brett Gallaway (McLaughlin). Analyze Apple's proposed search terms and draft a list of additional proposed search terms. Review/analyze draft letter to Apple's counsel regarding scope of discovery and ESI productions related to California claims, circulated by Brett Gallaway. Draft edits to letter and circulate. Email correspondence with KAK and Lee Shalov regarding continuance of call with Magistrate Judge Spero in light of stay order. Discuss with KAK.	5.50
6/10/2014	GMG	FEES - Email KAK re lodestar report; confer with KAK re expenses to date; prepare revised lodestar report and email KAK re same	0.60
	KSR	Email from Lee Shalov regarding settlement conference schedule with Judge Spero, discussion with Apple counsel, and procedure to address whether to proceed with Judge Spero. Research regarding Judge Spero's rules for communication with court and respond to Shalov. Email correspondence with KAK re case status and strategy. (.2)	0.90
	KAK	Email to KSR re strategy issues on California claims	0.20
6/11/2014	KSR	Review Judge Spero's standing orders per email request from Lee Shalov regarding possible settlement conference. Email to Lee with information from standing order to contact court deputy. Further email correspondence with Lee Shalov and KAK re conference with Judge Spero.	0.30
6/12/2014	GMG	FEES - Prepare draft statement for expenses, collect receipts and email KAK re same	0.50
	KAK	FEES - Review updated list of time and expenses and memo to GMG re preparation of costs invoice for co-counsel Shalov	0.10
	KSR	Email from Lee Shalov regarding statistical sampling under Duran decision, certification of California class, and request for conference call to discuss; review/analyze Duran. Email correspondence with Lee Shalov and Lonnie Blanchard re Duran opinion.	0.20
6/13/2014	GMG	FEES - Confer with KAK re clarification of receipts; prepare final statement for expenses with revised receipts and email KAK re same	0.50

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			<u>Hours</u>
6/13/2014	KAK	Review correspondence between co-counsel Shalov and defense counsel regarding letter to Magistrate Judge Spero's clerk requesting that upcoming mediation telephone conference be taken off calendar pending stay	0.10
6/17/2014	KAK	Review and evaluate email from clerk for Magistrate Judge Spero indicating that the telephone conference re settlement will go forward; email to co-counsel Shalov to confirm he will cover; evaluation of possible allocation of upcoming work related to California claims and email to KSR re same	0.20
	KSR	Email correspondence with Brett Gallaway and Todd Boyer re meet and confer on Apple ESI production. Email from Todd Boyer to Judge Spero's clerk changing conference call number for mediation status call.	0.20
6/18/2014	KAK	Review correspondence from Kalin counsel regarding possible expert witness; email to co-counsel Shalov re same; review and forward to Shalov our compilation of possible expert statisticians along with most recent available CVs; confer with KSR re settlement conference	0.20
	KSR	Email correspondence regarding mediation with Judge Spero. Discuss with KAK	0.10
6/19/2014	KAK	Review and respond to emails from KSR regarding request for status update received from opt-in plaintiff	0.10
	EIN	Correspond with KAK and KSR re case; review and respond to email from class member re case status update	0.60
	KSR	Email from EIN re call from client. Draft summary of case status for EIN to communicate to client, cc to KAK. Email correspondence with EIN and KAK re client declaration. Emails to KAK and GMG re upcoming discovery tasks.	1.20
6/20/2014	KAK	Call to co-counsel Shalov re coverage of today's teleconference with Magistrate Judge Spero; review email from Shalov circulating draft interrogatories regarding California claims and forward same to KSR; review report from Shalov re today's conference with Magistrate Judge Spero	0.20
6/23/2014	KAK	Review and respond to email correspondence from co-counsel Shalov regarding class certification damages theory	0.20
6/25/2014	KAK	Review and respond to email from co-counsel Shalov re class cert. ruling in similar case against CVS; telephone conference with Shalov re same	0.30
6/27/2014	GMG	FEES - Review recent statement for expenses and email KAK re same	0.10
7/1/2014	KAK	Review and approve notice of change of address prepared by GMG; review notification re filing of same; review correspondence between defense counsel and co-counsel re new response date for written discovery and email to co-counsel re same	0.10
7/2/2014	KAK	Review and respond to email from Judge Alsup's calendar clerk re address change notice filed yesterday and email to GMG re same	0.10
7/14/2014	GMG	Review termination notice and email KAK re same	0.20
	KAK	Review notification from court re filing by court of "termination" of stipulation to continue reply brief deadline for FLSA motion and notice of withdrawal of opt-in from one of the opt-in plaintiffs; email to GMG and co-counsel Shalov re same	0.10
7/16/2014	KAK	Review and evaluate recent trial court orders on relevant legal issue	0.40

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		<u>Hours</u>	
7/21/2014	KAK	Analysis of status of <i>Busk</i> case pending in USSC, which has been set for oral argument in October; preliminary review of amicus curiae brief of US; email to GMG re pulling briefs filed to date; review and respond to email re class certification granted in another case against Apple; draft email to co-counsel Shalov and KSR re same; conference with KSR re status of Shalov's discovery efforts	0.70
7/22/2014	KAK	Review and respond to correspondence from co-counsel Shalov regarding class certification order	0.10
	KSR	Email from Brett Galloway regarding call to discuss Apple's response letter regarding ESI production.	0.20
7/23/2014	KAK	Review further correspondence with co-counsel and defense counsel re scheduling of upcoming depositions on California claims; forward same to KSR; review press coverage of class certification ruling and forward same to co-counsel Shalov; locate and forward to Shalov [PRIVILEGED]	0.20
	KSR	Email correspondence with Brett Galloway re call to discuss discovery issues concerning Apple's ESI. Email correspondence with KAK regarding covering depositions. Further email correspondence with Brett Galloway regarding meet and confer call with Apple on ESI production and California discovery limitations. porting class cert motion.	0.30
7/24/2014	GMG	Research and pull <i>Busk v. Integrity</i> materials and email to KAK; prepare meet and confer letter from Boyer and email KAK and KSR re same	0.30
	KAK	Follow-up email to GMG re pulling briefing from <i>Busk</i> matter pending in U.S. Supreme Court; correspondence with co-counsel Shalov regarding coverage of upcoming depositions and other issues; email to KSR re same; draft email to co-counsel Shalov and Galloway circulating briefs filed to date in <i>Busk</i> matter	0.40
	KSR	Review/analyze 19-page letter from Todd Boyer regarding production of Apple's ESI and demand for further ESI search from plaintiffs. Telephone call with Brett Galloway to discuss response to Apple's letter. Email correspondence with Todd Boyer and Brett G. to set up call to meet and confer on ESI productions. Email correspondence with KAK re Apple ESI productions. Email correspondence with Lee Shalov and KAK re taking Verter deposition.	0.60
7/25/2014	KAK	Correspondence with KSR re possible coverage of Verter deposition in October and continuing to assist co-counsel with ESI negotiations with defense counsel	0.10
	KSR	Email from paralegal re message left by attorney. Return call and leave message; confirming message to GMG and KAK. Calendar July 31 meet and confer call to discuss Apple's ESI productions and production of documents relevant to California claims. Email correspondence with KAK regarding Verter and Benjamin depositions.	0.40
7/26/2014	KSR	Email correspondence with KAK re notice of depo for Verter.	0.20
7/28/2014	KSR	Email correspondence with Brett Galloway re pre-call to prepare for meet and confer with Apple counsel on responses to plaintiffs' document requests; respond and calendar.	0.30
7/29/2014	KSR	Email from Brett Galloway to schedule pre-call for meet and confer with Todd Boyer on production of Apple's ESI; respond. Email correspondence with GMG regarding draft of notice of deposition of Verter.	0.20
7/30/2014	GMG	Draft subpoena to Verter and email KSR re same	1.10

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		<u>Hours</u>	
7/30/2014	KAK	Review correspondence from defense counsel re scheduling of October deposition; forward same to KSR and co-counsel Shalov; review email from KSR to co-counsel Shalov re location for deposition	0.10
	KSR	Prepare for pre-call with Brett Gallaway to discuss issues for meet and confer call with Apple on ESI production. Call with Brett Gallaway and Lee Shalov to cement strategy positions for ESI meet and confer with Apple. Finalize notes for meet and confer with Apple and forward to Brett Gallaway with confirmation of further pre-call tomorrow. Email correspondence with Lee Shalov regarding location and notice of deposition for depo of Larry Verter (disclosed in Apple's initial disclosures). Instructions to paralegal for preparation of notice of deposition for Verter. Email discussion with GMG regarding ESI letter from Boyer and Apple's proposal to produce responsive documents in pdf form, searchability issues; further discussion with GMG regarding Apple's proposal to produce searchable pdfs rather than TIFFs. Research re authority justifying insistence on production of TIFFs for Apple's ESI production. Draft notice of deposition of Larry Verter with request for production of documents; instructions to paralegal re edits. Email confirmation from Todd Boyer confirming October 15 date for Verter depo. Email discussion with KAK regarding alternate location for Verter depo. Email correspondence with Lee Shalov regarding topics and document requests for Verter notice.	3.00
7/31/2014	GMG	Draft deposition notice to Verter and email KSR re same	1.80
	KAK	Conference with KSR regarding today's call with defense counsel on ESI production, including format of ESI; review email from KSR to co-counsel Shalov circulating deposition notice for October deposition of Vertler	0.10
	KSR	Further research regarding searchable PDFs vs. plaintiffs' request for TIFFs for meet and confer call with Todd Boyer re Apple's ESI production format. Review email from Brett Gallaway with email complaint to Helpline from Apple employee related to waiting in line for check of technology cards. Review second email from Brett re complaint concerning tech check policy. Telephone call from Brett Gallaway to prepare for meet and confer call with Apple re ESI production. Meet and confer call with Todd Boyer, Paul Weiner and Brett Gallaway to meet and confer on ESI productions. Telephone call from Brett Gallaway to address next steps in pursuing ESI from Apple. Complete notes from meet and confer call and forward to Brett Gallaway for use in confirming letter to Apple. Revise notice of deposition for Verter depo; circulate with notes regarding document requests. Discussion with KAK regarding citing case to Apple in which TIFFs were produced rather than Apple's proposed searchable PDFs. Instructions to GMG re revisions to Verter depo notice.	2.90
8/1/2014	KSR	Email from Brett Gallaway with draft letter to Todd Boyer and Paul Weiner confirming agreement regarding the parties' responsive ESI productions; response. Telephone call and email regarding Apple's format for ESI production (TIFF vs. PDFs). Discussions with additional counsel regarding ESI format for meet and confer with Apple.	1.10
8/2/2014	KAK	Review and respond to further email from KSR regarding ESI production issues and refusal by Apple to produce ESI in a usable format	0.10
	KSR	Email correspondence with Lee Shalov and Brett Gallaway re ESI negotiations with Apple.	0.20
8/4/2014	KSR	Email correspondence with Brett Gallaway and Lee Shalov regarding Apple's basis to refuse to produce Concordance load files with email production. Research for and circulate case law regarding production of PDF rather than original document format vs. preferred load format with email comments re basis to insist on Concordance load files and strategy to force production in that useable format.	1.20

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			<u>Hours</u>
8/6/2014	GMG	Review Benjamin deposition notice; finalize Verter deposition notice	1.10
	KSR	Email correspondence with Lee Shalov and Brett Gallaway regarding serving Verter depo notice with document requests; review, draft edits and instructions to paralegal for service. Further email correspondence with Brett Gallaway re Benjamin depo.	0.70
8/7/2014	GMG	Review Apple response to 3rd production request and email KAK re same; email opposing counsel re change of address	0.40
	KAK	Review further written discovery responses received from Apple; email to GMG re asking Apple's counsel to update their service list and to send them another copy of our notice of change of address, previously filed in this case	0.20
8/11/2014	GMG	Research for KSR re other cases against Apple where ESI production was made	0.60
8/12/2014	KAK	Review discovery-related correspondence and forward same to KSR; email to KSR re adding defense counsel to discovery-related communications	0.10
	KSR	Email to Brett Gallaway regarding Apple's ESI production in other cases for meet and confer on production format. Email correspondence with GMG regarding identification of counsel in other litigation against Apple to investigate ESI format. Email from Lonnie Blanchard regarding trial setting order in Kilker litigation and call to discuss. Review notes and email to GMG to check for similar order in Frlekin litigation. Email correspondence with Todd Boyer and Brett Gallaway and review Apple's responses to plaintiffs' RFPs.	0.70
8/13/2014	GMG	Review Kalin trial order, check docket and email KSR re lack of similar order in Frlekin case; email KSR re service of Verter notice of deposition	0.30
	KAK	Review correspondence re call with <i>Kalin</i> counsel Friday regarding scheduling order issued in <i>Kalin</i> matter; email to KSR re covering same; conference with KSR re issue of potentially hosting production database on our system with Concordance, as well as status of co-counseling issues	0.30
	KSR	Email correspondence with all plaintiffs' counsel regarding court trial setting order in Kilker case; calendar conference call to address order expected in Frlekin litigation per email from Lonnie Blanchard. Email correspondence with Brett Gallaway and Todd Boyer re meet and confer on Apple's ESI production. Telephone call to plaintiffs' counsel regarding ESI production in other Apple litigation for meet and confer on ESI format: telephone call to other plaintiff counsel regarding Apple's ESI production in other litigation (Apple's counsel requested case names to work with Apple on production format of Apple email). Email correspondence with KAK regarding meet and confer on Apple discovery responses. Email correspondence with Brett Gallaway regarding production format of Apple ESI. Further email correspondence with Brett Gallaway regarding Apple's objections to requested ESI format. Further email questions from Brett Gallaway regarding production of Apple email responsive to RFPs. Email correspondence with KAK regarding review platform for Apple ESI production. Telephone calls regarding Apple's ESI production in other cases against Apple; and confirming email to Brett Gallaway and Lee Shalov re Apple's ESI production, to address request of defense counsel Weiner to identify case in which Apple produced TIFFs and searchable text for its ESI. Email from Brett Gallaway requesting email to Apple counsel re format of ESI production. Draft and send email demand to Todd Boyer and Paul Weiner for TIFF format and text files for Apple ESI, and confirmation of that format in Apple E-books Antitrust Litigation as discussed in earlier meet and confer.	0.60

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		<u>Hours</u>	
8/14/2014	KSR	Review Apple's response to production request. Email from Lonnie Blanchard regarding conference call to discuss trial setting order in Kalin action. Email from Todd Boyer regarding response to plaintiffs' meet and confer letter regarding Apple's ESI format and responses to plaintiffs' document requests on California claims.	0.60
8/15/2014	KAK	Evaluate scheduling order entered in <i>Kalin</i> matter; conference with KSR regarding impact of same on scheduling in our <i>Frlekin</i> matter in anticipation of today's conference call	0.20
	KSR	Email to Brett Gallaway, Lee Shalov, Wade Wilkinson regarding Todd Boyer's demand that California plaintiffs and opt-ins identify dates of employment at California stores - this should come from Apple's records. Further email correspondence with Brett Gallaway regarding Apple's demand for employment dates and response. Discussion with KAK regarding scheduling order in Frlekin and Kalin cases and Apple's ESI production. Telephone conference call with Lee Shalov, Lou Ginsberg, Lonnie Blanchard, Brett Gallaway, Wade Wilkinson regarding proposing aggressive scheduling order to court based on short, 2 or 3 month extension of dates set prior to stay. Email to Lee Shalov and BG re meet and confer call with Apple to address California discovery responses, including request for class list, and ESI production format. Email to KAK regarding proposal to Apple to meet and confer on proposed short extension to dates in scheduling order. Email correspondence with KAK regarding conflict in date proposed for filing of class cert motion and alternative dates. Email correspondence with Brett Gallaway re discussions with Apple on ESI production format, and proposed dates for scheduling order.	1.30
8/18/2014	KAK	Review and respond to email from KSR re conference call with defense counsel today re ESI and production format issues	0.10
	KSR	Prepare for and conference call with Todd Boyer, Josh Kienitz, Lonnie Blanchard and Brett Gallaway to meet and confer on Apple's responses to interrogatories concerning identification of class members and names of store leaders, scheduling orders in Kalin and Frlekin actions, and format of Apple's ESI production. Notes to file. Instructions to GMG to contact Concordance re load files for Apple's corporate decks in Keynote. Email to Lee Shalov and KAK regarding Josh Kienitz' email and Apple's position on stay language in summary judgment order.	1.60
8/19/2014	GMG	Call Concordance re production format specifications and procedures for Keynote files and confer with KSR re same; prepare revised letter excerpt re production format and email KSR re same; prepare draft notice of change in counsel re EIN and email KAK re same	1.50
	KSR	Email to GMG regarding conferring with Concordance re Apple's Keynote corporate decks and format of production. Discussion with GMG regarding redline to Feb. 20, 2014 letter to opposing counsel re format of Apple's ESI production, based on information from Apple regarding native format of corporate decks, etc. Draft revisions to proposed production format for Apple's ESI production and forward to Brett Gallaway with confirmation regarding required format of Apple's Keynote decks.	1.30
8/22/2014	KAK	Review and evaluate correspondence from defense counsel regarding request to Court for clarification of scheduling issues	0.10
8/26/2014	KAK	Conference with KSR regarding whether class lists are subject to production prior to class certification; review and revise notice with withdrawal of appearance of EIN; email to GMG re finalizing same	0.20
	KSR	Email correspondence with Brett Gallaway and Todd Boyer re call to meet and confer on Apple's discovery responses including class list. Email question from Gallaway regarding case support for request for class list; discuss with KAK and research issue and forward result to Gallaway for meet and confer with Apple. Call to meet and confer with Todd and Josh, including Brett Gallaway and Lou Ginsberg, re response	1.20

		<u>Hours</u>
	to RFPs including California management personnel and class list and ESI format for production.	
8/27/2014	KSR Email correspondence with Lee Shalov re Verter deposition and committed dates for Apple's document productions. Email correspondence with Brett Gallaway regarding revisions to requested ESI format of Apple's productions. Email correspondence with Todd Boyer and Brett Gallaway regarding proposed stipulation to percentage of pre-class putative class list production. Email request from Brett Gallaway to send request to defendants' proposed ESI production 2 weeks before depositions of corporate employees and store leaders. Email to Todd Boyer and Josh Keinitz requesting assent to this production timetable. Email from Todd Boyer regarding request for plaintiffs' dates they worked in each store before Apple will produce requested documents and data. Email to Brett Gallaway regarding suggested response, that Apple has the best records on this and doesn't need plaintiffs to state dates worked. Further email correspondence with Todd Boyer and Josh Kienitz re productions of documents for store managers at least 2 weeks prior to their depositions, and ESI production format.	2.10
8/28/2014	KSR Email to KAK regarding dispute over meaning of court's order regarding stay with respect to California claims where discovery to continue.	0.10
8/29/2014	KSR Email correspondence with KAK re Verter depo prep and scheduling.	0.20
9/2/2014	KSR Email correspondence with Brett Gallaway and Josh Kienitz re draft letter re stay order.	0.10
9/3/2014	GMG Research re electronic discovery vendors, contact providers Evolve, DTI, IDS, Kiersted, Access and H5; confer with KSR and email KAK re same	4.30
	KSR Discussion with GMG re ESI vendors for Apple production. Email discussion with GMG and KAK regarding timing of obtaining vendor given Apple's estimated production date, and specifications going to Apple for ESI format. Email from Gary Gray re Northern District model stipulations and protective order; analyze. Email correspondence with Brett Gallaway and Lee Shalov re Northern District model stipulations re ESI and protective order and recommendations for negotiations with Apple. Email from Todd Boyer's requesting dates for depo of client. Email to Brett Gallaway and Lee Shalov et al. re depo Preparation and assembly of [PRIVILEGED]. Email questions from Brett Gallaway re client declaration; respond and forward declaration. Email from Brett Gallaway regarding ESI format information for Epiq. Review ESI correspondence with Apple with requested ESI format. Email to GMG and Brett Gallaway regarding merging Apple's acceptable proposals with plaintiffs' edits, for single set of production format specs to provide to Epiq. Email to Brett Gallaway with basic specs. Email correspondence with Brett Gallaway and Josh Kienitz regarding joint motion for clarification re court's stay order and applicability to California class. Email correspondence with Brett Gallaway and Todd Boyer re eta for ESI production from Apple. Fact research regarding client deposition and respond to BG; further email correspondence with BG re client deposition. Email correspondence with GMG and KAK re vendors for ESI platform for review Apple's ESI production.	4.20
9/4/2014	GMG Email KAK and KSR re potential e-discovery vendors; email IDS, Evolve and H5 vendors re caption and conflict check; confer with and email KSR re production format guidelines; review email from Evolve re conflict; review proposed format guidelines from both sides, prepare revised guidelines incorporating all Apple language that we agreed to and all our changes and email co-counsel re same; teleconference with vendor H5; review H5 pricing and sales materials	2.90

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		<u>Hours</u>	
9/4/2014	KAK	Review and respond to email from GMG regarding research on vendors for web-based document hosting and review; email to GMG and KSR re same; review correspondence regarding request by defense counsel for deposition of opt-in plaintiff	0.10
	KSR	Email correspondence with GMG, KAK, Brett Gallaway and Lee Shalov regarding document review platform to review Apple's ESI. Discussion with GMG re discussions with vendors. Email from Brett Gallaway regarding Epiq vendor and request for ESI protocol proposal. Email response to BG re specifications for ESI platform. Analyze proposal and instructions to GMG to merge Apple's requests with Plaintiffs' redlines and edits. Edit and forward final ESI format proposal to Brett Gallaway and Patrick Stevener at Epiq. Further email correspondence with Brett Gallaway regarding deposition and declarations. Review/analyze facts regarding declaration. Email correspondence with KAK regarding ESI vendors.	1.90
9/5/2014	GMG	Preparation for and teleconference with vendor IDS; email IDS re conflict check; confer with KSR re e-discovery issues and potential vendors	1.40
	KSR	Review analysis from Epiq re ESI format requirements for negotiation with Apple. Email correspondence with Brett Gallaway and Patrick Stevener at Epiq re de-duping requirements for proposed ESI protocol. Send de-duping proposal to Todd Boyer. Email to KAK regarding use of Epiq for ESI review. Email from Josh Kienitz re proposed language for joint request for clarification from court re stay on California claims.	1.50
9/8/2014	GMG	Review and compare document review hosting proposals from Epiq, IDS and H5; prepare email to Gallaway with recommendations and relevant articles	0.80
	KAK	Review and evaluate correspondence re upcoming deposition of client; email to KSR and co-counsel Shalov regarding preparation	0.20
	KSR	Email correspondence with Brett Gallaway and Todd Boyer regarding meet and confer on production eta. Email correspondence with BG re edits to proposed ESI production protocol. Analyze proposed edits and email to BG re edits. Further email correspondence with BG re meet and confer with Apple on ESI production and non-response from Boyer. Further review of Epiq proposal for platform and planning for depo prep. Email to BG re necessity of rolling production and receipt of documents in time for depo prep. Email to Todd Boyer and Josh Kienitz regarding BG 8/1/14 letter and request for custodian productions for deponents 2 weeks before depositions. Further email correspondence with BG re ESI protocol and forward redlined request made to Apple's counsel. Email to BG regarding status of preparation for client depo.	2.70
9/9/2014	GMG	Review objections to Verter and Benjamin deposition notices and email KAK and KSR re same	0.20
	KSR	Email correspondence with Brett Gallaway re client declarations; forward declarations. Email correspondence with BG re depo schedule. Further email correspondence re meet and confer with Apple on dates for productions. Email from Todd Boyer setting time for meet and confer call. Email correspondence with BG confirming our firm will handle Verter depo. Further email correspondence with BG regarding late productions of ESI from Apple and impact on depo schedule. Forward client declarations at request of BG. Prepare invite for meet and confer call with Apple's counsel regarding timing of productions and ESI issues.	1.80
9/10/2014	KSR	Email correspondence with Brett Gallaway re ESI production format for meet and confer with Apple. Prepare for meet and confer with defendant. Conference call with Josh, Paul Weiner and Todd Boyer, with BG re scope of search custodians, search terms, ESI production format, etc. Follow-up call with BG re responding to Apple's push-back on search terms, requesting CD for each depo custodian with all docs. Forward to Apple counsel email sent previously with proposed ESI format. Email to	2.90

Paul Weiner with ESI proposal and request for edits by redline to take to vendor. Calendar call with BG and Patrick from Epiq to address Apple's production format issues.

9/11/2014	GMG	Email IDS rep re forwarding proposal to Gallaway	0.10
	KSR	Email correspondence with BG regarding platform for review of Apple ESI and costs. Call with BG, Todd Boyer, Josh Kienitz, Paul Weiner to discuss percentage sample of class list, ESI protocol, substance of productions and dates to receive. Follow-up call with BG. Follow-up email to BG regarding ESI production letter requested by Paul Weiner. Research history of ESI format meet and confer; email correspondence with Patrick Stevener and Karl Lomberk at Epiq re ESI protocol. Forward redlines of proposed format. Response from Patrick and Karl and draft further edits to proposed format. Email question to Lomberk re edits and finalize redline. Send new redline in email to Paul Weiner with redlined edits sent February 2013 to Lara Strauss' Dec. ESI proposal; add de-dup specifications from Patrick Stevener at Epiq. Email to client regarding dates for deposition. Email to BG re Verter date probably not viable given no documents produced to date by Apple. Review edits to proposed search terms circulated by BG; respond with suggestions. Further email correspondence with client regarding proposed dates and locations for deposition. Research rules to confirm. Email to BG with alternative dates for client depo and request to propose them to Todd Boyer. Confirm depo location with client. Email question from client regarding [PRIVILEGED]. Propose dates for deposition to Claudia Wright.	2.10
9/12/2014	KSR	Email from Josh Kienitz re scheduling conference with Judge Spero and draft joint motion regarding stay. Email to BG re proposal for percentage sampling and perceived rejecting by Apple of 12%.	0.30
9/14/2014	KSR	Email correspondence with Josh Kienitz and Brett Gallaway re job titles for class list. Review/analyze filed, joint motion to clarify scheduling and stay orders re status of California claims. Review correction to filing by Kienitz. Calendar joint motion to clarify ruling.	0.30
9/15/2014	GMG	Review motion for clarification, calendar response date and email KAK and KSR re same	0.20
9/16/2014	KAK	Review court's order re joint motion for clarification and correspondence from co-counsel Gallaway to schedule conference call to discuss; correspondence with KSR re same and next steps	0.20
	KSR	Review/analyze court's order on joint motion to clarify order to stay and continue with California discovery. Email correspondence with KAK regarding effect of order on California claims. Email from Todd Boyer regarding depo dates for Claudia Wright deposition. Forward email to Brett Gallaway with proposed dates and location for Wright depo, and request forward to Todd Boyer.	2.50
9/17/2014	KAK	Telephone call regarding information received from defense counsel who says they plan to start interviewing class members about our case; analysis of implications and best response; draft detailed email to co-counsel regarding same and need for response ASAP; telephone conference re same; review letter from Apple counsel regarding this issue and proposing to seek court order; follow-up email re same	1.50
	KSR	Email correspondence with Todd Boyer and Brett Gallaway re Claudia Wright depo. Email from KAK re Apple's proposed interviews with putative class members. Research and circulate proposal to address. Email from Paul Weiner regarding ESI production protocol. Analyze Apple's proposal and redlines to plaintiffs' requested production format. Forward to Brett Gallaway with request to send to ESI vendor for counter proposal wrt Apple's native ESI. Conference call re Apple's proposal to interview class members. Email from Todd Boyer re commitment to produce each deponent's responsive ESI one week in advance of deposition. Calendar for Verter	3.60

depo. Email from KAK regarding strategy regarding Apple interviews of class members. Email from BG regarding class size. Email from BG re court's order re discovery cutoff. Email from KAK re discussion on class member interviews. Email from Todd Boyer to BG re protective order governing document productions. Email from Paul Weiner responding to my Sept. 11 email re-proposing ESI production format. Further email correspondence with KAK regarding Apple's interviews of putative class members. Email correspondence with Lee Shalov re Apple's proposed interviews of putative class members. Email from BG re effect of discovery cutoff order. Research for and email to Lee Shalov et al. re strategy on seeking protective order re Apple's communications with class members, with text from Manual for Complex Litigation, and further email to the group regarding strategy

9/18/2014	KSR	Email correspondence with Patrick Stevener and Karl Lomberk of Epiq regarding Apple's redline of ESI proposal. Email to Paul Wiener requesting sample of file types, information re Littler platform, and de-deduping proposal. Further email correspondence with Paul Weiner regarding ESI protocol and format of production. Email from Patrick Stevener re platform Littler using for Apple ESI.	1.10
9/19/2014	KAK	Review email correspondence confirming date for deposition of opt-in class member Claudia Wright and email from KSR re need to discuss issues related to upcoming deposition of Wright and production of her documents	0.20
	KSR	Email correspondence with Todd Boyer re date for Wright depo; confirm date with Claudia Wright and forward confirmation to KAK and GMG. Email from BG re ESI checklist, Wright document for production to Apple in response to document request sent with deposition notice and amended declarations. Discussion with KAK and email to Brett Gallaway re Claudia Wright's documents. Research regarding employee's retention of documents after termination. Telephone call from Brett Gallaway to further address Wright depo. Email from KAK regarding discussion with BG re Wright document production; discuss with KAK.	2.70
9/20/2014	KSR	Email to KAK re Wright depo.	0.10
9/22/2014	KAK	Conference with KSR re issues related to upcoming deposition of opt-in plaintiff Claudia Wright; review co-counsel correspondence re stipulation to extend discovery cutoff date	0.30
	KSR	Discussion with KAK re Claudia Wright depo and documents. Email and telephone discussions with Brett Gallaway re Wright depo and stipulation to continue discovery cutoff. Review draft joint stipulation to extend discovery cutoff on California claims and draft redline edits; circulate. Review/analyze discovery requests directed to Claudia Wright. Instructions to GMG to calendar and forward requests to Wright. Email from BG re ESI questionnaires.	1.80
9/23/2014	GMG	Prepare PDFs of interrogatories and deposition notice served by defendants and email KSR and KAK re same	0.40
	KAK	Review correspondence from attorney Jeff Hogue regarding upcoming call with Apple's counsel re class member interviews; forward same to co-counsel Shalov et al. for response	0.10
	KSR	BG email request for document requests served with Verter depo notice. Email correspondence with BG re Apple's objections to document requests in Verter and Benjamin depo notices. Instructions to GMG. Email regarding Apple's intention to interview employees; discuss with KAK. Email correspondence with BG re suggested edits to joint stipulation to extend discovery cutoff.	1.30
9/24/2014	KAK	Review correspondence with update on Apple's proposal to proceed with class member interviews; forward same to KSR and Shalov for response	0.10

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			<u>Hours</u>
9/24/2014	KSR	Email correspondence with KAK re status report on negotiations with Apple. Email response.	0.20
9/26/2014	KSR	Email from BG regarding Boyer's revision to search term list. Analyze revisions and comment. Email from Wade Wilkinson re response to Apple re witness interviews; and respond.	0.30
9/30/2014	KSR	Review further email correspondence with Todd Boyer re search terms. Email correspondence with BG; suggest rolling production including current search hits for dialog on revised search terms. Email to Claudia Wright Apple's discovery requests and [PRIVILEGED].	0.50
10/1/2014	KAK	Review significant correspondence between co-counsel Gallaway and defense counsel re numerous issues and email to KSR re same	0.10
	KSR	Email correspondence with Lonnie Blanchard et al. re putting over depositions pending receipt of Apple's ESI. Email correspondence with Todd Boyer and BG re protective order.	0.20
10/3/2014	KSR	Email correspondence with Brett Gallaway re Claudia Wright depo and continuing Apple employee depositions pending ESI production.	0.20
10/6/2014	GMG	Review protective order and order re discovery deadlines, add dates to calendar, revise list of dates and email KAK and KSR re same	0.30
	KSR	Review/analyze orders re extension of discovery cutoff. Email correspondence with KAK re extension and necessity of filing motion to compel production from Apple. Email correspondence with KAK re addition to service list.	0.30
	KAK	Review order regarding stipulation to continue discovery cutoff and expert disclosure dates; email to KSR re same; review significant email correspondence from defense counsel and co-counsel, including document productions by Apple; email to GMG and KSR re same	0.30
10/7/2014	GMG	Review documents produced by Apple to date, organize on network and confer with KSR re same; email potential vendor re e-discovery hosting	0.60
	KSR	Email correspondence with Todd Boyer regarding production of documents for deposition of Larry Verter. Email correspondence with Brett Gallaway re platform for document review. Email from Brett Gallaway and Wade Wilkinson re accessing Apple's document productions; email to Alexandra Behrman regarding procedures. Email correspondence with Brett Gallaway and Wade Wilkinson re contacting Patrick at Epiq re costs for ESI review platform. Telephone call with Brett Gallaway to discuss response to Paul Weiner for Apple on ESI format negotiations. Review history of meet and confer correspondence with Apple concerning ESI format. Email to Paul Weiner re ESI format, Littler's vendor, samples of document types. Email to Claudia Wright regarding Apple's discovery requests and arrange for call to discuss. Email to Claudia Wright to advise her [PRIVILEGED]. Review/analyze discovery requests from Apple to Wright and begin drafting responses. Research for objections to request for production and interrogatories. Discussion with KAK regarding Apple's discovery, timing of responses, Apple's failure to produce documents required for upcoming depositions. Email correspondence with Wade Wilkinson and Alexandra Behrman re accessing production of Verter documents for depo prep. Email to BG re ordering rough of depo transcript to assist with preparation for Verter depo. Further review past meet and confer correspondence and further email to Paul Weiner (Littler) re size estimate for Apple's production. Email to BG and Wade Wilkinson re requirement of gig estimate from Apple to get ESI vendor quote.	3.60

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		<u>Hours</u>
10/7/2014	KAK	0.30
<p>Conference with KSR re upcoming deposition of opt-in plaintiff Claudia Wright, production of her documents, written client discovery responses due next week, and postponement of upcoming deposition of Apple witness in view of Apple's failure to produce his custodial files</p>		
10/8/2014	KSR	6.50
<p>Email correspondence with Wright to reschedule conference call for depo prep. Review co-counsel agreement and recommendation to KAK. Prepare for call with Claudia Wright to discuss Apple's document request served with depo notice and interrogatories addressed to Wright. Conference call with Wright to prepare for depo, produce documents, object to overbreadth and respond to interrogatories. Review transcript of Busk argument and forward to Claudia Wright. Email from Brett Gallaway re Apple's commitment re ESI format and size of production estimate for vendor. Email to KAK regarding issues with Wright deposition. Instructions to GMG to correct format of discovery requests directed to Wright and to forward to her. Begin preparation for deposition of Larry Verter, including document review. Email to Todd Boyer (Littler) regarding need to continue deposition of Larry Verter given Apple's failure to produce his custodial documents. Email to KAK regarding Wright documents responsive to Apple's request to produce. Email from Joshua Kienitz (Littler) re expected eta for Verter documents.</p>		
	KAK	0.30
<p>Preliminary review of transcript of oral argument in <i>Busk v. Integrity Staffing</i>, which took place today in the U.S. Supreme Court; forward transcript to KSR and co-counsel Shalov and Gallaway</p>		
10/9/2014	KSR	6.30
<p>Draft objections to Apple's depo notice and request for documents and interrogatories directed to Claudia Wright. Email to GMG re response date for rogs. Email to BG re insufficient time to prepare for Verter depo based on Kienitz eta and need to postpone, and proposed dates. Email to Kienitz with new proposed dates for Verter depo. Begin preparation for Verter depo; review deposition notice, prior productions by Apple and transcripts of depositions. Email correspondence with KAK re update on orders related to Apple's communications with putative class members in California.</p>		
	KAK	0.30
<p>Follow-up correspondence re class member interviews proposed to be conducted by Apple's counsel; email to co-counsel re same; review and forward production emails to GMG</p>		
10/10/2014	GMG	0.60
<p>Research and emails with KSR re discovery response due dates; review calendar, prepare revised chart re upcoming deadlines and email KSR and KAK re same</p>		
	KSR	6.90
<p>Continue drafting objections to Apple's depo notice and request for documents and interrogatories directed to Claudia Wright. Research regarding objections and service dates. Email to Claudia Wright re [PRIVILEGED]. Email from Josh Kienitz with proposed alternative dates for Verter depo. Instructions to GMG to check for conf room; confirm Nov. 4 date with Kienitz. Instructions to GMG to order reporter and draft revised depo notice. Email from Josh Kienitz regarding ESI production format and draft and send response with history of negotiations and absence of agreement. Respond to separate email from Kienitz regarding new date for Verter depo and delay in production of documents for Verter. Discussion with GMG regarding response date for Wright interrogatories; calendar. Email to Claudia Wright re [PRIVILEGED]. Review email from Wade Wilkinson regarding report on orders related to Apple's communications with putative class members. Further email correspondence with GMG re response dates for discovery to Wright. Confirm new date for Verter depo with Kienitz. Instructions to GMG to prepare revised depo notice for Verter. Email from Paul Weiner (Littler) re format of Apple's ESI productions. Review meet and confer correspondence with Apple and send detailed email to Paul Weiner regarding negotiations on ESI format and plaintiffs' requirements. Further email from Kienitz re eta for Verter documents. Further email correspondence with Wright re [PRIVILEGED].</p>		

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		<u>Hours</u>	
10/11/2014	KSR	Email to BG regarding email from Paul Weiner re Apple's production of load files. Suggestion to BG re costs and ESI platform.	0.20
10/13/2014	KSR	Email from BG regarding load files for Apple's ESI production sent on October 9. Examine files and respond to BG's questions and instruct to forward all load files to Patrick at Epiq. Further email correspondence with BG re load files. Further instructions to BG to forward all pdf files to Epiq.	0.40
10/14/2014	GMG	Review Apple Verter production, organize on network and review correspondence re same; email KSR and KAK re file location	0.40
	KSR	Email correspondence with BG and Lee Shalov re Apple's document production for deposition of Larry Verter. Email correspondence with BG and Epiq regarding sufficiency of load files from Apple. Further email correspondence with Karl Lomkerk (Epiq) re concerns over ESI format and Catalyst platform in use by Littler. Email to Claudia Wright re [PRIVILEGED] Respond to Wright and set up conference call to work on discovery responses. Continue to draft objections and responses to interrogatories and document request directed to Wright. Email correspondence with BG re discovery requests to Wright, objections and potential motion for protective order. Review Apple's production of documents for Larry Verter; instructions to GMG to download and send files to Epiq to load. Email to BG to request Apple to send all load files to one central recipient to provide to Epiq to load. Email from Lee Shalov regarding Brett's hot docs file; response with request to BG to forward all hot docs and depo roughs for preparation for Verter depo. Further email correspondence with Claudia Wright to respond to Apple's discovery requests. Email correspondence from GMG regarding location of Verter documents pending loading on ESI platform, to prepare for Verter depo.	7.30
10/15/2014	KSR	Email from Lee Shalov re motion to compel class contact info. Discuss with KAK and respond. Compare sets of interrogatories served on California plaintiffs. Email to Brett Gallaway et al. re response to interrogatories. Further email correspondence with LS and KAK regarding motion to compel class contact info. Email correspondence with KAK re dates to respond to discovery served on Wright. Email correspondence with Paul Weiner to set up call to meet and confer regarding Apple's production format. Draft responses to interrogatories served on California plaintiffs. Email correspondence with Paul Weiner (Littler) re setting up meet and confer on ESI format issues. Further email to coordinate meet and confer with Weiner. Email from BG re responses to interrogatories served on California plaintiffs and request for extension. Email correspondence with KAK re depo date for Wright, [PRIVILEGED], and date for responses to discovery served on Wright. Email correspondence with BG and Karl Lomkerk (Epiq) regarding projected size of Apple production to estimate cost of vendor services from Epiq. Email correspondence with Wright to reschedule conference call to review Apple discovery. Further email correspondence with BG re projected size of Apple productions. Continue drafting objections and responses to interrogatories to California plaintiffs.	8.50
	KAK	Conference with KSR re deposition and written discovery responses of opt-in plaintiff Claudia Wright; review correspondence from co-counsel Shalov re motion to compel production of contact information of putative class members	0.20
10/16/2014	KSR	Email correspondence with BG regarding suggestions for Epiq to project size of Apple production for cost estimate.	0.20
10/17/2014	KSR	Email from Lee Shalov to set up call to discuss engaging expert. Draft responses to interrogatories. Telephone call with Claudia Wright to answer interrogatories, discuss document production and to discuss [PRIVILEGED]. Telephone calls re [PRIVILEGED]. Email correspondence with Todd Boyer and BG re extension of time to answer interrogatories to California plaintiffs. Instructions to GMG to calendar new response date for Apple interrogatories. Detailed email regarding date for Wright	6.10

deposition and issues with document production. Review/analyze Apple's objections to plaintiffs' deposition notices. Email from Claudia Wright re [PRIVILEGED].

10/20/2014	KSR	Further email correspondence with Lee Shalov to set up call to discuss engaging expert. Email correspondence with Claudia Wright re interrogatory responses and call to address. Discussion with KAK regarding further discovery for expert report and Wright depo. Telephone call re [PRIVILEGED]. Email from BG re materials to review to prepare for conference call with Paul Weiner re Apple ESI and respond. Telephone call with Paul Weiner regarding Apple's ESI productions and absence of extracted text files. Continue research for and drafting responses to interrogatories to California plaintiffs. Telephone conference call with Lee Shalov, Lou Ginsberg, KAK, BG re strategy for expert report, etc. Email correspondence with BG regarding adequacy of Apple's ESI load files and need for examination by Epiq. Response from BG re call to Epiq; conference call with BG and Karl Lomkerk at Epiq. Email correspondence with Paul Weiner (Littler) rescheduling meet and confer call on Apple ESI productions. Telephone call with Claudia Wright to discuss document production to Apple. Review and forward to Claudia Wright prior declarations in preparation for document production and deposition. Prepare for Verter deposition.	7.50
	KAK	Prepare for and participate in conference call with co-counsel Shalov, KSR et al. re upcoming expert disclosure deadline, content of expert report, and proposed statistical expert, as well as impact of <i>Duran</i> decision on content of report; conference with KSR and further call to Shalov re possibility of serving additional discovery relevant to damages calculations	1.30
10/21/2014	GMG	Confer with KSR re upcoming depositions, negotiations re production format and conference with i-discovery consultant	0.40
	KSR	Review/analyze Apple's class list table with sample of California employees. Email to KAK regarding further information on full-time or part-time status, shift length, etc., and status as current vs. former employees. Continue to draft interrogatory responses. Telephone call with Claudia Wright to go over rog responses. Telephone call re [PRIVILEGED], and follow up email correspondence re [PRIVILEGED]. Discussion with KAK re [PRIVILEGED]. Draft further edits to Wright's responses to interrogatories and instructions to GMG re document production.	4.10
	KAK	Conference with KSR re status of Claudia Wright deposition preparation and [PRIVILEGED]; review and respond to email from KSR re upcoming deposition	0.20
10/22/2014	GMG	Draft objections to Wright deposition notice and production requests and confer with KSR re same	2.10
	KSR	Email correspondence with Claudia Wright re [PRIVILEGED]. Email to BG, KAK, LS re objecting to doc requests and rogs served on Wright, and strategy. Email correspondence with BG, GMG re Verter production and consistency in production received from Apple so vendor receives all productions. Review/analyze documents produced by Apple in preparation for Verter deposition. Email correspondence with Lee Shalov and BG regarding emails in Verter production; email to BG to forward hot docs and depo roughs. Email from BG and Karl Lomberk re Apple's ESI and document productions. Email response to Lomberk at Epiq to evaluate Apple load files. Review email from Apple with Verter production. Email correspondence with Lee Shalov re use of surveys and statistical sampling for liability and damages purposes. Research case law regarding use of statistical sampling and respond to Shalov. Review email analysis from KAK re <i>Duran</i> , Allstate decisions re sampling. Email to BG regarding objections to Apple's deposition notices. Email correspondence with BG regarding email service of objections to Wright depo notice and request for production of documents. Continue drafting edits to responses to Apple's interrogatories to California plaintiffs. Instructions to GMG re drafting shell of objections to depo notice and request for production of documents directed to Claudia Wright. Continue to draft objections to deposition notice and request for	6.50

		<u>Hours</u>
	documents directed to opt-in plaintiff, Claudia Wright. Draft and finalize objections to deposition notice and request for production of documents. Instructions to GMG to finalize and serve. Send email to Apple's counsel with Wright's responses to depo notice and request for production of documents. Review email from KAK regarding use of surveys and further research. Further email correspondence with Lee Shalov and KAK re use of surveys.	
10/22/2014	KAK Review and respond to update from KSR re projects, including Wright discovery responses, Wright depo prep. and Verter (Apple witness) depo prep.; review and respond to email from co-counsel Shalov re expert issues	0.20
10/23/2014	GMG Email KSR re delivery of objections to Wright deposition notice; decrypt and review 10/23 Apple production	0.60
	KSR Prepare to defend Claudia Wright depo. Prepare to take Verter depo. Continue to draft objections to deposition notice and request for documents directed to opt-in plaintiff, Claudia Wright. Email correspondence with Brett Gallaway and KAK regarding service stipulation (none) and Apple's confusing proofs of service. Email correspondence with BG re responses to interrogatories directed to Claudia Wright and other plaintiffs. Further email correspondence with BG re Apple proofs of service. Email correspondence with KAK regarding service of objections to document requests in depo notice served on Claudia Wright. Email correspondence with GMG re delivery of objections to document requests in depo notice to Claudia Wright. Email correspondence with Anne Jordan (Littler associate) re ESI production and missing text files. Email to BG regarding Claudia Wright's [PRIVILEGED] Email correspondence with BG re objecting to Apple's interrogatories that are over-limit. Further email correspondence re service stipulation re objections to depo notice directed to Claudia Wright. Email from KAK re Apple declined request for service stipulation to permit email service. Email from KAK re over-limit interrogatories from Apple. Further email correspondence with KAK re service of objections to Wright depo notice and request for documents. Continue to draft and edit responses to interrogatories to Claudia Wright. Email correspondence with BG re issues with Apple's proof of service of interrogatories on California plaintiffs. Further email correspondence from KAK regarding negotiating responses with Apple on over-limit interrogatories. Email to KAK regarding FedEx service of objections to Wright depo notice. Email from BG with Claudia Wright's responses to Apple's ESI questions, to produce at her deposition or with her documents.	8.60
	KSR Email from Anne Jordan with Benjamin production; discuss with GMG re ESI format and procedures to review. Email to Anne Jordan regarding whether Benjamin production is new or replacement production and response. Email to KAK re no objections to depo notices served on plaintiffs other than Wright. Email re [PRIVILEGED]; prepare to defend her deposition and produce documents.	1.20
	KAK Review and respond to KSR correspondence re method of service of objection to notice of deposition of opt-in plaintiff Wright; review and respond to email from co-counsel Gallaway re defendant's attempt to propound more interrogatories than allowed by the FRCP on each plaintiff and best response thereto	0.20
10/24/2014	GMG Decrypt 10/24 Apple production of image files; review 10/23-24 Apple productions and email KSR re file formats	0.70
	KSR Draft revisions to responses to interrogatories served on Claudia Wright and other plaintiffs and circulate. Email correspondence re [PRIVILEGED]. Review/analyze relevant document and forward to Boyer, Dunne and Kienitz at Littler with request to continue Wright depo. Email correspondence with Paul Weiner and BG regarding vendor issues with Apple's ESI productions. Discussion with KAK re Verter depo prep. Review Apple's text files production forwarded by BG to assess compliance with agreed ESI format. Further instructions to GMG to calendar extension of time to respond to interrogatories to California plaintiffs. Follow-up email regarding	4.80

		<u>Hours</u>
	[PRIVILEGED]. Email question from BG regarding ESI format negotiations with Apple and respond. Further email correspondence with Paul Weiner (Littler) re Apple's ESI format for production in response to plaintiffs' RFPs. Further email to Paul Weiner re load files on FTP site and vendor link, to review Apple's ESI productions. Further email correspondence with Todd Boyer re continuing deposition.	
10/24/2014	KAK Began review of draft responses to special interrogatories prepared by KSR	0.20
10/27/2014	GMG Review email re 10/24 Apple production and email KSR re same	0.10
	KAK Conference with KSR re status of clients' written discovery responses due this Friday and need to prepare and serve all remaining written discovery this week; conference with KSR re continuance of Wright depo; review correspondence between KSR and defense counsel re same; correspondence with co-counsel Shalov re additional depositions and topics to be covered	0.50
	KSR Email correspondence with Brett Gallaway and Paul Weiner regarding volume of Apple's ESI production for coordination with ESI vendor. Email correspondence with Brett Gallaway and Alexandra Behrman regarding transcripts of prior Apple depositions for Verter depo prep. Email from Behrman with transcripts and respond. Email to Julie Dunne, Todd Boyer, Josh Kienitz re new dates for Wright depo. Follow up email correspondence to Todd Boyer re depo dates. Email response from Todd Boyer that he is checking availability and respond. Email to Claudia Wright re depo off pending new dates from Apple. Instructions to paralegal re depo transcripts. Research discovery deadlines in Northern District rules and circulate email re continuance of Wright depo, rules for discovery cutoff and strategy for further discovery. Email question from Lee Shalov re strategy for timing of motion to compel further contact info for sample list of California class members, and respond. Email correspondence with Claudia Wright re depo date and responses to interrogatories. Draft verification for Wright's signature and instructions to GMG re verification. Email to Lee Shalov and BG re due date for responses to rogs, service agreement, arranging for verifications, and substantive edits. Further email correspondence with BG and LS re rog responses for California plaintiffs. Email correspondence with Todd Boyer regarding new dates for Wright deposition. Further email correspondence with Wright regarding [PRIVILEGED]. Circulate draft response to Todd Boyer's push-back on request for new date for Wright depo in light of new DFEH claim and new counsel. Assent from LS and send email to Boyer, Dunne, Kientiz. Further correspondence re same.	5.80
	KSR Confirm depo date via email with Claudia Wright and Todd Boyer. Email correspondence with BG and research re exclusion of Dowling from set of plaintiffs receiving rogs. Review Feist depo transcript circulated by BG to prepare for Wright and Verter depositions. Email question from Lee Shalov re motion to compel employee addresses and survey. Draft and send response to Shalov with recommendations. Email discussion with Wright re [PRIVILEGED]. Email to GMG and KAK confirming last day to respond to interrogatories served on California plaintiffs. Email correspondence with BG to confirm no interrogatories sent to plaintiff Dowling. Further email correspondence with Lee Shalov and BG to coordinate edits to responses to interrogatories served on California plaintiffs. Further email correspondence with Wright to arrange for depo prep session.	2.40
10/28/2014	KAK Review correspondence between co-counsel Gallaway and KSR re status of client discovery responses due later this week; review and evaluate draft prepared by KSR for client Wright	0.40
	KSR Telephone call from Claudia Wright to discuss deposition continuance, logistics and depo prep. Email from BG with questions re draft responses to interrogatories to California plaintiffs. Analyze draft and respond. Further email correspondence with Claudia Wright re depo prep and responsive documents. Email from BG re blank spaces in Wright's rog responses and respond re placeholder for responses from	6.10

other California plaintiffs, including Dowling. Further email question from BG; and respond. Review updated DAT file from Anne Jordan on behalf of Apple. Continue to draft edits to responses to interrogatories directed to California plaintiffs. Prepare to take Verter depo; review documents produced by Apple and deposition transcripts; draft depo outline. Instructions to GMG re preparation for Verter depo.

10/29/2014	GMG	Review DAT file produced by Apple for production volumes 1-9 and email KSR and KAK re same; prepare draft verification for Wright responses to Apple interrogatories and email KSR re same	0.60
	KAK	Review [PRIVILEGED]; email to co-counsel Shalov regarding problems with same; review and respond to correspondence from KSR re same	0.40
	KSR	Email from Jason Giaimo re responses to interrogatories to California plaintiffs; and respond. Further email correspondence with Jason re interrogatory responses and suggestions re supplemental declarations filed with supplemental FLSA motion brief. Review/analyze documents circulated by Lee Shalov. Telephone call from Jason Giaimo to discuss responses to Speicher, Frlekin, Gregoroff, etc. rogs and depo testimony. Email correspondence with Brett Gallaway regarding hot docs for Verter depo, and follow up. Prepare for Verter depo. Email correspondence with BG and Jason Giaimo re facts supporting rog responses; review draft responses and respond. Review prior class cert supplement brief for facts supporting rog responses and forward to JG and BG. Email correspondence with BG re hot docs for review for Verter depo. Email request to BG for hot docs produced by Benjamin, for Verter depo prep. Email correspondence with BG re coding pane for defendants' productions. Review responses to Speicher and Gregoroff rogs circulated by Jason Giaimo, and draft edits and comments; circulate. Research regarding use of survey testimony. Email correspondence with KAK regarding [PRIVILEGED]. Review/analyze [PRIVILEGED] and send comments to KAK. Forward draft interrogatory responses to Claudia Wright for review with instructions. Forward supplemental FLSA brief to Jason Giaimo with reference to Dowling testimony re use of personal MacBook Pro for work. Email correspondence with BG re interrogatory responses concerning use of personal laptops. Further email correspondence with BG re Claudia Wright's interrogatory responses concerning her use of Apple-issued laptop. Instructions to GMG to prepare verification for Claudia Wright of interrogatory responses. Email to Claudia Wright with verification of interrogatory responses to sign and instructions.	7.60
	KSR	Further email correspondence with KAK re use of survey evidence. Further email correspondence with Wright re timing of sending packet with documents responsive to request for production in depo notice, and verification of interrogatory responses.	0.60
10/30/2014	GMG	Prepare PDF of Wright verification and email KSR re same; review re-notice of Wright deposition, compare production request with original and email KSR re same	0.80
	KAK	Review and evaluate further correspondence from co-counsel Shalov and KSR re [PRIVILEGED]; conference with KSR re same	0.20
	KSR	Telephone call to Claudia Wright regarding verification for interrogatory responses. Draft edits to interrogatory responses. Review/analyze case circulated by Lee Shalov regarding survey evidence. Research additional case law regarding contacts with putative class members and draft and circulate analysis. Review/analyze document requests and email to LS and BG, KK re meet and confer on statements of Apple employees and contact info. Further case research regarding survey evidence and circulate pertinent authorities with comments. Discussion with KAK regarding survey evidence. Analyze Apple's discovery responses re work product objections and email to LS and BG regarding meet and confer and/or motion to compel further responses. Instructions to GMG re Claudia's Wright's verification of interrogatory responses. Email correspondence with BG regarding coding pane for review of Apple's ESI and current collection of hot documents, for depo prep. Email correspondence with LS regarding analysis of case authorities governing use of survey evidence in California.	7.20

Further email correspondence with BG re organization of document review. Review/analyze [PRIVILEGED] and email correspondence with LS and BG regarding same. Review/analyze document requests to determine whether capture Apple's interviews with putative class members. Circulate email with text of pertinent requests and recommendations. Review revised notice from Apple for depo of Claudia Wright. Instructions to GMG to compare notices to see whether there are any differences in documents requested. Email correspondence with BG regarding meet and confer with Apple on responses to RFPs requesting documents re interviews with putative class members. Continue research regarding [PRIVILEGED]. Forward to LS and BG with comments.

10/30/2014	KSR	Update California research re security search cases; email to LS and BG re Stiller, Otsuka and Cervantez. Email correspondence with LS and BG re date to finalize survey. Further research for and email correspondence with LS and BG regarding necessity of disclosing survey sponsor.	0.90
10/31/2014	GMG	Prepare Wright interrogatory responses and serve; email Giaimo and Gallaway re method of service	0.50
	KSR	Further research of issues related to [PRIVILEGED]. Email to Jason Giaimo and BG re rog responses for all served California plaintiffs. Draft further edits to responses to interrogatories served on Claudia Wright. Email to Jason Giaimo and BG re service of all interrogatory responses, including responses of Claudia Wright. Email from Jason Giaimo re service date today and confirm. Email request from BG to review and edit all interrogatory responses. Question from BG re electronic signature on verification and respond. Email from Jason Giaimo with drafts of interrogatory responses for Gregoroff, Speicher and Frlekin. Draft edits to interrogatories and email redlines to Giaimo and BG with comments. Forward further edits to Wright responses for Giaimo to make changes as appropriate in responses of other plaintiffs. Draft further edits to Speicher rog responses and instructions to GMG re service of Wright responses. Forward Wright's verification to Jason Giaimo for service of her responses. Further correspondence re same. Further research and further email correspondence with LS and BG re [PRIVILEGED]. Further research and forward to LS and BG. Further research regarding [PRIVILEGED] and forward case authorities to LS and BG. Prepare for Verter depo.	7.80
11/2/2014	KSR	Prepare for Verter depo including drafting depo outline.	6.70
11/3/2014	GMG	Confer with KSR re preparation for Verter deposition; draft amended Verter deposition notice and confer with KSR re same; prepare final notice and serve; email court reporting service re confirmation; phone call with court reporter Leqve re LiveNote and confer with KSR re same; email KSR re successful service of deposition notice; email court reporting service and KSR re substitute reporter; download documents from Relativity database, save coding and prepare multiple copies for deposition; prepare other documents for deposition and confer with KSR re same	4.90
	KAK	Conference with KSR re tomorrow's deposition of store manager Verter; review correspondence from co-counsel Shalov to defense counsel re confidentiality designations and other matters	0.20
	KSR	Prepare for Verter depo. Instructions to GMG re logistics, room, reporter, etc. Review/analyze Verter production and instructions to paralegal regarding exhibit for deposition. Email correspondence with Claudia Wright re production of documents requested in depo notice. Email correspondence with LS and BG re Apple's request for extension to produce documents. Discussion with GMG re instructions to prepare new depo notice for Verter; check files and new instructions. Email correspondence with LS and BG re hot documents for Verter depo. Email to LS and BG with additional research re [PRIVILEGED]. Arrange with BG for Epiq account and review Verter document production and other hot docs produced by Apple relevant to Verter depo. Further email correspondence with Claudia Wright to confirm documents for	7.90

production at deposition were sent. Email correspondence with BG re coordinate Epiq account. Further email correspondence with BG re coding tags for Apple ESI production. Complete document review for Verter depo and instructions to GMG to prepare depo exhibits. Further instructions to GMG re preparation of depo exhibits. Review Kalin deposition and declaration in preparation for Verter depo. Email correspondence with GMG and instructions to check facts re Kalin. Further instructions to GMG re depo prep. Review transcript of depo of Brian Krinek to prepare for Verter depo. Email correspondence with Lonnie Blanchard re issues to raise with Verter. Review/analyze notes from Lonnie Blanchard in preparation for Verter depo. Instructions to GMG re further depo exhibits to prepare. Draft and finalize outline for Verter depo.

11/4/2014	GMG	Prepare documents and provide support of Verter deposition and confer with KSR re same; review 11/3 Apple production and email KAK and KSR re contents and location on network; email proof of service of amended Verter deposition notice to co-counsel	1.10
	KSR	Prepare for Verter depo. Review/analyze Verter production and instructions to paralegal regarding exhibits for deposition. Instructions to GMG re copies of objections to deposition notice. Take Verter deposition. Email to Lee Shalov re exhibit order. Email to Lonnie Blanchard re whether to ask Verter whether he disagrees with anything in Kalin declaration, and instructions to GMG to make exhibit copies of Kalin declaration. Email correspondence with LS et al. regarding next exhibit number in order. Draft and circulate summary of Verter deposition.	9.70
11/5/2014	GMG	Draft responses and objections to re-notice of Wright deposition and email KSR re same; confer with KSR re client documents received from Wright; review deposition notice, Wright declaration and email KSR re same; email KSR re original Wright declaration; prepare draft supplemental Wright declaration and email KSR re same	2.10
	KSR	Further email correspondence with LS re security checks optional vs. mandatory, and issues for class cert. Email correspondence with Lee Shalov and Lou Ginsberg re Verter depo. Discuss instructions not to answer re Apple interviews, Verter's testimony re Kalin and bag check practices, witnesses identified by Verter. Instructions to GMG to prepare Wright objections to new depo notice and request for documents based on prior served objections. Email from Brett Gallaway regarding sealing procedures for motion to compel. Research and respond with recommendation to put onus on Apple for order to seal. Further email correspondence with Brett Gallaway re motions to seal under Northern District rules and to put onus on Apple to deal with discovery cutoff deadlines and motion to seal. Further email correspondence with BG re procedures for administrative motion. Further questions from Brett Gallaway re motion to seal and respond with further recommendations. Review documents from Claudia Wright in response to depo notice. Instructions to GMG and email to Claudia Wright to discuss declarations. Email from Claudia Wright regarding [PRIVILEGED]. Call from Claudia Wright regarding documents to produce and declarations, logistics for depo prep. Instructions to GMG to prepare declarations. Forward declarations to Wright with email re [PRIVILEGED]. Further instructions to GMG re redlines of declarations. Further email correspondence with Wright re declarations, in preparation for deposition.	6.60
11/6/2014	GMG	Confer with KSR re Wright client documents and motion to compel; prepare letter to judge with redacted and unredacted chambers copies of motion to compel and arrange for hand delivery to Courtroom 8; prepare Wright client documents and email KSR re same	1.60
	KAK	Review enotification from court re scheduling of meet and confer and hearing on motion to compel; email to co-counsel Shalov and Gallaway re coverage of same	0.10

		<u>Hours</u>
11/6/2014	KSR	2.90
	<p>Email correspondence with Lee Shalov regarding motion to compel production of Apple's ESI. Review letter motion to compel and draft redline and comments and circulate. Email instructions to GMG re administrative motion to file under seal. Email correspondence and call with Brett Galloway regarding procedures for filing confidential documents and prepare to serve chambers copy of motion with redacted and unredacted versions. Instructions to paralegal re service of chambers copy and review. Email to LS and BG with sample motions to seal. Telephone call with Lee Shalov, Brett Galloway, Todd Boyer and Josh Kienitz to meet and confer regarding Apple's production of ESI. Follow-up call with Lee Shalov and Brett Galloway regarding service of chambers copy of motion to compel and further meet and confer with Apple on depo instructions of witnesses not to answer questions. Research re work product protection of identification of witnesses interviewed by Apple. Review court's order for meet and confer and discovery motion. Email from Lonnie Blanchard regarding substance of Verter depo; forward email report to Blanchard. Further email correspondence with Blanchard regarding identification of witnesses to depose.</p>	
11/7/2014	GMG	0.20
	<p>Prepare selected Verter deposition exhibits and email KSR re same</p>	
	KAK	0.20
	<p>Review and respond to correspondence from co-counsel Galloway re hearing set for next week and other available dates; review email from defense counsel re discovery on plaintiff Frlekin and email to co-counsel Galloway re same; review email from defense counsel re deposition of Claudia Wright and email from KSR forwarding same</p>	
	KSR	2.80
	<p>Email correspondence with Lee Shalov regarding alternate dates for hearing on motion to compel. Review exhibits to Verter depo and forward key exhibits to Brett Galloway for use in hearing on motion to compel. Instructions to GMG re Verter depo exhibits. Draft revised objections to re-notice of deposition of Claudia Wright. Email correspondence with Lonnie Blanchard re identification by Lonnie Blanchard of witnesses to depose. Email correspondence with LS and BG re date for hearing on motion to compel Apple to produce ESI; respond will be down in SLO preparing for Wright depo. Further email correspondence with LS and BG regarding Alsup's ordered date for hearing and advising appearance on that day rather than arranging continuance. Further email correspondence with LS and BG re schedule for prep time for Wright's depo and hearing date scheduled by Alsup, along with meet and confer session. Email correspondence with KAK and BG regarding requested extension for Frlekin's responses to Apple's rogs and possible waiver of objections; recommendation for next steps. Email from Todd Boyer re Claudia Wright depo, scope of questioning, and serving amended depo notice; review/analyze.</p>	
11/10/2014	KAK	0.10
	<p>Review and respond to email from KSR regarding Wright deposition preparation</p>	
	KSR	6.80
	<p>Email correspondence with BG re responses to Frlekin rogs. Draft revised objections to re-notice of deposition of Claudia Wright. Continued depo preparation and analysis of issues related to scope of questioning, calls to counsel and emails re same. Instructions to GMG to serve objections to Wright depo notice and request to produce documents.</p>	
11/11/2014	GMG	5.80
	<p>Confer with KSR re client documents received from Wright to select which to produce; email Wright documents to KSR; add redactions and bates numbers and prepare selected documents for production; email redacted and unredacted production documents to KSR; prepare KSR binder for Wright deposition; compare revised Wright declaration with original, prepare redline and email KSR re same; prepare hard copies of redacted production documents</p>	
	KSR	8.80
	<p>Further review of documents produced by Claudia Wright in response to Apple's depo notice. Instructions to GMG re redactions. Forward additional docs to GMG to add to Wright production. Continue drafting objections and responses to re-notice of deposition of Claudia Wright. Instructions to GMG re depo prep. Prep for Claudia Wright deposition. Analyze attorney-client privileged documents and instructions to GMG. Draft further edits to objections and responses to Apple's re-notice of Wright</p>	

depo; instructions to GMG. Instructions to GMG re further redactions and Bates-stamping of documents for Wright production to Apple. Further email correspondence with BG re Wright ESI checklist responses in preparation for ESI hearing before Alsup. Email to Claudia Wright instructing her to review and return any redlines to declarations. Instructions to GMG re preparation of amended declarations for production at Wright depo. Further email correspondence with BG re option to serve Wright ESI checklist on Apple before hearing on motion to compel further ESI production from Apple. Further email instructions to Wright regarding redlining declarations. Further preparations for Wright deposition. Draft detailed memo re proposed document production per Apple's depo notice to Wright; include questions re attorney-client privileged documents. Forward additional documents to GMG to add to Wright production. Evaluate apparent attorney-client privileged document.

11/11/2014	KSR	Email question to BG re declarations filed for Claudia Wright. Continued depo preparation. Further email correspondence with BG and Wade Wilkinson regarding declarations filed for Claudia Wright. Email to LS and BG et al. regarding responses to RFPs to Wright requesting counsel communications with witnesses involving the complaint, and website screenshots, etc.	0.90
11/12/2014	GMG	Email 5/14 Wright supplemental declaration to KSR; revise Wright objections to re-notice of deposition and email KSR re same; revise production documents and email KSR re same; prepare final signed objections; revise Wright declarations and calls with KSR re same; prepare final bates-numbered declaration and supplemental declaration and email KSR re same; resend final declaration and revised production pages to KSR and Wright	4.20
	KSR	Email coordination with Claudia Wright for depo prep. Further review of documents produced by Claudia Wright in response to Apple's depo notice. Forward additional docs to GMG to add to Wright production. Draft further edits to objections and responses to Apple's re-notice of Wright depo; finalize and instructions to GMG to serve. Instructions to GMG re depo prep. Work with Claudia Wright to prep for deposition. Email correspondence with BG and Wade Wilkinson regarding whether Wright supplemental declaration filed with supplemental brief on FLSA motion. Review Apple's motion to compel additional responses to interrogatories from Amanda Frlekin. Email to LS and BG re recommendations for response to motion. Travel to San Luis Obispo to prepare for and defend Claudia Wright deposition and coordinate document production and preparation of revised declarations. Meeting with Claudia Wright to prepare for deposition. Instructions to GMG re prior declarations filed for Claudia Wright, for depo prep. Email to BG re whether he produced to Apple plaintiff's answers to questionnaires re ESI in plaintiffs' writing; response. Work with Wright on drafting amended declaration and amended supplemental declaration. Telephone calls to GMG re changes to Bates stamping for document production. Research Northern District standing orders re depositions. Telephone call from Julie Dunne and Lee Shalov regarding Wright deposition and areas of examination. Telephone call to Jeff Hogue to resolve issues with Wright deposition at behest of Shalov and Dunne. Email to Brett Gallaway and Lee Shalov and telephone call from Lee Shalov regarding resolution of issues. Email correspondence with Todd Boyer and Lee Shalov regarding order re Wright deposition. Further instructions to GMG regarding changes to documents for production to Apple to remove privileged document.	10.30
	KSR	Further instructions to GMG regarding making edits to Wright amended declarations.	0.20
11/13/2014	GMG	Call KSR re Wright declarations; review 11/13 Apple production and email KSR and KAK re same	0.40

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		<u>Hours</u>
11/13/2014	KAK Review and respond to correspondence from KSR regarding amended declaration of opt-in plaintiff Claudia Wright and impact on her deposition today; telephone call to co-counsel Gallaway re same; locate standing orders of the Northern District addressing depositions and forward same to KSR	0.30
	KSR Review LAW360 article excerpt regarding hearing before court on issues related to Apple's ESI production. Forward to Lee Shalov and BG and request information regarding result at hearing; response re new time for depo. Further work with Claudia Wright to prepare for deposition and prepare amended declarations for production. Email from BG regarding document from Monkowski production for Wright depo prep. Telephone call with BG regarding Wright amended declaration. Telephone call from Todd Boyer to change location for deposition. Defend Wright deposition in SLO. Further depo prep. Telephone call with KAK and further research regarding Northern District standing orders re depositions. Prepare redacted Wright deposition exhibit from notes Wright referred to for testimony. Post-deposition meeting with Claudia Wright to follow up on areas of deposition to mark confidential and next steps. Email to BG to inquire about result of hearing before Judge Alsup on Apple's failure to produce ESI.	12.20
11/14/2014	KSR Email to BG responding re email produced in Monkowski production and discussion with Wright.	0.20
11/15/2014	KAK Review stipulation extending fact discovery, expert disclosures and other deadlines; correspondence to KSR and co-counsel re same	0.20
11/17/2014	GMG Review judge's request re stipulation and email KAK re same; organize Verter and Wright deposition transcript materials on network and email KSR re same; confer with KSR re Wright deposition, exhibits and production	0.60
	KAK Review and respond to correspondence from co-counsel Gallaway and KSR re waiver of objections issue with regard to discovery responses of client A. Frlekin; review court's order directing that Kalin counsel state their position with regard to the revised proposed schedule and email to Gallaway and KSR re same	0.30
	KSR Discussion with GMG and instructions regarding documents produced at Claudia Wright's deposition, including revised declarations. Review email correspondence with BG and Josh Kientiz re ESI productions. Email correspondence with BG re re-producing rog responses of Amanda Frlekin without objections. Email to BG, LS et al. re last day for Apple to produce ESI so that plaintiffs may prepare for depositions of Apple employees. Telephone call with BG regarding responses; work with BG to revise responses of Frlekin to Apple rogs. Email correspondence with KAK re attorney-client privilege objections to rogs served on Frlekin. Further email correspondence with BG regarding revised responses. Further email correspondence with BG regarding preserving privacy objections. Instruction to GMG regarding Wright depo transcript and confidentiality designation. Email to Apple's counsel Julie Dunne, etc. re confidentiality designations for Wright transcript.	2.50
11/18/2014	GMG Prepare 11/13 Wright declarations and email KSR re same; review 11/13 Wright production documents and confer with KSR re same	0.60
	KSR Instructions to GMG re Wright document production and amended declarations. Draft and send email to Lee Shalov, BG and KAK addressing Wright depo testimony and amended declarations and advising filing of declarations. Review Wright production with GMG and send email to Todd Boyer requesting scan of documents produced from Wright to ensure no production of attorney-client privileged letter. Email from BG re filing amended Wright declarations and telephone call with BG to discuss. Email response from Boyer agreeing to scan and forward documents produced by Wright. Instructions to GMG re scans of Wright supplemental declarations.	2.20

		<u>Hours</u>
11/19/2014	GMG	4.20
	Review scheduling order and email KAK and KSR re same; revise draft Gallaway declaration and email KSR and KAK re same; emails re negotiations with Apple and revisions to Gallaway declaration; file Gallaway declaration via ECF; prepare hearing binder for KSR	
	KAK	2.90
	Review and respond to correspondence from KSR and co-counsel Gallaway re draft of declaration re opt-in plaintiff Claudia Wright; review and evaluate case management order issued by Court today extending case deadlines including discovery cutoff; conference with KSR regarding tomorrow's hearing on motion to compel further interrogatory responses from client Amanda Frlekin; review and evaluate court's notice regarding tomorrow's hearing and email to KSR and Gallaway re next steps; review further order of court regarding tomorrow's hearing; review draft stipulation to be submitted; correspondence re impact of Apple's refusal to include language directed by court; review enotifications re filing of stipulation, and filing by court of order rejecting same and requiring hearing to go forward unless Apple states that it withdraws motion to compel with prejudice; telephone conference with KSR regarding next steps; extensive email correspondence re same; legal research regarding impact of withdrawing initial motion to compel and filing subsequent motion to compel, including review of applicable rules; email to KSR and Gallaway re results of research; analysis of and email to KSR re possible arguments to be made at tomorrow's hearing	
	KSR	5.10
	Review draft from BG and draft revisions to declaration of Lee Shalov attaching supplemental declarations of Claudia Wright submitted at her deposition. Circulate and request to KAK to review. Further email correspondence with KAK re Wright supplemental declarations. Email correspondence with Brett Gallaway regarding hearing set on Apple's motion to compel further interrogatory responses from Amanda Frlekin. Email and telephone discussions with Brett Gallaway regarding request to appear on Apple's motion to compel. Email correspondence with KAK re appearance for hearing on Apple's motion to compel. Review court's order and email correspondence re no telephone option and required appearances for meet and confer at 8 am and court hearing at 10 am. Further email correspondence with BG regarding stipulation to withdraw motion. Telephone call with BG regarding same. Email correspondence with KAK re hearing. Further email correspondence with KAK re hearing. Review of Frlekin rog responses in preparation for hearing and further email correspondence with KAK re strategy. Review email correspondence with BG and Todd Boyer regarding filing stipulation to avoid hearing on motion to compel. Email correspondence with BG re Apple's attempt to withdraw motion to compel. Email correspondence with KAK and GMG re logistics of putting together exhibits for and filing BG declaration in opposition to motion to compel. Review and draft edits to BG declaration in opposition to motion to compel. Email correspondence with BG and GMG re additional documents for exhibits. Instructions to GMG to put together materials required for hearing. Further email correspondence with BG and Todd Boyer re filing of stipulation to remove motion to compel. Review stipulation filed by Apple. Review/analyze court's order regarding terms of stipulation to take motion of calendar.	
	KSR	4.90
	Draft revised, proposed stipulation to take motion off with prejudice and forward to Julie Dunne, with request to either comply or enumerate issues with Frlekin responses. Email instructions to GMG re proposed stip. Further email correspondence with BG re proposed stipulation. Email redline of BG declaration to BG to review for accuracy. Review email edits from BG; finalize BG declaration with exhibits and instructions to GMG to file. Review Frlekin responses to interrogatories and prepare for meet and confer on responses and hearing before the Court. Email issues to KAK and BG to research regarding substance of Frlekin responses. Email question to BG re basis for Frlekin's initial request for extension of time to respond to rogs. Review court's scheduling order and email question to BG and LS re judge's comments at hearing on California claims vs. all claims. Email to BG regarding proposed stip to Apple and request that Apple identify issues with rogs. Telephone call from BG regarding preparation. Email correspondence with LS, KAK, BG re	

Apple's position on motion to compel re Frlekin responses to rogs. Prepare for hearing on motion. Email to Julie Dunne et al. with request to take motion off-calendar or to identify substantive issues with plaintiffs' interrogatory responses. Email correspondence with BG re stip does not say all issues resolved and necessity to appear for hearing. Further email correspondence with BG re requirement that Apple stip with prejudice. Further instructions to GMG re materials for ordered meet and confer and court hearing on Apple's motion to compel. Coordinate with BG on Gallaway declaration regarding discussion with extern, for submission at hearing. Email correspondence with KAK re research for hearing; forward research questions to BG. Response from KAK re research request re successive motion to compel on same set of discovery.

11/20/2014	GMG	Review Wright deposition transcript and errata sheet and email KSR re same; prepare draft transmittal letter to Wright and email KSR re same	0.70
	KAK	Review and respond to additional early-morning correspondence between KSR and co-counsel Gallaway in preparation for 8:00 a.m. hearing on motion to compel re Frlekin responses; conference with GMG re whether we need to comply with requirement to deliver courtesy chambers copy by noon of Gallaway declaration filed last night; concluded we don't; telephone conference with KSR re events at hearing and draft preliminary report re same to co-counsel Gallaway and Shalov; further correspondence with Gallaway and Shalov re events at hearing; review and evaluate transcript of hearing; correspondence to Gallaway and Shalov regarding allocation of discovery related work after hearing	1.20
	KSR	Email to BG regarding service of declaration opposing motion to compel. Continued hearing preparation; handle 2-hour meet and confer with Apple's counsel Julie Dunne, Todd Boyer and in house counsel re Frlekin responses to interrogatories. Hearing before Judge Alsup on Apple's motion to compel. Follow-up telephone calls and email with KAK and BG, LS, re court's orders at hearing and next steps for discovery. Email from GMG regarding Wright transcript and instructions to prepare shell letter and copy of transcript for her review. Email to BG to immediately request full class list from Apple. Further email instructions to GMG re Wright transcript. Email to BG to call regarding additional issues addressed at court hearing and dates set by court for supplemental interrogatory responses, etc.	5.30
11/21/2014	GMG	Confer with KSR re 11/20 hearing and case status; review local rules re ECF filing and proof of service and email co-counsel re same; finalize cover letter and send deposition transcript to Wright via US mail and email	1.20
	KAK	Further conference with KSR re events at yesterday's hearing and next steps; email correspondence to co-counsel Gallaway and Shalov re same	0.30
	KSR	Review email from Brett Gallaway to Julie Dunne regarding immediate production of class list and other materials ordered by Judge Alsup at hearing on Apple's motion to compel further rog responses from Amanda Frlekin; and respond. Email to BG re information learned from Apple counsel in meet and confer. Discussion with KAK regarding discovery and case strategy. Email to BG, LS et al regarding revising schedule for Apple's ESI production in light of judge's orders at hearing on motion to compel. Email discussion with GMG re Wright deposition transcript next steps and calendaring orders of court at hearing on Apple's motion to compel further responses to rogs from Amanda Frlekin. Discussion with KAK re Northern District rules on professional conduct and requests for extensions. Email rules to BG with recommendations for dealing with Apple on requests for extensions of time and strategy for Frlekin amended responses on rogs given Apple's refusal to provide extension. Draft letter to Claudia Wright with instructions to review and complete errata for depo transcript. Review transcript of hearing and send email to BG and LS re make motion to compel if Apple doesn't produce class list by 11/26, per court's comments at hearing that "not ordering yet." Telephone call with BG to discuss meet	4.70

		<u>Hours</u>
	and confer with Apple, Claudia Wright deposition and declarations, strategy for questionnaires to class members, etc.	
11/24/2014	KSR Email correspondence from Todd Boyer re dates for deposition of Cano and Young-Smith. Email correspondence with BG re requesting that Apple immediately full class list per Alsup's order at hearing on motion to compel; review BG's email to Todd Boyer demanding production. Email correspondence with Todd Boyer regarding ESI review and production and delay producing class list; further email correspondence with BG re demand for class list. Email request from BG to handle depositions of Cano and Young-Smith in January; and respond. Further email correspondence with BG and Todd Boyer to set up call to meet and confer re production of class list. Email to BG and LS re most pressing issue is supplementing interrogatory responses. Email correspondence with BG re comments at hearing regarding splitting costs of Apple's ESI production.	1.50
11/25/2014	KAK Email to KSR re status of confidentiality designations in deposition transcript of Claudia Wright	0.10
	KSR Email correspondence with KAK regarding status of correcting Wright depo transcript and designating any necessary portions confidential. Review Feist errata sheet. Instructions to GMG re Verter depo transcript.	0.30
12/1/2014	GMG Review Boyer scan of Wright production documents and confer with KSR re same; prepare Wright000087-90 for production and email KSR re same	0.60
	KSR Email to Todd Boyer re Wright document production and privileged materials. Response from Boyer with Wright production. Review/analyze and forward to GMG with instructions. Review Wright depo transcript for confidentiality designations. Email correspondence with Todd Boyer and Brett Gallaway re date and time for call to meet and confer on plaintiffs' request and court order re class list. Discussion with GMG re Wright documents and Bates stamping. Email correspondence with Todd Boyer regarding absence of attorney-client privileged documents in Wright production. Instructions to GMG re Bates-stamps for additional Wright documents produced to Apple. Further instructions to GMG regarding redacted exhibit to Wright's deposition.	2.40
12/2/2014	GMG Review files produced by Apple on 11/26 and 12/1, organize on network and email KSR and KAK re same	0.40
12/3/2014	GMG Prepare and email Wright production documents to Gallaway	0.20
	KSR Email correspondence with Todd Boyer and Claudia Wright regarding Wright-000089 and privileged status. Instructions to GMG to send Wright document production to Brett Gallaway. Reminder to KAK re Lee Shalov declaration with Claudia Wright amended declarations to be filed. Review/analyze documents, including redacted exhibit from Wright deposition of document she used to refresh, and forward four pages to Todd Boyer with Bates stamps. Further email correspondence with Todd Boyer regarding four pages from Claudia Wright and Boyer demand for production list. Email to Claudia Wright re [PRIVILEGED]. Instructions to GMG to send full production of documents produced at Wright depo to BG.	1.80
12/5/2014	GMG Review letter re Wright transcript and email KSR re deadline for corrections; review Apple production, organize on network and email KAK and KSR re same; review Apple response to production request	0.40
	KSR Email correspondence with Claudia Wright confirming [PRIVILEGED]. Instructions to and discussion with GMG re deadline for Wright to submit corrections to deposition transcript	0.30

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		<u>Hours</u>
12/8/2014	KSR Email correspondence with Claudia Wright regarding document production and corrections to deposition transcript. Review/analyze Apple's class list. Email correspondence with BG re strategy for contacting putative class members for declarations.	0.40
12/9/2014	GMG Review order lifting stay; review <i>Busk</i> ruling and email co-counsel re same	0.30
	KAK Review enotification and order from court directing further briefing on impact of Supreme Court's opinion in <i>Busk</i> , handed down today; email to co-counsel and KSR re same and re issue of federal court's continued jurisdiction	0.20
	KSR Email correspondence with KAK and BG re <i>Busk</i> opinion; review opinion; further email correspondence re California claims. Review email from Todd Boyer demanding dismissal of claims. Review/analyze order regarding briefing of effect of <i>Busk</i> decision; calendar. Email to KAK (in mediation) with summary of court's order; coordinate briefing.	0.40
12/10/2014	KAK Review and evaluate email from defense counsel demanding dismissal of claims in view of <i>Busk</i> ; review and respond to correspondence from co-counsel re decision to agree to drop all claims except claim under California state law, contacting clients to obtain their consent to this, and federal court's possible resulting lack of jurisdiction, and need for research on impact of dismissal	0.20
12/11/2014	KSR Email correspondence with Todd Boyer and BG re dismissal of FLSA claims and state claims tied to FLSA.	0.20
12/12/2014	KAK Review and evaluate Supreme Court's opinion in <i>Busk</i> matter; analysis of impact on California claims and next steps to be taken in case; review and respond to emails from co-counsel re same and strategy call next week	0.90
12/15/2014	GMG Review dockets and evaluate status of <i>Gauthier</i> and <i>Kalin</i> cases and email KSR re same; review Apple brief re <i>Busk</i> case and email KAK and KSR re same	0.40
	KAK Conference with KSR re obtaining approval from client to dismissal of federal claim in view of <i>Busk</i> ; review correspondence between KSR and client re same; review enotification re filing by defendant of its brief today concerning <i>Busk</i> ; review and evaluate defendant's brief re <i>Busk</i> ; continued evaluation of next steps and preparation for co-counsel conference call; participate in conference call with co-counsel and Kalin counsel re response to defense brief and other next steps in case; review correspondence between defense counsel and co-counsel regarding deposition scheduling	1.90
	KSR Discussion with KAK regarding dismissal of federal claims and strategy regarding California state claims. Research related cases and send email to GMG re status of <i>Gauthier</i> case filed in state court. Email <i>Busk</i> decision to client and request consent to dismiss federal claims, and [PRIVILEGED]. Review orders in <i>Gauthier</i> and <i>Kalin</i> case. Review Apple's brief requesting dismissal of FLSA claims and Mass, Ohio and NY claims based on USSC ruling in <i>Busk</i> . Email response to questions from client regarding survival of California state law claims. Prepare for and conference call with Lee Shalov, Lonnie Blanchard, BG, Lou Ginsberg, KAK et al. to discuss dismissal of federal and FLSA-following state claims, and future of California claims. Email correspondence with BG re joint motion ordered to be filed on December 23 and coordination with <i>Kalin</i> action. Email correspondence with KAK regarding <i>Kalin</i> action and Apple's request regarding dismissal of state claims. Email from BG regarding contacting plaintiffs for consent to dismiss claims; respond and forward to KAK with comments re clients. Contact and confirm consent from clients to dismiss FLSA and Ohio, NY and Massachusetts state claims in light of ruling in <i>Busk</i> . Email to BG re client consent. Email to client for consent to dismiss. Further email correspondence with client to confirm consent; forward to BG. Email from KAK regarding necessity of obtaining consents in writing or getting written confirmation for all plaintiffs. Further	4.20

		<u>Hours</u>
	response to client re status of California claims. Email correspondence with client re deposition corrections.	
12/16/2014	GMG Review Verter deposition errata and email KSR and KAK re same	0.20
	KAK Review correspondence between KSR and clients approving dismissal of federal and non-California claims; review further correspondence from co-counsel and Kalin counsel regarding impact of dismissal of California claims for lack of jurisdiction; review notice of errata to Verter deposition transcript; review co-counsel correspondence regarding consents received from clients to dismissal of federal and non-California claims; email to co-counsel regarding preparation of stipulation with terms that are acceptable to us	0.30
12/17/2014	GMG Download and review Felczer docket and email co-counsel re same	0.20
	KAK Review and respond to correspondence regarding client consents to dismissal of federal action, defense counsel's position with regard to supplemental jurisdiction over California claims, and preparation for tomorrow's strategy call	0.30
	KSR Email correspondence with Lee Shalov, BG, Lonnie Blanchard, Lou Ginsberg, etc. re email with Todd Boyer refusing to stip to remove California claims from federal court. Email from Lonnie Blanchard re call pertaining to status of Gauthier litigation stayed in state court. Email question from Lee Shalov re writ in Felczer action; forward writ petition to Lee. Email correspondence to set up conference call to discuss case strategy. Email correspondence with KAK re appealability of ruling on class cert. Email correspondence with KAK re coordination of briefing ordered by court. Review email string between LS and TB re dismissal of state claims and proposed dismissal of remaining claims in federal court.	0.80
12/18/2014	CAS Review deposition trx of Claudia Wright re: possible confidential information disclosed that should be designated as such subject to protective order; discuss with KSR; email KSR re results of review	1.50
	KAK Review and respond to correspondence re consolidation issue, status of brief due Monday and other matters	0.10
	KSR Review draft brief circulated by Lee Shalov pursuant to court's order to comment on effect of Busk. Email to Lee Shalov with comments on brief and question regarding court's order for joint statement re case consolidation. Discussion with CAS re confidentiality designations for Wright depo transcript. Email correspondence with Lee Shalov re conference call. Review/analyze draft joint statement circulated by Josh Kienitz regarding case consolidation, and circulate comments. Further email correspondence with Lee Shalov, Lonnie Blanchard, etc. re draft joint statement and consolidated complaint. Email correspondence with CAS regarding no designation necessary for Wright deposition. Review email from KAK re court's order re stipulation to consolidation. Conference call to discuss proposed consolidated complaint.	1.50
12/19/2014	KSR Review email from Lonnie Blanchard to Josh Kienitz re consolidated complaint and court's decision on supplemental jurisdiction. Email correspondence with KAK regarding consolidation strategy.	0.20
12/22/2014	KAK Review enotification re filing today of plaintiffs' statement re <i>Busk</i> ; review correspondence from defense counsel re joint statement on consolidation, due tomorrow; correspondence with co-counsel regarding same, including locating and forwarding relevant materials and court's past comments on idea of filing consolidated complaint	0.40

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			<u>Hours</u>
12/22/2014	KSR	Review draft circulated by Josh Kienitz re joint statement on consolidating complaints. Email to Lee Shalov and BG re Kienitz redlined statement. Telephone call to BG re consolidation issues.	0.50
12/23/2014	GMG	Review scheduling orders and joint statement re consolidation and calendar relevant dates	0.30
	KAK	Review enotifications re filings today and evaluate next steps	0.20
	KSR	Review Lonnie Blanchard's redline of joint statement. Draft edits to joint statement and circulate. Review/analyze court's order staying orders and motions. Recirculate redline of joint statement with further comments. Telephone call with BG to discuss joint statement and strategy. Email to Lonnie Blanchard with additional edit from BG. Forward draft of joint statement to KAK with request for comments. Review final version of joint statement circulated by LB and approve for filing.	2.50
12/24/2014	GMG	Review order re motion for extension; email KAK and KSR re recent filings; review letter re Benjamin deposition and email KSR and KAK re lack of transcript	0.30
	KAK	Review and respond to correspondence regarding preparation of amended complaint on timeframe ordered by court, including issue of adding named plaintiffs; review enotifications and review and evaluate most recent orders and filings this week	0.30
	KSR	Email from Lonnie Blanchard regarding draft of amended complaint and questions regarding included plaintiffs. Email response to Blanchard to add former FLSA opt-in plaintiffs in California, including Speicher, Dowling and Gregoroff, and delete former plaintiffs in state where claims follow FLSA and are dismissed. Email from BG re agreement on adding former opt-in plaintiffs. Email to LB and BG re potential issues with Wright re [PRIVILEGED]. Review/analyze filed request from LS for extension of time to file consolidated complaint and motion. Email correspondence with KAK regarding motion for extension. Review/analyze court's ruling on motion for extension and send email comments to KAK; calendar response date. Email to client re new complaint. Review discovery status.	2.10
12/29/2014	GMG	Review recent transcript and scheduling order, calendar upcoming deadlines and email KAK, KSR and CAS re same; prepare chart of upcoming deadlines and circulate to KSR, KAK and CAS	0.90
	KAK	Conference with KSR and GMG regarding upcoming deadlines, additional California plaintiffs, filing of amended complaint next week, and other matters	0.20
	KSR	Discussion with KAK re telephone hearing with Berger on Jan. 8. Email to Lee Shalov and BG re covering hearing with Spero on January 8; further email to LS re call. Discussion with KAK re additional California plaintiffs in consolidated amended complaint. Continue to review status of Apple's discovery responses and determine need for further discovery.	1.50
12/30/2014	GMG	Email Gallaway re Benjamin transcript	0.20
1/2/2015	KSR	Discussion with KAK re work on amended complaint, additional plaintiffs, doc review for amended interrogatory responses per court order, etc. Instructions to GMG to forward calendar with deadlines for filing amended complaint, serving discovery responses, etc. Email from BG re plaintiffs for consolidated, amended complaint limited to California class; respond. Email to client regarding consolidated amended complaint and [PRIVILEGED]. Email from GMG re Apple new production and total number of pages produced to date. Discussion with GMG re database searches for evidence to include in amended interrogatory responses. Review Apple's discovery responses for meet and confer letter. Notes to file re follow up discovery and deadlines.	5.60

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		<u>Hours</u>	
1/5/2015	GMG	Review latest Apple production, organize on network and check for completeness, and email KSR and KAK re same	0.40
	KAK	Conference with KSR re amended complaint due Friday, other upcoming deadlines, and allocation of work	0.20
	KSR	Email correspondence with BG re amended complaint; review, analyze and respond. Further email correspondence with client. Email correspondence with GMG and instructions regarding running searches on Apple's newest document productions.	1.20
1/6/2015	CAS	Research deadlines for motions to compel and written discovery in FRCP and Local Rules based on discovery cut-offs; email to GG and KAK; Meeting with KAK and KSR re: motion to amend, amended complaint, discovery deadlines, and case strategy	1.10
	GMG	Revise chart of upcoming deadlines and email KAK, KSR and CAS re same; review Apple bill of costs and email KAK re same	0.50
	KAK	Conference with KSR and CAS re upcoming deadlines, including deadline to file motion for leave to amend complaint and allegations to be included in complaint; review enotification re filing by Apple of costs bill; review same and forward to co-counsel; voice mail from reporter re same; review and respond to email from CAS re discovery deadlines	0.40
	KSR	Discussion with KAK and CAS re work on amended complaint and motion to file amended complaint limited to California claims and consolidating Kalin claims. Discuss supplemental responses to interrogatories and survey results. Email to Lee Shalov and BG requesting current draft of amended complaint and recommend additional allegations to be added. Review Lonnie Blanchard's draft of motion to amend and edits from LS and BG. Draft edits to motion to amend complaint. Email correspondence with BG regarding call with Boyer to discuss Apple's motion for costs. Email correspondence with Lou Ginsberg re covering call with Boyer to meet and confer on Amanda Frlekin's interrogatory responses. Discussion with CAS re discovery cutoff and research to determine and calendar last day to serve all follow-up discovery. Further email correspondence with KAK regarding last day to serve discovery on Apple. Further response from CAS re last day to serve written discovery. Instructions to GMG. Further email correspondence with KAK and instructions to GMG re calendar by method of service. Review/analyze Apple's filed bill of costs. Review/analyze GMG's revised chart of deadlines for discovery, expert issues, pre-trial deadlines, etc.; further instructions to GMG. Email correspondence with KAK, LS re Apple's bill of costs and call from Daily Journal, and deadline and strategy to oppose bill of costs. Email from Boyer regarding exhibits showing sources and custodians pertaining to documents searched and produced by Apple; analyze and determine sufficiency and adherence to plaintiffs' requests and meet and confers.	4.50
1/7/2015	KAK	Review email from co-counsel Gallaway re deadline to file objection to bill of costs submitted yesterday by Apple; review email from Apple's counsel re status of document production	0.10
	KSR	Review/analyze LS and BG draft redline to consolidated amended complaint circulated by Lonnie Blanchard. Review deposition transcripts regarding lines and wait times for redline. Further review/analyze revised motion to amend circulated by Lonnie Blanchard. Draft redline and circulate. Email correspondence with BG regarding deadline to oppose bill of costs and meet and confer requirement. Email correspondence with BG and Todd Boyer regarding scheduling meet and confer on Apple's bill of costs; further correspondence with BG and Todd Boyer in preparation for meet and confer call.	7.20
1/8/2015	GMG	Email KSR and CAS re 3/14 Shalov declaration; confer with KSR re motion to file amended complaint	0.40

Hours

		<u>Hours</u>
1/8/2015	CAS Draft/revise consolidated complaint, edit for content re California substantive causes of action, attorney fees provisions; Research CCP 1021.5; legal research re same; confer with KSR re factual allegations; additional evidence review re same and email to KSR	3.60
	KAK Review co-counsel correspondence regarding amended complaint; conference with KSR re same; preliminary review of new opinion relevant to California policy and protections being broader than under federal law; forward same to KSR for use in amended complaint; further correspondence concerning same	0.70
	KSR Discussion with KAK regarding status of consolidated, amended complaint, filing status, and additional allegations in Kalin complaint. Email with LB and BG to set up conference call to discuss motion to amend complaint, file consolidated. Conference call with Lonnie Blanchard, Lou Ginsberg, Lee Shalov re drafts of consolidated, amended complaint and motion to amend. Further email correspondence with Lonnie Blanchard regarding checking allegations against plaintiff declarations. Discussion with CAS regarding checking allegations against plaintiffs' declarations to confirm accuracy. Instructions to GMG regarding plaintiff declarations. Forward Speicher and Dowling declarations to CAS with instructions. Review/analyze Frlekin declaration and Shalov declaration and allegations of complaint for accuracy and consistency. Discussion with CAS regarding support for complaint allegations. Email to Lonnie Blanchard et al. regarding support for complaint allegations. Email correspondence with BG regarding factual basis for allegations concerning time spent on checks and waiting in line. Further email correspondence with Lonnie Blanchard regarding basis for allegations. Email correspondence with LS and LB re filing of motion to file amended, consolidated complaint. Telephone call from Claudia Wright regarding [PRIVILEGED]. Further discussion with CAS re edits to draft complaint. Research regarding legal issues for complaint and discuss with KAK. Email to Lonnie Blanchard et al. regarding edits needed.	3.20
	KSR Review/analyze complaint and further email correspondence with and telephone calls to Lonnie Blanchard regarding edits to complaint. Email to KAK regarding edits to consolidated complaint and filing status. Further email correspondence with LB re comments to motion to file amended, consolidated complaint. Draft and circulate further edits to motion to file consolidated complaint. Review comments from Lou Ginsberg on motion to file amended, consolidated complaint. Telephone call with LB and LS regarding motion to file amended, consolidated complaint. Review email from LG re settlement conference in-person scheduled with Judge Spero and calendar. Email correspondence with LS and BG re checking all allegations in draft amended complaint against plaintiff declarations and depositions for consistency. Request to LB for newest draft of motion and start checking against plaintiff declarations. Discussion with CAS regarding checking declarations. Email from BG regarding some complaint allegations based on discussions he had with plaintiffs. Review/analyze Mendiola opinion circulated by KAK to support arguments in motion to file amended, consolidated complaint. Draft and forward language for LB to add to motion based on Mendiola opinion. Discussion with CAS regarding facts stated in plaintiffs' declarations as checked against draft amended complaint. Further email discussion with BG regarding precise statements from plaintiffs in interviews to support complaint. Further email correspondence with BG regarding specific facts related to Amanda Frlekin. Email discussion with LS and BG regarding additional plaintiffs. Email discussion with KAK regarding additional legal issues for complaint.	3.20
	KSR Review and further redline edits to complaint. Instructions to LB to amend text. Telephone call with LB to ensure needed changes are made; email to KAK to confirm. Email from LB re inclusion of Mendiola opinion in motion to amend. Further email question from LB re consolidated complaint; and research further and respond. Further email correspondence with LB re same; further research and respond. Confirming email from CAS re same. Further email discussion with LB regarding same.	3.20

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		<u>Hours</u>
1/9/2015	CAS Meeting with KSR re: motion to amend complaint; edits to consolidated complaint; case strategy	0.50
	GMG Review motion to file amended complaint filed by Blanchard and order re same; review motion filed by Dion-Kindem and confer with KSR re same	0.40
	KAK Further correspondence with KSR re amendments to complaint; review enotifications re filing of motion for leave to amend; review co-counsel correspondence re court's order entered today	0.10
	KSR Email from Lonnie Blanchard with final drafts of consolidated complaint and motion to amend. Review. Email correspondence with KAK, Lee Shalov and Lou Ginsberg regarding remaining issues. Discuss same with CAS. Review filing of complaint and motion and further email correspondence with LS, LG and KAK. Further email discussion with KAK regarding amended complaint. Review/analyze order from court re response by January 16 on jurisdictional issues and commitment to abide by current schedule if consolidated complaint permitted. Forward with comments to KAK. Research regarding test for court to retain concurrent jurisdiction when federal claims dismissed and posture in state court if state claims dismissed. Email to Lee Shalov et al. re results and recommendations. Review filed minute entry re proceeding before Spero re settlement discussions; review filed notice and order setting further settlement conference and calendar. Email from Lonnie Blanchard with request for final approval of complaint and motion to amend for filing. Further email correspondence with KAK re rsame. Instructions to GMG to calendar response date and note court's requirement of attorney declarations that we will abide by current court-set deadlines. Email correspondence with LB re strategy on supplemental jurisdiction.	7.10
1/12/2015	GMG Review Wright production for ESI checklist and email/confer with KSR re same	0.30
	KAK Review and evaluate court's order requiring further briefing on jurisdiction issues; review co-counsel correspondence re same and other matters	0.20
	KSR Further email correspondence with LS and LB regarding who will prepare requested response re jurisdiction; response from BG and coordinate drafting of declarations required by court's order. Email from Lonnie Blanchard regarding court-ordered filing with declarations stating plaintiffs will not seek continuance if consolidated complaint permitted. Email to Lonnie Blanchard, LS, et al. re Alsup's verbal order to complete supplemental responses to interrogatories by February 1 and status of Apple's production, information to include in declarations. Email from BG re preparation of court-ordered declarations and brief on jurisdiction. Email correspondence with LS, BG, KAK and Lonnie Blanchard re copycat case pending in Santa Clara County superior court. Email from BG regarding defenses to Apple's cost bill; analyze issues with cost bill. Email to BG to coordinate call to address status of review of Apple's ESI, evidence and supplemental responses to Apple's interrogatory to California plaintiffs due Feb. 1. Email correspondence with BG and Todd Boyer re Wright responses to ESI checklist. Email to BG re possibly part of production at Wright depo; instructions to GMG to check that production. Review final document production from Wright and forward to BG with comments re ESI checklist already produced. Email questions from BG and further email correspondence with KAK regarding pending action in Santa Clara County superior court. Email discussion with LB and KAK regarding communicating with attorneys in Santa Clara case. Email to LS and BG re call to discuss status of doc review of Apple's ESI, evidence, and drafting supplemental responses to Apple's interrogatories to Amanda Frlekin and the proposed named plaintiffs. Further email correspondence with LS and BG to set up call and report by BG on status of meet and confer on Apple's cost bill. Forward Claudia Wright's ESI checklist to BG with information re production to Boyer at Wright deposition; BG email to Boyer with copy of Wright's ESI checklist. Instructions to	8.70

		<u>Hours</u>
	GMG to check for prior production of Wright ESI checklist at her deposition. Email to BG with Bates identification of Wright ESI checklist; BG email to Boyer confirming.	
1/13/2015	GMG Email Gallaway re Wright deposition invoice; review all deposition transcripts in file and confer with KSR re same; email Gallaway et al. re co-counsel agreement	0.60
	CAS Research Mediola v. CPS Security (Cal. Supreme Ct. case) for applicability to California claims; meeting with KSR re same.	0.80
	KAK Review and respond to correspondence from co-counsel re request by defense counsel for production of email cited in proposed consolidated amended complaint; confer with KSR re same	0.20
	KSR Email correspondence with LS et al. re jurisdiction over state claims, and possibility of new cost bill. Email correspondence with LS and KAK et al. re basis for new cost bill. Review/analyze authorities from BG re items allowed in cost bill, and allowance of cost bill where claims dismissed for lack of jurisdiction. Research and respond to BG re court's discretion to keep supplemental jurisdiction claims. Email from BG re email cited in consolidated complaint and request by Todd Boyer. Research for and respond to BG re email cited in consolidated complaint and suggestions for response to request. Email from KAK re whether to respond to Boyer declaration challenging statements in court-ordered declarations from plaintiffs' counsel, on issues of discovery status, production of class list. Further email correspondence with BG re email requested by Apple and check prior complaints. Discuss with KAK. Discussion with GMG re cost bill and depo transcripts. Review hot documents regarding employee complaints about bag checks. Email correspondence with BG and KAK regarding depo transcripts. Draft notes to file regarding follow-up discovery.	3.70
1/14/2015	GMG Draft KAK declaration in response to 1/9 order and email KAK and KSR re same	0.70
	KAK Follow-up email to co-counsel Gallaway re status of jurisdictional brief and declarations due Friday; correspondence with co-counsel and KSR re same; review and revise draft of declaration required by court's order re case schedule; circulate same to KSR; draft revisions and re-circulate; review edited declaration as prepared for KSR; review email from KSR to co-counsel circulating these drafts; conference with KSR re status of projects and next steps	0.80
	KSR Further email correspondence with Wade Wilkinson re analysis of whether to request court to decline supplemental jurisdiction. Email from Wade Wilkinson requesting review of draft brief on supplemental jurisdiction. Review and draft edits to brief. Email from KAK re whether email cited in earlier versions of complaint. Review/analyze meet and confer correspondence from Todd Boyer and coordinate brief and declarations due on 1/16. Review/analyze Apple's ESI for supplemental responses to Apple's interrogatories. Draft notes to file regarding same, hot documents identified by GMG, and various issues related to discovery and next steps in case. Email correspondence with KAK and BG regarding declarations ordered by court regarding compliance with court-ordered deadlines should court allow consolidated complaint. Review/analyze order requiring declarations and respond to KAK that each individual attorney must file declaration. Email correspondence and discussion with KAK re language of declaration and inclusion of issues with Apple's late production of class list and incomplete document productions, etc. Review/analyze draft of declaration from KAK; draft edits, finalize and circulate declarations from KAK and KSR.	8.40
1/15/2015	KAK Follow-up email to co-counsel Wilkinson re status of jurisdictional brief due tomorrow; review and evaluate current draft of brief with redlines by KSR; email to Wilkinson re additional revisions; locate and forward notice of related case filed by Apple re Santa Clara County Superior Court bag check action; correspondence regarding counsel declarations due tomorrow; review revised draft of brief and email to co-counsel with further comments; review draft of objections to bill of cost drafted by co-counsel	1.80

Galloway; email to Galloway with detailed comments; conference with KSR re supplemental responses to contention interrogatories, evidence, and next steps, including need to schedule conference with co-counsel Shalov re same

1/15/2015	KSR	Email correspondence with KAK re draft of brief on supplemental jurisdiction. Email correspondence with WW, BG and KAK re declarations ordered by court to be filed on Jan. 16. Further email correspondence with BG, etc. regarding order requiring email from each attorney, and procuring declarations from Lonnie B. and Peter K. Draft further redlines to supplemental jurisdiction brief draft circulated by WW; circulate edits. Telephone call from BG regarding plaintiffs' supplemental responses to Apple's interrogatories due Feb. 1 and [PRIVILEGED]. Telephone call with BG. Legal research regarding [PRIVILEGED]. Email correspondence with KAK re [PRIVILEGED], evidence to include in rog responses, and [PRIVILEGED].	8.20
1/16/2015	KAK	Review enotifications confirming filing of supplemental jurisdiction brief and supporting declaration; review KSR emails re status of discovery	0.10
	KSR	Further email correspondence with WW re declarations ordered by court to be filed on Jan. 16. Instructions to GMG re filing from Shalov office. Review/analyze [PRIVILEGED]. Response. Email to Lee Shalov and BG regarding [PRIVILEGED]. Email to LS, BG, KAK re evidence for supplemental responses to Apple's rogs. Email correspondence with LS re call to discuss evidence to cite in plaintiffs' supplemental rog responses. Email suggestion to BG re [PRIVILEGED]. Begin drafting follow-up interrogatories to Apple.	7.20
1/17/2015	KSR	Email regarding [PRIVILEGED]. Analyze. Response. Review/analyze Boyer declaration filed to contradict declarations from plaintiffs' counsel regarding whether we will comply with court's schedule if permitted to file consolidated complaint. Email correspondence with BG regarding Boyer declaration, confirm discussion at hearing on Apple's motion to compel relevant to declaration, and recommend no response.	1.20
1/20/2015	GMG	Review Verter deposition invoice and email KAK and KSR re same; review objections to Young-Smith and Cano deposition notices and email KAK and KSR re same	0.40
	KAK	Review further enotifications from Friday, including declaration of Apple's counsel filed in response to ours on supplemental jurisdiction; correspondence with co-counsel and KSR re same; follow-up email to co-counsel Shalov re call to discuss supplemental discovery responses due at beginning of next month; prepare for and participate in conference calls with co-counsel Shalov, Galloway and KSR re same; review objections to deposition notices received today; email to KSR re coverage of same	1.40
	KSR	Email correspondence with KAK and BG re status of opposition to Apple's cost bill and whether to respond to Boyer's declaration responding to points raised in plaintiff counsel declaration filed with brief on supplemental jurisdiction. Review final drafts of opposition to bill of costs and declarations prior to filing. Further email correspondence with KAK regarding issues raised in Boyer declaration. Discussion with KAK regarding email to Shalov re [PRIVILEGED] and supplementing rog responses. Email from KAK re Boyer declaration re status of ESI and production date of class list. Review Boyer declaration and respond to KAK. Email from Shalov re conference call to discuss [PRIVILEGED]. Notes re research to prepare for call with Shalov re [PRIVILEGED]; how to supplement rog responses and prove required elements under Rule 23 and on merits. Analyze original rog responses of Amanda Frlekin. Meeting with KAK to discuss responses Apple's contention rogs. Telephone calls with LS and KAK to discuss responses to contention rogs. Email from KAK regarding upcoming depos noticed by plaintiffs. Instructions to GMG regarding invoices for deposition transcripts. Email correspondence with BG re Cano and Young-Smith depos. Continue drafting follow-up interrogatories.	7.20

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		<u>Hours</u>	
1/21/2015	KAK	Review correspondence from co-counsel Gallaway re coverage of upcoming depositions; evaluation of next deadlines in case	0.20
	KSR	Email correspondence with BG re coordinating on depos and forward to KAK. Instructions to GMG to prepare shell of supplemental rog responses of Amanda Frlekin. Further analysis of rog responses of all plaintiffs and California opt-in plaintiffs for supplemental responses to Apple's contention rogs, according to Alsup's order to include evidence or be precluded from reliance. Email correspondence with BG re noticed depositions.	4.90
1/22/2015	GMG	Email Wilkinson re 11/20/14 hearing transcript; email KSR re previous Frlekin interrogatory responses; prepare draft Frlekin supplemental response to Apple interrogatories and email KSR re same	2.70
	KAK	Further co-counsel correspondence re depositions taken to date; conference with KSR re possible reply on jurisdiction issues	0.30
	KSR	Further review/analysis of Frlekin rog responses in preparation for call with BG and WW to discuss drafting supplemental responses. Call with BG and WW. Review/analyze Jan. 13 meet and confer letter from Todd Boyer re plaintiffs' rog responses. Research re interrogatories on unnamed class members. Email to WW and BG for information on which Frlekin original rog responses were based. Draft letter response to Boyer and circulate. Circulate original rog responses to KAK and LS to refer to re meet and confer letter to Boyer, with explanation of objections to interrogatories, plaintiffs' conditional agreement to withdraw them, and Apple's failure to meet condition. Email correspondence with BG re questions related to Boyer letter, including waiver of plaintiffs' right to receive Apple's declarations from interviewed class members. Instructions to GMG re draft supplemental rog responses for Frlekin. Review list of plaintiff-noticed depos from BG; forward to GMG for billing purposes. Email from WW requesting copy of transcript from November 20, 2014 hearing on Apple's motion to compel; respond and forward. Review transcript wrt supplemental responses to Apple's contention interrogatories and excerpt and circulate language regarding examples of class members who were subject to bag checks and who brought certain items in bags to work. Instructions to GMG regarding draft of supplemental responses to Apple's rogs to Frlekin. Forward original Frlekin responses, both sets, to WW. Continue to draft supplemental responses to interrogatories directed to Frlekin (contention).	7.10
1/23/2015	GMG	Finalize meet and confer letter to Boyer and confer with KSR re same; email to Boyer and Gallaway; revise Frlekin supplemental interrogatory responses and email KSR re same	1.10
	KAK	Correspondence with KSR regarding briefing on supplemental jurisdiction and advisability of filing early reply brief	0.20
	KSR	Email correspondence with Brett Gallaway regarding negotiations with Todd Boyer over production of Apple's employee declarations, for inclusion in meet and confer letter. Review/analyze court's comments at November 20 hearing re production of employee declarations. Draft edits to meet and confer response letter to Todd Boyer and circulate, with recommendations re demand for declarations. Draft supplemental responses to Apple's contention interrogatories to Amanda Frlekin, Set Two. Analyze court's January 9 order regarding briefing on motion to file consolidated complaint to determine whether court intended to consider on same track with issue of supplemental jurisdiction. Email correspondence with KAK re court's intent and briefing schedule. Further email correspondence with KAK re court's intent re ruling on supplemental jurisdiction. Finalize response to Boyer's meet and confer letter and instructions to GMG. Telephone call re [PRIVILEGED], for supplemental responses to Apple's rogs, Set Two. Review/analyze <i>Ralph Lauren (2008)</i> opinion cited by LS. Forward opinion to KAK with comments. Two telephone calls regarding evidence for supplemental rog	9.40

responses of Amanda Frlekin. Email to Lonnie Blanchard, BG, LS and KAK re drafting reply brief and coordinating hearing on February 19 on motion to file consolidated complaint. Check order on briefing schedule and circulate additional email with text of court's ruling. Response from Blanchard and email correspondence with KAK regarding reply brief. Review transcript of November 20, 2014 hearing and forward language to BG suggesting number of declarations court would want to see on specific issues, including transporting feminine hygiene products issue. Further email correspondence with BG regarding demand for Apple's declarations from putative class members. Further email explanation to KAK regarding date for filing reply on issue of supplemental jurisdiction. Draft final edits to meet and confer letter to Boyer and instructions to GMG to serve. Email further comments to KAK re Ralph Lauren opinion. Email correspondence with BG re depo exhibit numbers. Follow up email to BG regarding last depo. Draft additional supplemental responses to interrogatories to Frlekin; email to WW to add to draft responses. Instructions to GMG re draft of Frlekin supplemental responses. Email to Lonnie Blanchard regarding who will draft reply brief on supplemental jurisdiction issue, and who to handle February 19 hearing. Response from Lonnie B. and email discussion with KAK regarding reply brief. Email request from Claudia Wright regarding case status and draft and send email summary.

1/25/2015	KSR	Continue drafting supplemental responses to Frlekin interrogatories. Further email correspondence with KAK re reply brief on supplemental jurisdiction.	3.50
1/26/2015	GMG	Organize 1/23 Apple production on network, review file contents and email KSR and KAK re same	0.90
	KSR	Review/analyze Apple's reply brief regarding motion to file consolidated complaint and supplemental jurisdiction. Draft notes to file. Email correspondence with KAK regarding coordination of work to draft reply. Evaluate responses to be drafted to supplemental interrogatories and issues re forms of proof. Further discussion with KAK re [PRIVILEGED] and research case authorities. Email from Lee Shalov regarding due date for reply brief re motion to file consolidated complaint and supplemental jurisdiction issues, and asking about status of supplemental rog responses of Amanda Frlekin. Respond to Shalov with due date, issues to be addressed and strategic recommendations for reply. Conduct research regarding work product protection over [PRIVILEGED], whether matter of federal or state law, and research case authorities addressing the issue. Email correspondence with BG regarding his suggested extension of time to file reply brief. Further email correspondence with BG re extension of time on rog responses. Draft and circulate email regarding federal law with Alsup opinion and recommendation for strategy on [PRIVILEGED]. Email from Shalov advising to ask for extension on supplemental rog responses. Continue drafting supplemental responses to Apple's interrogatories, Set 2, to Frlekin. Circulate draft with further comments. Email correspondence with WW re status of reply brief draft and his request for further assistance with draft of supplemental Frlekin rog responses. Continue drafting supplemental responses.	9.10
	KAK	Email correspondence and conference with KSR re request that we cover both the reply brief and hearing on the motion for leave to amend. Further discussion with KSR re Apple's opposition brief on supplemental jurisdiction, additional legal research and strategy issues; review co-counsel correspondence re obtaining extension of time to serve supplemental responses	0.30
1/27/2015	GMG	Email KSR re Relativity database; confer with KSR re document review and status	0.30
	KSR	Email from Todd Boyer re clawback of privileged document. Email to BG re sent clawback request to Epig; response from BG with question re clawback request. Review Stipulated Protective Order and analyze document subject to clawback request. Draft and send par. 13(c) notes to BG regarding email string subject to claw back. Instructions to GMG re Relativity. Continue extensive drafting of Frlekin's supplemental responses to Apple's contention rogs, Set 2. Further instructions to	8.70

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Hours

GMG re ESI review. Email correspondence with WW and BG regarding email from putative class member. Further email correspondence regarding checklist for declarations. Call to class member. Further email to WW and BG regarding checklist or script for calls to procure declarations.

1/28/2015	GMG	Organize 1/27 Apple production on network, review file contents and email KSR and KAK re same	0.30
	KSR	Continue draft of supplemental contention rog responses of Amanda Frlekin. Email correspondence with BG re strategy for responses and plaintiff status. Telephone call from BG re hot documents in Apple's production including email and audit form, and strategy for supplemental rog responses, reply to motion to file consolidated complaint, etc. Continue to draft supplemental rog responses; finalize draft and circulate. Email to BG for last document request to Apple, to prepare follow-up RFPs. Email from WW with last set of RFPs. Email from WW regarding PAGA claims in complaint and respond. Email from BG regarding request for extension of time to serve supplemental rog responses and timing of responses under court's order.	7.10
1/29/2015	GMG	Review Apple response to proposed consolidated complaint and email KSR re same; email KSR re service methods for 1/23 meet and confer letter	0.30
	KSR	Email to Todd Boyer regarding date for serving supplemental rog responses. Email to BG regarding verification. Further email correspondence with BG re verification issue. Continue extensive work to draft supplemental rog responses of Amanda Frlekin. Finalize new draft and circulate. Review/analyze draft brief on supplemental jurisdiction circulated by WW. Draft edits and circulate. Discussion with GMG and instructions re earlier meet and confer letter sent to Boyer on issue of declarations. Per request, forward letter to Lonnie Blanchard. Email from BG regarding Frlekin verification of supplemental rog responses. Email from Lonnie Blanchard with request for draft supplemental rog responses so he can prepare responses for Kalin; respond and forward draft. Revise draft verification and circulate. Email from BG re contacting class member. Email from KAK forwarding email from class member. Email correspondence with and call to Hoag. Circulate email re conversation with class member. Coordination with WW and BG to add witness names to draft supplemental rog responses. Further email correspondence with Lonnie Blanchard re edits to draft supplemental rog responses.	8.90
	KAK	Review email received from class member and forward same to co-counsel Gallaway for response; review correspondence between KSR and co-counsel regarding draft of clients' supplemental discovery responses	0.20
1/30/2015	GMG	Prepare draft fourth set of requests for production and email KSR re same; prepare materials for discovery binder	2.80
	KSR	Email from Todd Boyer refusing extension of time to serve supplemental rog responses. Email correspondence with BG regarding responses of plaintiffs other than Frlekin and strategy for supplementing. Follow-up email to Blanchard re rog responses. Instructions to GMG regarding RFPs and email request to WW for Word version to draft additional set. Continue draft of supplemental rog responses of Amanda Frlekin. Email correspondence with KAK, BG, LS etc. re supplementing initial disclosures and timing of supplementing rog responses based on Apple's insistence that it is not opposing consolidated complaint adding these plaintiffs. Further instructions to GMG regarding draft of new set of RFPs. Email question to BG regarding Boyer's statement regarding number of putative class member declarations cited by BG. Email to BG regarding contacting class member by phone. Instructions to GMG re all Apple discovery responses for meet and confer letter. Response from BG regarding comment to Boyer re number of declarations. Email to Blanchard re how many interrogatories served in Kalin action, to assess how many follow-up rogs available to plaintiffs. Further email correspondence with BG re call with Frlekin to go over supplemental rog responses, and question re timing of	8.70

supplemental responses for Gregoroff and Speicher. Email to BG regarding call to discuss discovery responses. Telephone call with BG to discuss discovery responses and motion to file consolidated complaint and hearing date. Email to Lonnie Blanchard regarding error in motion papers re hearing date. Review/analyze draft supplemental rog responses for Frlekin and draft and circulate edits. Email to BG re proof of service and handling service from NY. Email correspondence with Blanchard re making use of Kalin's allotted discovery for follow-up requests. Further email correspondence with BG re proof of service for rog responses.

1/30/2015	KSR	Further instructions to GMG regarding binder of all discovery responses for meet and confer letter to Apple and follow-up discovery requests. Further instructions to Blanchard regarding edits to rog responses. Continue drafting follow-up interrogatories.	0.60
	KAK	Review correspondence from defense counsel and between KSR and co-counsel re discovery responses for unnamed opt-in plaintiffs; draft email with thoughts on this issue	0.20
1/31/2015	KSR	Email to BG regarding preparation and service of supplemental disclosures. Response from BG re status of verifications on supplemental rog responses and timing of supplemental disclosures.	0.20
2/1/2015	KSR	Email correspondence with BG re Frlekin's supplemental responses to Apple's rogs Set 2. Further email correspondence to respond to questions from BG re meet and confer session prior to Apple's motion to compel re definition of "required" in rogs. Review/analyze new draft of rog responses from BG and comment.	1.20
2/2/2015	GMG	Review order re motion to file amended complaint and email KAK and KSR re same; assemble KSR discovery binder; confer with KSR re document review; search Apple documents produced 1/27 and 1/30 and email co-counsel re absence of completed retail store audits in those productions; review Apple 1/27 production, compile relevant documents and circulate to co-counsel	4.30
	KAK	Review enotification re order on motion for leave to file amended complaint; review and evaluate order allowing leave to file complaint and determining that supplemental jurisdiction will be exercised; evaluation of next steps; email to KSR re involvement of GMG in document review	0.30
	KSR	Instructions to GMG re binder with Apple's discovery responses for meet and confer. Discussion with CS re rule on number of interrogatories and draft interrogatories and requests for admissions to Apple. Further discussion with GMG re Apple's prior rog responses. Review/analyze court's order re filing of second consolidated amended complaint and retention of supplemental jurisdiction. Discussion with CS. Draft and circulate comments on court's opinion and strategy for discovery. Email from KAK regarding review of Apple's ESI production. Draft meet and confer letter to Todd Boyer regarding Apple's discovery responses. Discussion with GMG re reviewing Apple's ESI production including audits and other key issues. Forward audit form. Email from Anne Jordan at Littler re Production 18 uploaded; email correspondence with BG re review of Production 18. Response from BG re review of Productions 17 and 18. Instructions to GMG re document review and organizations of key evidence. Further email correspondence with BG re document review logistics and coding. Email from Jason Giaimo (McLaughlin) re rules on managers conducting bag checks; forward key documents to GMG with instructions. Review key documents in Apple's productions and forward audit documents to GMG to add to evidence spreadsheet for class cert motion. Email to BG and WW to forward to me all early meet and confer correspondence with Apple counsel, for use in analysis of Apple's responses and draft of meet and confer letter on all outstanding discovery issues re Apple's productions and rog and RFA answers. Review meet and confer correspondence	9.40

forwarded by BG and follow up request for additional correspondence by date, including correspondence referred to in Apple's discovery responses.

2/2/2015	CAS	Confer with KSR re discovery and assistance with tasks needed given the deadlines in today's order	0.30
2/3/2015	GMG	Email Gallaway re sample checklist from Apple 1/27 production; search Apple 1/30 production re bag checks and compile relevant documents; email KSR re document re client Claudia Wright; begin review of Apple 1/30 production, compile relevant documents and circulate to co-counsel	4.10
	CAS	Review/analyze emails regarding 2/2 Order retaining supplemental jurisdiction and scheduling co-counsel call; review 2/2 Order by Judge Alsup; Review email and attached meet and confer letter from KSR to Todd Boyer, begin editing; meeting with KSR and KAK re agenda for call with co-counsel	1.20
	KAK	Conference with KSR and CAS regarding impact of judge's order that it will exercise supplemental jurisdiction and next steps in view of upcoming deadline, including service of additional written discovery and PMQ deposition notices; review and evaluate correspondence from GMG re content of most recent document production; review correspondence scheduling all-hands strategy call; review and respond to email inquiry from reporter with Daily Journal	0.70
	KSR	Further email correspondence with BG regarding meet and confer emails and letters with Apple. Review all meet and confer correspondence from BG for negotiations with Apple for further discovery responses. Email to BG with follow-up questions regarding meet and confers on rogs and RFAs vs. ESI productions. Meeting with KAK and CS to discuss case strategy after order from court exercising supplemental jurisdiction in federal court. Discuss additional discovery required for class cert motion, contacting Shalov for telephone conference, briefing schedule, etc. Continue to draft comprehensive meet and confer letter to Todd Boyer regarding Apple's responses to plaintiffs' rogs and RFAs. Review/analyze previous meet and confer correspondence received from BG. Review/analyze hot documents circulated by Gary Gray regarding Apple's bag check procedures, including email concerning Claudia Wright and respond to GMG. Legal research for meet and confer letter and continue drafting letter. Finalize draft of letter and circulate. Email to Lee Shalov et al. to set up conference to discuss preparation of class cert motion, additional discovery required, etc. Review report from GMG re hot documents in Production 18 and review additional documents. Edit draft of letter to Boyer consistent with suggestion from production that Apple only produced docs concerning plaintiffs and opt-ins rather than all employees affected.	9.50
2/4/2015	GMG	Email KSR re personnel files produced by Apple on 1/30; confer with KSR re document review; prepare revised list of upcoming deadlines and email KAK and KSR re same; prepare draft evidence table by store and begin to fill in document cites; finalize meet and confer letter to Boyer with attachment	3.90
	CAS	Draft/revise meet and confer letter from KSR to Todd Boyer, email edits to KSR and KAK; review emails from co-counsel and KSR with comments on MC letter; meeting with KSR re letter and further discovery needed for class cert; review emails re gathering declarations and disclosure requirements; review revised meet and confer letter to Boyer; review Judge Alsup's order regarding discovery and disclosures, email same to KSR; review email from KAK and prepare for strategy call	2.90
	KAK	Evaluation of work allocation going forward; preparation for strategy call; review correspondence re discovery letter prepared by KSR; email to GMG re preparation of list of upcoming deadlines in anticipation of tomorrow's strategy call; review and evaluate deadlines; review and respond to correspondence re evidence to be used in class certification briefing and need to serve amended supplemental discovery	1.60

responses; re-read relevant opinion; evaluate matters to be discussed tomorrow, particularly scheduling issues, and email to KSR and CAS re same

2/4/2015 KSR	<p>Email correspondence with GMG re Apple's production of documents from non-plaintiff or opt-in employees and managers. Draft revisions to meet and confer letter to Todd Boyer on all outstanding discovery issues with plaintiffs'-propounded discovery. Email correspondence with Lee Shalov et al. re witness declarations and audits and draft additional sections in meet and confer letter. Review/analyze redacted documents produced by Apple and draft section to letter demanding identification of associated employees and stores. Draft and circulate section of meet and confer letter to Boyer regarding excessive and impermissible document redactions. Review/analyze email edits from BG to meet and confer letter to Boyer. Revise and finalize letter and instructions to GMG re attachment and service. Discussion with and instructions to GMG re spreadsheet pertaining to all California Apple retail stores with evidence pertaining to each re bag and tech checks. Continue to review/analyze hot documents produced by Apple. Begin draft First Set of Rogs to Apple from Gregoroff. Email from Lee Shalov re production of witness declarations, relevant class cert opinion in favor of production and Apple's delay in productions of its declarations in violation of court's order. Email correspondence with LS, BG, KK, CS re supplemental responses to Apple's rogs directed to plaintiffs re survey evidence and representative testimony, strategy for responses. Further email correspondence with BG re revisions to supplemental responses to Apple's rogs and need for new verification from Amanda Frlekin. Draft revisions to section of meet and confer letter to Boyer concerning production of declarations; circulate. Research for and draft and send email to GMG with complete California Apple retail store list for preparation of key evidence spreadsheet. Discussion with GMG re preparation of spreadsheet and evidence to include. Finalize letter to Boyer and re-circulate.</p>	9.40
2/5/2015 GMG	<p>Review applicable rules and Alsup trial guidelines and add deadlines to calendar for class cert briefing, pretrial and pre-hearing filings etc.; revise list of upcoming deadlines and email KAK, CAS and KSR re same; compare Gallaway's list of potential declarants to class list, correct misspellings and add store location and dates of employment and circulate to KAK and KSR; further revisions to list of deadlines and email KAK, KSR and CAS re same; add document and declaration cites to evidence table by store and email KSR and KAK re same</p>	4.90
KAK	<p>Email to co-counsel Shalov's office re need to generate calendar of all trial-related deadlines; email to GMG re review of local rules regarding deadlines triggered by setting of trial date; review and evaluate court's most recent scheduling order; email to GMG re additional calendaring issues; correspondence to KSR and CAS regarding current calendaring issues and deadlines; review agenda items for today's call prepared by KSR; correspondence with co-counsel Gallaway re need for comprehensive calendar of deadlines; prepare for and participate in conference call with co-counsel Shalov and Ginsburg, KSR and CAS regarding various matters including class certification motion strategy, needed discovery, depositions, list of expert topics, and trial plan for certification motion; post-call discussion with KSR and CAS re allocation of work</p>	3.60
KSR	<p>Email from KAK re revisions to case calendar to calculate and include all class cert, discovery and trial-related dates. Calculate all discovery and motion deadlines from cutoff and draft notes in preparation for conference call to discuss strategy and further discovery. Email to KAK and CS re northern district rules governing class cert motion and application of 7-3(a). Draft agenda items and circulate bullet list to KAK in preparation for conference e call. Draft and circulate topics for PMQ depositions. Conference call with Lee Shalov, BG. Review/analyze Apple declarations and supplemental disclosures. Email to LS, BG, KAK, CS re Apple declarations. Instructions to GMG re additions to evidence table. Email from BG with list of potential class members who have agreed to provide declarations to support class cert motion; and respond. Review names of class members and check against employee list produced by Apple; circulate name corrections, questions. Email</p>	7.40

correspondence with BG re contacting potential class members to respond to inquiries and secure additional supporting declarations for class cert motion. Review/analyze Apple's amended initial disclosures and instructions to GMG to check names and facts and add evidence to store spreadsheet to support class cert motion. Further email correspondence with BG re contacting class members. Email to BG et al. re corrections to names of potential declarants and for amended disclosures. Draft email to Todd Boyer regarding request for email addresses corresponding to class list where mail returned; request for all supplemental discovery responses by no later than February 15, and request for list of store managers. Email response from KAK and CS with edits to email; revise email to Boyer. Review/analyze declarations of employees and managers produced by Apple. Draft and circulate email to LS, BG, KAK, CS, GMG re content and summary of declarations and follow-up strategy, depositions, affected stores.

2/5/2015	KSR	Email instructions to GMG to add helpful evidence from Apple's declaration to evidence spreadsheet by store. Review notes re need for and issues for supplemental discovery requests. Email questions from Matt Cohen regarding draft of supplemental initial disclosures, including damage calculation for California Class; and key documents to cite. Respond re key evidence including Apple's declarations and disclosures. Email to BG regarding signatures on plaintiff's responses to Apple's second set of rogs. Follow up email correspondence with BG re signatures on responses. Meeting with CS to discuss additional necessary discovery including depositions.	2.30
	CAS	Prepare for and join in call with KSR, KAK and co-counsel regarding discovery deadlines, additional depositions and other work; review list of deadlines prepared by GMG; review correspondence and project of class member declaration review; meeting with KSR regarding discovery work	1.30
2/6/2015	GMG	Review documents pulled from database and email KSR re potential store manager deponents; draft notice of appearance for CAS and confer with CAS re same; review 11/14 motion to compel, interrogatory responses and hearing transcript and email KSR re objections in responses	2.20
	KAK	Review correspondence and supplemental initial disclosures received from defendant; preliminary review of declarations just produced by defendant; conference with CAS and email to KSR regarding coverage of depositions; review and respond to correspondence concerning additional deponents, including managers and defendant's declarants; email to CAS re preparation and filing of notice of appearance; review email from co-counsel Gallaway circulating class member declaration; email to KSR and CAS re review of same; review letter from co-counsel Shalov to defense counsel re improper "confidential" designations; review email from Gallaway circulating draft class member declaration; email to CAS re checking these draft declarations	0.70
	KSR	Email correspondence with Matthew Cohen, BG, KAK, Lou Ginsberg, GMG re Claudia Wright now not class member but willing if lose other plaintiff. Email request to BG regarding procuring original signatures on discovery responses. Forward to LS. Email from LS re Apple's liberal use of confidentiality designation in violation of court rules and orders. Email to LS re adding point to meet and confer letter to Boyer. Review and edit letter to add this point. Calculate all discovery and motion deadlines from cutoff and draft notes in preparation of conference call to discuss strategy and further discovery. Draft agenda items and topics for PMQ. Conference call with Lee Shalov, BG. Review/analyze Apple declarations and supplemental disclosures. Email to LS, BG, KAK, CS re Apple declarations. Instructions to GMG re additions to evidence table. Email correspondence with BG re issues with signature from Frlekin and suggestions re FedEx. Email from Todd Boyer with attached meet and confer letter re plaintiffs' responses to Apple's rogs. Email from LS re necessity of responding asap to Boyer letter. Finalize and send email to Todd Boyer re email addresses corresponding to class list, deadline for Apple's supplemental discovery	4.60

responses and store leader list. Response to LS re will draft letter response to circulate and request for BG to deal with issue of signatures on plaintiff responses and verifications. Further email correspondence with LS re issues of Apple's redactions and confidential designations. Email from BG regarding suggested store leaders to depose based on information in Apple's document productions. Forward to GMG with request for suggestions based on his document review and store spreadsheet. Finalize and send email to Boyer. Email from KAK re CS' suggestions for depositions and strategy. Email from LS re suggestions for store manager depositions; analyze.

2/6/2015 KSR	Respond to LS with further information re suggested deponent Barandon. Draft edits to letter to Todd Boyer re outstanding discovery issues, including Apple's Interrogatories Set Two, Apple's Requests for Production of Documents Set One, plaintiff's Rule 26 Disclosures and plaintiffs' ESI checklists, and declarations of plaintiffs and putative class members; circulate draft. Email re information for Barandon depo. Email to LS and BG regarding information about Barandon from Wright depo, and further discussion of Apple's confidentiality designations. Further email correspondence with LS and BG regarding Wright's employment at Mission Viejo store and evidence contrary to Apple's declaration from Mission Viejo manager Casey Schull. Email from BG with draft declaration in support of class cert motion. Email correspondence with KAK and CS re draft declarations. Email from LS re draft letter to Boyer. Finalize letter to Boyer and send. Email from Boyer requesting dates/times for meet and confer call. Email to LS and BG re available dates/times. Instructions to GMG re attachments to Apple motion to compel re plaintiffs' objections to Apple's interrogatories for meet and confer letter response to Boyer on plaintiffs' interrogatory responses. Response from GMG and draft edits to Boyer letter.	4.60
CAS	Discussion with GMG re notice of appearance to be filed; discussion with KAK re availability to cover upcoming depositions, preparing for depositions and strategy	0.30
2/7/2015 KSR	Review/analyze Apple's supplemental responses to plaintiffs' interrogatories and requests for admissions served by Nicolas Kelsey (Littler). Instructions to GMG to add new evidence to evidence spreadsheet re Mission Viejo store. Email to Todd Boyer regarding whether Apple's supplemental responses to rogs are intended to address deficiencies raised in meet and confer letter vs. supplemental responses ordered by court to be served by February 1. Draft email to Todd Boyer addressing deficiencies in Apple's supplemental discovery responses in preparation for meet and confer call scheduled for Monday. Circulate draft with original discovery, and request comments/edits. Email response from LS. Finalize, pdf and send letter to Boyer re supplemental discovery responses in preparation for Monday's meet and confer call.	3.10
2/9/2015 CAS	Review/analyze emails from KAK, KSR, and co-counsel regarding meet and confer efforts with Apple and scheduling a conference call; review meet and confer letters from KSR, Brett Gallaway and Lee Shalov regarding deficient discovery responses, abuse of the confidentiality designation, and plaintiffs supplemental disclosures; Comment and edit draft class members' declarations; review email assignment from KAK -- review draft class member declarations and provide comments to co-counsel as they come in; review emails regarding whether we need to get original as opposed to electronic signatures for plaintiff and class member decs	3.50
GMG	Email Gallaway et al. re document review status; email KSR re 11/20 hearing and transcript; review class list and email KSR and Gallaway re absence of name; prepare list of all Andrews and Drews in class list and email KSR re same; review Verter depo invoice and email KAK and KSR re same; add Apple declarations to evidence table and email KSR re same; review of Apple documents to search for bag check documents by store; email Gallaway and KSR re Apple trainer; email KSR and Gallaway re relevant documents from Berkeley, Canoga Park, Cerritos and Chula Vista.	5.90

		<u>Hours</u>
2/9/2015	KAK Review further meet and confer correspondence with defense counsel re deficiencies in defendant's discovery responses; email to KSR re same and coverage of today's meet and confer call; review and evaluate class member declaration prepared by co-counsel Gallaway and comments of CAS; prepare additional comments in redline; email to CAS re reviewing remaining declarations; circulate redline to Gallaway; conference with GMG re continued review and evaluation of Apple's document production; correspondence with Gallaway re revised declaration; review further revisions prepared by CAS and approve same; follow-up email to Gallaway re same; correspondence re outstanding court reporter invoices	1.00
	KSR Prepare for meet and confer call with Todd Boyer to discuss all outstanding discovery issues. Work on drafts of additional discovery, including rogs, RFAs and RFPs. Email correspondence with BG re class member. Email correspondence with BG re Kalin declaration and rules re electronic signatures on declarations. Research and forward northern district rules to BG re e-signatures on declarations. Email correspondence with BG re Frlekin verification of supplemental rog responses. Respond to BG re meet and confer call to address outstanding deficiencies with Apple's discovery responses. Email to KAK and CS in preparation for meet and confer call with Boyer. Email from BG with additional class member declarations to support class cert motion for service on Apple. Email correspondence with KAK and CS re additional declarations. Email from Todd Boyer requesting later time for meet and confer call; further email correspondence with LS, BG, and Boyer to coordinate call time and divvy issues for discussion. Continue to review/analyze all of plaintiffs' discovery requests to evaluate need for further discovery. Email questions to GMG re hearing on Apple's earlier motion to compel in preparation for call to meet and confer on Apple's discovery responses. Email to Lonnie Blanchard regarding Kalin signature on verification of rog responses, in response to issues raised in Boyer letter. Email correspondence with BG re Frlekin's verifications in response to Boyer letter. Further email correspondence with BG re edits to draft letter to Boyer in response to his meet and confer letter re plaintiff's supplemental rog responses. Further email correspondence with BG and coordination on verifications of plaintiffs' supplemental rog responses. Response from BG re witness names in plaintiffs' responses to Apple's second set of rogs. Email question to GMG regarding witness names identified from discussions with Claudia Wright.	5.10
	KSR Instructions to GMG to research names on class list to locate correct witnesses. Further email correspondence with GMG re witnesses and stores worked in for identification. Email request to BG to call regarding issues with plaintiff discovery response verifications and discovery issues. Call from McLaughlin re depo transcript; forward to GMG with instructions. Email response from Lonnie Blanchard regarding Kalin signature on verification and respond re rules for attorney attestation. Forward northern district rules re attorney attestation to Blanchard. Follow up email correspondence with KAK and GMG re depo transcripts. Draft first set of RFPs of plaintiff Taylor Kalin and circulate with request for input on discovery request for data related to damages. Review/analyze info from GMG re evidence of bag/technology searches in Berkeley, Canoga Park, Cerritos and Chula Vista stores; respond to GMG. Draft additional interrogatories and requests for admissions. Telephone call from Lonnie B. re additional topics for RFPs to Apple and verification from Kalin.	3.70
2/10/2015	GMG Revise Kalin 1st set of interrogatories and admissions requests and email KSR re same; review 2/9 Apple production, organize on network and email KAK and KSR re same; finalize KSR meet and confer letter to Boyer; prepare list and compilation of all hot documents identified to date and email KSR re same	5.60
	KAK Review, evaluate and respond to correspondence from co-counsel Gallaway and KSR re California law relevant to draft of written production requests	0.20
	KSR Meet and confer call with Todd Boyer regarding deficiencies in Apple's discovery responses. Continue drafting interrogatories, requests for admissions and RFPs to Apple. Instructions to GMG re service of RFPs and request for topics for additional	7.60

RFPs based on GMG doc review. Email to BG, LS, KAK re adding list of hot docs to supplemental disclosures. Email to BG re review of Apple's newest document productions. Review Apple's document productions and further email correspondence with BG re coding options to collect best evidence for class cert motion and trial. Review/analyze draft of best evidence spreadsheet by store. Instructions to GMG re document review. Further follow-up emails with BG to confirm logistics of document review and retrieval of coded hot documents. Response from BG re coding protocol and further instructions to GMG. Review email from BG to declarants regarding return of signature after review and edits to declarations. Respond to BG re specific instructions for declarants re signatures. Further email correspondence with BG re declarant signatures. Email to BG, LS, KAK re data request made to Apple to support class damages and suggested revision. . Instructions to GMG to generate list of Bates numbers of documents coded as hot in Apple's productions for supplemental disclosures and RFAs. Instruction to GMG to create shells of first set of RFAs and Rogs to Apple from Taylor Kalin. Draft bullet list of discovery requirements for additional sets. Email to Lonnie Blanchard regarding response to Apple that plaintiffs are procuring original signature to verify rogs directed to Taylor Kalin. Email request to BG to copy CS on all draft declarations to support class cert motion. Review/analyze drafts of declarations. Review/analyze comments from LS on draft RFPs from Taylor Kalin to Apple and respond re strategy. Email response from BG re data needed to prove class damages.

2/11/2015 GMG	Review of Apple documents to search for bag check documents by store and save relevant documents re Brea, Costa Mesa and Fresno stores; prepare list of names from 2/5 Apple disclosures that did not submit disclosures, add positions and email KSR and KAK re same; confer with KSR re document review status; contact Epiq re access to Reviewer Comment field	5.10
KAK	Conference with KSR re supplemental initial disclosures; correspondence to Gallaway re same; email to co-counsel Shalov re status of draft of list of expert issues due on 3/2/15	0.30
KSR	Review drafts circulated by Brett Gallaway of supplemental disclosures. Draft and circulate edits and add documents from review of Apple's documents in Relativity. Continue drafting RFPs, RFAs, ROGS from Taylor Kalin. Call from LS and BG to discuss contact info for witnesses listed in supplemental disclosures. Discuss issue with KAK. Instructions to GMG re check of Apple's witnesses against declarations. Review/analyze list. Instructions to GMG to complete info re each witness on Apple's list. Meeting with GMG to review projects including document review in Relativity of Apple's new productions, and searches by store. Continue drafting new discovery requests to Apple.	8.20
2/12/2015 GMG	Confer with KSR re document review status and attorney comments field; prepare draft RFA Set 1 from Gregoroff to Apple re document authentication with exhibit listing all documents identified to date and email KSR re same; review of Apple documents to search for bag check documents by store; revise evidence table to add documents for Costa Mesa, Fresno, Glendale, Beverly, Manhattan Beach, Modesto, Pasadena, Pleasanton, Sacramento, Santa Barbara, Sherman Oaks, Thousand Oaks, Valencia and Walnut Creek and email KSR re same	6.40
KAK	Review, evaluate and respond to further correspondence from co-counsel Gallaway re upcoming store manager depositions	0.20
KSR	Instructions to GMG to prepare RFAs regarding business records. Draft edits to business record RFAs and further instructions to GMG regarding documents to list in exhibits. Discussion with CS re RFAs to Apple re business records. Continue drafting substantive RFAs. Email correspondence with BG re continued document productions from Apple after Boyer's statement productions complete, and whether to request what RFPs new docs are responsive to and whether cure after meet and confer correspondence and call. Meet and confer call with Todd Boyer, Josh Kienitz	9.30

and Brett Gallaway re Frlekin's supplemental responses to Apple's interrogatories. Follow up call with BG re depo scheduling, attorney work product privilege for emails to putative class members and draft declarations. Draft Taylor Kalin's interrogatories to Apple. Meeting with CS re PMK on audits and interrogatories on Apple's witness interviews. Forward to CS draft of RFPs to create audit PMK notice.

2/12/2015	CAS	Confer with KSR re revisions to next set of production requests; draft revisions; confer with KSR re additional interrogatories and deposition topics; began drafting 30(b)(6) deposition notice topics	1.80
2/13/2015	GMG	Draft interrogatories for Speicher and Dowling; finalize PMQ depo notice and discovery requests from Kalin, Gregoroff, Speicher and Dowling to Apple and email KAK and KSR re service; email discovery requests to co-counsel	5.10
	KAK	Conference with KSR re status of discovery to be served today; review and evaluate draft of 30(b)(6) deposition notice re audit procedures; prepare redline with revisions and re-circulate; review and evaluate draft of requests for admissions regarding audit procedures and email to KSR with comments; review and evaluate draft interrogatory for plaintiff Debra Speicher; draft revisions and email to KSR and GMG re same; review and evaluate draft interrogatory asking Apple to identify all persons interviewed about this case and email to KSR re same; review and evaluate draft RFAs regarding business records and email to KSR suggesting a corresponding interrogatory; review and evaluate addendum to RFAs re business records and email to KSR re revisions; review and edit revised draft; review and revise draft of corresponding interrogatory prepared by GMG; conference with KSR re status of discovery sets, service today, and next steps	1.60
	KSR	Continue drafting and editing discovery to Apple, including 3 sets of interrogatories, 2 sets of requests for admissions, request for production of documents and 30(b)(6) depo notice. Draft edits provided by LS and LB. Instructions to GMG regarding preparation of additional rog sets and exhibit list for RFAs. Discussion with KAK regarding rogs on denial of RFAs and research rule re effect on numerical limits. Work with KAK to finalize all discovery sets and instructions to GMG to submit for personal service today. Email correspondence re correct witness names in contention interrogatory responses, for supplemental responses of named plaintiffs. Review/analyze letter from Todd Boyer regarding plaintiffs' meet and confer letter on Apple's deficient responses to RFPs, RFAs, ROGs. Email to BG and LS to address parts of letter where Boyer says they agreed to accept less than requested.	8.30
2/16/2015	KAK	Review enotification re filing today by Apple of its answer to complaint; preliminary review of answer	0.10
	KSR	Email correspondence with BG regarding drafting supplemental responses to interrogatories for named plaintiffs; review/analyze original responses.	0.40
2/17/2015	KAK	Conference with CAS re preparation of updated calendar to circulate to co-counsel; review email from CAS re deadline to serve deposition notices by hand delivery; review follow-up email from CAS to defense counsel re scheduling of 30(b)(6) deposition notice on audit procedures	0.20
	KSR	Email from Jason Giaimo regarding edits to supplemental responses to interrogatories. Email correspondence with JG re further edits and forward correspondence addressing witness names and corrections to earlier rog responses. Review Claudia Wright responses to interrogatories and email to CW with question about [PRIVILEGED]. Review prior responses and send email to BG with supplemental witness name for Mission Viejo store. Meeting with Chad Saunders to discuss further discovery including 30(b)(6) deposition of Apple PMK on 6 stores for which no evidence listed on evidentiary table. Draft response to Boyer letter of February 13 regarding Apple's discovery responses. Review prior meet and confer correspondence referred to by Boyer. Review/analyze draft supplemental responses	7.90

to interrogatories circulated by Brett Gallaway. Draft comments and edits and circulate. Telephone call with Jason Giaimo and BG to edit supplemental interrogatory responses.

2/17/2015	CAS	Discussion with KAK re discovery deadlines and depositions to be set; review and determine last day to serve deposition notice and email to KAK; email to defense counsel re setting deposition on audit procedures; meet with KSR regarding this deposition and additional discovery; continued work on deposition notice	2.10
2/18/2015	KAK	Review correspondence with defense counsel re ongoing problem of improper "confidential" designations; draft follow-up email to co-counsel Shalov re status of list of expert issues due 3/2/15	0.10
	KSR	Review/analyze Boyer response to Feb. 4, 6 and 7 meet and confer letters and re Feb. 9 and 10 conference calls to meet and confer on all outstanding discovery disputes re Apple's responses to RFAs. Rogs and RFPs.. Draft further additions and edits to comprehensive meet and confer letter reply to Todd Boyer regarding deficiencies in Apple's discovery responses. Finalize and circulate draft of letter to Boyer with email re email addresses for class members requested. Receive, review and input edits to letter, finalize draft. Review email correspondence from LS to Todd Boyer re inappropriate confidentiality designations. Email to Todd Boyer re remaining issues re confidentiality designations and review/analyze email response from Boyer. Further email correspondence with Boyer and LS re redactions and confidentiality designations. Further email from LS re he will follow up with Boyer and pursue this issue. Discussion with KAK re court-ordered list of expert issues. Email correspondence with KAK and LS re list of expert issues. Discussion with CS and email correspondence with CS re he will take 30(b)(6) depo on Apple's audits of retail stores.	6.80
	CAS	Discussion with KAK re discovery deadlines and depositions to be set; review and determine last day to serve deposition notice and email to KAK; email to defense counsel re setting deposition on audit procedures; meet with KSR regarding this deposition and additional discovery; continued work on deposition notice	0.60
2/19/2015	CAS	Review email from co-counsel and Todd Boyer re scheduling depositions; Review email from KSR re meet and confer letter to Boyer and review attachment; meet with KSR re depositions and discovery issues; review email from GG transmitting meet and confer letter to Boyer and review attachment; Review store managers and PMK depo transcripts; Draft email to Boyer re depo schedule but do not send	3.20
	GMG	Prepare attachment to meet & confer letter listing class members for whom we are requesting emails and emails KSR re same; finalize meet & confer letter and circulate to all counsel via email; prepare draft privilege log	1.10
	KAK	Review and respond to email from KSR re coverage of upcoming depositions by our office; discuss privilege issues	0.10
	KSR	Email correspondence with Lee Shalov and BG re Apple's request for communications with putative class members and privilege log. Discussion with CS re privilege log and attorney-client relationship with Claudia Wright; further discussion with KAK. Instructions to GMG re preparation of list of putative class members for whom plaintiffs request email addresses from Apple; discuss with GMG. Continue drafting further edits to meet and confer letter to Todd Boyer regarding Apple's deficient discovery responses. Discussion with CS re deposition scheduling and plaintiffs' requests for data related to damages. Review Strauss letter referenced in Boyer letter of 2/13/15 re alleged waiver of RFPs on damages data. Draft further edits to letter to Boyer regarding Strauss letter. Email correspondence with BG re dividing depo responsibilities and issues re scheduling. Email correspondence with KAK re Barandon depo in SLO. Email correspondence with BG and ESI vendor to determine date of Apple's document productions vs. the date stated in meet and	4.70

confer letter from Todd Boyer. Draft further revisions to meet and confer letter to Boyer on all of plaintiffs' discovery directed to Apple on which responses already provided. Further email correspondence with BG re first date of Apple's document production; research production dates and forward relevant emails to BG. Draft further revisions to Boyer meet and confer letter regarding Apple's responses to all plaintiffs' discovery. Meeting with CS re depo prep for Barandon and 30(b)(6) on audits; and discussion of motion to compel and to determine sufficiency of Apple's RFA responses. Further email correspondence with BG and Lonnie Blanchard regarding assignments for taking Apple management depositions. Further email correspondence with KAK re CS taking 30(b)(6) depo on Apple's audits of its retail stores. Email to BG re CS will cover Barandon and audit depositions.

2/19/2015	KSR	Discuss and review draft of CS correspondence to Apple re plaintiffs' request for completed audit forms. Email from Todd Boyer regarding scheduling of depositions of Apple manager witnesses. Review edits from CS on draft of discovery meet and confer letter to Todd Boyer and draft additional edits to letter. Email to LS regarding issue of Apple redactions and confidentiality designations; and response from LS. Email correspondence with BG re issue of Apple's demand for production of communications with putative class members. Research communications issue and further email correspondence with BG on scope of any production. Further email correspondence with BG and TB re location for Apple management witness depositions (Cornelius and Kinder). Further email correspondence with BG and LS re request to Apple for communications with putative class members. Email correspondence with BG re responding to email from Boyer regarding when Apple started production of ESI. Further email correspondence with KAK re CS to handle Apple depositions. Further email correspondence with BG re dates of receipt of Apple's ESI including load files, for comprehensive discovery reply letter. Instruction to GMG to add names received from BG to draft letter to TB. Fact research regarding date of Apple's first ESI production to respond to point in Boyer email and meet and confer letter. Email correspondence with BG re further edits to reply meet and confer letter to TB. Instructions to GMG re edits to letter insert and to finalize and send. Email from BG with draft letter response to TB re production of communications with class members. Draft suggested edits and circulate. Instructions to GMG re privilege log and inclusion of redacted doc from Wright deposition. Email correspondence with TB and CS re dates for Barandon deposition in San Luis Obispo. Review/analyze/calendar Apple's notices of deposition served on counsel, directed to putative class members Coles, Telles and Paczka.	4.40
	KSR	Email to BG re requirement of subpoena on these witnesses. Further email correspondence with BG re need for subpoena. Discuss issue with KAK and further email correspondence with BG re whether to accept service.	0.40
2/20/2015	CAS	Meeting with KSR re scheduling depositions of 30b6 deponent and Karan Barandon's depo in San Luis Obispo; meeting with KAK re scheduling 30b6 and travel to San Luis Obispo; Email Todd Boyer re scheduling Barandon depo; review response from Boyer; meeting with GG re depo assistance; Review Verter deposition; Review 30b6 Notice and Audit document referenced therein; Review email from KAK attaching class member declarations sent to OPC	2.00
	GMG	Confer with KSR re draft privilege log; preparation for 3/16 deposition; confer with CAS re potential deposition on 3/9; review Apple deposition notices and add to calendar	0.80
	KSR	Email correspondence with Lee Shalov, BG and KAK re privilege log and communication with putative class members and depo notices to putative class members; need for subpoenas. Email correspondence with LS re BG's letter to TB re production of communications with class members. Further email correspondence with LS re Apple's need to subpoena class members for deposition. Telephone call from Lonnie Blanchard regarding scheduling depositions noticed by plaintiffs. Discussion with CS re scheduling of deposition in San Luis Obispo (Barandon) and	6.80

30(b)(6) depo notice. Research regarding requirement for order to take depositions of unnamed class members. Email to LS, BG and KAK regarding authorities supporting need for order, and Rule 32 requirements to notify Apple of depo notice defects. Instructions to GMG re preparation of privilege log. Further email discussion with LS re pre-litigation materials only on privilege log and research issue and review meet and confer correspondence on communications with unnamed class members; draft and circulate email with authorities and recommend deletion from BG meet and confer letter re plaintiffs' privilege log. F Email from BG with draft letter response to TB re production of communications with class members. Further email correspondence with LS re confidential communications with class members and privilege log.

2/23/2015	CAS	Review email from Todd Boyer (OPC) re scheduling 30b6 deposition and Apple's depo notices to putative class members; email from Lee Shalov re putative class member depositions; research federal case law re limits to depositions of putative class members; review emails re scheduling depositions of Apple's declarants and managers; review draft declaration of class member and provide edits to Brett Gallaway; Review deposition transcripts in preparation for upcoming depositions.	4.30
	GMG	Review declarations submitted by Apple on 2/22 and add summaries to evidence table by store; email Gallaway re draft declarations to be submitted by plaintiffs; email KSR re declarations submitted by Apple on 2/12 and add summaries to evidence table by store; email KSR re evidence table status; circulate current draft of evidence table to co-counsel	2.70
	KSR	Email and telephone discussion with LS and BG re challenging Apple's deposition notices for unnamed class members. Review/analyze Apple's new declarations of store employees. Email to LS, BG et al. re analysis of evidence and instructions to GMG to add analysis to evidence spreadsheet by store. Further email discussions with LS re declarant depositions. Instructions to GMG re evidence table. Review/analyze letter from Todd Boyer re Apple's discovery responses and reply to my meet and confer letter. Notes to file. Email to LS et al re conference call to discuss motion to compel. Notes to file for motion to compel. Email from Josh Kienitz regarding data format sample requested in plaintiffs' meet and confer letter. Analyze sample of time/punch records from Kienitz and respond with request for explanation of particular data fields. Further review/analysis of evidence table circulated by GMG and instructions for distinguishing class member declarations. Review email from LS to TB regarding notices of depositions re class members who submitted declarations and email question to LS. Further email correspondence with GMG re adding class member declarations to evidence table. Email response from LS re representing class members whose depositions Apple noticed. Further email correspondence with LS, BG and KAK regarding representing class member deponents.	5.20
2/24/2015	GMG	Revise evidence table by store; email co-counsel re declarations included in table; prepare draft Barandon deposition notice and email CAS re same; contact service re reporter and room for 3/9 deposition; email Saunders re potential locations; email court reporter service re preferred location	1.60
	CAS	Review/analyze emails re possible motion to compel from Lee Shalov and KSR; Review spreadsheet of evidence by California store prepared by GG; Review emails between Boyer and Shalov re limits to depositions and review cases cited therein; meeting with KSR re Barandon depo and possible MTC; Meeting w GG re preparing Barandon depo notice and review draft; Email GG re doc requests in notice; Email Boyer re scheduling Barandon, Kinder, and Cornelius depositions; Review draft decl. for class member; Barandon depo preparation	2.50

		<u>Hours</u>	
2/24/2015	KAK	Review and evaluate correspondence between KSR and co-counsel Shalov re possible motion to compel; review correspondence between Shalov and defense counsel negotiating terms of limited depositions of unnamed class members	0.30
	KSR	Further email and telephone discussion with LS and BG re challenging Apple's deposition notices for unnamed class members. Review/analyze Apple's new declarations of store employees. Email to LS, BG et al. re analysis of evidence and instructions to GMG to add analysis to evidence spreadsheet by store. Further email discussions with LS re declarant depositions. Instructions to GMG re evidence table. Review/analyze letter from Todd Boyer re Apple's discovery responses and reply to my meet and confer letter. Notes to file. Email to LS et al re conference call to discuss motion to compel. Notes to file for motion to compel. Email from LS regarding issue of whether to file motion to compel. Discussion with CS re motion to compel and deposition preparation for Barandon and 30(b)(6). Email correspondence with BG and instructions to GMG re citing Apple's declarations in evidence table. Email correspondence with KAK re motion to compel. Discussion with Chad Saunders re whether to file motion to compel further discovery responses from Apple and to determine adequacy of its responses to requests for admissions. Draft list of all issues for motion to compel. Email from LS re draft list of expert issues, and respond. Email correspondence with LS and BG re draft evidence table and list of whether table includes all declarants. Instructions to GMG to respond and add information to evidence table in preparation for motion for class cert. Email to LS re proposing limited set of telephone depositions to Apple.	6.80
2/25/2015	GMG	Confer with CAS re Barandon deposition notice; forward reporter confirmation to CAS; revise Barandon deposition notice and confer with CAS re same; preview declaration filed with Apple's opposition to FLSA motion and summary judgment motion and add California declarants to evidence table by store; confer with KSR re privilege log	1.80
	KSR	Email correspondence with LS re issues for expert testimony. Email correspondence with LS re procedures and issues re telephonic depositions. Email correspondence with LS re expert on damages issues. Review LS' meet and confer correspondence with Todd Boyer re noticed depositions of putative class members. Research authorities permitting telephonic depositions and circumstances, and procedures for swearing the witness, etc. Forward link to LS of relevant authorities. Email from BG regarding privilege log. Review and circulate draft privilege log. Email correspondence with BG re documents on Relativity. Review/analyze email from Todd Boyer to negotiate re length of depositions of unnamed class members. Discussion with Chad Saunders re putative class member declarations. Instructions to and discussion with GMG re privilege log. Email correspondence with BG re preparation for Cornelius depo. Email correspondence and discussion with KAK regarding need for expert testimony on discrete issues. Further email correspondence with LS and BG regarding preparation of witnesses for deposition on issue of counsel representation, and legal issues with representation. Email from Jeff Hogue in Felzcer action with request to appear by phone on Barandon depo. Response from Josh Kienitz. Instructions to CS to respond to Hogue and coordinate. Email from LS with issues for plaintiffs' depositions of Apple managers to be taken by Lonnie Blanchard. Analyze and respond. Further email correspondence with LS re whether expert needed for damages issues. Review dates and times proposed by BG for depositions of class members noticed by Apple. Calendar and respond. Review/analyze Apple's notices of deposition of Bolivar and Williams and its amended disclosures. Further email correspondence with LS re telephonic depositions and support for request. Review drafts of declarations circulated by BG of class members.	5.90
	KSR	Email correspondence with TB and LB re Cornelius depo. Further meet and confer correspondence regarding class member depositions with LS and TB. Further email correspondence with LS and BG regarding issues for expert testimony, including	0.70

		<u>Hours</u>
	damages issues. Email correspondence with KAK and discussion regarding issues for expert testimony, in preparation for deadline to disclose.	
2/25/2015 CAS	Review GMG emails re arrangements for Barandon deposition; Review/analyze emails re deposition protocol; review draft Barandon depo notice prepared by GMG, emails re same and approve for service; review plaintiff declarations submitted to Apple and email Gallaway re missed edits; review draft class member declarations and email Gallaway re edits; confer with KSR re status of draft declarations	2.60
KAK	Review emails and confer with KSR re expert issues and impending disclosure deadline	0.20
2/26/2015 GMG	Email KSR re <i>Duran</i> opinion; review number of depositions noticed by plaintiffs and email KAK, KSR and CAS re same	0.90
KAK	Review correspondence concerning depositions of class member declarants; conference with KSR regarding relevant new class cert. decision, deposition coverage, and possible motion to compel; review and forward to co-counsel relevant new decision construing <i>Comcast</i> ; correspondence with co-counsel re possible special master declaration in support of class certification	0.50
KSR	Email correspondence with LS re whether to insist on subpoena for depositions of putative class members, and draft bullet list of issues for depo prep; circulate. Review/analyze article concerning Nordstrom bag check class cert opinion. Review/analyze Nordstrom opinion. Draft and circulate comments and suggestions for evidence to distinguish Nordstrom. Email from Lee Shalov regarding strategy for expert report. Discuss Shalov's email with Chad Saunders. Further meeting with Chad Saunders to discuss off-the-clock damages issues. Discussion with KAK regarding list of expert issues ordered by court. Check calendar date for expert issues list. Draft and circulate email with suggestions for expert report on classwide damages to support motion for class cert. Email from Chad Saunders re failsafe classes and review case law. Email from Brett Gallaway with list of retired judges to address class cert issues identified by Lee Shalov. Email from Chad Saunders with proposed best candidates. Forward Chad's suggestions to BG with comments need further discussion of how to address class cert. Instructions to GMG re Allstate and Duran opinions. Review/analyze Allstate and Duran opinions regarding proving classwide damages in off-the-clock case. Review further case authorities and further email correspondence with LS re expert reports. Email from KAK forwarding depo notice for Paczka. Respond to KAK re BG request that our firm defend; address on call. Review/analyze Blanchard's report on depo of Jennifer Cornelius. Review pending RFPs to Apple re request for loss prevention reports and forward to Blanchard with comments. Research recent class cert opinions in preparation for call to discuss issues for expert on class cert. Instructions to GMG re Allstate and Duran class cert opinions. Email discussion with LS re Sibley and Jimenez cases and expert for damages issues.	4.60
KSR	Further email discussion with KAK, LS, BG and CS re classwide proof of issues and remaining issues for expert report. Response from LS re protocols and procedures to prove classwide damages in this action. Coordinate call to discuss. Email from Josh Kienitz re list of California store numbers as requested data sample format. Review/analyze data sample format and circulate. Email to Josh Kienitz with further questions re data sample format for proof of damages.	1.10
CAS	Review Nordstrom bag check decision and emails with co-counsel re same; Research ascertainability and "fail safe" class issues and email KSR re same; review list of potential special masters circulated by Gallaway and email KSR re same; confer with KSR re expert issues including damages	2.90
2/27/2015 GMG	Decrypt and review materials produced by Apple on 2/26 and 2/27 and email KAK, KSR and CAS re same	0.80

		<u>Hours</u>	
2/27/2015	KAK	Review and evaluate correspondence from co-counsel Shalov concerning issue of expert testimony and disclosure of topic list due Monday, in preparation for strategy call; participate in strategy call with co-counsel Shalov and Gallaway, KSR and CAS regarding list of expert issues due Monday, proof issues at trial, and other matters; correspondence with KSR and CAS re anticipated class cert issues	1.80
	KSR	Research case authorities in preparation for call to discuss expert report supporting class cert. Discuss issues with Chad Saunders. Email correspondence with Lee Shalov regarding case authorities and issues for expert report. Further discussion with Chad Saunders. Review/analyze survey and survey results for further analysis of need for expert report. Draft notes in preparation for conference call to discuss expert issues. Conference call with LS, BG, KAK, CS re court-ordered list of expert issues. Continue to review case authorities from Lee Shalov and Westlaw research regarding expert reports for class cert. Email correspondence with Boyer and Lee Shalov regarding time agreement for putative class depositions and prospect of motions to compel. Email to Lonnie Blanchard regarding availability to defend class member depo. Email from LB re loss prevention materials discussed in depo. Review discovery requests to determine whether loss prevention documents discussed in depo covered; respond to LB. Review/analyze pending discovery requests to determine whether Lee Shalov's issue related to off the clock nature of check is covered; respond to Lee Shalov. Further email correspondence with LB re Apple loss prevention documents. Email correspondence with LS re issues with protocol for class member depositions noticed by Apple. Review/analyze draft opposition to motion for summary judgment and discuss with CS. Research for opposition brief. Email to CS regarding prongs to de minimis test and related fact evidence. Forward case authorities to LS re record-keeping prong of de minimis test. Review/analyze class cert opinion of Judge Alsup forwarded by LS. Respond to LS re subclassing California retail stores. Further email discussion with CS and KAK re applicability of Bell opinion to Frlekin class cert motion. Email correspondence with LS re [PRIVILEGED]. Analyze.	3.10
	KSR	Coordinate call to discuss expert issues to meet scheduling deadline from court. Email from Todd Boyer regarding depositions of class members noticed by Apple and 30(b)(6) depositions noticed by plaintiffs. Email correspondence with KAK regarding scheduling issues. Further email correspondence with LB re loss prevention materials requested from Apple. Email request to LB to defend Paczka depo. Forward additional RFP request to LB re loss prevention materials, to follow up on LB request for materials in depo. Review amended disclosures and class member declarations served by BG; email to BG re service. Email to CS re defending Paczka depo and coordinating for Barandon depo. Further email discussion with CS re meeting with Claudia Wright to prepare for Barandon depo. Email from Josh Kienitz re Apple's production of store video. Discussion with GMG re receipt of overnight package over the weekend. Email to Josh Kienitz regarding building closed and will receive package Monday.	2.10
	CAS	Review calendar of dates prepared by GMG, email KAK re same and circulate to co-counsel; email co-counsel re common liability issues; review <i>Amaral</i> case re de minimus test and confer with KSR re same; review deposition schedule circulated by Apple counsel and email Boyer re location of 3/16 PMK deposition; email KSR re availability for Paczka deposition; review plaintiff declarations submitted to Apple and email Gallaway re additional missed edits; participate in team strategy call; post call discussion with KSR re draft opposition to summary judgment motion; review/analyze draft	4.90
2/28/2015	KAK	Review correspondence between CAS and co-counsel Gallaway re incorporating revisions into class member declarations; follow-up email to CAS re same	0.20
3/2/2015	KAK	Review correspondence re coverage of depositions; email to CAS and KSR re same; review relevant new Ninth Circuit decision on class certification handed down Friday and circulate to co-counsel Shalov et al.; review and evaluate draft of statement	0.80

regarding expert witness issues and correspondence with co-counsel Shalov re same; telephone conference with Shalov; draft revisions and circulate redline with comments; review final draft served by co-counsel Gallaway; email to Gallaway re need to include proof of service; preliminary review of list of expert issues served by Apple; preliminary review of further deposition notices served by Apple and forward same to KSR and CAS

3/2/2015	KSR	<p>Email correspondence with BG, Chad Saunders, KAK and LB re defending Paczka depo. Meeting with CAS to prepare for Barandon and Paczka depositions. Further review of documents for Barandon depo. Email to Claudia Wright re meeting to prepare for Barandon depo. Further email correspondence with Claudia Wright re Barandon depo. Email and meeting with CAS re defending Bolivar depo and further prep for Barandon depo. Discussion with KAK re defending Bolivar and Paczka depositions and logistics. Review/analyze LS' list of expert issues pursuant to Alsup's order. Draft redlines to Shalov's draft list and circulate with comments. Email correspondence with LS re privilege log; review plaintiffs' productions, analyze privilege issues and respond to LS. Further email correspondence with LS and KAK re plaintiffs' list of expert issues. Review/analyze Apple's list of expert issues. Email from LB with notes from Brian Krinek's depo; review notes for preparation for Barandon depo. Review notes from Verter depo in preparation for Barandon depo and forward to CAS. DS with CAS re Apple's service of notice of expert issues; email correspondence with CAS and Paige Bridges for Apple requesting service of all papers served by Apple. Review email and letter correspondence between TB and BG regarding production of letter plaintiffs sent to class members. Email to BG re strategy and applicable law re production of letter and privilege log. Forward to KAK and CAS. Further email correspondence with LB and CAS re defending Paczka depo.</p>	7.20
	CAS	<p>Email KSR re Paczka deposition coverage; email Gallaway to confirm coverage of Paczka deposition; Barandon and Paczka depo preparation meeting with KSR; Email Gallaway re coverage of Bolivar deposition; review notes re Krinek deposition prep and begin depo prep outline; review draft Ernst declaration and email correspondence with Gallaway re edits; review deposition notices from Apple and email KAK re missing list of expert issues; email Boyer re inclusion in service list</p>	3.60
3/3/2015	GMG	<p>Review files produced by Apple on 2/27, organize on network and confer with KSR re same; email KSR re corrupt files in production; email correspondence with Littler paralegal re corrupt files, organize replacements on network, upload to Gallaway via Dropbox and email KAK and KSR re same</p>	4.40
	KAK	<p>Review and evaluate correspondence between KSR and co-counsel Shalov re whether to proceed with 30(b)(6) depositions on audits and video; email to KSR re proceeding with depositions; conference with KSR and CAS re same</p>	0.30
	KSR	<p>Analyze meet and confer correspondence for discussions relating to preservation of video and production of store theft documents. Email to LB re RFP and Shalov meet and confer letter requesting production of loss prevention documents. Email from LS regarding store video produced by Apple and respond; further email correspondence with LS and BG re store video. Discussion with GMG re Apple store video and instructions to forward to LS and BG; and review sample. Further instructions to GMG re store video. Further email with GMG re time stamp on store videos. Meeting with CAS to discuss additional 30(b)(6) depo on store video produced by Apple. Email from GMG regarding corrupt files produced by Apple and follow up with Josh Kienitz. Response from Kienitz with replacement files and forward to GMG. Review/analyze video of The Grove store and Third Street Promenade produced by Apple, and supporting declarations. Further discussion with CAS re 30(b)(6) on videos. Email correspondence with LS, BG, KAK re 30(b)(6) depositions on audits and store videos. Review/analyze transcript of depo of Seth Dowling regarding bag checks and break room in The Grove store, for analysis of video produced by Apple. Email to LS re issues with the video and strategy for 30(b)(6). Email from LS with draft email to meet and confer with TB on discovery issues, including insufficiency of</p>	6.70

Apple's privilege log and response to Apple's notice of depositions of plaintiffs' declarants. Response email from BG re previous Apple video production limited to New York store. Further email correspondence with LS re analysis and strategy for 39(b)(6) depo re store video produced by Apple. Email correspondence with GMG re corrupt video files. Email to Josh Kienitz regarding replacement of corrupt video files. Review meet and confer correspondence re employee theft documents requested by plaintiffs.

3/3/2015	KSR	Email to LBlanchard re meet and confer correspondence with Lara Strauss, date of Apple's document productions, etc. Further email correspondence with Paige Bridges for Apple requesting service of all Apple's documents filed or served on plaintiffs. Forward Apple's supplemental documents production to GMG for file and analysis re necessity of MTC.	0.60
	CAS	Revise depo prep outline and email Gallaway re Pazcka and Bolivar depositions; confer with KSR and KAK re depositions and possible additional deposition	1.30
3/4/2015	GMG	Search database and compile all nonduplicative documents re Karen Barandon and Higuera Street store and email CAS re same; prepare table of plaintiff declarations and deposition dates and email KAK, KSR and CAS re same; begin draft table of defendant declarations and deposition dates; begin review of video files produced by Apple and draft table re same	5.10
	KAK	Review correspondence re scheduling of declarant depositions; email to KSR and CAS re preparation for same and need for either transcripts of first couple declarant depositions or detailed summaries of same from person defending them; conference with CAS, KSR and GMG re upcoming depositions and status of production of declarations; review past correspondence and forward further declarations; email to GMG re compiling list of declarations	0.90
	KSR	Email correspondence with KAK and CAS re Paczka and Boliver depositions noticed by Apple. Further email correspondence with CAS re logistics for Paczka depo and arrangement on all depositions with BG. Draft 30(b)(6) notice re store video of bag checks produced and not produced by Apple. Email correspondence with BG and LS re history of meet and confers on production of store video recordings. Review/analyze meet and confer correspondence pertaining to Apple store video forwarded by BG. Draft letter to Boyer regarding production of audits and related documents and California store video footage. Review/analyze all meet and confer correspondence regarding Meeting with CAS to prepare for Barandon depo. Review depo outline for Barandon depo circulated by CAS and meet with CAS to provide comments and suggestions. Call from Lonnie Blanchard regarding meet and confer call set with Littler for 3/5 to discuss scheduled depositions of putative class members, Apple's improper document redactions, etc. Instructions to GMG re review/analysis and chart of Apple video productions. Review declarations and documents in preparation for Barandon depo. Email questions to BG re Apple's production of store video for Century City store. Review/analyze plaintiffs' supplemental initial disclosures and Malek and Caputo declarations. Review/analyze Apple's declarations of Melcher, Glezer and Kapadia to determine whether counter-declarations required for class cert motion. Email correspondence with KAK re Apple's faulty service. Email correspondence with BG re Apple's California store manager list; analyze list to determine sufficiency of Apple's responses. Instructions to GMG re Apple's class member declarations and supplemental initial disclosures, for final analysis of Apple's discovery responses prior to discovery and motion cutoff.	6.70
	KSR	Further instructions to GMG re Apple's and plaintiffs' class member declarations and spreadsheet showing evidence pertaining to each California store for use with plaintiffs' motion for class cert. Review/analyze Apple's amended depo notices of Telles and Schneider. Finalize and circulate draft of 30(b)(6) depo notice to Apple re	0.70

store video. Instructions to GMG re class member declarations and Apple's depo notices.

3/4/2015	CAS	Emails with KAK and KSR re Pazcka and Bolivar depositions; email Gallaway re deposition schedule and circulate response to KAK, KSR and GMG; begin review of Barandon documents identified by GMG and continue depo prep outline; email GMG to request additional Higuera street documents for Barandon depo; email Boyer re Barandon and PMK deposition; emails with Pazcka re deposition arrangements; Email KSR re Barandon depo outline	3.80
3/5/2015	GMG	Review video files produced by Apple and prepare table re same; finalize depo notice re video files and confer with KSR re same; print and organize documents for Barandon depo and confer with CAS re same	5.20
	KAK	Review and evaluate draft of 30(b)(6) deposition notice regarding video recordings; review redline comments of CAS; email to KSR re same; conference with KSR and CAS regarding deposition of declarant Paczka next week; review issue of client Claudia Wright's amended declaration and email to KSR re same	0.40
	KSR	Further email correspondence with KAK, GMG and LS re store video 30(b)(6) notice. Review/analyze edits from CAS to 30(b)(6) depo notice to Apple on store video recordings; draft further edits. Forward draft notice to GMG with instructions to fill in Bates numbers of all video recordings produced by Apple. Depo prep for 30(b)(6) and Barandon depositions. Review/analyze proposed exhibits and draft depo outline from CAS. Email discussion with GMG re logistics for taking deposition wrt hours of video produced by Apple. Review and draft further edits to store video 30(b)(6) depo notice and instructions to GMG to serve. Email to LS and BG re call with TB on privilege log issues. Further email to LS and BG re scheduling of Apple's and plaintiffs' depositions. Review email correspondence with Ferenc Paczka and forward to CAS with strategy proposal. Further research for and email to CAS to communicate to Paczka re witness fee in federal action. Email correspondence with KAK re revised and new declarations produced by Claudia Wright in connection with her deposition. Review/analyze those declarations and respond to KAK re necessity of production. Work with CAS on Barandon depo prep.	7.90
	CAS	Review and revise 30(b)(6) notice re Apple video and email KSR re proposed edits; review email from Packa re deposition and email KSR and Gallaway re same; review Barandon and Higuera Street documents and continue preparation	0.80
3/6/2015	GMG	Email court reporter to confirm 3/9 Barandon deposition; email KAK, KSR and CAS re confirmation of service of depo notice re video; forward word indices and Barandon depo notice to court reporter; search for attachment to APL-Frlekin_00044645 and confer with CAS re same	0.60
	KAK	Review and evaluate client Wright's two amended supplemental declarations produced in November; review email from KSR regarding filing of same and possible accompanying declaration of co-counsel Shalov; review draft Shalov declaration; email KSR re filing these declaration with the class cert. papers in May without any Shalov declaration; follow-up with KSR re status of service of 30(b)(6) deposition notice re video recordings produced by Apple	0.30
	KSR	Depo prep meeting with CAS for Barandon depo. 3 hours. Email correspondence with KAK and discussion with GMG re service of 30(b)(6) notice re store videos. Email from LS circulating letter to Boyer re confidential designations and document redactions. Review/analyze draft letter and email comments to LS. Arrange for travel to SLO for Barandon depo. Review/analyze Apple's supplemental responses to interrogatories and RFAs and supplemental disclosures for adequacy. Email correspondence with LS regarding supplemental responses/disclosures, further review/analysis required, and Apple's potential withdrawal of prior objections. Email to Todd Boyer with question regarding whether Apple is withdrawing its prior	8.50

objections to RFAs/rogs. Assist CAS to prepare for Barandon depo. Email from LS re plaintiffs' 15 class member declarations and Apple's request to depose declarants. Research legal authorities re Apple's right to take and any limitations on class member depositions and forward strategy proposals to LS. Email correspondence with KAK re service of class member depo notices re Apple declarants. Further email to LS re Apple's supplemental discovery responses and expected date of Apple's response to supplemental discovery served in February. Review/analyze additional class member declaration served by plaintiffs (BG); and respond to BG. Review confirmation of service of 30(b)(6) notice re store video on Apple; respond to GMG. Further email correspondence with BG re comparative number of class members' declarations served by plaintiffs and by Apple, to assess strategy for class cert motion.

3/6/2015	CAS	Further preparation for Barandon deposition; meet with KSR; call from reporter re request for caption and email GMG re same	4.80
3/8/2015	CAS	Travel to San Luis Obispo for Barandon deposition; continued preparation for deposition	4.60
3/9/2015	GMG	Review Verter deposition invoice and email Shalov et al. re same; review Apple supplementary discovery responses and email KAK, KSR and CAS re same	0.40
	KSR	Drive to San Luis Obispo to defend deposition of Karen Barandon (leave home 5:20 am). Address, engage in resolution of ongoing discovery disputes with Littler counsel and local counsel for Barandon regarding instructions not to answer and document redactions and confidential designations. Strategy discussions with Chad Saunders and provide depo questions. Meeting with Chad Saunders after depo to discuss strategy for class cert based on Barandon testimony and testimony of additional Apple witnesses, and to prepare for 30(b)(6) depositions. Drive home from San Luis Obispo (arrive midnight).	18.50
	CAS	Barandon deposition; return travel from San Luis Obispo; confer with KSR re other potential deponents	14.60
3/10/2015	GMG	Review Apple document productions to date and prepare production log; review depositions taken to date and prepare deposition log; confer with CAS re Barandon deposition; review recent declarations and update evidence table and declaration lists	6.10
	KAK	Conference with CAS regarding events at yesterday's deposition and scheduling remaining class member depositions this week; review update from KSR regarding yesterday's deposition; review correspondence between KSR and co-counsel regarding defending this week's deposition, scheduling and other matters	0.40
	KSR	Email correspondence with Todd Boyer to reset Paczka and Malek declarant depositions. Meeting with Chad Saunders to discuss prep for declarant depositions. Email to LS and BG re issues re privileged communications wrt declarant depositions. Further meeting with CAS to prepare for declarant depositions and 30(b)(6) depositions on Apple store audits and video footage produced to plaintiffs. Email report to LS, KAK, BG forwarding rough of Barandon depo transcript with short summary of key testimony. Confirm date and times for Paczka and Malek depositions with Todd Boyer. Email from Todd Boyer with list of upcoming depositions; review list and send email to Boyer regarding noticed depositions missing from list. Email correspondence with CAS re depositions missing from Boyer's list. Email correspondence with LS, BG and Lonnie Blanchard re privilege issues for declarant depositions. Email from Paige Bridges with depo location change for Malek and Paczka depositions. Email correspondence with BG regarding Apple's document production; forward and instructions to GMG. Email from BG regarding substance of new Apple production; further instructions to GMG re preparing summary.	6.70
	CAS	Confer with KAK re Barandon deposition; email and teleconference with Paczka re deposition arrangements and preparation session 3/11; Email Malek re deposition arrangements and depo preparation session 3/11; email KSR re preparation	3.60

		<u>Hours</u>
	schedule; prepare outlines for Paczka and Malek depositions; preparation meeting with KSR	
3/11/2015	GMG Review and summarize 3/10 Apple production, email Gallaway, KAK, KSR and CAS re same; review and summarize 3/11 Apple productions, organize on network, update evidence table and video and declaration logs and email KAK, KSR and CAS re same	1.20
	KSR Meetings with CAS and Paczka and Malek to prepare for declarants' depositions. Further meeting with Chad Saunders to prepare to defend Malek and Paczka depositions. Review manager declaration regarding Corte Madera store where Paczka worked just served in preparation for Paczka depo. Email correspondence with Todd Boyer re 30(b)(6) depo re videos produced by Apple. Review/analyze Apple's declarations of class members and managers from stores where plaintiffs' declarants worked, in preparation for evidence compilation for class cert motion. Email correspondence with CAS re Littner declaration and procedures at Corte Madera store, in preparation for Paczka depo. Further discussion with CAS re evidence relevant to Paczka depo and depo prep. Draft and send further email to TB regarding absence of confirmation of date for store video 30(b)(6) depo. Email correspondence with reporter from Barandon depo re reading and signing of transcript; review protective order and further email correspondence with reporter re procedure for deponent corrections.	8.20
	CAS Deposition preparation with KSR, Paczka and Malek for tomorrow's depositions; continue preparation; further meeting with KSR and review documents	4.80
3/12/2015	GMG Confer with KSR re video files produced by Apple; prepare list of video file locations on server and email KSR re same; copy all video produced by Apple to USB drive; test video review equipment in conference room; review all video files, prepare chart re file type, duration and whether each file opens on conference room equipment and email KSR re same	5.20
	KAK Conference with KSR re today's depositions and preparation for PMK depositions scheduled for Monday on audit procedures and video production; conference with CAS re today's depositions	0.30
	KSR Defend Paczka depo along with Chad Saunders. Prepare for 30b6 depo re Apple store videos. Email correspondence with court reporter and Barandon counsel re corrections to transcript. Instructions to GMG to prepare exhibits for store video depo. Meeting with GG and instructions to prepare for 30b6 depo. Telephone call with CAS and BG re re-scheduling declarant depositions. Forward additional video evidence to GMG in preparation for PMK depo re store videos. Review/analyze meet and confer correspondence related to substantive relevance of store videos in preparation for depo and forward to GMG to prepare exhibits. Further instructions to GMG re depo exhibits and forward additional exhibits. Analyze Apple store video evidence in preparation for depo. Further email correspondence with Barandon depo reporter. Email correspondence with LS and BG regarding additional meet and confer correspondence with counsel for Apple re production of store video in response to plaintiffs' RFPs, in preparation for PMK depo. Email to CAS re status of Malek depo.	8.50
	CAS Pre-depo meeting with Pazcka; defend Pazcka deposition with KSR; Pre-depo meeting with Malek; defend Malek deposition with KSR; post-depo meetings with KAK and KSR and emails re same	5.80
3/13/2015	GMG Confer with CAS and email KSR re video issues; research video playback software; email KAK re forwarded declarations; email reporter re 3/16 deposition; email KSR re video player; download re-produced APL-Frlekin-00057399 video files and confer with CAS re same; print/organize documents for 3/16 deposition and confer with CAS re same; email CAS and Littler paralegal re inaccessible link to Production 20	5.20

		<u>Hours</u>
3/13/2015	KSR	3.70
		Prepare for 30b6 depo re Apple store videos. Email to TB regarding video files that will not open and request for replacement videos in time to prepare for Monday's deposition. Response from TB re software to open-play videos; forward to GMG with instructions. Email correspondence with CAS re store videos and logistics for PMK deposition re Apple store videos. Discussion with CAS re preparation for 30b6 on store audits. Further email correspondence with TB re opening videos; and respond. Continue to analyze Apple store video in preparation for deposition and draft depo outline. Email from Josh Kienitz re Apple's refusal to produce witness for 30(b)(6) depo on store videos. Review/analyze Apple's objections to 30b6 depo on store videos and declaration of Steve Smith. Email to LS re Apple's refusal to produce 30(b)(6) witness and strategy re further depositions of plaintiffs' declarants. Email to Josh Kienitz re discovery cutoff and noticed PMK depo, and purposes for Apple's use of store video. Review/analyze deposition outline circulated by CAS for store audits depo. Review/analyze email response from Josh Kienitz re basis for Apple's production of store video. Response to Josh Kienitz re plaintiffs' will object to any use by Apple of store video given Apple's refusal to produce a witness to testify about it.
	CAS	4.60
		Review Apple video files and email KSR re same; review Apple objections to video depo notice and email KSR re same; email reporter to confirm 3/16 video depo; discuss depo preparation with KSR; prepare outline for 30(b)(6) video depo and email KSR and KAK re same; email GMG re downloading Apple production 20; set up FTP password and email GMG re same
3/14/2015	KSR	1.20
		Further preparation for 30b6 depo re Apple store audits. Email from CAS with Apple's objections to production of documents in audit 30b6 notice. Email correspondence with CAS re Littler ftp site and Apple's refusal to produce pre-class period audits of bag checks. Further email correspondence with CAS re meeting and conferring with Apple on objections to store audit 30b6 depo notice.
	CAS	1.10
		Email KSR re unaccessible Apple production; review Apple objections to 30(b)(6) notice and email KSR re same
3/15/2015	KSR	1.90
		Review/analyze CAS' outline for depo on store audits. Email to CAS re topics to add. Telephone call with CAS to prepare for depo. Review and redline CAS depo outline with additional topics.
	CAS	0.90
		Draft email to Apple re objections to 30(b)(6) notice and email KSR re same; email Dunne et al. re response to objections; further preparation for video depo tomorrow, including revisions to outline of topics; confer with KSR re same
3/16/2015	GMG	5.90
		Download and review Apple productions 20 and 21 and confer with CAS and KSR re same; print/organize documents and provide support for 30(b)(6) deposition re audit forms; review discovery requests to Apple and prepare chart re responses and meet and confer communications
	KSR	9.20
		Further preparation for deposition concerning store audits; draft and forward to CAS additional questions/issues. Email correspondence with CAS re additional topics for deposition on store audits. Discussion with GMG and instructions re Apple's document production for depo. Review Apple's document production related to store audits and draft outline for examination on audits documents. Discussions with CAS on further areas of examination. Participate in 30b6 depo on store audits. Short meet and confer with Julie Dunne and Gary Shapiro following the depo during which they said they couldn't tell us when they would be able to meet and confer on 30b6 topics they objected to and did not produce a witness for. Julie said only that they would talk to Todd, but would not say when they would get back to us. Review meet and confer letters re audits pursuant to statements of Gary Shapiro objecting that plaintiffs did not take the 30b6 sooner. Email coordination with BG re exhibit numbers for audits depo and instructions to GMG re exhibits. Instructions to GMG re review of Bonnett declaration for store audit depo. Review/analyze Apple's responses to Speicher rogs, Kalin rogs and Kalin RFAs. Instructions to GMG re table showing Apple's discovery

		<u>Hours</u>
	responses and email to LS re table and coordinating call to address strategy for any further, required discovery before cutoff. Email to Lonnie Blanchard re following up on dates for rescheduling depo of declarants he's defending.	
3/16/2015	CAS Review KSR edits to depo outline; email KSR re deposition start time; email GMG re Apple objection to depo notice; participate in 30(b)(6) deposition re Apple video with KSR; email Gallaway re exhibit numbers	6.90
3/17/2015	GMG Review declaration and email KAK, KSR and CAS re same; review 3/16 Apple discovery responses, update chart and email KSR re same; prepare binder of all discovery to Apple and responses since 1/1/15 and confer with KSR re same	2.40
	KSR Further review/analysis of Apple's responses to Speicher/Kalin RFAs, RFPs and Rogs. Begin draft of list of issues and arguments to include in motion to compel. Meeting with CAS to discuss strategy for motion to compel and evidence and arguments for class cert motion. Email to Julie Dunne requesting meet confer on Apple's refusal to produce witnesses and documents in response to plaintiffs' 30b6 notices on videos and audits. Draft meet and confer letter on all outstanding discovery disputes, including issues raised by Apple's March 16 responses.	8.20
3/18/2015	GMG Email KSR re production date of audit document; review Apple productions, cover letter and emails and email KSR re lack of identification of responsive requests for production; review Apple spreadsheet of store leaders and email KSR re contents of same	1.70
	KSR Further analyze all meet and confer correspondence and Apple's new discovery responses re all outstanding discovery issues and draft letter to Todd Boyer to meet and confer. Arrange for time for meet and confer call with Todd Boyer. Further email correspondence with TB and CAS to arrange for meet and confer call. Email from Claudia Wright re Barandon depo re Higuera Street store where she worked; respond. Instructions to GMG to check Apple's load files and metadata, cover letters and emails forwarding productions, for information matching Bates numbers to specific RFPs. Email to GMG re date of production of Apple's blank audit form. Instructions to GMG to check Apple's list of flag leaders for stores and dates, for meet and confer letter to TB. Response from GMG with chart from Josh Kienitz. Review/analyze chart re flag leaders for meet and confer letter on Apple's discovery responses, to TB. Email to LS re call arranged with TB to meet and confer on Apple's refusal to produce witnesses on audits and video evidence and letter re deficiencies with Apple's discovery responses. Further email correspondence with Lonnie Blanchard re status of rescheduling depositions of declarants. Email instructions to GMG re Alsup's orders and business records requirements. Further instructions to GMG re Apple's identification of requests that productions are responsive to. Email correspondence with CAS re para. 12 of court's sup. CMC requirements re confirmation of production of all requested materials. Prepare for and telephone meet and confer call with TB and Nick Kelsey re deficiencies in Apple's document productions, request for further audit forms. Follow up email to TB and NK with list of precise information and dates plaintiffs requesting to resolve discovery dispute re audits. Email correspondence with CAS re resolution of Apple's instructions to Barandon not to answer questions asked in her deposition and analysis of whether to file motion to compel.	8.70
	CAS Review Alsup standing orders re business records and discovery responses and email KSR and GMG re same; email Boyer re meet and confer availability; review Barandon transcript, compile instructions not to answer and email KSR re same	1.90
3/19/2015	GMG Email evidence table to KSR and CAS; review Alsup rules re requests for discovery relief and email CAS and KSR re same; review Apple interrogatory response listing stores that did bag checks and add references to evidence table; review all plaintiff declarations on hand, add summaries to evidence table and circulate to KSR and	2.60

		<u>Hours</u>
	CAS; review Apple productions of time and shift data, summarize and email KSR and CAS re same	
3/19/2015	KSR Continue to analyze Apple's discovery responses and continue drafting and finalize first letter to Todd Boyer addressing new discovery and disputes re audits and Apple store video. Continue analyzing discovery responses. Meeting with CAS to discuss remaining issues. Begin draft of second letter to TB re outstanding discovery issues. Instructions to GMG re current draft of evidence table by store; review and analyze by-store evidence for class cert motion and determination of need to file and issues for motion to compel. Email correspondence with KAK re CAS help with motion to compel. Email from LS re addition of confidentiality designation issues to motion to compel, and respond. Email edits from CAS to meet and confer letter to Boyer; draft edits. Finalize and circulate additional meet and confer letter to Littler counsel. Email from TB to re-set conference call. Conference call with TB and CAS to address outstanding discovery issues. Instructions to GMG re court's order re motions to compel. Further review/analyze court's supplemental CMC order re motions to compel. Draft edits to store spreadsheet created by GMG, adding additional evidence from documents produced by Apple and declarations received. Email correspondence with LS re whether to file motion to compel. Instructions to GMG re Apple's shift data. Analyze GMG response re shift data.	8.60
	CAS Review and revise draft letter to Dunne re discovery issues and email KSR re proposed edits; participate in meet and confer call with KSR and defense counsel	0.80
3/20/2015	GMG Confer with KSR re motion to compel to be filed 3/23; review Apple production and privilege log, organize on network and email KSR, CAS and KAK re same	0.90
	KAK Telephone conference with KSR and CAS re motion to compel due Monday; review and respond to email correspondence re same	0.30
	KSR Continue to analyze Apple's discovery responses and continue drafting and finalize second letter to Todd Boyer addressing new discovery and disputes re audits and Apple store video. Conference call with TB and CAS to address remaining , outstanding discovery issues. Meeting with CAS to discuss remaining issues and scope of motion to compel. Begin draft of motion to compel. Email correspondence with CAS re business records admissions for Apple's evidence. Review/analyze Apple's production of Gonzalez complaint. Email from Todd Boyer regarding date for hearing on motion to compel. Email correspondence with KAK re response to TB email re hearing date; response to TB. Review/analyze Apple's further document productions. Instructions to GMG to review Apple's discovery responses for any additional sets not verified, to address in MTC; review updated privilege log. Email to TB requesting signed verifications of discovery responses; email from TB with verifications; review and analyze to evaluate need for MTC on issue.	7.80
	CAS Review Apple data production 20 and confer with KSR re deficiencies; research federal rules re business records and email KSR re same; further meet and confer call with Apple counsel and KSR re discovery responses; discussion with KSR re motion to compel	2.40
3/22/2015	KSR Further email correspondence with TB re further, missing verifications. Email from TB with all verifications. Begin draft of motion to compel. Email to KAK, CAS, LS re motion to compel. Email from Todd Boyer; analyze meet and confer correspondence.	0.60
3/23/2015	KAK Conference with KSR re status of discovery negotiations with defense counsel and decision not to proceed with motion to compel; review and approve draft email to defense counsel; review and evaluate email from defense counsel Dunne received in response; conference with KSR re same and whether motion to compel should be filed in view of response and issues to be addressed in such motion; telephone conference with KSR and co-counsel Shalov re same	0.90

		<u>Hours</u>
3/23/2015	KSR	7.50
		Further email correspondence with TB to meet and confer on Apple's discovery responses. Draft motion to compel. Email to KAK, LS, CAS, BG re strategy and facts for motion to compel. Telephone call from LS and meeting with CAS to discuss strategy. Further review of letter from TB. Draft proposed response to TB letter and circulate. Draft 3rd meet and confer letter to TB in response to his, re discovery disputes. Email agreement from LS and KAK to draft response. Telephone call to TB and forward letter to Josh Kienitz, Julie Dunne, Nick Kelsey and Kelsey admin when received out-of-office from both TB and NK. Discussion with CAS re further communication with Littler re prospective motion to compel. Email from Julie Dunne regarding plaintiffs' demands re motion to compel. Email from CAS with comments on Dunne email. Discussion with KAK re strategy on motion to compel. Telephone call to LS re Dunne's email. Further discussion with KAK and email to LS regarding decision not to file motion and position on audits. Email to CAS re information from Barandon depo re Apple audits, for consideration wrt MTC. Email response from CAS re Barandon depo and review responses re audits. Email correspondence with CAS re decision not to file motion to compel. Further email correspondence with KAK, LS and CAS re Apple's position on repository of audit forms. Review/analyze Apple's second supplemental responses to rogs.
	CAS	1.20
		Prepare excerpt of Barandon deposition re audits and email KSR re same; review and revise draft meet & confer letter to defendants and email KSR re proposed edits; review Apple supplemental interrogatory response and verifications; review email response from Dunne and email KSR re same; meeting with KSR re motion to compel
3/24/2015	KSR	0.10
		Email to GMG re Apple production of exhibits.
	CAS	0.40
		Review Monkowski deposition transcript
3/25/2015	GMG	0.60
		Email/confer with KSR re Smith declaration and associated video; review exhibits to Apple response to production request and email KSR, CAS and KAK re same
	KAK	0.10
		Conference with KSR re upcoming expert report deadline and following up with co-counsel Shalov, and other upcoming deadlines
	KSR	5.20
		Review discovery correspondence re video evidence. Review scheduling orders re Daubert motions. Meeting with KAK and CAS to discuss scheduling order, expert reports and Daubert motions. Email to LS and BG re scheduling and Steve Smith video depo evidence. Email from CAS re date for expert reports. Instructions to GMG re Apple's prior expert report on video evidence. Review/analyze Steve Smith declaration submitted by Apple in opposition to FLSA motion. Review/analyze Apple's list of possible expert issues. Email to CAS re Apple's list and Steve Smith likely expert. Further instructions to GMG re Apple's video montage evidence; review/analyze montage. Further research for and analysis of need for expert reports, and Daubert challenge to Steve Smith. Email to LS and team re analysis re expert reports, expert depositions and scheduling, prospective Daubert motion. Response email from LS re expert reports. Review errata sheet from Barrandon depo. Review/analyze Apple's exhibits A and B to plaintiffs' first RFPs for adequacy of response and for evidence supporting class cert motion.
	CAS	1.30
		Confer with KSR re Apple list of expert issues; review video files and email KSR re same; review deposition transcript of Paczka and Malek; review Barandon errata sheet
3/26/2015	KSR	0.40
		Review/analyze Apple's re-sent Production 20.
3/27/2015	GMG	0.20
		Review Malek and Paczka deposition transcripts and exhibit and organize on network
	CAS	3.30
		Begin draft of class cert memo

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			<u>Hours</u>
3/30/2015	GMG	Review Monkowski 30(b)(6) transcript and exhibits, organize on network and email CAS re same	0.30
	KSR	Analyze Hall report regarding bag checks at selected stores; notes to file. Research for and draft and send email to LS, BG, KAK et al. re issues with Hall report and Hall and Smith depositions, and grounds for Daubert motion.	2.50
3/31/2015	CAS	Review email and attached expert report from Josh Keinitz; Review email from Keinitz re expert's availability for deposition; Review email from KSR re expert report	2.80
	KSR	Continue to analyze Hall report regarding bag checks at selected stores. Email from Josh Keinitz at Littler re proposed deposition dates for Hall deposition. Circulate with comments.	0.40
4/1/2015	KSR	Analyze Hall report regarding bag checks at selected stores. Email to LS, BG, KAK et al. re issues with Hall report and Hall and Smith depositions.	1.90
4/3/2015	CAS	Review email and attachments from Lee Shalov re Alsup decision and draft of Issues for Certification	0.50
	KSR	Email correspondence with Lee Shalov. Analyze Shalov's list of class cert issues. Research class cert case law from briefs in other cases re issues list.	0.80
4/6/2015	KAK	Review and evaluate email from co-counsel Shalov recommending that we not depose Apple's video expert; correspondence with KSR re same and video PMK deposition	0.30
	CAS	Review email between Lee Shalov and KSR re expert reports and need for expert deposition or Daubert motion w/ class cert reply	0.30
	KSR	Email from Lee Shalov regarding Apple's expert report and whether to take expert deposition and challenge report. Email correspondence with KAK re status of Smith deposition and strategy. Review status of Smith deposition and further email correspondence with KAK detailing thoughts on strategy of whether to depose Apple's video expert and basis to challenge all store video. Review/analyze Apple's expert report and research history or meet and confer negotiations re Apple's store video. Draft and circulate summary of expert report and suggested strategy for challenge.	4.20
4/7/2015	KAK	Conference with KSR and CAS re various issues including defense video expert deposition and status of legal analysis memo on certification issues; review email from KSR to co-counsel Shalov re same; review and evaluate email from Shalov re lead counsel issue for purposes of certification motion	0.30
	CAS	Review email and attachment from KSR responding to Lee's email re Issues for Certification; Research case law re liability-only classes under FRCP 23(c)(4)	2.50
	KSR	Review Lee Shalov's proposed list of class cert issues. Analyze and draft additional issues; circulate and discuss with KAK. Review/analyze case law circulated by LS and comment; conduct further research. Discussion with KAK re Smith deposition. Research to confirm no Smith PMK deposition. Research regarding Daubert challenges in Ninth Circuit. Email correspondence with LS re lead counsel designation in class cert motion.	5.20
4/8/2015	GMG	Review transcripts for Malek and Paczka depositions and email CAS, KAK and KSR re same	0.20
	CAS	Review email and attachments from Aptus re Malek and Paczka depositions, forward to GMG and KAK; Review transcripts of Malek and Paczka depositions; Email transcripts to Malek and Paczka for review and signature	1.50

		<u>Hours</u>
4/8/2015	KSR Respond to email from BG re additional class member depos. Email to Peter Dion-Kindem regarding follow-up with Apple to re-schedule depos they cancelled. Email from BG re Malek and Paczka depos; respond re transcripts for class cert motion. Email correspondence with CAS re depo transcripts and instructions to GMG re payment. Further research for Daubert motion.	1.30
4/9/2015	GMG Forward Barandon deposition transcript to Gallaway; circulate Paczka and Malek deposition transcripts to co-counsel	0.30
	KSR BG email request for depo transcripts for class cert motion; instructions to GMG to send transcripts to BG. Review/analyze original declaration of Ferenc Paczka and send email to Paczka requesting additional declaration regarding interval of no bag checks in Corte Madera store, to support class cert motion.	1.80
4/10/2015	GMG Review confirmation re Barandon deposition and email CAS re Realtime order	0.20
	CAS Research case law re certifying a liability only class under Rule 23(c)(4)	2.80
	KSR Email correspondence with LS, KAK, GMG and CAS re transcripts for class member depos. Further discussion re transcripts with KAK, GMG, CAS. Meeting with CAS and discuss need for additional declarations of Malek and Paczka to address bag check policy received by Malek and length of periods of no bag checks that Paczka testified to in his deposition, to support class cert motion.	0.40
4/13/2015	CAS Review and respond to email from Paczka re transcript review	0.20
	KSR Email correspondence with Ferenc Paczka re corrections to transcript and additional declaration re periods of no bag checks in Corte Madera store; and respond.	0.20
4/14/2015	KSR Further email correspondence with Ferenc Paczka re corrections to transcript and additional declaration re periods of no bag checks in Corte Madera store.	0.20
4/15/2015	GMG Review confidential designations for Cano, Young-Smith and Cornelius depositions and email KAK, KSR and CAS re same	0.40
	KSR Review/analyze depo transcripts for Cornelius, Cano and Young-Smith for evidence to support class cert motion.	1.50
4/16/2015	CAS Email Verter and Monkowski transcripts to Brett; Review emails between KSR and Lee re using audit depo for class cert motion	0.50
	KSR Email from Lee Shalov requesting summary of key evidence from audit deposition. Draft and send summary to Shalov. Further correspondence with Lee Shalov regarding relevance and importance of audits and draft and circulate email re legal relevance and evidentiary rules regarding audit evidence. Email correspondence with BG and CAS re witnesses deposed by our firm. Further email correspondence with BG re depo transcripts and instructions to GMG to send.	0.80
4/17/2015	GMG Review letter re Barandon confidential designations and email CAS et al. re same	0.20
	KSR Begin draft of summary of key evidence from discovery to include in class cert motion.	1.80
4/20/2015	CAS Review email from Lee Shalov re draft of class cert motion; review draft of class cert motion; meet with KSR re draft of class cert motion and whether to insert audit evidence; phone call with Esquire re invoices for Barandon and Monkowski depositions; phone call with Aptus re invoices for Malek and Paczka depositions; research case law re individualized damages and class certification for memo to Lee	3.70

		<u>Hours</u>
4/20/2015	KSR	2.30
	Email from Lee Shalov with first draft of class cert motion; review. Continue draft summary of key evidence from discovery to include in class cert motion. Email from KAK re draft. Discuss Shalov's draft and points and evidence to include with CAS. Email from KAK forwarding errata sheet from Monkowski depo; review. Legal research for class cert brief. Review Boyer letter re confidentiality status of testimony from Kinder.	
	KAK	0.20
	Review and reply to email from co-counsel Shalov circulating initial draft of class certification motion; preliminary review of initial draft; review letter from defense counsel re deposition testimony marked as confidential and forward to KSR	
4/21/2015	CAS	2.80
	Meeting with KSR re P&A in support of class certification; edit and revise class certification brief; Review email from Lee Shalov re deadline for edits and comments on class cert brief and KSR responses; email my edits to KSR for inclusion in brief; Review email from KSR re need for California law section in brief	
	KSR	5.80
	Email from Lee Shalov requesting comments today on first draft of class cert motion. Further analysis of draft. Draft edits and comments on class cert motion. Discussion with KAK re adding edits to redline for Shalov, and need for section with California authorities. Review email from CAS with edits re class cert legal standard. Email to LS re comments.	
	KAK	1.40
	Review and evaluate draft of class cert. brief; provide comments to KSR for incorporation into redline to be provided to co-counsel Shalov; conference with KSR re same	
4/22/2015	GMG	1.70
	Review evidence table and declarations and email KSR re bag check policy at Irvine and Newport Beach stores; prepare draft KAK adequacy declaration in support of class certification	
	CAS	2.50
	Phone call with Esquire manager re Malek and Paczka depo invoices; email from Esquire attaching rate sheet and offering to reduce real time rate on invoices; email KSR re contacting Paczka to obtain supplemental declaration for class cert; email Paczka requesting phone meeting; email KSR re evidence cited in class cert brief; GMG email and attachments -- declarations and evidence for class cert brief, KSR response; review and edit draft of class cert brief; research California case law re off-the-clock class cert opinions	
	KSR	6.70
	Draft further revisions to class cert motion. Email to CAS re follow up with Ferenc Paczka on supplemental declaration in support of class cert motion. Instructions to GMG re research evidence supporting facts in motion. Further instructions to GMG re evidence of how many employees brought bags to work, for class cert motion. Continue to draft edits to class cert motion. Forward redline edits from CAS and me to LS. Instructions to GMG to create first draft of firm adequacy declaration supporting class cert.	
4/23/2015	GMG	3.40
	Review declarations of recent deponents, prepare compilation of evidence re frequency of employees bringing bags to work and email KSR re same; review class rep declarations and add excerpts to compilation; email CAS re absence of adequacy statements in class rep declarations; revise evidence table by store and email to KSR with revised compilation of evidence re bags; email KSR re review of 5/14 class rep declarations	
	CAS	4.50
	Meeting with KSR and KAK re class certification brief and supporting declarations; Review Stiller v. Costco class cert order forwarded by KSR; email with Brett Gallaway and Lee Shalov re need for class rep adequacy declarations; Meeting with GMG re prior declarations by class reps; review class rep depositions for adequacy statements; Research case law re need for declarations of class reps; Draft supplemental declarations for putative class members Paczka and Malek, email to	

KSR for approval and for review and signature to Paczka; review KSR redlines to class cert brief

4/23/2015	KSR	Email correspondence with LS re motion to strike Hall report. Continue drafting comments and edits to class cert motion and further analysis of relevant evidence to include in motion. Continue draft summary of key evidence from discovery to include in class cert motion. Discuss Shalov's draft and points and evidence to include with CAS. Discussion with CAS re additional California authorities to add to class cert brief. Further instructions to GMG to prepare firm declaration to support class cert brief. Email from GMG re Kalin declaration and forward declaration to LS and BG and advise to add relevant cites to class cert brief. Instructions to GMG to locate evidence regarding numbers of employees bringing bags to Apple retail stores, for class cert brief. Email from GMG with evidence, review, analyze and respond. Follow up email to GMG re paragraph numbers for cites to evidence. Additional instructions to GMG re store evidence for class cert brief. Research and analyze additional cases for draft class cert brief. Email to LS re cases to add to brief. Email from Ferenc Paczka re supplemental declaration to support class cert motion (re Corte Madera store). Email correspondence with BG re class rep declarations on issue of adequacy. Instructions to GMG to check class rep declarations filed with FLSA motion, as well as depo transcripts, for additional, helpful evidence. Finalize edits and circulate new draft of class cert motion.	8.60
	KAK	Conference with KSR and CAS regarding class cert. opposition and additional evidentiary citations to be provided to co-counsel Shalov for incorporation into argument, as well as other next steps; review correspondence between CAS and defense counsel Shalov re client declarations to establish adequacy	0.20
4/24/2015	GMG	Email Gallaway re evidence table by store; confer with KAK, KSR and CAS re class cert briefing, prepare draft reminder re PDF file conversion and email KAK and KSR re same; review 5/14 Kalin declaration and email KSR and CAS re same; email Gallaway re availability for teleconference; review Frlekin and Speicher depositions for testimony re adequacy or others bringing bags and confer with KSR re same	3.10
	CAS	Review email from KSR re draft Malek declaration; email dec to Malek for review and signature; Review emails from Brett G. re class cert brief and support decs and scheduling a phone confernece; Review letter from Todd Boyer designating part of the Eric Kinder depo as Confidential; Review chart created by GG showing store by store evidence of bag checks; Review KSR and KAK emails re N.D. Cal. pdf filing requirements; Review additional KSR redlines to class cert brief; Call with Lee and Brett re class cert brief; Review email between Brett and KSR re Claudia Wright declarations; Review email and attachment from Brett re Employee Declaration Chart; Read Kurihara v. Best Buy class cert order re bag checks; Review 5/1/14 Kalin declaration for useful info for class cert brief; Email from GG re Kalin dec; Draft class rep decs and send to co-counsel for review; Draft California law insert to class cert brief and email to KSR; Email Murphy v. CVS class cert briefing and order to Lee	6.50
	KSR	Email correspondence with BG et al. to set up conference call to discuss logistics of preparation of class cert motion. Continue drafting comments and edits to class cert motion. Telephone conference call with CAS, LS and BG to discuss strategy for class cert motion and logistics. Continue drafting edits to motion. Circulate new draft. Meeting with KAK, GMG and CAS in calendar meeting to discuss strategy for class cert motion, filing requirements, legal framework for brief, and spreadsheet of key evidence by store. Email from Peter Dion-Kindem re preparation of Kalin adequacy declaration. Email from KAK re Kalin declaration. Send email to PD-K re preparation of Kalin declaration. Discussion with CAS re adequacy declarations for class reps represented by McLaughlin/Kralowec firms. Email correspondence with BG re including declarations of class reps and former opt-in Claudia Wright with motion for class cert. Further email discussion with BG re discovery cutoff and production of declarations; respond to BG re all declarations already produced within the cutoff. Instructions to GMG to forward evidence spreadsheet to LS and BG for class cert	8.90

motion. Discussion with GMG re evidence spreadsheet; instructions to work with BG on spreadsheet. Email from CAS re Circulate new draft. Review draft of firm adequacy declaration circulated by GMG. Draft edits to declaration and circulate to KAK and GMG with instructions to attach firm resume and send to Shalov. Review/analyze Chad Saunder's insert with legal framework for commonality section of class cert brief. Forward draft adequacy declaration to LS to file with brief. Draft edits to brief and circulate with comments. Discussion with KAK re logistics and timing for filing motion for class cert. Email to CAS re supplemental Malek declaration to support class cert motion. Email from BG to coordinate call to discuss drafts of class cert motion. Email to LS re local rules requiring PDF format.

4/24/2015	KSR	Forward new draft of redline of brief to BG and LS to discuss on conference call. Email correspondence with BG regarding draft Shalov declaration supporting supplemental Wright declarations; email to BG re may file separately from Shalov declaration in support of class cert.	0.70
	KAK	Conference with KSR and CAS regarding class certification brief, upcoming call with co-counsel Shalov, and work to be done by our firm in connection with the filing, including class representative declarations; review draft email from GMG to Shalov regarding local rule requirements for the upcoming filing; prepare for and participate in conference call with Shalov, KSR and CAS re class certification motion filing	0.80
4/27/2015	GMG	Email Gallaway re teleconference; call with Gallaway re evidence table; add verbatim quotes from Apple declarants to table; email CAS re Gregoroff email address; review revised table format, fill in Berkeley store information and email Gallaway re same; add information for stores from Bakersfield through Irvine to revised table format	5.80
	CAS	Review email from Lee Shalov re draft class rep declarations; review class rep depo transcripts to confirm amount of time; email Lee Shalov and review response; revise decs based on KAK comments; email decs to class reps	1.00
	KSR	Review drafts of class representative declarations circulated by Chad Saunders. Respond to email from Lonnie Blanchard re declaration for Kalin. Review/comment re edits to store chart to accompany class cert brief circulated by Brett Gallaway. Email correspondence with Lee Shalov and CAS regarding facts concerning class rep depositions to include in adequacy declarations. Further email correspondence with BG and Gary Gray regarding format of evidence chart to accompany class cert motion. Further email correspondence re class cert declarations. Email correspondence with LS and CAS re CAS edits wrt declarants' depositions. Email correspondence with BG and GMG re format of and edits to store evidence spreadsheet. Email correspondence with BG and CAS re email addresses for class reps. Review GMG edits to store evidence spreadsheet.	2.60
	KAK	Review and respond to correspondence re draft of class representatives declarations establishing their adequacy	0.20
4/28/2015	GMG	Add information for stores from Irvine through Los Angeles to revised evidence table format; email Gallaway re current draft and status update.	2.10
	CAS	Research case law re class certification of California off-the-clock claims; Revise section on California law in class cert brief; Email with KSR re class cert brief and revisions to CA law section; Email CA law insert to co-counsel for inclusion in the brief	3.40
	KSR	Email to BG and LS regarding further work on class cert brief from Newark. Email correspondence from LS regarding cites to California Labor Code, wage orders and UCL in class cert brief. Additional research re cases pertaining to California labor code claims. Email to CAS requesting he respond to LS re common questions related to these statutes/orders. Review response from CAS to LS addressing	1.10

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		<u>Hours</u>
	common questions arising from collective claims under California law; and LS response. Respond. Review CAS insert for class cert brief.	
4/29/2015	CAS Review email from class member Malek re supp declaration; Review email from Brett Gallaway attaching Speicher signed adequacy declaration and tax information, respond to Brett; Review signed Kalin declaration in support of class cert	0.50
	KAK Review email from co-counsel circulating declaration of class representative Kalin in support of class certification; forward same to KSR and CAS	0.10
4/30/2015	CAS Email Lee Shalov re reminder to send class cert supporting docs for review; Email M. Malek and F. Paczka re follow-up on supp. decl.; T/C M. Malek re supp. Decl.; review signed version from Malek; Review NDCal Coach opn re MTD similar bag check case	1.00
5/1/2015	CAS Review email and attachments from F. Paczka re signed supplemental declaration, reply to same; Review email and attachment from Lee Shalov re draft of trial plan for class cert motion; Research CA case law re requirements for trial plan at class cert stage and examples of approved plans	1.50
5/4/2015	CAS Review proposed trial plan from Lee Shalov	1.50
5/5/2015	GMG Prepare highlighted conduct manual and email CAS re same; add information for stores from Los Angeles to San Francisco to revised evidence table format; email Gallaway re class cert declarations and status update.	3.60
	KAK Review correspondence re administrative motion to file under seal "confidential" documents in support of class certification motion; email to CAS re preparing draft of this motion at request of co-counsel Gallaway	0.20
	CAS Email Seth Dowling re adequacy declaration, set up time to talk; prepare final versions of Malek and Paczka supp decs, email to group; review email from Brett G. re requirements administrative motion to file docs under seal; Research Northern District rules for filing docs under seal, email results to Brett; Email KAK re drafting admin motion; Draft admin motion to seal, email to group	2.00
5/6/2015	GMG Review Apple declarations and add information for stores from San Francisco through Walnut Creek to revised evidence table format; organize class cert declarations in folder; circulate draft evidence table to Gallaway, Shalov, CAS and KAK.	4.80
	KAK Correspondence with CAS re status of declaration in support of class certification motion regarding adequacy of our firm as co-counsel for the class, as well as status of supporting declarations of class representatives to establish their adequacy; review email circulating draft declaration of class representative Kalin and forward to CAS for review; review email from co-counsel Gallaway requesting assistance with preparing components of the cert. motion and email to CAS re taking on further tasks	0.30
	CAS Review and revise KAK decl in support of class cert motion, email to KAK for review; Review and revise trial plan to be submitted with class cert motion, email proposed edits to co-counsel; Email Kalin decl iso Opposition to Apple's SJ motion to Brett; Email with co-counsel re documents needed for class cert and procedure for filing under seal; Research FRCP re requests for judicial notice of state court rulings; Review signed versions of Malek and Paczka supplemental declarations and forward to co-counsel; follow up call to Amanda Frlekin re adequacy declaration; update Frlekin's contact information	3.50
5/7/2015	GMG Review Apple declarations and prepare chart re declarant position and tenure; review manager and store leader declarations and email Gallaway re same; review draft class cert brief, fix formatting issues and email CAS re same	3.60

		<u>Hours</u>	
5/7/2015	KAK	Conference with CAS regarding revisions to class certification motion and adequacy declaration and re sample order granting class certification; review correspondence re status of various supporting declarations; review and revise adequacy declaration and email to CAS re additional changes needed; review and respond to email from co-counsel Gallaway regarding same	0.90
	CAS	Email and call with Class Rep Seth Dowling re adequacy declaration for class cert; Draft Notice of Motion for class cert, email with co-counsel re class definition to include; Revise draft of Request for Judicial Notice for CVS state court decision; Email Notice and RJN to co-counsel for review; research local rules for proposed order requirement, email results to Lee; email Class Reps Aaron Gregoroff and Amanda Frlekin re adequacy declarations; Revise class cert brief and email revised version to co-counsel	4.20
5/8/2015	GMG	Prepare KAK declaration and email CAS re same; review rules re e-filing and administrative motions to seal and confer with CAS re same; email CAS and KAK re requirement to use ECF-stamped documents for courtesy copies; email Gallaway re Bahu, Burgess and Jensen declarations; email KAK and CAS re edits to firm resume; review evidence table, compile all referenced Bates numbered documents and email Gallaway re same; finalize updated firm resume, prepare revised KAK declaration and email KAK and CAS re same; email Gallaway re Moseley declaration; confer with CAS re filing on Monday	2.20
	KAK	Review final draft of adequacy declaration in support of class certification, including updates to firm resume drafted by CAS; conferences with GMG and CAS re assistance with filing on Monday, including courtesy copies and administrative motion to file portions of papers under seal	0.30
	CAS	Send revised versions of RJN and Notice of Class Cert motion to Lee and Brett; Send KAK dec to GMG for finalizing with Exhibit; Research Local Rules for requirements of filing documents under seal, email results to Lee and Brett; Review draft of administrative motion to file under seal and supporting dec; Revise firm resume and email to GMG for KAK dec; email final KAK dec to Brett and Lee; Review most recent version of class cert motion and supporting papers sent by Brett; Phone call with Seth Dowling re adequacy dec; Review proposed order for class cert sent by Brett	4.50
5/10/2015	KAK	Review and respond to email from KSR re tomorrow's filing	0.20
	KSR	Email correspondence with LS, KAK and BG re drafts of class cert brief and proposed order. Review brief and email to LS re issues with format, request updated version. Review/analyze chart of evidence by store. Email correspondence with KAK and CAS re edits to proposed order. Review and draft edits to proposed order; circulate. Draft further edits to proposed order and circulate. Email to LS re review of draft brief. Email correspondence with KAK, GMG and CAS re logistics for chambers copies of brief and all supporting documents.	1.90
5/11/2015	GMG	Email Gallaway and Ramirez re unredacted Shalov declaration exhibits for download; prepare courtesy copy of unredacted Shalov declaration exhibits 1-170; email CAS, KAK and KSR re status; teleconference with Gallaway and Ramirez re e-filing procedures	7.10
	CAS	Review KSR proposed edits to class cert order; email Brett re proposed order iso motion to seal; Review and forward final Seth Dowling dec; email Brett re filing requirements for motion and supporting docs; meet with GMG re preparing courtesy copies of docs	0.50
	KSR	Email correspondence with BG and Anthony Ramirez, GMG re logistics for chambers copies of class cert brief and supporting materials. Review all exhibits. Discussion with CAS re requirements for filing under seal and chambers copies. Review revised proposed order supporting motion for class cert. Telephone calls from Brett Gallaway	4.70

Hours

regarding request for judicial notice supporting motion for class cert, and ECF filing issues re large exhibits. Review/analyze and draft edits to class cert brief. Email to BG, LS and team re edits to brief and adequacy declaration. Email correspondence with BG regarding exhibits. Email correspondence with LS and BG re trial plan. Further email correspondence with AR and BG re exhibits and oversee filing. Email correspondence with BG and CAS re administrative motion to file under seal. Discuss sealing issues with CAS. Further email correspondence with CAS, BG and AR re logistics of filing large exhibits. Review/analyze proposed trial plan in support of class cert motion. Review/analyze declarations in support of class cert motion. Work with BG and CAS on finalizing exhibits to motion. Discussion with GMG re e-filing notification for redacted exhibits. Review as-filed motion for class cert and supporting documents. Email correspondence with BG and Todd Boyer re motion and ECF issues with filing proposed order.

5/12/2015	GMG	Teleconference with Gallaway and CAS re e-filing; confer with CAS and e-file administrative motion with redacted and unredacted exhibits; organize class cert moving papers filed 5/11; email CAS, KSR and KAK re typo in caption; prepare courtesy copy of filed class cert papers and redacted exhibits; confer with CAS re cover sheets and final review; arrange for all courtesy copies to be delivered to court clerk	6.40
	KAK	Conferences re status of yesterday's filing; review various enotifications and correspondence re same	0.20
	CAS	Email and call with Brett re ECF filing of Admin Motion to Seal; meeting with GMG to assist with filing Admin motion and compilation of courtesy copies	2.30
	KSR	Review ECF filings associated with class cert motion and email to BG re status of unfiled documents. Discussion with GMG and CAS re class cert motion filing. Email from LS re motion and dates for opposition and reply. Check calendar, research re opposition date and reply to LS confirming dates. Email correspondence with LS and BG re 49 day track in court's order for class cert motion and correspondence from Boyer re schedule. Request to LS to forward Boyer's email to court to us. Email correspondence with LS, BG, CAS, KAK re calculation of 49 day track and suggestion for resolution. Further email correspondence with LS and BG re whether to oppose Boyer's request for extension of normal briefing schedule. Email correspondence with Peter D-K re motion. Further discussion and email with CAS re administrative motion to seal exhibits filed with motion for class cert. Email correspondence with BG re submission of Word version of proposed order. Email from BG correcting exhibit filed with motion. Work with CAS on administrative motion to file under seal and review. Email from GMG re corrections to caption and logistics for filing. Further email correspondence with BG and GMG re administrative motion. Email from BG correcting proof of service on administrative motion. Email from TB to clerk requesting correction of schedule for opposition due date (class cert motion). Review/analyze transcript of case management conference re Apple's request to extend time to file opposition brief; discuss with CAS. Email from CAS to BG et al. re extended time and contacting ECF to correct opposition date. Email correspondence with LS re change in procedural posture and objection to longer briefing schedule. Further email correspondence with Todd Boyer re call to clerk and with Lee Shalov re whether to oppose extended schedule.	4.80
5/13/2015	GMG	Confer with CAS re completion of filing; prepare courtesy copy of highlighted class cert brief and confer with CAS re same	0.70
	KAK	Review and evaluate correspondence from co-counsel Shalov to defense counsel regarding briefing schedule for class certification opposition and reply	0.10
	KSR	Review further press regarding class cert motion including Apple's response to gauge basis for settlement demand. Further email correspondence with Todd Boyer re briefing schedule for opposition to class cert motion. Email correspondence with LS	2.50

		<u>Hours</u>
	re extending briefing time by one week and email correspondence with Todd Boyer and LS re extension. Discussion with GMG re schedule for reply re class cert motion and draft of motion to strike evidence and expert report. Review email from LS to Todd Boyer regarding basis for refusal to extend briefing schedule for class cert opposition. Email from Todd Boyer in response and notification of administrative motion to extend time to file opposition to motion for class cert. Email from Claudia Wright with questions and respond.	
5/14/2015	CAS Review Apple's Admin Motion to extend time to respond to class cert motion and supporting docs; Review email from KSR re time to respond to admin motion under Local Rules	0.70
	KSR Review/analyze administrative motion filed by Apple requesting additional time to file opposition to class cert motion. Research rules and generate and circulate email to LS, CAS, BG, GMG re opposition to administration motion, time to respond, and bases for opposing extension. Further email from Claudia Wright. Respond to Wright. Discussion with KAK, CAS, GMG re case status conference and review of time requirements for class notice etc., in event court grants motion for class cert. Review rules and scheduling order for all applicable dates. Discuss dates for reply to class cert motion and possible schedule extension based on Apple's administrative motion; draft memo to file.	1.70
5/18/2015	GMG Review and organize opposition papers to Apple motion for extension and email Gallaway re typo in caption	0.30
	CAS Review email from Brett Gallaway re time to oppose Apple's admin motion to extend time for class cert opp; Research Local Rules re time to oppose admin motion; Review and edit opposition to Apple's admin motion, email to Brett; Review ECF filing of opp to admin motion and supporting docs, email Judge's PO email to Brett	1.00
	KSR Email correspondence with BG re deadline to file opposition to Apple's administrative motion to extend deadline for opp to class cert motion. Research rules and further email correspondence with BG re administrative motion opp. Review/analyze draft opp circulated by BG and discuss with CAS. Draft redline to administrative motion and forward to Chad Saunders for further review. Review pleadings concerning Apple's requested extensions of court ordered deadlines for addition to opposition. Review CAS redline and draft further edits to opposition brief. Discuss with CAS, draft further edits and circulate redline with comments to BG with instructions re corresponding declaration. Review case forwarded by CAS re result of court not ruling on evidentiary objections. Review calendar of case deadlines.	3.40
5/19/2015	GMG Prepare initial draft objections to and motion to strike Hall declaration and email KSR re same	0.70
	KAK Review enotification from Court granting in part extension of briefing schedule for class certification motion	0.10
	CAS Review Order re Apple's Motion for Extension to oppose class cert motion	0.20
	KSR Email correspondence with Lee Shalov regarding motion to strike Hall report. Instructions to GMG re motion to strike. Further review/analyze all meet and confer correspondence with counsel for Apple re video evidence which is subject of Hall report.	2.90
5/20/2015	CAS Review email re new deadline to file reply iso class cert and motion to strike Hall report	0.20
	KSR Review/analyze court's order regarding Apple's administrative motion to extend time to respond to class cert motion. Email to BG re order. Calendar dates and email instructions to GMG re noon filing deadline and logistics for chambers copies and	0.40

		<u>Hours</u>
	motion to strike. Email to BG and LS re coordination on reply brief and motion to strike and organize call after receipt of Apple's opposition brief. Response from BG and email to BG and LS re change to street address on all new pleadings. Draft motion to strike Hall Report served by Apple in prospective opposition to plaintiffs' motion for class cert.	
5/26/2015	KAK Review enotification and co-counsel correspondence re order denying administrative motion to file under seal; email to GMG and CAS regarding courtesy copies	0.10
	CAS Review email from Brett Gallaway re time to file unredacted class cert docs, research Local Rules and email excerpt to Brett; call with clerk for Judge Alsup re need to file additional courtesy copies with unredacted documents; Review email from OPC Todd Boyer re Apple's motion for reconsideration of order denying motion to seal	0.50
	KSR Email correspondence with BG and CAS re date by which to file unredacted documents in support of motion to compel and further discussion with GMG re filing and service logistics.	0.30
5/27/2015	CAS Review emails between Lee Shalov and Todd Boyer re Apple's motion for reconsideration of order denying motion to seal; Review email from KSR re deadline to file unredacted documents; Review email and attachment from Todd Boyer re documents sought to be sealed and Lee's response; Email group re conversation with Judge Alsup's clerk who said that we do not need to lodge another courtesy copy	0.70
	KSR Email correspondence with Lee Shalov re Apple's request for plaintiffs to stipulate to filing documents supporting class cert motion under seal. Check local rule 79 regarding requirement to file unredacted versions following court order and email to Lee Shalov regarding necessity for Apple to get order from court relieving plaintiffs of compliance with Rule 79 if we decide to stip to filing under seal for any documents. Further email correspondence with Todd Boyer re stay. Review documents at issue. Further email correspondence with LS re filing of unsealed documents absent order.	1.40
5/28/2015	GMG Review/organize Apple filings in opposition to class cert and confer with KSR and CAS re same; organize unredacted materials to be filed 5/29 and prepare combined exhibit PDFs	1.10
	KAK Review and evaluate court's orders regarding class certification briefing schedule and denying motion to seal, as well as correspondence among co-counsel re the latter; evaluate correspondence re need for re-submitting courtesy copies of unredacted versions; review enotifications re filing today of defendant's opposition to class certification and email from co-counsel Shalov with preliminary thoughts on same; review email from defense counsel's office regarding service of video exhibits in support of their class cert. opposition; evaluate and respond; review amended certificate of service filed today by defense counsel	0.40
	CAS Review email from Todd Boyer and response from Lee Shalov re stipulation to seal some of the documents requested by Apple; Review ECF notices re Apple's opposition to class cert; Read opposition to class cert, meet with KSR re same; Review proposed Stip re Sealing Documents from Todd Boyer, Lee's response, and revised Stip; Review email from Paige Bridges requesting to serve by hand rather than mail, respond to KAK quesiton re same; Review ECF notices re Apple's Motion for reconsideration and stip to filing docs under seal	2.80
	KSR Email correspondence with CAS and BG re filing unredacted versions of class cert brief, LS declaration and exhibits. Email correspondence with Todd Boyer and Lee Shalov re stipulation to basis to seal documents filed with plaintiffs' motion for class cert. Review/analyze Boyer's filing requesting leave to file motion for reconsideration of order denying motion to seal. Review/analyze Apple's opposition to plaintiffs' motion for class cert and Hall report. Discuss with Chad Saunders. Email correspondence with LS re Apple's arguments, including Rule 23(c)(4) not	2.90

Hours

independent basis to certify class. Instructions to GMG to prepare to file unredacted versions of documents filed under seal in support of motion for class cert per local rules. Review/analyze Apple's draft stipulation and email discussion with LS. Review/analyze Apple's draft revised stipulation. Review BG's draft opposition brief in anticipation of motion for reconsideration of Apple's motion to file under seal. Email from Apple's counsel requesting agreement to receive service of video exhibits by hand delivery; confer with LS et al. and respond. Research time to oppose Apple's administrative motion; calendar and circulate info re time to oppose. Email from Todd Boyer with proposed additional exhibit to file under seal; LS agreement. Review Apple's motion for leave to file motion for reconsideration of administrative motion to file under seal and stipulation. Review Apple's unredacted exhibits in opposition to class cert.

5/29/2015	GMG	Draft notice of filing file unredacted class cert motion and Shalov declaration with exhibits and confer with CAS re same; review/organize video files produced by Apple on 5/28 and confer with KSR re same	3.20
	KAK	Review further correspondence from defense counsel circulating additional unredacted portions of their filing; email to defense counsel re adding KSR and CAS to their service list for such correspondence; review draft of notice of change of address and email GMG re revisions; review revised draft and email GMG re further revisions and KSR re following up re filing today	0.30
	CAS	Review and respond to email from Brett Gallaway re filing unredacted docs in response to order denying motion to seal despite Apple's motion for reconsideration; Review Apple's unredacted Exhibits filed under seal; Read Avilez v. Pinkerton (9th Cir. unpub) forwarded by KSR; Review ECF notice re filing unredacted documents; confer with KSR	1.50
	KSR	Email correspondence with BG and CAS, Todd Boyer and Lee Shalov re filing unredacted copies of documents filed under seal in support of class cert motion per local rules. Email from LS re date to oppose Apple's administrative motion to seal documents filed in support of motion for class cert. Research applicable dates and circulate date to oppose with question re declaration required of Apple following plaintiffs' initial motion to file under seal. Email from LS requesting me to prepare opposition to Apple's motion to seal. Respond to LS agreeing and requesting call to discuss Apple's opp to class cert and strategy for reply brief. Discussion with CAS re LS' email concerning Rule 23(b)(3) vs. c(4) procedures and Pinkerton case circulated by LS. Telephone call with LS and BG re basis for reply brief supporting motion for class cert and opposition to Apple's motion to seal. Review photographs and video evidence served by Apple with its motion to seal and draft opposition to motion to seal. Email correspondence with BG and CAS re Apple's motion for reconsideration re filing under seal and standards. Telephone call from BG re filing Apple's unredacted exhibits. Discussion with GMG re ECF issues with filing unredacted exhibits. Email to LS re notice of filing. Email correspondence with LS re notifying Apple prior to filing unredacted exhibits. Email from BG re authorities supporting 23(c)(4) as independent basis for certifying class issues; review/analyze these authorities for reply brief. Instructions to GMG re video exhibits subject to Apple's motion to seal.	5.60
6/1/2015	GMG	Review materials sought to be sealed by Apple and email KSR re number of video clips, number of photos and number of photos with distinguishable faces; draft KSR declaration re opposition to motion to seal and email KSR re same; draft GMG declaration re opposition to motion to seal and confer with KSR re same; proofread opposition brief, check cites and quotes and email KSR re same; finalize and file brief, GMG declaration and proposed order	4.70
	KAK	Review and respond to email from co-counsel Shalov regarding citation of unpublished Ninth Circuit opinions and rule governing same	0.10

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		<u>Hours</u>	
6/1/2015	CAS	Review and edit Opposition to Apple's Motion to Seal, email doc to KSR; Read Judge Alsup class cert order in Cherry v. City College, provide comments to Lee Shalov and KSR; Review ECF filing notice for Opp to Motion to Seal and email attaching proposed order	1.20
	KSR	Email from Lee Shalov regarding analysis of Cherry decision. Respond and forward to CAS. Research for and draft opposition to motion to seal, declaration, proposed order; circulate, drafts edits, finalize, file. Instructions to GMG re photographs and video clips. Instructions to GMG re case numbers. Further instructions to GMG re video clips. Review Cherry decision and CAS comments and reply to LS. Email correspondence with LS and KAK re 9th Cir. Rules on unpublished decisions.	6.80
6/2/2015	GMG	Review/organize Daubert filings from High Tech Employees case and email KSR re same; search files and review local rules re motions to shorten time and email KSR and CAS re same	0.60
	KAK	Review enotification and court's order granting and denying in part motion to seal certain portions of our class certification motion papers; conference with KSR re opposition brief filed yesterday re Apple's motion to seal, anticipated motion to strike expert report, and status of class certification reply brief due Thursday; review correspondence between KSR and CAS re preparation of application for order shortening time to hear motion to strike expert report, which will be prepared by CAS	0.30
	CAS	Review Apple's opposition to class cert and provide comments for our Reply to KSR; meeting with KSR re points for reply brief and motion to strike Hall report; Research standards for motion to strike expert report at class cert stage, send article to KSR; Review GMG email re Local Rules for motion to shorten time; email KSR re motion to shorten time	1.30
	KSR	Draft motion to strike Hall report cited in Apple's opp to motion for class cert. Review/analyze Apple's opposition to motion for class cert and draft and send bullet points for Lee Shalov and Brett Gallaway on point to cover in reply. Discussion with CAS re further points to cover in reply re Rule 23 standard. Review court's order granting in part Apple's motion for reconsideration on plaintiff's motion to seal. Instructions to GMG re Daubert motion. Review stipulation re shortening time and approve to send to Apple counsel for agreement. Review local court rule re shortening time and instructions to GMG re administrative motion. Email correspondence with CAS re motion to strike and motion to shorten time. Review draft email from CAS to Todd Boyer requesting assent to shortened time as required by rules; respond with direction to send.	8.20
6/3/2015	GMG	Proofread/reformat class cert reply brief and confer with CAS re same; check cites and quotes and email co-counsel re same	2.20
	KAK	Review and evaluate draft of reply brief circulated by co-counsel Shalov; email to Shalov with comments	0.30
	CAS	Research ND Cal. Local Rules re motions to shorten time; draft email to Todd Boyer requesting stipulation to shorten time for motion to strike Hall Declaration, send to KSR and KAK for approval; Send email re stip to shorten time to Todd Boyer; Review Todd's response and reply; Review and edit Reply brief in support of class cert, email to Lee Shalov	5.20
	KSR	Continue draft of motion to strike Hall report cited in Apple's opp to motion for class cert. Draft edits to reply to opposition to motion for class cert. Further research for motion to strike. Email correspondence with Lee Shalov and Brett Gallaway re further edits to reply brief. Instructions to GMG re reply brief. Review email from Todd Boyer forwarded by BG with question re court rule requiring evidentiary objections to be in brief. Respond to BG re Daubert motions not encompassed. Draft insert to reply brief supporting class certification objecting to video evidence and Hall report; forward	8.20

to LS and BG to insert. Email correspondence with LS and BG re formatting and shortening reply brief. Draft edits to reply. Instructions to GMG re preparing tables. Continue drafting and editing motion to strike Hall report. Circulate draft of motion to strike and discussion with CAS re draft stipulation with Todd Boyer re shortening time. Email from LS re edits to class cert definition in reply brief.

6/4/2015	GMG	Review chart of evidence by store and email co-counsel re same; prepare PDF of final class cert reply brief with tables, confer with CAS re same and file via ECF; prepare PDF of final motion to strike with declarations and proposed order, confer with KSR re same and file via ECF; prepare PDF of KSR declarations re Shalov and KAK e-signatures and file via ECF; email Word version of proposed order to court; arrange for delivery of courtesy copies; review Esquire deposition invoices and email co-counsel re same	5.60
	KAK	Conference with CAS re status and components of today's filing; review co-counsel and KSR correspondence re same; review email from CAS circulating final version of brief with all revisions; review brief and email to group re final edits; review enotifications re successful and timely filing of reply papers by noon deadline; conference with KSR and CAS re upcoming deadlines following class certification hearing and work necessary to meet them	0.50
	CAS	Review email from KSR re Reply brief iso class cert, and reply; Draft stip to shorten time for motion to strike Hall declaration; email Stip to Todd Boyer for approval; edit Reply brief, email final version to all co-counsel; Review TOA and TOC prepared by GMG	4.50
	KSR	Further email correspondence with LS re evidence to include in motion to strike. Email correspondence with GMG and CAS re edits from LS and BG to reply brief in support of class certification. Draft edits to motion to strike Hall report cited in Apple's opp to motion for class cert. Draft declarations of KAK and KSR in support of motion to strike and add exhibits. Prepare exhibits and instructions to GMG. Review spreadsheet of declarations in support of class cert motion re practices in stores address by Hall report. Add citations to brief on motion to strike. Further email correspondence with CAS and LS re edits to class cert reply brief. Discussion with CAS re motion to shorten time on motion to strike. Instructions to GMG re filing of motion to strike and exhibits. Draft attestation supporting Shalov signature on reply brief and instructions to GMG. Review draft stipulation from CAS on stipulated request to shorten time on motion to strike. Draft declaration in support of request for order shortening time with all case extensions. Discussion with KAK, CAS, GMG re upcoming dates on court's scheduling order and actions to take prior to and in preparation for hearing on class cert motion. Discussion with CAS re logistics of stipulation for order shortening time on motion to strike and filing stip and order. Instruction to GMG re declarations supporting motion to strike Hall report. Draft edits to declarations in support of motion to strike. Review revised draft of reply brief iso class cert. Instructions to GMG re exhibits to declarations iso MTS Hall report. Forward to GMG depo notice and video exhibits. Instructions to GMG re attestation of agreement to file. Draft attestation to support filing of KAK declaration. Instructions to GMG re edits to KSR declaration and instructions to file stipulation re shortening time with declaration. Email from CAS re sending stip to T Boyer for approval.	6.30
6/5/2015	CAS	Review email and attachment from Todd Boyer re stip to shorten time	0.20
	KSR	Email from Todd Boyer agreeing to stipulation to shorten time for hearing on motion to strike Hall report, with modifications to text of stipulation. Review court's order re Apple's motion to file under seal. Email correspondence with LS re depo transcripts; investigate and discussion with CAS.	0.40
6/8/2015	GMG	Prepare PDF of stipulation to shorten time and KSR declaration re same, file via ECF, email Word version and forward courtesy copy to court	0.90

		<u>Hours</u>	
6/8/2015	CAS	Email final stip and KSR dec to shorten time for motion to strike to GMG for filing; Email Todd Boyer re stip to shorten time; Meeting with KSR re motion to strike Hall declaration; research history of meet and confer discussions regarding store videos and audits, email results to KSR	2.20
	KSR	Further email from LS regarding invoice for audits depo transcript. Discuss with CAS and respond to LS. Further discussion with CAS re Boyer's changes to stipulation to shorten time for hearing on motion to strike Hall report. Further review court's order granting in part and denying in part Apple's motion to seal exhibits filed with its opposition to plaintiff's motion for class cert. Email from CAS re history of audits depo. Review stip and order re Hall's report for filing.	0.90
6/9/2015	KSR	Review court's order granting motion for order shortening time for hearing on motion to strike Hall report filed by Apple in support of opposition to plaintiffs' motion for class cert. Review revised order and calendar.	0.30
6/10/2015	KSR	Review filed motion to certify class. Review Apple's filed notice re sealing of photograph evidence. Review Shalov declaration in support of class cert motion.	0.30
6/11/2015	KSR	Review email and article from LS re employee complaints about Apple's bag check policy; respond to LS.	0.20
6/12/2015	KSR	Discussion with CAS re deadline for filing reply brief in support of motion to strike Hall report; CAS to handle. Also preparation for arguing motion and preparation for deadlines and projects subject to court's scheduling order, in preparation for hearing on class cert motion.	0.60
6/15/2015	CAS	Review emails re scheduling a call to discuss procedures following class cert	0.10
	KSR	Schedule conference call with LS, BG, CAS, KAK to prepare for class cert hearing and issues with scheduling order, e.g. class notice timing.	0.20
6/16/2015	KSR	Discussion with CAS in preparation for call with LS, BG to prepare for class cert hearing and request for modification of court's scheduling order and Judge Spiro's order re settlement discussions.	0.40
6/17/2015	GMG	Confer with KAK, KSR and CAS re upcoming tasks and deadlines	0.20
	KAK	Prepare for and participate in conference call with KSR, CAS and co-counsel Shalov and Gallaway re upcoming deadlines, steps needed to either meet these deadlines or get them continued, and preparation for class certification hearing; correspondence with reporter re upcoming class cert. hearing and email to Shalov re same; review voice mail from attorney Jeff Hogue, plaintiffs' counsel in related Apple meal period case in San Diego	0.90
	CAS	Email Lee Shalov re chart of upcoming deadlines and offer to create proposed order with new proposals	0.20
	KSR	Prepare for call with LS, BG, CAS, KAK to prepare for class cert hearing and issues with scheduling order, e.g. class notice timing. Review scheduling order and rules from Judge Alsup and Judge Spero in preparation for call. Conference call with KAK, LS, BG and CAS re preparation for class cert hearing, responding to MTS Hill report, and addressing court's schedule for trial prep and trial following hearing. Follow up with CAS re proposal for revised scheduling order to have ready at class cert hearing. Email from KAK re call from reporter.	1.50
6/18/2015	KAK	Draft email to CAS and co-counsel Gallaway re returning voice message received from attorney Jeff Hogue regarding defense counsel	0.10

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			<u>Hours</u>
6/18/2015	CAS	Review email from KAK re VM from Jeff Hogue; Call Jeff re opposing counsel and new case law -- left message	0.20
	KSR	Discussion with CAS to prepare argument points for motion to strike Hall report.	0.30
6/19/2015	CAS	Review Apple's opposition to motion to strike Hall declaration (Dkt. 281), meet with KSR re same; Review email and attachments from KSR re objections to video evidence in SJ opposition and FLSA reply; outline reply re motion to strike	2.00
	KSR	Further discussion with CAS to prepare argument points for motion to strike Hall report.	0.40
6/22/2015	GMG	Review chart re video produced by Apple, calculate approximate total duration and email CAS re same	0.30
	KAK	Review enotification re defendant's filing last week of opposition to motion to strike expert declaration; correspondence with CAS regarding status of reply brief due Thursday; follow-up to CAS regarding returning call received from attorney Hogue	0.20
	CAS	Draft reply P&A in support of motion to strike; research case law cited in Apple's opposition to motion to strike; phone conference with Jeff Hogue (plaintiffs' counsel in state court action against Apple) re opposing counsel; email KAK re phone conference with Jeff	6.50
6/23/2015	KAK	Review further press inquiry received re upcoming hearing; forward same to co-counsel Shalov and KSR; conference with CAS re status of reply brief due Thursday	0.10
	GMG	Draft and revise reply P&A in support of motion to strike; research case law re Daubert motions at class certification; Email draft to KAK and KSR for review	4.50
	KSR	Review/analyze draft of reply brief re motion to dismiss Hall report circulated by CAS. Email to CAS to circulate brief to all for review. Draft and send comments to CAS re draft of reply.	1.00
6/24/2015	GMG	Confer with CAS re components and details of filing reply re motion to strike	0.20
	KAK	Review correspondence from KSR and co-counsel Shalov re reply brief prepared by CAS in support of motion to strike expert report; review draft of brief; prepare redline with comments and edits and circulate back to CAS and KSR	0.50
	CAS	Revise Reply iso motion to strike, email to KSR and KAK for review; Further revisions based on KSR and KAK comments and edits, re-circulate; Draft Declaration iso Reply, email to KAK and KSR for review	3.80
	KSR	Email to CAS re Apple's opposition brief. Draft and send to CAS text of introduction and points to raise in reply, corresponding to points raised in Apple's opposition brief. Email correspondence with CAS re attaching meet and confer correspondence re Apple's failure to provide dates for deposition of Steve Smith.	1.30
6/25/2015	GMG	Revise exhibits, prepare final PDF of reply memo and CAS declaration re motion to strike and email CAS re same; file via ECF and arrange for delivery of chambers copies	0.90
	KAK	Review and evaluate revised draft of reply brief in support of motion to strike defendant's expert declaration in opposition to class certification; review and evaluate draft declaration in support thereof; prepare redlines with comments on both and circulate to CAS and KSR; review revised drafts prepared by CAS; email to KSR re possible further revisions; review and respond to further comments of KSR re edits	1.20

		<u>Hours</u>
	needed; review new revised draft prepared by CAS; email to CAS re final revisions needed then filing today	
6/25/2015	CAS Review KAK comments and edits to Reply brief iso motion to strike, revise and re-circulate; Send to GMG for finalizing pdfs for filing and review; Review ECF notice re filing reply	3.50
	KSR Review reply draft re Hall report and email correspondence with KAK and CAS re revising and adding text re Apple's 11th hour production of 57 hours of videotape, and failure to provide 30(b)(6) witness to testify about it.	0.20
6/29/2015	GMG Prepare chart of all upcoming deadlines in Alsup's court, calculate dates 180 days out and email CAS re same	0.80
	KAK Conference with KSR re status, following up with co-counsel Shalov, and preparation for and coverage of this week's hearing	0.10
	KSR Discussion with KAK and CAS re preparation for class cert hearing. Further discussion with CAS re extension of court's scheduling order to propose to Apple in advance of hearing. Email correspondence with CAS and LS re proposed revisions to scheduling order. Email from LS re preparation for class cert hearing. Email correspondence with CAS re proposed extended schedule to send to Boyer.	0.50
6/30/2015	KAK Review and respond to email from KSR re proposal to extend schedule for upcoming settlement conference; review correspondence between KSR and defense counsel re same wherein defense counsel refused to confer on the matter	0.10
	CAS Draft proposed stipulation to continue case deadlines by 180 days, email to KSR for approval and email to Lee Shalov for comments	1.00
	KSR Further email correspondence with CAS re proposed, extended scheduling order to send to Boyer. Review draft stipulation and Exhibit 1 with proposed, extended deadlines. Review deadlines from Judge Spero's order regarding settlement conference and related dates. Email to LS, BG et al. re date to lodge settlement conference statement and last day to make settlement demand.	0.90
7/1/2015	KAK Review correspondence with co-counsel Shalov re hearing preparation and correspondence from Shalov to defense counsel re proposal to stipulate to postpone upcoming settlement conference; conference with KSR and CAS re preparation for tomorrow's hearing and arguments to be made in support of request for continuance of upcoming deadlines, including trial date; additional assistance with hearing preparation	0.80
	CAS Review email from Todd Boyer re settlement discussions before class cert, and Lee Shalov response; Meeting with Lee Shalov to prepare for class certification hearing; Research case law re Wage Order No. 4 standards for "work" under CA law	3.50
	KSR Meeting with LS and CAS to prepare for class cert hearing. Draft proposed orders re case schedule. Prepare for hearing. Review store by store evidence attached as exhibit to class cert motion in preparation for hearing. Work with CAS to prepare materials for hearing on class cert motion. Arrange with LS and CAS to bring hearing binders to court. Email correspondence with BG re evidence for hearing, including exhibit to Apple rog responses re stores with security guards and breakrooms. Further review of evidence and preparation for hearing. Discussion with CAS to prepare for argument on motion to strike Hall report. Email response from Todd Boyer stating Apple will not discuss settlement on a classwide basis, in response to plaintiffs' inquiry for class cert hearing. Further email correspondence with LS and TB re upcoming settlement conference call with Judge Spero. Draft and finalize	7.20

proposed orders re case schedule for class notice, trial, etc. as contingency for ruling from the bench.

7/2/2015	KAK	Conference with KSR and CAS re events at today's class certification hearing and comments of court, including question about whether special masters may be used over the defendants' objection in view of the 7th Amendment jury trial right; research regarding materials on Teamsters Stage II proceedings in Title VII cases, in which a special master procedure was used; draft email to CAS forwarding these materials; correspondence to CAS, KSR and co-counsel Shalov re argument that UCL claim carries no jury trial right, and all of the unpaid wages we are seeking are recoverable under the UCL; review and respond to email from KSR regarding requesting continuance of upcoming settlement conference with Magistrate Judge Spero and sending further email to defense counsel re stipulation	1.30
	CAS	Continued preparation for and attend class certification hearing; Review email and attachments from KAK re 7th amendment jury trial issues in relation to using special masters; Review KSR email and attachment re continuing settlement conference before Judge Spero, KAK response	7.20
	KSR	Continued preparation for class cert hearing. Participate with LS and CAS in class cert hearing. Meeting with CAS and LS re next steps. Meeting with KAK re results of hearing. Discussion with CAS and KAK re requesting extension of deadlines in Judge Spero's settlement conference order and extension of case schedule. Check all deadlines against orders. Further email correspondence re administrative motion or stip. Email correspondence with Jeff Hogue re results of hearing. Email to Todd Boyer re request for stip on Spero's order. Check Spero's rules and civil local rules re scheduling and administrative motions. Review articles concerning class cert hearing circulated by LS; comment. Email correspondence with KAK and LS re equitable basis for permitting special master to determine damages issues. Review court's minute entry re hearing.	7.50
7/3/2015	KSR	Review court's order requiring supplemental briefing on adequacy issues and all-or-nothing theory. Email to LS, BG, KAK, CAS re due date of 7/7. Email correspondence with LS, KAK and BG re next steps.	0.40
7/4/2015	CAS	Review email from Lee Shalov re withdrawing Amanda Frlekin as proposed class rep; Review ECF notice and Order requesting supplemental briefing	0.70
7/5/2015	KAK	Review enotification and court's order dated 7/4/15 ordering further briefing on class certification; evaluate same; review and respond to correspondence between KSR and co-counsel Shalov re same and arguments to be made therein; review and respond to correspondence from Shalov regarding class representative Frlekin	0.70
	CAS	Review email between co-counsel re Order for supplemental briefing	0.50
	KSR	Begin draft of supplemental brief in support of class cert per Court's July 4 order. Email correspondence with BG re order and coordinating with LS re points to address. Review email from LS re points to raise in brief and declarations from class members. Review further case authorities from LS to add to brief. Email correspondence with KAK re Amanda Frlekin adequacy issue.	2.50
7/6/2015	KAK	Further analysis of correspondence this morning among co-counsel Shalov, Gallaway, KSR and CAS regarding supplemental brief due tomorrow; draft email to co-counsel, KSR and CAS regarding arguments to be made in supplemental brief; conferences with CAS and KSR regarding same, and research to be done; review draft joint declaration of class representatives regarding theories to be asserted; correspondence re withdrawal of Frlekin as proposed class representatives and email to CAS re preparing withdrawal document; review further correspondence re	0.90

supplemental brief due tomorrow; began review of transcript of class certification motion hearing

7/6/2015 CAS	Review emails between co-counsel re supplemental briefing strategy and assignments; Review draft of joint declaration for class reps and draft dec for class members sent by Brett; Research case law and email results to co-counsel; Email court reporter re ordering class cert transcript; Draft Notice of Withdraw of Amanada Frlekin as class rep, email to co-counsel; Draft and file transcript order through ECF; Review email from Todd Boyer re continuing settlement conference; Draft stip to continue settlement conference, email to KSR and KAK for review; Meeting with KSR re drafting supplemental brief; Further legal research re res judicata effect of class certification and judgment, and superiority standards	4.20
KSR	Research for and draft supplemental brief in support of class cert motion per court's order of July 4. Email correspondence with Brett Gallaway re class member declarations supporting all-or-nothing certification. Further email correspondence with LS re points and authorities to include in brief. Email correspondence with LS, BG and KAK re timing of withdrawal of Frlekin as class rep. Review draft plaintiffs declarations circulated by BG. Review email from BG to class members re hearing and draft declarations; comment with proposed edits. Email correspondence with BG re need for Kalin dec. Review email from KAK re points to raise in supplemental brief. Review/analyze transcript from class cert hearing re necessities of life theory for brief. Email correspondence with KAK and LS re damages theories discussion for brief. Email with Wade Wilkinson re additional case authorities for brief. Continue to research and draft supplemental brief. Email from KAK re CVS order and 7th Amendment jury issue and respond. Email correspondence with team re claim splitting issue. Review notice of withdrawal of Frlekin as class rep.	13.50
7/7/2015 GMG	Review materials from 7/2 hearing and order re supplemental brief; organize class member declarations, prepare exhibits for Gallaway declaration and circulate to co-counsel; prepare PDF of Gallaway declaration with exhibits and attestation and circulate; prepare PDF of supplemental brief and file via ECF with Gallaway declaration; prepare chambers copies and arrange for delivery	2.10
KAK	Began review of transcript of class certification hearing; review and provide comments on draft of supplemental brief prepared by KSR; review comments of co-counsel Shalov and Gallaway; review revised draft of supplemental brief and prepare final edits; conference with GMG re filing; review enotifications re filing of both parties' briefs today; review enotification and order from judge directing a further supplemental brief be filed by tomorrow; evaluate same and availability of attorneys to work on this; email correspondence to co-counsel Shalov, Gallaway, CAS and KSR; call to CAS and left voice mail re beginning work on brief this evening; review and evaluate Apple's supplemental brief filed today; draft detailed email to group re same and arguments to be made in further supplemental brief due tomorrow	2.20
CAS	Email results of research re preclusive effect of class judgments and superiority standards; Meeting with KSR re drafting supplemental brief; Review signed versions of class member declarations sent by Brett and forward to GMG; Review email between co-counsel re supplemental brief; Review draft of supplemental brief sent by KSR, provide comments; Review ECF notice and Apple's supplemental brief; Review ECF notic and Order for Further Supplemental Briefing; Review email assignment from KAK to draft further supp. brief, prepare and email outline of brief; Review KAK email with notes on Apple's supp. brief; Draft further supplemental brief	6.70
KSR	Further research for and draft supplemental brief in support of class cert motion per court's order of July 4. Email correspondence with Brett Gallaway re class member declarations supporting all-or-nothing certification. Email correspondence with LS re points and authorities to include in brief. Meeting with CAS re points to include in brief. Work with CAS to draft sections of brief. Circulate drafts and draft revisions. Finalize and instructions to GMG for filing. Email correspondence with BG re	17.00

supporting declaration. Email to BG re declaration from Kalin. Email correspondence with LS re draft brief. Draft attestation for BG declaration and filing instructions to GMG. Email correspondence with KAK, BG, LS and CAS re court's 7/7 order for further, supplemental briefing on notice and opt out. Review/analyze court's order to file second supplemental brief in support of motion for class cert. Email correspondence with team to discuss. Review/analyze email from KAK with points to address in second supp. brief. Review/analyze points to discuss in email from LS.

7/8/2015	GMG	Prepare PDF of second supplemental brief and file via ECF; prepare chambers copies and arrange for delivery; review Apple second supplemental brief and email CAS re same	0.80
	KAK	Review and respond to further correspondence from co-counsel Shalov et al. re further supplemental brief due today and arguments to be made therein; review draft of supplemental brief circulated by CAS; prepare redline with comments and proposed edits and circulate back to group; review revised draft circulated by CAS and draft additional comments in redline; re-circulate; review enotification confirming filing of brief today	1.00
	CAS	Draft and revise further supplemental brief re class cert; Review comments and redlines from KAK, KSR, and co-counsel; Revise brief based on comments and re-circulate; Meeting with KSR re further supplemental brief; Review cases and excerpts sent by Lee Shalov for further supp brief; Review ECF notice and Apple's further supplemental brief	8.50
	KSR	Research for second supplemental brief in support of class cert motion per court's order of July 7. Further email correspondence with LS and KAK re points and authorities to include in brief. Review draft of brief from CAS. Discussions with CAS re arguments for brief. Telephone call from LS re further points to include in brief and comments on draft. Draft revisions to brief. Review case authorities circulated by LS. Review edits from KAK and discuss strategy for brief. Draft further edits to brief and discuss with CAS. Circulate additional strong case authorities to include in brief. Telephone call with Lee Shalov re discussion of issue identified by court re how to protect class members with other claims. Email to CAS re further discussion of other claims. Review edits from KAK and continue to finalize brief. Review, draft further edits to and finalize brief. Instructions to GMG to file.	8.10
7/9/2015	GMG	Review Alsup and Spero standing orders and confer with KSR re same; prepare PDF of stipulation to continue settlement conference, file via ECF, email Word version to court and arrange for delivery of chambers copy	0.80
	KAK	Conference with KSR re status of proposed stipulation to continue settlement conference, as well as next relevant upcoming deadlines and timeframe for requesting continuance of same	0.10
	KSR	Review/analyze Apple's brief in response to court's order of 7/7/15. Discussion with CAS re Apple's brief, case strategy and deadlines tied to Judge's Spero's settlement conference order. Email to Todd Boyer re proposed stip and order to continue settlement conference. Email correspondence with Josh Kienitz (Littler) re case management order and Spero's order re settlement discussions. Discussion with KAK, CAS, GMG re deadlines and strategy for when to request court to modify scheduling order if no immediate ruling on class cert motion. Email to BG re transcript with discussion of court's order pertaining to pre-class cert settlement discussions. Further discussion with CAS re pending deadlines before Judge Spero and no returned stip from Apple. Telephone call to Todd Boyer regarding stip and order. Email from Todd Boyer assenting to stip and order as proposed. Research regarding Judge Spero's standing orders re submission of stip and order and instructions to GMG to file on ECF and email to Spero. Review final pdf and approve for filing. Research re Alsup time records guidelines. Email to BG re transcript of settlement conf re no settlement discussions under class cert order. Email	4.60

		<u>Hours</u>
	correspondence with Claudia Wright re class cert hearing and deposition in employment action.	
7/10/2015	GMG Organize materials from 7/2 hearing and confer with CAS re same	0.20
	KAK Review enotification and order denying stipulation to continue settlement conference; review and respond to email from KSR re next steps	0.10
	CAS Review ECF notice and Order re stip to reschedule settlement conference, Forward to GMG for calendaring; Review KSR and KAK emails re rescheduling settlement conference and other deadlines after class cert order	0.30
	KSR Review Judge Spero's denial of request to extend settlement conference, without prejudice. Email to the team re request for clarification or wait until July 16 to see if class cert order out. Further email correspondence with KAK and CAS re Spero's order. Forward to GMG with instructions. Further discussion with GMG re deadlines tied to July 23 settlement conference order.	0.40
7/13/2015	GMG Review Alsup standing orders, search CAND website for fee motion guidelines and email KSR re same	0.50
	KSR Instructions to GMG re judge's standing orders. Review Judge Alsup's standing orders re time-keeping and settlement discussions in preparation for request to modify scheduling order. Review all deadlines in Judge Spero's settlement conference order and Judge Alsup's Second Case Management Scheduling Order. Email to KAK, GMG, LS, BS re no dispositive motions filed and request for extensions of deadlines in both orders.	1.00
7/14/2015	KAK Review and respond to email from KSR re Apple's failure to file any dispositive motions by yesterday's deadline, and need to renew our requests to continue the settlement conference and to extend the case schedule as a whole	0.10
	KSR Review all case deadlines and send email to KAK, LS, BG re contacting Apple and getting stip to continue settlement conference before Judge Spero and all remaining deadlines in Judge Alsup's Second Case Mgt. Scheduling Order, and if no agreement, making administrative motion. Further email correspondence with KAK re stipulations and administrative motion.	0.50
7/15/2015	KSR Draft stipulations to extend settlement conference date and related deadlines and to extend deadlines in case management order. Email correspondence with KAK re wait for next day possible order from Judge Alsup on class cert motion, before seeking Apple's assent.	1.20
7/16/2015	GMG Review order granting class certification, confer with CAS and email KSR and KAK re same; monitor email re possible stipulation; confer with KSR re lack of agreement and time to file today	1.20
	KAK Review enotification from court re order granting class certification; review and evaluate order; correspondence with co-counsel Shalov and Gallaway, KSR and CAS re impact of order and next steps; review and respond to email from KSR regarding status of stipulation to continue settlement conference	0.60
	KSR Review/analyze order granting class certification. Email correspondence with LS, BG and KAK re class cert order and deadlines. Email from Lee Shalov re complying with Spero order re settlement conference. Email correspondence with LS and KAK re continuing settlement conference and compliance with date in Spero order. Email from Jeff Hogue re order and respond. Email correspondence with Todd Boyer regarding continuing settlement conference. Draft edits to proposed stip and order to continue settlement conference and associated deadlines; forward to TB. Email correspondence with TB, LS and KAK regarding dates for extended settlement	4.40

conference and strategy for settlement. Further revisions to stip and order continuing settlement conference; circulate, and forward to TB. Email to GMG and CAS re fling stip re settlement conference date and associated deadlines. Further email correspondence with KAK and LS regarding deadline in Spero's order. Telephone call and voicemail to TB regarding deadline in Spero order. Email from TB objecting to proposed date. Follow up email to TB. Email correspondence with LS re TB reply and options regarding settlement conference order. Draft revisions to stip and circulate; forward to TB. Email correspondence with KAK re wording of Spero's order and deadline to file stip or request for new date. Further email correspondence with LS re strategy in Apple's request to delay settlement conference date. Email correspondence with Aaron Gregoroff and Claudia Wright re court granting class cert. Further email to team re no response from TB and strategy for deadlines in settlement conference statement. Review articles regarding court's order. Further email correspondence with LS and KAK re calculation of damages estimates for upcoming settlement conference. Email discussion re in-person requirement of Spero's settlement conference order. Email from KAK re call from vendor and respond.

7/16/2015	CAS	Review order granting class certification and email co-counsel re same; discuss schedule with GMG	0.30
7/17/2015	GMG	Prepare final PDF of stipulation to continue settlement conference and email CAS re same; file stip via ECF, email Word version and arrange for courtesy copy delivery to Judge Spero; review Alsup reminder to counsel and order re class settlement considerations and email KAK, KSR and CAS re same; prepare chart of upcoming deadlines and email KAK, KSR and CAS re same; review order re motions to strike and email KAK re same	1.80
	KAK	Review and respond to email from KSR re status of stipulation to continue mandatory settlement conference; review enotifications and orders filed today; draft email to CAS re need to prepare updated calendar of deadlines; review and evaluate order on evidentiary objections, filed by court today; email to KSR confirming that co-counsel Shalov is taking the lead on filing due on 7/29/15	0.40
	KSR	Further review and analysis of order granting class certification. Email correspondence with LS, BG and KAK re class notice and deadlines. Further email correspondence with LS and KAK re class notice and deadlines. Email correspondence with Todd Boyer regarding continuance of settlement conference date. Review proposed, revised stip and order from TB. Email from BG with edit to stip. Draft edits to revised stip and order and circulate. Review redline from CAS regarding edits to revised stip and order. Email to TB regarding correction to order. Email from TB approving stip and order; instructions to GMG to file.	2.50
	CAS	Review and revise draft stipulation re settlement conference and email GMG re approval to file	0.60
7/20/2015	GMG	Search Apple productions for spreadsheet showing stores with offsite break rooms and/or security guards and email KSR re same; prepare detailed time & expense report, calculate lodestar at current and historical rates and email KAK re same; review unpaid deposition invoice and email Shalov et al. re same	1.20
	KAK	Review enotification from Magistrate Judge Spero re settlement conference this week; review and respond to email from notice administration firm re bidding; forward same to co-counsel Shalov et al.; careful re-read of order granting class certification and evaluation of strategy going forward, including summary judgment motion on liability, import of court's comments on page 13 and possible evidentiary presumption based on failure to keep legally-required records, possible method of projecting damages for purposes of a settlement demand, and other issues; detailed correspondence with KSR re same; review updated calendar of deadlines and correspondence with CAS re same; calculate deadline for Apple's Rule 23(f) petition for permission to appeal; telephone conference with Pat Hoffman from OPEIU re	3.20

		<u>Hours</u>
	possible assistance; draft detailed emails to co-counsel Shalov re same and other strategy matters	
7/20/2015	KSR Instructions to GMG re Lonnie Blanchard's notes from Krinek depo, for summary judgment evidence. Email correspondence with LS and KAK re plaintiffs' summary judgment motion. Review order from Judge Spero resetting settlement conference and email to LS and BG requesting they circulate number per order. Email from BG to class member declarants re grant of class cert. Review court's order re reminder to counsel. Review court's order on plaintiffs' motion to strike Hall report. Review court's order on stip re continuing settlement conference. Email with KAK re class administrator. Email with KAK re calculating damages estimate. Further email correspondence re how to estimate. Instructions to GMG re evidence for calculations. Review data from Apple for calculations. Review Apple's discovery responses re calculations for stores with security guards and offsite breakrooms.	3.80
	CAS Review list of deadlines prepared by GMG, revise SJ hearing date and email KAK re same	0.30
7/21/2015	GMG Email CAS re Esquire deposition invoice	0.10
	KAK Review draft of long-form class notice prepared by co-counsel Shalov; review redline comments of KSR and CAS and draft additional edits; draft email to Shalov re several big-picture issues raised by current draft; review and evaluate recent fee order entered by Judge Alsup and evaluate impact on our case	1.10
	KSR Further review/analyze draft notice to class circulated by Lee Shalov. Draft edits and circulate. Email to KAK and CAS re further edits to class notice. Discussion with KAK re concerns over class notice issues. Further email discussion with KAK re class notice.	0.50
	CAS Review and revise draft notice of pendency and email co-counsel re proposed edits	0.50
7/22/2015	KSR Email correspondence with BG and TB re call-in info communicated to Judge Spero. Discussion with CAS in preparation for settlement conference setting call with Judge Spero.	0.30
	CAS Prepare for call to schedule settlement conference with KSR	0.10
7/23/2015	GMG Review captions from Alsup orders and confer with KSR re same; revise caption on draft summary notice and email KSR re same; review Spero order re settlement hearing, calendar dates, revise list of deadlines and email KAK, KSR and CAS re same	0.80
	KAK Review draft of short-form published notice; email to KSR regarding edits needed; preliminary draft of memo to co-counsel Shalov with past briefing and case authorities on issue of presumption arising when an employer fails to keep records of hours worked as required by law, as suggested by Judge Alsup's order granting class certification; review and evaluate new opinion on this issue; conference with CAS re preparation for call to set settlement conference and scheduling call with Shalov to discuss damages calculations and settlement demand; review enotifications re order resetting settlement conference and related deadlines; review updated calendar prepared by GMG; email to Shalov re need to discuss damages calculations	1.20
	KSR Email correspondence with CAS and LS in preparation for setting conference with Judge Spero. Further email correspondence with LS and CAS re proposed dates and firm available dates. Review/analyze publication notice circulated by LS. Draft edits to publication notice and circulate with comments to KAK and CAS for further comment. Review further edits from CAS and further email correspondence with CAS re edits. Further email correspondence with KAK and CAS re edits to publication notice. Email correspondence with CAS, KAK, AR re scheduled status	4.10

conference and motion for appt as interim lead counsel. Review and calendar settlement conference dates from court's order. Review/analyze court's further order and re-calendar settlement conference date and settlement demand and counter and settlement conf statement dates. Further review/analysis of draft publication notice from LS. Review/analyze court's class cert order and dates of alleged violations defining scope of class. Draft further edits to publication notice, including incorporating comments from CAS and KAK. Discussion with GMG re case caption on publication notice. Review court's recent order and correct caption per email from judge's clerk re filing in consolidated actions. Draft further edits/corrections to publication notice and circulate.

7/23/2015	CAS	Email Shalov re date preference for settlement conference; review KSR calendar and email co-counsel re proposed dates; review draft summary class notice, email co-counsel re suggested edits sand confer with KSR re same; review notice of settlement conference and email GMG re calendar dates	1.70
7/24/2015	GMG	Confer with KAK, KSR and CAS re upcoming projects and deadlines	0.10
	KAK	Telephone conference with co-counsel Shalov, KSR and CAS regarding alternative methods of calculating damages for settlement purposes and for trial, as well as possible early motion in limine regarding presumption to be applied if Apple failed to record all compensable time; conference with KSR and CAS regarding status of joint filing due next week and completing same, and work needed to prepare detailed settlement demand due next month	0.80
	KSR	Discussion with CAS re basis for damages calculations in preparation for settlement demand and settlement conference statement. Prepare for conference call with LS, BG, CAS, KAK to discuss settlement demand. Review/analyze Judge Spero's order re appearance of parties at settlement conference; email to Brett Gallaway to request he contact plaintiffs re appearance. Draft notes in preparation for conference call detailing approach for calculating damages. Conference call with LS, CAS, KAK to discuss method to formulate settlement demand and class-wide damages. Further discussion with KAK and CAS re case deadlines re-set in orders by Judge Alsup and Judge Spero; calendar.	2.10
	CAS	Review orders and email KSR re requirement that lead counsel attend settlement conference; conference call with team re strategy and settlement demand; confer with KAK and KSR re deadlines and tasks	0.60
7/27/2015	GMG	Review Apple time records productions and email/confer with KSR re same	0.40
	KAK	Review and respond to correspondence from co-counsel Gallaway re status of obtaining bids from administration firms for handling of notice as ordered by the Court; follow-up email to KSR re status of filing due Wednesday (proposed class notice and schedule)	0.10
	KSR	Email to BG to set up call to discuss strategy prior to call with expert to address damages study and calculations for settlement demand. Review/analyze draft of notice plan. Discuss with CAS re need list of actual publications to propose. Telephone call from BG in preparation for call with expert to discuss damages analysis. Review/analyze spreadsheet filed with LS declaration in support of motion for class cert with all evidence of bag checks in California stores. Email instructions to GMG re spreadsheet. Further telephone calls with BG to discuss settlement demand and data analysis. Review/analyze data produced by Apple and track meet and confer correspondence to determine completeness and reason for different data formats. Instructions to GMG to analyze later data. Discuss damages and expert issues with CAS. Review/analyze notice plan circulated by LS. Email from KAK re Boyer response to notice plan and schedule required by court's order. Respond to KAK.	5.40

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			<u>Hours</u>
7/27/2015	CAS	Email with Gallaway re solicitation of administrative bids; prepare RFP and contact KCC and Simpluris re same; discuss notice plan, damages and experts with KSR	1.20
7/28/2015	CAS	Phone meeting with KSR re changes to class notice documents proposed by Apple, email re same; phone conference with co-counsel re revisions to class notice documents; revise full notice, summary notice, and notice plan and email to KSR and Lee Shalov; review emails re notice documents from OPC, Lee, and KSR; Email responses to notice administrators' questions regarding RFPs sent 7/27/15	3.60
	KSR	Email correspondence with LS re class notice and notice plan. Draft edits and circulate.	0.90
7/29/2015	GMG	Calculate estimated expert costs based on invoices from another matter and email KSR re same; review joint statement re class notice and email KSR and CAS re same	0.40
	KSR	Email correspondence with LS re class notice and notice plan. Review redlined drafts from Michael Leggieri at Littler. Discussion with CAS re resolution of dispute with Apple over text of class notice, summary of notice and notice plan. Email correspondence with LS re dispute. Review further correspondence between LS and Michael Leggieri re edits to class notice, etc. Email to LS with points to consider for final versions to submit to court. Telephone calls to GMG and CAS for status of filing documents per court order.	2.80
	CAS	Prepare clean version of revised notice, summary notice and notice plan and circulate to co-counsel; email KCC and Simpluris re request to add opt-out form to bids; email Schwartz re expert referral and forward recommendation to KSR; review email from Apple counsel re notice and email comments re same to co-counsel; review Simpluris administrative bid, respond with follow up question and circulate to co-counsel; review ethics rules and email KSR and KAK re same	4.20
7/30/2015	GMG	Calculate estimated expert costs based on another matter and email KSR re same; transmit all California employee time records produced by Apple to expert Krinek and confer with KSR re same; review Apple 23(f) petition and calendar response date	1.70
	KSR	Email correspondence with BG and Debra Speicher re settlement conference. Calls to prospective experts to calculate damages in preparation for presenting settlement demand to Apple for settlement conference. Email correspondence with LS and BG re expert hourly rates. Analyze evidence and draft plan and approach for expert analysis and source of calculations with four different store scenarios; circulate. Instructions to GMG to forward Apple punch data to EconOne for analysis. Review/analyze Apple's 23(f) petition. Discuss with CAS. Circulate email with response date and instruction to GMG to calendar. Further instructions to GMG re 23(f) petition response. Further analysis of 23(f) petition in conjunction with court's class cert order and circulate email to LS, BG, KAK and CAS re points to address in brief and chances 9th Circuit would grant Apple's petition.	3.20
	CAS	Review revised Simpluris bid, respond and circulate to co-counsel; email Gallaway re cost and duration of published notice	0.40
7/31/2015	GMG	Search files and circulate Rule 23(f) motion papers from another case to co-counsel	0.40
	KAK	Review correspondence re filing yesterday of Rule 23(f) petition by Apple; email to GMG re circulating sample opposition from another similar matter	0.10
	KSR	Discussion with BG re damages analysis for settlement conference, and 4-store scenario I sent to Brian Kriegler at EconOne. Telephone conference call with BG and Brian Kriegler to discuss damages analysis. Further research for damages analysis. Forward to BG Apple's discovery response breaking out stores with offsite breakrooms and security guards for damages analysis. Further research regarding testimony about stores with periods of no checks. Review Judge Spero's settlement	7.50

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		<u>Hours</u>
	conference order. Email correspondence with BG re Judge Spero's settlement conference rules and presence of all class reps. Return call from Dave Brusheers re damages analysis.	
7/31/2015	CAS Email Shalov re page limit for rule 23 petition; review KCC administrative bid and circulate to co-counsel; confer with KSR and KAK re damages estimates and preparation for settlement conference	0.40
8/3/2015	GMG Review time records produced 3/10 and email co-counsel re last date represented; review order modifying dissemination plan, calendar dates and email co-counsel re same	0.30
	KAK Review and evaluate Rule 23(f) petition filed by Apple next week; review and evaluate correspondence between CAS and co-counsel regarding settlement administrator bids; review and evaluate correspondence between KSR and co-counsel regarding damages calculations for purposes of settlement demand as well as eventually for trial; conference with KSR and CAS re same and need for expert witnesses; review and evaluate Court's order regarding notice and schedule submitted last week	1.10
	KSR Review/analyze spreadsheet circulated by BG re percentage of time bags/technology brought into Apple stores and times spent on checks, etc. for damages analysis. Email correspondence with LS and BG re stores with period of no checks. Email correspondence with CAS and BG re evidence for Corte Madera store. Review/analyze evidence circulated by BG re limited periods of no checks in 2 stores and advise for damages analysis for settlement conference. Review court's order re class notice and notice plan. Review Judge Spero's order re settlement conference and send email to Blanchard and Dion-Kindem re contacting Kalin to appear at conference. Discussion with CAS re necessity of Kalin's appearance in person. Email from LS with issues to research for opposition to 23(f) petition. Discussion with KAK and CAS re MIL re presumption re time records for bag checks. Email correspondence with LS, BG and Wade Wilkinson re research for opposition to Apple's 239f) petition. Discussion with KAK and CAS re points to address in opp to 23(f) petition and damages calculation for settlement conference. Instruction to GMG re last included date for Apple's data for settlement demand. Email instructions to GMG re Spero order and discovery in connection with settlement demand.	2.70
	CAS Review order re joint dissemination plan; emails with KSR and Gallaway re preparations for settlement conference; email Gallaway re supplemental Paczka declaration not included in class cert evidence; review draft opposition to rule 23(f) petition and confer with KSR re same	0.70
8/4/2015	KSR Email correspondence with LS re making court-ordered changes to notice to class and notice plan. Further email correspondence with LS and Michael Leggieri at Littler re changes. Review/analyze chart from BG for settlement demand.	1.70
8/5/2015	KSR Review/analyze spreadsheet of store-by-store evidence to support damages analysis, in preparation for conference call with Brian Kriegler (EconOne). Draft revisions and additions to spreadsheet and circulate to BG and Brian Kriegler for purposes of conference call to discuss damages analysis for settlement conference. Telephone call with BG and Brian Kriegler. Discussion with KAK re damages analysis and response to 23(f) petition. Research for case law to support opp to Apple's 23(f) motion. Email correspondence with Lee Shalov re analysis of case law concerning 23(f) petitions of class cert rulings. Forward cases to Shalov.	2.60
	CAS Email KCC to request revised bid; email Gallaway re requirement for web-based opt-outs in dissemination plan	0.40
8/6/2015	KSR Email from Brian Kriegler with spreadsheet for damages analysis. Review/analyze spreadsheet. Email correspondence with Brian Kriegler (EconOne) and BG to set up call to discuss spreadsheet. Research for opposition to Apple's 23(f) petition and	7.60

		<u>Hours</u>
	forward to Lee Shalov. Email to TBoyer and Littler team with request for pay period information required by EconOne to calculate damages for settlement demand. Review draft of opposition to 23(f) petition circulated by LS, and discuss with CAS. Draft redline edits to opposition brief. Email from Shalov re research on likely to evade end of case review, for opposition to 23(f) petition. Research, analyze and send Shalov authorities and argument for evade end of case review issue. Review notes of discussion with Kriegler and draft and send email to Todd Boyer (Littler) with request for additional information regarding Apple's data production. Continue to draft redline of opp to 23(f) petition and circulate. Email questions from Brian Kriegler re liquidated damages and punitive damages. Research for and respond to Brian.	
8/6/2015	CAS Review Epiq administrative bid and email Gallaway re same; email Simpluris rejecting bid; review rules and email co-counsel re deadline for petition	0.70
8/7/2015	GMG Review <i>Sides v Macon County Greyhound Park</i> case and email KSR re same	0.10
	KAK Conference with KSR re status of damages analysis, including possible statutory bases for recovery of prejudgment interest, as well as arguments to be made in opposition to Rule 23(f) petition	0.20
	KSR Discussion with CAS re research for opposition to 23(f) petition. Email to Brian Kriegler re Labor Code sections addressed by damages claims. Research issues under Labor Code re rate of interest and remedies. Discussions with KAK re rate of interest and 218.5 application to waiting time penalties. Email from Brian Kriegler re remedies for damages calculations and required information re pay periods and workweeks. Response to Kriegler re status of request to Apple for pay period and workweek information. Review allegations of complaint and further research re remedies and interest. Draft email memo for Brian Kriegler and BG summarizing and itemizing calculations of damages for settlement demand, including issues of pay rate, and interest rate under California law. Further coordination with CAS re redlines to draft opp to Apple's 23(f) petition. Review email response from Kriegler with further questions and points of clarification for damages calculations. Respond to Kriegler re weighted average, interest and penalties issues. Discussion with CAS re UCL waiting time penalties and send email to Kriegler correcting calculation. Email to Lee Shalov circulating all redlines prior to KAK review. Response from Shalov re draft opposition.	7.40
	CAS Continue to review draft opposition to rule 23 petition and confer with KSR re same; research and add cases and draft introduction; discussion with KSR and email expert re calculation parameters; revise draft opposition and circulate proposed edits to co-counsel	4.40
8/8/2015	KAK Review and respond to email from KSR re status of opposition to Rule 23(f) petition	0.10
	KSR Email correspondence with KAK re opposition to 23(f) petition. Email correspondence with Kriegler re further work on damages analysis and expected cost.	0.30
8/9/2015	KSR Draft edits to opposition to 23(f) petition. Forward to KAK for further review.	1.70
8/10/2015	KAK Review draft of opposition to Rule 23(f) petition as circulated by co-counsel Shalov as well as redlines circulated by CAS and KSR; prepare redline with further revisions and circulate; conferences with KSR re status and review correspondence from KSR to Shalov re same	2.10
	KSR Draft further edits to opposition to 23(f) petition. Forward to KAK for further review. Coordinate further edits with CAS and request to cite check. Email correspondence with LS and KAK re further edits to opposition brief and conformance with page limits. Draft further redline and forward to KAK. Forward combined edits to opp to 23(f) petition to Shalov. Email correspondence with BG and Todd Boyer re court-ordered edits to class notice and joint dissemination plan. Email correspondence with Brian Kriegler and BG re damages analysis for settlement conference. Further email	5.30

correspondence with KAK re page limits and edits to opposition to 23(f) petition. Email to BG and Wade Wilkinson re blanks in opp to 23(f) petition. Discussion with CAS re reliance on Wells Fargo and Vignole cases in opposition brief. Review/analyze cases and CAS' proposed edits and draft and send email to KAK with proposed changes to brief. Review/analyze order from Judge Spero re-setting settlement conference. Email correspondence with KAK re analysis of cases to cite in opp brief. Email correspondence with BG and Lonnie Blanchard and Peter Dion-K re contacting class reps to change arrangements for conference. Complete review of CAS edits to 23(f) brief and complete drafting additional edits; forward to KAK for review. Circulate final edits with suggestions re authorities to cite. Review cite checks and corrections from CAS and forward to BG et al. with edits and note re one case not citable authority. Further analysis of Kriegler spreadsheet and send email with questions. Email correspondence with KAK re strategy for date to file MSJ wrt new date for settlement conference. Further email correspondence with Shalov re authorities to cite in opp brief. Email correspondence with Kriegler re whether to account for changes in local minimum wage ordinances in calculating damages for settlement conference. Arrange follow-up call with Kriegler.

8/10/2015	CAS	Cite check Rule 23 opposition, prepare redline and email KSR re same; review notice rescheduling status conference and emails with co-counsel re same	1.60
8/11/2015	GMG	Emails with KSR and online research re Counsel Press and ECF logins and appellate filing procedure	0.40
KAK		Review correspondence re status of opposition to Rule 26(f) petition; conference with CAS re same; review and reply to correspondence regarding Ninth Circuit admission issue and fact that filing will have to be done out of our office; telephone conference with KSR and co-counsel Shalov re same; careful review of current draft of opposition and prepare redline with revisions; circulate same to KSR and CAS; instructions to KSR and CAS re filing tomorrow in my absence	2.30
KSR		Email correspondence with Wade Wilkinson re edits and cite corrections to opposition to Apple's 23(f) petition. Further email correspondence with WW re edits to opp brief. Email correspondence with CAS re further research for post-Dukes authorities to add to brief. Email correspondence with WW and LS re filing logistics. Discussion with KAK re filing logistics and suggested edits to brief. Telephone call from LS re edits to brief. Further review of petition and email to LS with suggestions based on modified dissemination order filed after Apple's petition. Review/analyze spreadsheet circulated by Brian Krieger with revised damages analysis for settlement conference. Telephone call with Brian Krieger and BG to address revisions to spreadsheet. Follow-up telephone conference with BG re opposition to 23(f) petition and store-by-store analysis of evidence for damages spreadsheet. Email correspondence with Counsel Press regarding docket number and ECF login for filing opposition brief. Telephone call to Counsel Press and email from Jacki re format of brief. Discussion with KAK re damages analysis, forward low and high estimates to KAK with Kriegler's assessment. Instructions to GMG re edits to opp brief per Counsel Press. Email correspondence with KAK re edits to intro in 23(f) opposition brief re relation of this case to three categories of cases for 9th Circuit review. Discussion with KAK re settlement conference. Discussion with CAS re logistics of further edits to and filing of opposition brief. Email to CAS re further edits to opp brief required. Email to KAK re damages analysis. Draft edits to cut length of opp brief and circulate. Forward info re uncitable case to KAK and CAS for additional research. Circulate final edits to opp brief. Forward draft cover of brief from Counsel Press to KAK to approve. Send edits to cover to Counsel Press. Discuss final edits with CAS.	7.80
CAS		Research re Rule 23(f) test and identify post- <i>Dukes</i> cases for brief; revise opposition brief, prepare redline and circulate to co-counsel; email KAK and KSR re formatting and final edits	4.40

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			<u>Hours</u>
8/12/2015	GMG	Draft KAK notice of appearance for 9th Circuit and confer with CAS and KSR re same; prepare revised notice and file via ECF and serve via US Mail; review filed notice and answer to petition for review	1.60
	KAK	Review and respond to correspondence from KSR and CAS re status of finalization and filing of opposition to Rule 23(f) petition, due today	0.20
	KSR	Coordinate with Wade Wilkinson, CAS and Counsel Press to edit and correct brief in opposition to Apple's 23(f) petition and prepare for filing. Instructions to GMG re notice of appearance, review and approve for filing. Further coordination and review of brief and tables for filing. Email from Counsel Press and further instructions to Counsel Press re edits to brief. Further review and corrections to brief; approve for filing. Email from Brian Kriegler re audit and revision to spreadsheet with estimated damage analysis for settlement conference. Email to KAK regarding revisions to EconOne analysis. Discussion with CAS re MSJ and MIL and next steps to prepare for settlement conference. Instructions to GMG re notice of appearance. Email to Kriegler re info from Apple on bi-monthly pay periods for damages analysis. Follow-up email to Kienitz and Boyer with questions for damages analysis. Email to Counsel Press re KAK notice of appearance, for filing opp to 23(f) petition. Review brief formatting and tables from Counsel Press and draft and circulate edits. Approve filing of opposition.	6.50
	CAS	Proofread and finalize opposition brief and cover and forward to Counsel press for filing; confer with GMG re drafting notice of appearance and approve draft for filing	3.90
8/13/2015	KSR	Email to BG re approach for generating by-store hours and percentages to plug into EconOne spreadsheet to calculate damages for settlement demand. Review declarations and depo transcripts for store-by-store evidence for assumptions to plug into damages spreadsheet from EconOne.	1.60
8/14/2015	KSR	Continue to revise damages estimates chart for number to plug into EconOne spreadsheet to generate settlement demand.	1.90
8/17/2015	KSR	Continue analysis of evidence and completion of chart to generate settlement demand. Finalize exemplar stores and forward to BG.	2.10
8/19/2015	KSR	Further work drafting spreadsheet to calculate damages for settlement demand. Email correspondence with BG and team regarding numbers generated in spreadsheet and source, and logistics for spreadsheet analysis.	0.50
8/20/2015	KSR	Email correspondence with Brett Gallaway re damages study for settlement conference.	0.20
8/21/2015	GMG	Review Apple reply brief and circulate to co-counsel	0.20
	KSR	Review/analyze Apple's motion to the Ninth Circuit for leave to file a reply brief supporting its 23(f) petition. Email from Lee Shalov regarding analysis of motion and whether to respond. Research rules and respond to LS re opinion of brief and date to file response if any. Email correspondence with KAK re time limits to respond to Apple's motion.	0.60
8/24/2015	KSR	Email to BG regarding completion of spreadsheet by store for calculation of settlement demand. Further correspondence with BG re settlement demand. Discussion with KAK re Apple's motion to file reply brief in Ninth Circuit, and calculation of settlement demand.	0.60
8/25/2015	KAK	Further review and evaluation of motion for leave to file reply brief in support of petition for permission to appeal, filed last week by Apple	0.20

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			<u>Hours</u>
8/25/2015	KSR	Continue review of evidence and drafting spreadsheet to formulate settlement demand.	0.30
8/26/2015	KSR	Continue review of evidence and drafting spreadsheet to formulate settlement demand. Review spreadsheet from BG. Review BG's store summary and email to BG re additional evidence to account for re San Luis Obispo store. Email correspondence with Aaron Gregoroff re experience in Carlsbad store. Further email correspondence with AGregoroff re Carlsbad.	1.70
8/27/2015	GMG	Review Apple reply brief and ECF notification re same; email co-counsel re method of service	0.20
	KAK	Review and respond to email from co-counsel Shalov re due date for opposition to Apple's motion for leave to file reply in support of Rule 23(f) petition, including possible arguments to make in such an opposition; correspondence with KSR re settlement demand	0.20
	KSR	Continue work on spreadsheet for settlement conference. Email from Lee Shalov re response to Apple's request to submit reply brief re 23(f); check rules and calendar and respond. Instructions to GMG to check Apple's service method to ensure calculation of time to respond. Redline and circulate clean draft of spreadsheet for settlement conference. Telephone conference call with Brett Galloway to finalize spreadsheet. Email correspondence with KAK re spreadsheet. Draft and circulate further revisions to spreadsheet. Email correspondence with KAK re not including penalties in demand.	3.70
8/28/2015	KAK	Conference with KSR re status of settlement demand and store-by-store analysis; telephone conference with co-counsel Shalov re content of settlement demand, as well as response due next week to Apple's request for leave to file reply brief in Ninth Circuit; correspondence with KSR re settlement approach proposed by Shalov; review and edit draft settlement demand letter prepared by Shalov and circulate back to Shalov	0.50
	KSR	Email questions from Brett Galloway re evidence chart and respond re formula. Follow up email with BG to change numbers for Carlsbad store. Telephone call with Lee Shalov and Brett Galloway re specific settlement demand to Apple. Forward numbers to KAK. Follow-up email to KAK re call to Shalov and BG re settlement demand. Response from KAK re settlement demand. Further email correspondence with KAK re settlement demand after call with Shalov. Email correspondence with KAK re due date for 9th Circuit brief.	2.40
8/31/2015	KAK	Review and respond to email from co-counsel Shalov regarding rules governing reply briefs in Ninth Circuit; email to KSR and CAS re status of meeting class notice deadlines later this week	0.20
	CAS	Review email between KAK and Lee Shalov re 9th Circuit rules re reply briefs; Review KAK email and attachments re notice administration deadlines	0.50
	KSR	Review calendar of notice dates.	0.20
9/1/2015	GMG	Confer with KAK, CAS and JSR re upcoming deadlines	0.20
	KAK	Conference with KSR and CAS regarding class notice deadlines upcoming this Friday and Monday; review and respond to email from KSR to co-counsel Shalov and Galloway re same; review email from Shalov and draft opposition to Apple's motion for leave to file reply brief in support of Rule 23(f) petition; review and respond to email from CAS reporting on status of meeting class notice deadlines; prepare redline of draft opposition with proposed edits and circulate to KSR; email to Shalov re same	0.90

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		<u>Hours</u>	
9/1/2015	CAS	Review emails between KSR and Lee Shalov re notice administration deadlines; Call with Epiq director and project manager re notice admin deadlines; Review email from Epiq (Paulsson) re outstanding items in notice admin process, email notes to KAK and KSR; discuss with KAK, KSR and GMG	1.50
	KSR	Email to LShalov re preparations to mail notice and exclusion form to class members Friday per court's order. Review and draft edits to plaintiffs' opp to Apple's request to file reply brief. Email correspondence with CAS re Epiq's dissemination of class notice. Email report from CAS re status of notice to class. Coordinate with KAK on edits to response to Apple's request for reply.	0.90
9/2/2015	KAK	Follow-up email to KSR re status of getting edits to Ninth Circuit opposition brief to co-counsel Shalov	0.10
	CAS	Review email from Lexa Paulsson (Epiq) re approval of notice website content and email notice format, Lee Shalov response, and Paulsson reply with proposed email notice	0.50
	KSR	Coordinate edits to response to Apple's request to file reply re 23(f) petition and email to L. Shalov. Email correspondence with KAK re finalizing brief.	0.70
9/3/2015	KAK	Review correspondence re final draft of opposition brief due and to be filed today in Ninth Circuit; follow-up email to KSR and CAS with instructions to do final review before filing	0.20
	CAS	Review Opposition to Request to file Reply to 23f petition, email comments to KSR; Review final version of Opposition emailed by Counsel Press and efilng confirmation	2.20
	KSR	Review draft cover page for filing brief with 9th Cir. Opposing Apple's reply brief. Draft edits and send to Wade Wilkinson. Further coordination of filing with Wilkinson and Simone Cintron, Counsel Press. Email from KAK re edits to brief and cover, finalize, filing. Email correspondence with CAS to check final edits; confirmed by CAS. Approve for filing. Email from KAK re logistics of 9th Cir. Notifications; instructions to GMG.	1.20
9/4/2015	KAK	Review new Ninth Circuit class certification opinion handed down yesterday that may be of relevance and forward same to co-counsel Shalov	0.20
9/9/2015	KSR	Email correspondence with BG and plaintiffs re settlement conference. Instructions to GMG re logistics for settlement conference. Further instructions to GMG re settlement conference. Email from BG re PAGA penalties considered in settlement demand; research thread and instructions to expert re settlement calculations and PAGA penalties, and respond to BG. Further discussion with CAS re PAGA claims.	1.80
9/10/2015	KSR	Email to Lee Shalov re last day to file motion for summary judgment and strategy to file prior to settlement conference; response from Shalov and follow-up.	0.30
9/11/2015	CAS	Review Apple response to Settlement Demand; Review emails re Apple response from Lee Shalov and KSR; Discuss with KSR	0.50
	KSR	Review case management order re MSJ deadline. Email correspondence with Lee Shalov re strategy for date to file MSJ. Review Todd Boyer's letter responding to plaintiffs' settlement demand. Email from LS proposing letter to court re Apple's letter; respond to LS. Discussion of strategy with CAS. Review letter sent to Judge Spero.	0.80
9/13/2015	KSR	Email from client re receipt of class notice and questions. Respond with information regarding options to class.	0.20

		<u>Hours</u>	
9/14/2015	GMG	Review letters received in response to published class notice and circulate to co-counsel; email Gallaway re same	0.70
	KAK	Review letter with settlement offer from Apple and correspondence between co-counsel Shalov and KSR re next steps, including summary judgment motion; evaluate status of Ninth Circuit appeal and upcoming summary adjudication deadlines; review email from co-counsel Shalov circulating draft letter in response to Apple's offer; conference with CAS re additional argument to be made; prepare redline with revisions, including additional arguments and incorporating quotations from Judge Alsup's order concerning settlement; circulate same to co-counsel Shalov and Gallaway, CAS and KSR; review email from Shalov's office circulating letter to magistrate judge before our comments were incorporated and email correspondence with Shalov re same; conference with GMG re correspondence received from class members; review email from GMG circulating same to co-counsel; review same; review and respond to email from Gallaway re conclusion that these particular communications do not require a response	1.20
	CAS	Review KSR edits to Lee Shalov letter to Judge Spero; Meeting with KSR, KAK re letter to Judge Spero; Edit letter to Judge Spero	1.00
	KSR	Email correspondence with BG and Speicher, Gregoroff and Dowling re logistics for settlement conference. Discussion with KAK re response to Apple's non-settlement offer. Review draft letter from Lee Shalov to Judge Spero re Apple's non-settlement offer. Draft edits to letter and send to KAK and CAS with comments, for further review and strategy. Discussion with CAS re fact Apple's settlement offer not one court could or would approve under Rule 23 or court's orders. Review further edits to letter circulated by KAK and approve for circulation to LS. Email correspondence with GMG and BG re letters from class members and whether to send to Epiq. Email to BG re email from client. Email from KAK re draft letter to Judge Spero re Apple's settlement offer. Review letter letter sent by BG and further email correspondence with LS and KAK re letter to Spero. Email from BG re class member letters. Forward client email to BG, KAK. Email to CAS re proposed, extended schedule to send to Boyer.	2.60
9/17/2015	KAK	Conference with KSR and CAS regarding status of settlement conference statement due next week	0.10
	KSR	Call from Lee Shalov re mediation statement; discuss with KAK. Call to Shalov re mediation statement. Discuss with KAK. Begin draft of settlement conference statement.	1.30
9/18/2015	GMG	Review letter in response to class notice and email Gallaway et al. re same	0.10
	KSR	Continue to draft settlement conference statement.	1.00
9/21/2015	GMG	Review letter from Roberson in response to class notice and circulate to co-counsel	0.10
	KAK	Conference with KSR re status of settlement conference statement due this week; analysis of upcoming case deadlines and allocation of work so that all deadlines are timely met; review and evaluate further correspondence received from class member today	0.30
	KSR	Continue to draft settlement conference statement. Review/analyze new Ninth Circuit opinion in Google for cites to add to SCS.	4.80
9/22/2015	CAS	Draft and revise settlement conference statement; Meeting with KSR re contents of SCS; Email Lee Shalov re contacting Apple about exchanges SCS per Judge Spero's order, review response; Further revisions to SCS and meeting with KSR re same	4.70

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			<u>Hours</u>
9/22/2015	KSR	Continue to draft settlement conference statement. Further research for settlement conference statement. Circulate draft of SCS. Draft further edits to settlement conference statement and organize exhibits. Finalize and approve for lodging with the Court.	7.10
9/23/2015	GMG	Review spreadsheet from expert, print all tabs to PDF and prepare attachments for settlement conference statement; prepare hard copy of attachments and confer with KSR re same; confer with KSR re filing procedures and email order re same; prepare final PDF of settlement conference statement with attachments, arrange for delivery to court and email to judge and co-counsel; confer with KAK, KSR and CAS re upcoming deadlines	1.80
	KAK	Review and evaluate draft of settlement conference statement prepared by KSR; draft comments and proposed revisions; conferences with KSR and CAS re same; review email circulating final revised draft to co-counsel Shalov and Magistrate Judge Spero; conference with KSR and CAS re next upcoming deadline (dispositive motions due next week)	1.10
	CAS	Review and edit settlement conference statement; Review emails re SCS between co-counsel; Meeting with KSR and KAK re SCS; Further revisions to SCS, email to KSR	4.20
	KSR	Continue to draft settlement conference statement. Discussion with GMG and further instructions re attachments to settlement conference statement. Discussions with KAK and CAS re settlement conf stmt. Review edits from BG. Further research for settlement conference statement. Review and approve attachments from GMG for settlement conf stmt. Email from BG re spreadsheet to attach to settlement conference statement and review. Review declarations from BG on control issue. Email correspondence with LS re settlement conference statement confidential; do not exchange with Apple. Email correspondence with BG re trial plan. Conference with CAS re edits to statements; review edits from CAS. Finalize statement with attestation and approve for lodging with court. Further instructions to GMG re email to Spero.	4.20
9/24/2015	KAK	Review enotification re filing of declaration of client Speicher re inability to attend settlement conference; review declaration and comments of CAS; draft email to co-counsel Gallaway re same; review and respond to email from co-counsel Shalov re attendance at settlement conference	0.20
	CAS	Review declaration of hardship filed for Debra Speicher, forward to KAK re errors in filing; Research ND Cal Local Rules re signatures for non-registered ECF users	0.30
	KSR	Email correspondence with LS and KAK re attendance at settlement conference. Research Spero's order and further email correspondence re lead trial counsel attendance.	0.30
9/29/2015	GMG	Prepare KSR settlement conference binders and and thumb drives and email KSR re same; prepare KAK settlement conference binders and confer with KAK re same; review Kalin hardship declaration and email KAK and KSR re same; confer with KAK re delivery of KSR binder and drives	2.30
	KAK	Preparation for tomorrow's mandatory settlement conference; conference with GMG re materials needed; review relevant materials; correspondence with KSR and co-counsel re logistics	0.40
	KSR	Prepare for settlement conference. Email correspondence with Brett Gallaway and instructions to GMG re preparation for conference.	8.30

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		<u>Hours</u>	
9/30/2015	GMG	Review deposition invoices and confer with CAS re same	0.40
	KAK	Final preparation for mandatory settlement conference before Magistrate Judge Spero; participate in conference with Judge Spero, KSR, co-counsel Shalov and Gallaway, clients Gregoroff and Dowling, and defense counsel; conferences with co-counsel and clients re same; conference with Shalov, Gallaway and KSR re summary adjudication motion due tomorrow and status thereof	4.10
	CAS	Email KAK re inserts to letter to Spero for settlement conference; draft insert to SJ motion re knowledge of employer re off-the-clock work	2.70
	KSR	Prepare for and participate in settlement conference. Review/analyze Lee Shalov's draft MSJ.	7.10
10/1/2015	GMG	Revise format of summary judgment motion and email Gallaway re same; review and organize Apple summary judgment papers; review filed summary judgment motion and confer with CAS re same	1.40
	KAK	Review and evaluate draft of summary judgment motion; email to KSR and CAS re same and drafting of notice of motion; review redline prepared by CAS and new draft circulated by co-counsel Gallaway; email to CAS and Gallaway re further revisions needed; review draft of notice of motion and email to CAS re revisions needed; review and approve revised notice of motion; review enotification re filing of motion by co-counsel's office; review and respond to email from KSR re filing issue to be corrected	0.80
	CAS	Review and edit draft of summary judgment motion; Review ECF Notices re settlement conference and date for new conference; Review KAK email re draft of summary judgment motion; Research FRCP re notice of motion; Draft notice of motion to include with brief, revise per KAK and KSR comments; Research FRCP re citing documents in the record for summary judgment; Reply to Brett Gallaway re citing to Westlaw using Bluebook style; Email co-counsel re opposition and reply deadline per ND Cal rules	4.50
	KSR	Review notice of motion and MSJ, draft edits, coordinate filing with BG. Email correspondence with CAS re benefit of the employer FLSA standard and notice of motion for MSJ. Email to BG re requirements in rules for brief format including statement of issues. Follow-up email to BG re proposed order for lead counsel motion. Review CAS edits to MSJ. Review comments from KAK and draft further edits. Email correspondence and call with CAS re filing logistics and tables. Email to team re inclusion of all claims in MSJ. Review rules for MSJ and email correspondence with team re Rule 7-4 requirements. Further email correspondence re addition of attestation. Review notice of motion and draft edit, circulate. Instructions to GMG re filing MSJ. Review and draft edits to proposed order in support of MSJ. Review/analyze Apple's MSJ and forward to BG re procedural issues with plaintiffs' MSJ, including supporting declaration. Review and draft edits to notice of motion. Email to BG re proposed order. Email correspondence with LS and BG re filing logistics for MSJ. Discussion with CAS re settlement conference and issues for next SC. Email correspondence with LS, KAK, BG, CAS re Apple's video evidence and drafting objections to evidence to include in text of opp to MSJ. Draft edits to proposed order on MSJ and circulate. Review/analyze Apple's MSJ and email to BG re logistics of plaintiffs' MSJ. Email correspondence with BG re KAK edits to proposed notice of MSJ. Email correspondence with CAS re MSJ filed under incorrect party names. Research re northern district procedures to correct filing and email to BG with request to correct. Follow up email with BG re corrections. Further email correspondence with BG re correction to filing. Email from BG re corrections to filing and respond re court instructions.	4.20

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		<u>Hours</u>	
10/2/2015	KAK	Conference with CAS re delivery of courtesy copy of yesterday's filing to Judge Alsup's chambers; review preliminary correspondence from KSR and co-counsel Shalov re our opposition to Apple's motion; review order scheduling continued settlement conference statement; email to co-counsel Gallway re advising clients of new date; draft detailed email to co-counsel, KSR and CAS re additional points to be researched and included in updated settlement conference statement in order to address concerns stated at this week's conference by Magistrate Judge Spero	0.80
	CAS	Email co-counsel re courtesy copy to judge; deliver courtesy copy to clerk's office	0.70
	KSR	Further review/analyze Apple's MSJ. Email correspondence with LS to coordinate draft of opposition brief and objections to evidence cited by Apple; strategy. Discussion with CAS re issues with proposed order and need to amend; corrections to ECF filing of MSJ by BG. Email to BG re proposed order and forward redline with suggestion to file amended. Email correspondence with KAK and BG re advising clients of continued settlement conference date and strategy for prospective, continued settlement conference. Discussion with CAS re delivering chambers copy of MSJ. Email to BG re emailing proposed order to Judge Alsup, and following up re revised proposed order. Response from BG re amended order. Discussion with GMG re technical issues with disks produced by Apple with video evidence ISO Apple's MSJ. Email to Todd Boyer with lists of corrupt or problem disks. Email response from Todd Boyer re software and disk issues; forward to GMG with instructions. Respond to Boyer re issues with disks.	3.70
10/5/2015	GMG	Review video exhibits received from Apple and organize on network; prepare email to co-counsel re discrepancies; confer with KSR re same	1.30
	CAS	Review Apple's summary judgment motion and supporting documents	1.00
	KSR	Review Apple video evidence for MTS Hall report. Email and discussion with GMG re defects in video evidence from Apple. Email to Littler re defects. Response from Todd Boyer re video evidence and forward to GMG; response from GMG. Follow up email to Boyer. Notes to file re date for renewing Daubert motion.	1.90
10/6/2015	CAS	Review Order granting administrative motion to file Apple video exhibits for SJ under seal	0.10
	KSR	Email from Boyer re replacement video supporting Apple's MSJ. Discussion with KAK re re-filing Daubert motion in opposition to Apple's MSJ. Review/analyze Apple's MSJ.	1.70
10/7/2015	GMG	Review replacement video exhibits received from Apple, organize on network and email KSR, KAK and CAS re same	1.10
	CAS	Review KSR email re responding to Apple SJ motion; Review email and attachment from GMG re delivery of video exhibits	0.10
	KSR	Continue review of Apple's MSJ and draft and draft and forward further comments for opp brief. Research regarding cases cited in Apple's MSJ brief for analysis. Discuss legal analysis of control issue with Chad Saunders and revise comments directed to Lee Shalov. Add comments to email re Daubert motion to strike Hall report, and objections to evidence for opp brief.	2.30
10/9/2015	KAK	Review and evaluate comments of KSR re arguments made in Apple's MSJ and responses thereto based on case law; further analysis of possible operation of presumption at trial for purposes of awardable penalties under PAGA and otherwise	0.30
	KSR	Research for opp to Apple's MSJ and evidentiary objections.	2.30

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		<u>Hours</u>	
10/12/2015	CAS	Review KSR email re revising motion to strike Hall Report and objections to video evidence; Review Apple's SJ filings and Hall Report; Review motion to strike and revise; Review KSR email to Todd Boyer requesting stip to shorten time for motion to strike	2.50
	KSR	Research for opp to Apple's MSJ and evidentiary objections; and detailed memo to LS with points and authorities for brief. Email to Todd Boyer re shortened time for Daubert motion. Research for and draft Daubert motion. Email correspondence with CAS re draft brief. Further instructions to CAS to complete draft of Daubert motion and section to add. Discussion with KAK and CAS re objections for opp brief.	6.10
10/13/2015	CAS	Review email from Todd Boyer re stip to shorten time for motion to strike; Draft proposed stip to shorten time, send to KSR for review; Email proposed stip to Todd Boyer; Draft and revise motion to strike Hall Report, email to KSR for review; Review email from Todd Boyer re stip to shorten time, KSR response	4.60
	KSR	Email from Todd Boyer with response to request to shorten time on Daubert motion. Email to CS re calculation of time for reply per Boyer's demands. Review proposed stipulation re time for Daubert motion from Boyer and forward to CAS with instructions. Email to Boyer re CAS will send back revised draft stip and order. Email from Todd Boyer insisting on inclusion in stipulation shortening time for Daubert motion that Apple's position is motion should be included in MSJ. Email to CAS to add that language to draft stip and order.	0.50
10/14/2015	GMG	Review order re MSA hearing, add to calendar and email KAK re same	0.20
	CAS	Revise stip to shorten time, email to Todd Boyer; Revise motion to strike and objections to video evidence, email to KSR for review; Review ECF notice rescheduling hearing date	3.50
	KSR	Further research for opposition to Apple's MSJ. Email to Lee Shalov re points to add to opp brief.	1.20
	KAK	Review email from Shalov circulating current draft of opposition brief due tomorrow and forward to CAS; review enotification and scheduling order changing hearing date on SJ motion; email to co-counsel re same	0.10
10/15/2015	GMG	Finalize motion to strike and stipulation to shorten time, file via ECF and confer with CAS re same; email stipulation to judge; prepare courtesy copies, post and mail	0.90
	CAS	Email draft motion to strike to co-counsel for review; Review Todd Boyer email re stip to shorten time; Revise stip and recirculate to Todd; Review and edit opposition to Apple's SJ motion sent by Lee Shalov; Review KSR and KAK edits and incorporate into redline version; Email all suggested edits to co-counsel; Send final motion to strike and stip to shorten time to GMG for filing; Draft proposed order granted motion to strike, email to KSR for review, file and email to judge; Review ECF notices for motion to strike and stip to shorten time; Review ECF notice for opposition to Apple SJ motion; Review ECF notices for Apple's opposition to plaintiffs' SJ	5.50
	KSR	Review and draft edits and section with evidentiary objections in opp to Apple's MSJ. Email correspondence with CAS re further objections and rules requiring objections in brief. Discuss edits and coordinate comments into one set of revisions with KAK and CAS. Review motion to strike. Discussion with GMG and CAS re need for proposed order. Review stip and order for hearing date on motion to strike. Discussion with KAK re filing of opp to Apple MSJ and email to BG re filing under class rep names. Telephone call from BG re filing procedures for opp brief. Review/analyze Apple's opp to Plaintiffs' MSJ. Email to LS, KAK et al. re commute case arguments. Email correspondence with KAK re revisions to motion to strike. Research for and draft revisions to opposition to Apple's MSJ. Coordinate edits with KAK and CAS. Email to LS re comments on draft opposition to MSJ. Further email to BG reo coordinate filing	4.20

		<u>Hours</u>
	and instructions re names of class reps. Email from BG re delivering courtesy copies to chambers. Instructions to GMG and response to GMG. Review Apple's MSJ and send email to LS, BG, KAK, CAS re Apple's arguments play into plaintiffs' commute case arguments. Instructions to CAS to prepare draft order on motion to strike Hall report. Review draft and approve for filing.	
10/15/2015	KAK Review and evaluate current draft of opposition brief circulated by Shalov; email to Shalov re same	0.50
10/16/2015	CAS Review Apple's opposition to plaintiffs' SJ and supporting docs	1.00
	KSR Review orders from court re filing errors with Apple's opposition to plaintiffs' MSJ.	0.10
	KAK Review email from reporter requesting comment on pending SJ motion and forward same to co-counsel Shalov for response	0.10
10/19/2015	GMG Search files and email Wilkinson re initial disclosure drafts	0.30
	CAS Review ECF notice re Order approving stip to shorten time re motion to strike, forward to GMG for calendaring; Review KSR email re responding to Apple re suffer or permit standard, email response with cites to Complaint re Wage Order No. 4	0.50
	KSR Review orders from court and calendar dates re plaintiffs' motion to strike. Email from Lee Shalov re address "suffer" and "permit" arguments in Apple's opp to plaintiffs' MSJ. Discuss issue with CAS and with KAK. Begin research on suffer and permit issue for reply brief.	1.90
10/20/2015	KAK Review enotification re denial by Ninth Circuit of Apple's Rule 23(f) petition for permission to appeal the order granting class certification; forward same to KSR and co-counsel	0.10
10/21/2015	KSR Research for and draft insert to reply ISO MSJ re suffered or permitted to work issue; circulate. Draft edits to draft brief. (stayed til midnight)	12.60
10/22/2015	GMG Proofread reply brief re motion for summary judgment, check cites and quotes; review local rules and standing orders re necessity of tables and email KSR and CAS re same; prepare final PDF of brief and Gallaway declaration and confer with CAS re same; file brief and declaration via ECF; prepare chambers copies	2.10
	CAS Meetings with KSR re Reply brief iso SJ; Research case law re what constitutes "hours worked" under the Wage Order, email results to KSR and co-counsel; Review and edit reply brief iso SJ; Research case law re admissibility of documents produced by opposing party in litigation	5.80
	KSR Review Daily Journal article re case and comment. Research for reply brief ISO MSJ. Email correspondence with LS, BG, CAS re authorities supporting arguments in reply. Discussion with CAS re case authorities. Continue to research and send relevant cases to Shalov, Gallaway. Email from BG re class cert hrg transcript. Coordinate filing with BG. Email from Lee Shalov with request for additional research re work cases. Email correspondence with BG re cites to add to reply brief. Continue to edit and draft inserts to brief. Discussion with CAS re additional case authorities. Continue research. Email to LS re strategy of addressing hours worked issue. Email to BG re table for brief and logistics for filing. Review and draft edits to BG declaration ISO reply brief. Email to BG re evidentiary objections. Review all Apple exhibits for objections to evidence. Email correspondence with Shalov and BG re objections. Email correspondence with CAS re several exhibits for evidentiary objections.	8.30

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		<u>Hours</u>
10/22/2015	KAK Review correspondence from co-counsel Shalov re status of reply brief due today in support of summary judgment motion; review correspondence from KSR circulating insert for brief; review and edit draft reply brief; conference with CAS re status of filing; review and forward press coverage of case	0.40
10/23/2015	GMG Arrange for delivery of courtesy copy of MSA reply brief; review second letter from prisoner Hernandez in response to class notice and confer with/email KAK and CAS re same	0.40
10/27/2015	KSR Discussion with CAS re reply on motion to strike Hall report and strategy for hearing on motion to dismiss.	0.30
	KAK Further evaluation of possible methods of proof at damages stage of case; draft detailed email to cl-counsel Shalov, Gallaway, KSR and CAS re same, as well as impact of new unpublished <i>McAdams</i> opinion	0.30
10/28/2015	KSR Email from Claudia Wright re resolution of issues with Apple re age discrimination claim, and continuing as class member in our action; respond.	0.20
10/30/2015	GMG Create/revise draft charts re commute and non-commute cases for use as hearing exhibits and confer with KSR re same; review video from SF store by stairwell and email KSR re lack of long lines	1.20
	KSR Discussion with CAS re reply to MTS Hall report. Review/analyze Apple's opp brief and begin draft of reply. Email from Lee Shalov re MTS Hall report and chart for hearing on MSJs. Respond to Shalov. Research evidence cited by Apple in opp brief re MTS Hall. Review charts from Shalov and revise; instructions to GMG. Draft further revisions to charts. Discussion with GMG re video evidence cited by Apple. Instructions to GMG re preparation of charts for hearing on MSJs. Draft/create additional chart for hearing on MSJs and instructions to GMG for blow-up. Email from LS with further revisions to charts. Instructions to GMG re video evidence to prepare for hearing on MTS Hall report. Further preparation for hearing.	8.10
	KAK Conference with KSR re reply brief due Monday on expert declaration and co-counsel Shalov's proposal to use demonstrative charts during SJ hearing	0.10
11/2/2015	GMG Finalize charts for enlargement and confer with KSR and email Shalov re same; arrange for production of enlarged hearing exhibits; draft RJN and KSR declaration and email KSR re same; email Newman re easel; Locate requested cases and email KSR re same; prepare deposition testimony excerpts for declaration exhibit; prepare exhibit for RJN; finalize reply, declaration and RJN and file via ECF	10.70
	KAK Conference with KSR re status of reply brief due today re motion to strike expert report; review and edit draft of RJN in support of reply; email to KSR re same; review correspondence re demonstrative charts to be used at Wednesday's hearing on summary judgment motions	0.30
	CAS Meeting with KSR re Reply brief iso Motion to Strike; Review emails and attachments between KSR and Lee Shalov re charts to be used during SJ hearing; Review draft RJN sent by GMG; Review ECF Notice and filed version of Reply brief iso Motion to Strike	0.50
	KSR Further review and draft edits to exhibits for hearing on summary judgment motions. Continue research for and draft reply brief in support of motion to strike Hall Report. Email with CAS re time to file. Email correspondence with Lee Shalov re strategy and logistics for hearing. Draft/create additional blow-ups for hearing on MSJs; finalize exhibits. Instructions to GMG re materials for hearing and preparation of exhibits; cite-checking. Finalize reply brief, RJN and supporting declaration and exhibits for	11.30

		<u>Hours</u>
	filing. Instructions to GMG re filing. Discussion with KAK re RJN. Review and edit and finalize RJN.	
11/3/2015	GMG Obtain foamboard poster exhibits and easel for hearing; provide support for meeting with Shalov; prepare hearing and cases binders and confer with KSR re same	3.80
	KAK Conference with KSR re preparation for tomorrow's hearing and requesting a status conference to discuss further scheduling issues regarding damages phase of trial	0.20
	CAS Meeting with Lee Shalov and KSR re preparing for SJ hearing; Review briefs and binders for SJ hearing	2.70
	KSR Prepare for hearing on MSJs. Meeting with Shalov and CAS. Instructions to GMG re exhibits and hearing binders. Discussion with KAK re requesting judge to set immediate status conference to discuss damages phase of trial. Further preparation for hearing and instructions to finalize exhibits.	8.50
11/4/2015	GMG Confer with KSR and CAS re hearing and next steps	0.40
	KAK Conference with CAS and KSR re events at today's hearing; conference with CAS and KSR re next steps if we prevail on motion, including possible motion in limine re presumption based on defendant's failure to keep records and various potential approaches to damages calculations	0.40
	CAS Travel to and attend hearing re cross-motions for summary judgment; Meeting with Lee Shalov and KSR re next steps; Meeting with KAK and KSR re motion in limine re records presumption/burden shifting	5.20
	KSR Prepare for hearing on MSJs/MTS. Email correspondence with CAS re further documents required for hearing. Participate in hearing on MSJ. Meeting with Lee Shalov post-hearing to discuss trial date and early motion in limine to address damages issues and mechanisms for the court's consideration. Discussion with KAK representing damages evidence and strategy.	2.90
11/7/2015	KSR Review court's order granting defendant's MSJ and circulate with comment.	0.30
11/9/2015	GMG Review order re summary judgment motions; calculate and calendar appeal deadline and email KSR, KAK and CAS re same	0.40
	CAS Review Order granting Apple's motion for summary judgment; Review emails between plaintiffs' counsel re order granting sj for Apple; Research 9th Circuit procedure for Notice of Appeal, email form of notice to Brett Galloway	1.70
	KAK Review enotifications and order granting defendants' SJ motion; review various correspondence from press re same; review some of the press coverage; email to co-counsel Shalov and Galloway, KSR and CAS regarding job well done regardless and next steps, including possible appeal; review email from KSR re deadline to appeal; email to co-counsel Galloway to confirm that clients were notified of ruling	0.30
	KSR Frlekin: Research time for Frlekin appeal from summary judgement, calendar and circulate date. Email correspondence with KAK, BG. GMG and LS re appeal. Email to Claudia Wright re judgment.	1.50
11/11/2015	CAS Research burden shifting re lack of records to show hours worked -- Tyson Foods oral argument transcript	2.30
	KSR Email correspondence with Brett Galloway and KAK re date on calendar for settlement conference and addressing with court; previous stip and order.	0.20

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		<u>Hours</u>
11/12/2015	KSR Discussion with KAK and CAS re notice of appeal and strategy for settlement; effect of judgment on settlement conference date set by court.	0.50
11/13/2015	KAK Correspondence with co-counsel Shalov re settlement proposal received from Apple; evaluate same	0.20
	KSR Email from Lee Shalov re Apple settlement proposal. Forward to KAK with comments. Further email correspondence with KAK re strategy for settlement. Email to Shalov re ethics rules and communication of settlement offer to plaintiffs.	0.40
11/16/2015	KSR Email from Peter Dion-Kindem with questions and comments re order on MSJ and settlement proposal. Review response from Shalov and comment.	0.20
11/18/2015	KAK Further closer evaluation of court's order granting Apple's motion for summary judgment	0.50
	KSR Email correspondence with Lee Shalov re call to discuss next steps after summary judgment order.	0.20
11/19/2015	KSR Email correspondence with Lee Shalov to arrange strategy call.	0.20
11/20/2015	KAK Continued analysis of court's order granting summary judgment and possible appellate arguments; conference with KSR regarding potential appellate strategies and status of efforts by co-counsel Shalov to resolve matter with defendant	0.40
	KSR Telephone call from Lee Shalov re strategy re appeal or settlement.	0.20
11/23/2015	KAK Follow-up email to lead counsel Shalov re status and discussions last week with Apple's counsel	0.10
	KSR Email to Lee Shalov re filing of notice of appeal with Ninth Circuit and pro hac admission; settlement negotiations with Apple. Follow up email with Shalov re 9th Circuit admission and notice of appeal.	0.30
11/24/2015	KAK Review draft of notice of appeal prepared by co-counsel Gallaway and email to him with revisions needed; correspondence with co-counsel re need to communicate settlement offer to clients and allow them an opportunity to accept before filing notice of appeal	0.40
	CAS Review emails between co-counsel re notice of appeal; Email Brett Gallaway re judges who decided Rule 23(f) petition; Review KAK email re notifying clients about settlement offer; Email Brett re Notice of Appeal	0.30
	KSR Email correspondence with Lee Shalov, BG, KAK, CAS re notice of appeal and Apple's settlement offer to pay own costs. Further email correspondence re communicating settlement offer to plaintiffs. Review/analyze draft notice of appeal and research for information to include. Email to KAK re appeal and fee agreement. Email from B. Gallaway re three-judge panel on Apple's 23(f) petition and respond. Email to CAS re judges on 23(f) petition. Email with CAS and Brett Gallaway with panel of judges likely assigned to appeal. Further research for notice of appeal and forward 9th cir. Form to Brett Gallaway. Email correspondence with Lee Shalov and KAK re class rep responses to Apple's offer of settlement (no costs). Follow up email with KAK re response from class reps prior to notice of appeal. Arrange conference call to address appeal.	2.20
11/25/2015	KSR Further email correspondence with Lee Shalov, BG, KAK, CAS re notice of appeal and Apple's settlement offer to pay own costs. Further email correspondence re communicating settlement offer to plaintiffs. Review/analyze draft notice of appeal	1.80

		<u>Hours</u>
	and research for information to include. Further research for appeal procedures and notes to file.	
11/30/2015	KAK Review and respond to emails concerning strategy call to discuss appeal, communication of settlement offer to clients, and opposition due this week to bill of costs	0.10
	CAS Review emails between co-counsel re scheduling call re notice of appeal	0.20
	KSR Email correspondence with Lee Shalov, BG, KAK, CAS re conference call to discuss Apple's settlement offer and notice of appeal. Email correspondence with BG re call to discuss Apple's bill of costs. Email from CAS re date for filing oppositions to bill of costs.	0.30
12/1/2015	KAK Conference with KSR in preparation for call with co-counsel today to discuss appellate strategy and status; telephone conference with co-counsel Shalov and Gallaway and KSR re appellate strategy, status of settlement discussions with defense counsel Boyer and clients, opposition to costs bill, and status of notice of appeal; post-call discussion with KSR re next steps	1.60
	CAS Review Notice of Appeal and Objections to Bill of Costs circulated by Brett Gallaway; Research 9th Cir. rules re commencing appeal	0.50
	KSR Discussion with KAK re appeal. Review/analyze bill of costs and forward to KAK with total. Email to BG re draft of opposition to bill of costs. Telephone call with Lee Shalov and Brett Gallaway re issues for appeal, procedures. Research appeal procedures for notice and draft and circulate email with requirements for notice.	1.80
12/2/2015	KAK Review applicable FRAP and Circuit rules regarding content and format of notice of appeal; conference with KSR re same; review revised draft of notice of appeal prepared by CAS; draft additional revisions to notice of appeal based on review of rules; further legal research regarding whether notice of appeal must individually identify each interim order that may be challenged; review and evaluate class certification order; circulate revised notice to co-counsel Gallaway, CAS and KSR along with summary of important changes and filing requirements	2.80
	CAS Meeting with KSR re Notice of Appeal -- research question re subject matter jurisdiction after dismissal of all federal claims; Research 9th Cir. case law re retaining supplemental jurisdiction after dismissal of federal claims, email results to KSR; Revise Notice of Appeal and email to KSR; Review KAK email and attachment re notice of appeal	2.10
	KSR Discussion with CS re notice of appeal and orders to include. Discussion with CS re inclusion of supplemental jurisdiction order and test for exercise of supplemental jurisdiction. Further research re Northern District's filing and service requirements for notice of appeal. Email to BG with ECF and service procedural requirements for notice of appeal. Further email correspondence with BG re appealing supplemental jurisdiction order and inclusion of Kalin on notice. Review file for additional orders and discuss with CS. Research merger rules of Ninth Circuit. Further email correspondence with BG re drafting Representation Statement to be filed with Notice of Appeal. Discussion with BG re reviewing draft objections to Apple's cost bill. Further research re requirements for notice of appeal and circulate. Research for, draft and circulate redline to objections to cost bill.	4.90
12/3/2015	KAK Continued legal research regarding merger doctrine and whether specific interim orders need to be listed in the notice of appeal; review and evaluate Wright and Miller chapter on this subject; review current draft of notice of appeal and email to co-counsel re same; conference with KSR re form and content of required representation statement; review final correspondence regarding final notice and	0.80

		<u>Hours</u>
	representation statement; review enotification confirming filing of notice of appeal today; forward same to co-counsel Gallaway and Shalov	
12/3/2015	KAK Correspondence with co-counsel Shalov re preparation of revised co-counseling agreement; generate preliminary time and expense figures for exchange	0.40
	CAS Review KSR email re merger of interim orders into final judgment for purposes of notice of appeal; Review and revise new version of notice of appeal and resend; Review and edit Representation statement email by KSR, email to co-counsel; Review ECF notice from 9th Cir. re Docketing documents and case schedule	1.00
	KSR Research for and draft revised notice of appeal with representation statement. Circulate and email correspondence with BG et al. re edits to notice and filing logistics and requirements. Discuss conflicting form and district court requirements with KAK. Revise notice of appeal and representation statement. Discussion with CAS re service list for representation statement and inclusion of Ginsberg and Apple appellate counsel. Email to group re issues with Frlekin status and Ginsburg representation. Finalize draft notice with representation statement and recirculate. Email correspondence with BG re signature requirement. Check rule re signature requirement and discuss with CS. Email correspondence with BG re edits to objections to Apple's bill of costs.	6.30
12/4/2015	CAS Email 9th Cir. case docketing and scheduling documents to Lee Shalov and Brett Gallaway; Review ECF notice re filed objections to Bill of Costs	0.30
	KSR Discussion with CAS re 9th Circuit docketing packet. Review and email to Lee Shalov re requirements for admission to 9th Cir. Email correspondence with KAK and LS re required mediation statement; review, calendar and respond.	0.40
12/7/2015	KAK Analysis of judicial assignments issue and upcoming deadlines; correspondence with KSR and CAS re same, including deadline for ordering reporter's transcript; review and circulate rule; review email from KSR summarizing various rules governing reporter's transcript and alternative deadlines depending on whether we are ordering a full or partial transcript; review email from KSR to co-counsel Shalov and Gallaway re this issue and providing reminder re mediation questionnaire deadline	0.30
	CAS Review KAK and KSR emails re assigned 9th Circuit judges for appeal; Research FRAP and 9th Cir. rules re assignment of cases, email results to KAK and KSR; Review email between plaintiffs' counsel re upcoming appellate deadlines and need to request reporters' transcripts	0.80
	KSR Research 9th Circuit rules for full vs. partial transcript and requirements for filing statement of issues and serving transcript order. Email correspondence with KAK and CS re 9th Circuit requirements. Email to Lee Shalov et al. re deadlines and requirements. Research regarding extended time for serving statement of issues/designation where falls on Sunday; recalculate due date and circulate. Email to CS re filing mediation questionnaire. Further email correspondence with LS and KAK re necessity of reporter's transcript. Research regarding necessity of transcript and circulate. Response from LS. Email to team re all portions of RT to designate. Email from KAK re research on judges on 23(f) petition. Email to LS and BG re 9th Circuit appellate rules and transcript order. Email to LS re mediation questionnaire and statement of issues. Email to CS re 9th Circuit admission procedures for McLaughlin attorneys. Email to CAS and KK re Appellate ECF login for civil case docket. Response from LS re transcript on summary judgment motion, and respond.	4.30
12/8/2015	KAK Conference with KSR re deadline to designate transcript and evaluation of which transcripts will be needed for appeal	0.20

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			<u>Hours</u>
12/8/2015	CAS	Review Brett Gallaway email re 9th circuit admission, email response	0.20
	KSR	Email correspondence with BG re admission to 9th Circuit and mediation questionnaire. Research admission and email to BG with requirements. Review mediation questionnaire.	0.70
12/9/2015	KAK	Review and evaluate draft of mediation questionnaire prepared by co-counsel Gallaway and comments of KSR on same; draft additional revisions and re-circulate	0.50
	CAS	Review mediation questionnaire for filing in the 9th Circuit	0.20
	KSR	Email correspondence with Daniel Mallia and CAS re information required to sponsor LS and BG for admission to 9th Circuit. Follow up email correspondence with Mallia. Review and draft edits to Mediation Questionnaire and coordinate comments with KAK. Circulate comments. Draft further comments re challenge to class cert order. Coordinate filing and circulate instructions. Follow-up email discussion re scope of appeal with KAK. Review 9th Circuit appeal packet re filing mediation questionnaire and forward to CAS. Draft and circulate further edits to mediation questionnaire and finalize. Email from BG re attaching service list.	2.30
12/10/2015	KAK	Conference with KSR re status of reporter's transcript designation due by Monday; conference with CAS re status of filing mediation questionnaire today; review notification and correspondence from CAS re same	0.20
	CAS	Revise Mediation Questionnaire for filing with 9th Cir.; Email final version to co-counsel; Complete 9th Cir. filing and email filed version to co-counsel; Review KSR email re transcript order for appellate record	0.80
	KSR	Discussion with KAK re portions of transcript and statement of issues for appeal. Begin draft of statement of issues. Discussion with CS re mediation questionnaire and review and approve final version for filing. Research for Ninth Circuit requirements for reporter's transcript. Review/analyze docket sheet in district court for all hearing transcripts and whether required for appeal. Circulate email recommending designation of all transcripts and request McLaughlin attorneys to order last transcript on MSJ now. Discussion with KAK re date to file transcript designation form in district court and calendar. Email from CAS circulating final version of mediation questionnaire for filing; review. Email correspondence with BG and Daniel Mallia re ordering transcripts for appeal. Review/analyze all Ninth Circuit rules for appeal and deadlines.	2.10
12/11/2015	KSR	Review notice re appeal from Ninth Circuit.	0.10
12/14/2015	KSR	Email from KAK re order for transcript for appeal. Email correspondence with Daniel Mallia at McLaughlin re ordering transcript of MSJ hearing to complete reporter's transcript for appeal. Follow up email from Mallia re transcript.	0.40
12/15/2015	KSR	Email questions from Daniel Mallia re transcript procedures for appeal; and respond. Review filed transcript order and calendar. Follow-up email from Mallia re requested timeframe for transcript from reporter. Review email from Mallia to reporter re transcript.	0.40
12/16/2015	KSR	Discussion with GMG and KAK re appeal deadlines.	0.20
12/20/2015	KSR	Email from KAK with article on court ruling and correcting if required. Review/analyze article.	0.20
12/22/2015	CAS	Review ECF Notice requesting Apple's response to motion to tax costs	0.20

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			<u>Hours</u>
12/22/2015	KSR	Review order requesting Apple to respond to objections to its cost bill; calendar.	0.20
12/30/2015	GMG	Prepare draft transcript designation form and confer with/email KSR re same	1.10
	KSR	Research and review requirements for transcripts in Ninth Circuit. Instructions to GMG re completion of transcript designation form and status of MSJ hearing transcript.	0.50
12/31/2015	GMG	Review docket, revise draft transcript designation form and confer with KSR re same; prepare final signed form, file via ECF and confer with CAS re same	0.90
	KSR	Review requirements for transcript designation form and instructions to GMG re form. Review draft from GMG re form and draft edits. Further instructions to GMG re filing.	1.80
1/4/2016	KAK	Review enotification and order directing Apple to file reply to our opposition to its costs bill; review enotification from Ninth Circuit setting case for "assessment conference" and correspondence confirming that co-counsel Shalov will cover	0.20
	KSR	Review mediation session order from Ninth Circuit re appeal. Email to KAK re having Lee Shalov handle; conflict with PSP status conf. Further email correspondence with BG re mediation conference; calendar. Review Judge Alsup's order requesting Apple to respond to plaintiffs' objections to cost bill. Email correspondence with KAK re order.	0.80
1/7/2016	KAK	Conference with KSR re reviewing reply papers filed this week by Apple in support of cost bill	0.10
1/8/2016	KSR	Review/analyze Boyer declaration supporting bill of costs. Email to Gallaway/Shalov re whether to reply to response. Email to KAK re no need to address Boyer declaration. Response from Gallaway re no reply.	1.80
1/11/2016	GMG	Review voice mail from possible class member and email KAK and co-counsel re same	0.10
1/13/2016	GMG	Review docket and email KSR re absence of recent transcript	0.20
	KSR	Review appeal deadlines, dates for completion of reporter's transcript and briefs and discuss with CAS. Email to Brett Gallaway re confirm completion of reporter's transcript. Calendar additional appeal dates. Instructions to GMG re check docket for transcript. Follow up with Malia re transcript.	1.50
1/14/2016	KSR	Email from Brett Gallaway re reporters' transcript and Ninth Circuit rules; respond.	0.30
1/19/2016	CAS	Review KSR email assignment re 9th Circuit rules concerning filing transcripts for appeal, email results to KSR	0.30
	KSR	Review notification of transcript filing from court reporter. Email to CS to confirm Ninth Circuit rules re transcript. Response from CAS.	1.80
1/20/2016	KSR	Review/analyze reports from Gallaway and Lonnie re mediation. Email response with questions to Gallaway. Email from Mallia re Ninth Circuit admissions for Shalov and Gallaway.	1.80
1/21/2016	KSR	Notice from Ninth Circuit re date for further mediation conference and calendar.	0.20
1/22/2016	KSR	Email from Lee Shalov re Apple's settlement offer. Review report on mediation from Brett Gallaway and comment on settlement offer and mediation strategy. Research regarding settlement with class reps after class cert and summary judgment against plaintiffs. Email correspondence with Shalov re settlement posture and legal issues.	1.80

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			<u>Hours</u>
1/25/2016	KAK	Review and evaluate report from co-counsel Gallaway regarding matters discussed with 9th Circuit mediator; analysis of implications of individual settlement proposal; email to co-counsel and KSR with thoughts on possible settlement approaches; review enotification and evaluate order on costs bill; circulate same to KSR and co-counsel	0.40
1/26/2016	CAS	Review emails re mediation phone assessment and possible settlement; Review order setting mediation phone conference; Review Order re Apple's costs	0.60
	KSR	Further research regarding settlement with class reps after class cert and summary judgment against plaintiffs.	1.80
1/27/2016	KAK	Correspondence with co-counsel re need for filing notice of appeal as to yesterday's order awarding costs; review correspondence between co-counsel and CAS re status of preparation of appellate transcript	0.10
	CAS	Emails with co-counsel and KSR re costs order; confer with KSR re research needed	0.20
	KSR	Email from Daniel re reporter's transcript on appeal and designation deadline. Review deadlines. Response email from CAS; discuss with CAS.	0.50
2/1/2016	CAS	Research procedure for appealing Bill of Costs order, email results to KAK and KSR	0.70
	KSR	Email from Brett Gallaway re need to separately appeal order on costs. Research issue and discuss with CAS. Review CAS research re appealing ruling on costs.	0.40
2/2/2016	KAK	Review analyses of CAS and co-counsel Gallaway re appellate challenge to costs order; email to co-counsel re circulating results of research; discuss with KSR	0.10
	CAS	Email Brett Gallaway re research on appealing bill of costs order per KAK instructions, review Gallaway response	0.20
	KSR	Email correspondence with CAS, KAK, Gallaway re appealing order on costs. Discussion with CAS re potential for court to move date to file appellant's brief, and next steps for upcoming mediation session.	0.30
2/9/2016	KAK	Prepare for and participate in strategy call with co-counsel Shalov and Gallaway and KSR regarding pending appeal and possible settlement, including further conference with mediator this month; email to ethics counsel Bill Balin to schedule call to discuss ethics issues presented by settlement	0.60
	KSR	Telephone conference call with Lee Shalov and KAK re appeal and settlement, mediation strategies. Email from Shalov re call with Boyer re settlement negotiations.	0.60
2/10/2016	KSR	Email correspondence with Lee Shalov re call to discuss strategy for mediation session.	0.30
2/11/2016	KAK	Prepare for call with ethics expert Bill Balin; participate in lengthy call with attorney Balin; draft memorandum memorializing ethics advice provided and circulate same to Balin for review	1.90
2/12/2016	KAK	Correspondence to co-counsel Shalov and Gallaway and KSR re yesterday's conference with ethics counsel and next steps	0.20
	KSR	Email correspondence with KAK, LS etc. re advice from ethics counsel re proposed settlement and setting call to discuss. Coordination for conference call.	0.10
2/15/2016	KSR	Email from Lee Shalov re set up call to address settlement negotiations and ethics issues with certified class; respond.	0.20

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		<u>Hours</u>
2/16/2016	KAK Follow-up email to ethics counsel Balin; review and respond to emails from co-counsel to schedule call to discuss settlement proposals	0.10
2/17/2016	KAK Further follow-up email to ethics counsel Balin; circulate memo on ethics opinions to KSR for review; review and respond to further emails from Balin and KSR	0.20
	KSR Email from KAK re ethics issues related to settlement negotiations between Apple and certified class. Review/analyze draft ethics letter from Bill Balin and send email with comments to KAK.	0.40
2/18/2016	KAK Further telephone discussion with ethics counsel Bill Balin regarding additional questions; update memorandum memorializing advice; forward same to co-counsel Shalov and Gallaway; review email from defense counsel requesting to reschedule tomorrow's call with mediator; prepare for and participate in conference call with Shalov and KSR re next steps and settlement positions in view of ethics advice, including possible request for private call with mediator re same; locate rules regarding streamlined requests for extension of time and forward same to Shalov and Gallaway	0.70
2/19/2016	CAS Review email from Todd Boyer (Apple) requesting immediate payment of costs and Brett Gallaway's proposed response	0.20
	KSR Email from Brett Gallaway forwarding email from Boyer re taxation of costs and draft response from Gallaway based on CAS research. Respond.	0.20
2/22/2016	KSR Email from Lee Shalov re time to file opening brief and securing extension. Respond. Email from Gallaway re extension. Email to CAS re extension for opening brief on appeal. Follow up questions and responses to CAS. Email correspondence with Lonnie Blanchard, Lee Shalov, Brett Gallaway, KAK re scheduling conference call with mediator.	0.50
2/23/2016	KAK Review correspondence from co-counsel Shalov re extension of time for opening brief; follow-up email to Shalov re whether last week's mediation teleconference was rescheduled	0.10
	CAS Review email forwarded by KSR re requesting extension of time from the mediator for opening brief; Voicemail to Peter Sherwood (9th Cir. mediator) re extension request for opening brief	0.20
	KSR Email to KAK re call with mediator and response. Calendar. Email correspondence with Brett Gallaway to schedule call with mediator.	0.40
2/25/2016	KSR Discussion with CAS re briefing deadlines and communication with 9th Circuit mediator. Email to BG re date for call with mediator to discuss settlement demand status. BG response.	0.30
	CAS Confer with KSR re status of extension of opening brief deadline	0.20
2/26/2016	KSR Email to Shalov, Gallaway, CAS re new date for mediation conference call. Coordinate securing new date with BG. Further emails with BG and CAS re new date for call (mediator ill).	0.30
2/29/2016	KAK Review correspondence re continuance of appellate briefing schedule	0.10
	KSR Follow-up email to Brett Gallaway re new date for call with mediator. Discussion with CAS re arranging with mediator to move due date for opening brief. Email from BG re extension from mediator; forward to CAS. Discussion with CAS re mediator unaware of extension but granted and moved mediation call. Email from CAS confirming extension. Review mediator's order re new briefing deadlines and calendar.	0.60

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			<u>Hours</u>
2/29/2016	CAS	Confer with KSR re extension request and contact mediator re same; email to KAK and KSR; review mediator's order	0.20
3/11/2016	KSR	Email from Todd Boyer regarding Apple's position on enforcing cost award. Review CAS' email memo re cost procedures on appeal; review cites.	0.50
3/17/2016	GMG	Email KAK re appellate briefing deadlines and order re same	0.10
	KAK	Review order setting new briefing schedule, signed by settlement special master; record dates	0.10
3/20/2016	KSR	Email to Lee Shalov re mediation conference call and call to prepare, and whether still waiting from response from Boyer	0.20
3/21/2016	KSR	Email correspondence with Lee Shalov re mediation conference call. Review prior correspondence re settlement discussions with Apple; forward to Shalov and further correspondence with Shalov re strategy. Email instructions to GMG re mediation call. Email correspondence with LS and Todd Boyer re mediation.	0.40
3/22/2016	KAK	Review report from KSR re matters discussed with settlement referee; correspondence to KSR re next steps; review new Supreme Court opinion on use of representative sampling evidence and possible use in this case upon remand, if we prevail in the Ninth Circuit	0.90
	KSR	Review ethics memo and forward to Lee Shalov to prepare for mediation call. Further preparation for mediation call. Call with Ninth Circuit mediator. Email report to KAK re call. Email from Wade Wilkinson to organize call to discuss briefing schedule. Email discussion with KAK re opening brief and respond to Wade. Further email discussion with KAK re briefing schedule.	1.20
3/23/2016	KAK	Conference with KSR re impact of new Tyson Foods opinion and time needed for opening brief on appeal	0.20
	KSR	Review/analyze Tyson Foods opinion and discuss with KAK effect on Frlekin appeal, including discussion of ability to prove damages, etc. Discussion with KAK re extension for briefing. Email Wade Wilkinson re seeking extension to file opening brief. Email with KAK re time for extension and respond to Wade.	0.60
3/24/2016	KAK	Conference with KSR re costs issue and Apple's position that those are immediately payable; review correspondence between co-counsel Shalov and KSR re same	0.20
	KSR	Email from KAK re Boyer email re cost award. Review email from Todd Boyer re Apple's cost award. Email to Lee Shalov and Brett Gallaway re responding to email from Boyer.	0.20
3/29/2016	KSR	Email from Wade Wilkinson re no response from Boyer, and procedure for extension of briefing schedule and respond. Email from Brett Gallaway re seeking informal extension through mediator; response from Wilkinson. Email from Wilkinson to Sherwood re briefing extension.	0.20
3/30/2016	KSR	Email correspondence with Wade Wilkinson re extension of time to file Appellant's Opening Brief.	0.10
4/1/2016	KAK	Analysis of status of costs issues; email to CAS re further research needed on issues raised in defense counsel Boyer's email re enforcement of judgment	0.30
	CAS	Review KAK email assignment to research requirements of FRCP 62 re posting a bond to stay cost judgment pending appeal; Research FRCP 62 and effect of bond on cost judgment, email limited results to KAK, research to continue	1.10

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			<u>Hours</u>
4/1/2016	KSR	Email from CAS re necessity of posting a bond re costs award. Respond. Email from KAK re distinction between state and federal court requirements.	0.30
4/4/2016	CAS	Continued research on procedure for staying cost judgment in federal court; Email sample motion to stay and writ of execution forms to KSR and KAK with research results; discuss with KAK	2.20
	KAK	Conference with CAS re status of research on enforcement of costs judgment pending appeal; review results of CAS research on this issue; forward same to co-counsel Shalov and Gallaway; conference with KSR re defense counsel's agreement to extend time to file opening brief on appeal	0.30
	KSR	Email from Todd Boyer agreeing to extension for opening brief. Discuss with KAK. Email to Wade Wilkinson to request mediator to issue order re extension. Review email from CAS re enforcement of cost award. Email from KAK to Lee Shalov et al. re enforcement of cost award and next steps to protect class reps.	0.40
4/5/2016	KAK	Review and evaluate order facilitated by mediator extending time to file opening brief on the merits; analysis of next steps to meet extended filing deadline	0.20
	KSR	Email correspondence with Wade Wilkinson and Sherwood, mediator, re extension for opening brief. Review order from mediator re extension and calendar new date for brief.	0.30
4/13/2016	KAK	Follow-up email to co-counsel Shalov and Gallaway re costs issue	0.10
4/14/2016	KAK	Review and reply to email from co-counsel Shalov regarding enforcement of costs judgment; conference with KSR re next steps to protect clients from enforcement of costs judgment	0.20
	KSR	Meeting with KAK to discuss ramifications of cost award to Apple and protection of class representatives. Email from LS re no need to post bond for costs. Response from KAK re writ of execution.	0.40
4/26/2016	GMG	Confer with KAK and KSR re upcoming deadlines	0.10
	KSR	Discussion with KAK and GMG re briefing schedule for appeal. Email to KAK re costs award and discussing preparation to pay with Shalov and notifying class reps; KAK response.	0.30
	KAK	Conference with KSR and GMG re upcoming appellate brief deadline and logistics	0.10
5/9/2016	KSR	Email from Lee Shalov re drafting opening appellate brief and recent bag check decisions. Respond.	0.20
5/10/2016	GMG	Prepare draft notice of withdrawal for CAS	0.30
5/11/2016	KAK	Discussion with KSR re upcoming opening brief deadline and next steps	0.10
	KSR	Email from Lee Shalov re Coach settled bag check case; confer with KAK re appeal deadline	0.10
5/12/2016	GMG	Revise draft CAS notice of withdrawal and confer with KAK re same	0.20
	KAK	Analysis of steps necessary to prepare opening brief due next month, including preparation of excerpts of record; review correspondence between co-counsel Shalov and KSR re same	0.20

			<u>Hours</u>
5/18/2016	KSR	Email from Brett Gallaway with article re case status; review and respond.	0.20
5/27/2016	GMG	Discuss excerpts of record with KAK and KSR; review FRAP and 9th Circuit rules and 9th Circuit practice guide re excerpts of record; email practice guide to KAK; compile and review sample covers and indices; review docket and prepare initial draft cover and index for excerpts of record	4.40
	KAK	Conference with KSR and GMG re upcoming appellate briefing filing and need to review rules for and prepare excerpts of record	0.30
	KSR	Discussion with GMG and KAK re compiling record on appeal; review rules on excerpt requirements and designation.	0.40
5/31/2016	GMG	Review practice guide, docket and draft table of contents for excerpts of record and email/confer with KSR re same	0.60
	KAK	Review email from co-counsel Wilkinson re coverage of appellate brief due next month and email from KSR re same; confer with GMG re status of excerpts of record	0.10
	KSR	Email from Wade Wilkinson re work on Appellant's Opening Brief. Email to KAK with request to respond and to suggest splitting work if she is not briefing, plus address revised co-counseling agreement. Instructions to GMG re excerpts. Discussion with GMG re rules and procedures for excerpts of record to accompany opening brief, and substantive contents to include. Email from GMG re practice guide.	0.90
6/1/2016	KSR	Email from Lee Shalov re appellant's opening brief; respond.	0.20
6/2/2016	GMG	Discussion with KAK; review files and email Gallaway re 11/4/15 transcript; organize documents for working binder and email KAK re same	0.60
	KAK	Correspondence with co-counsel Shalov re appellate brief due this month; review materials and evaluate status; telephone conference with Shalov re brief, various strategy considerations, and allocation of work needed to complete the filing; evaluate arguments for brief and conference with GMG re preparation of excerpts of record and other logistical issues relative to filing; email to GMG re same	1.60
	KAK	FEES - continued work on revised co-counseling agreement	0.20
	KAK	Telephone conference with attorney Shaun Setareh regarding possible CAOC amicus support; review materials; forward same to Saveena at CAOC (Troester v. Starbucks) (Amicus)	0.30
6/3/2016	KAK	Conference with KSR re reviewing draft of list of record excerpts prepared by GMG and review of rules; email to co-counsel Wilkinson re arrangements with attorney service for filing of brief and excerpts of record; review and respond to message from attorney service regarding deadline to provide materials to them for formatting, finalizing and filing; continued analysis of arguments to be made in brief and records needed	0.40
	KAK	FEES - continued work on co-counseling agreement; finalize and circulate to co-counsel Shalov	1.90
	KSR	Email correspondence with KAK and Wade Wilkinson re coordination with attorney service for Ninth Circuit AOB and excerpts of record; discuss with KAK	0.20
6/7/2016	KAK	FEES - Review and respond to email from co-counsel Shalov approving revised co-counseling agreement	0.10

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			<u>Hours</u>
6/8/2016	KSR	Review materials for excerpt of record.	1.20
6/9/2016	GMG	Review appellate practice guide and email KSR re same; email summary judgment order to KSR; search files and email archive and email KAK re reporter's transcript on appeal; review 9th Circuit docket and email KAK re same	0.70
	KAK	Correspondence with KSR regarding rules governing excerpts of record; analysis of items to be identified and included in excerpts; research concerning format and content of brief, content of excerpts of record, and other procedural considerations; began drafting outline of brief	2.30
	KSR	Email from KAK re excerpts of record on appeal. Research re requirements for excerpts of record and respond. Further email questions from KAK re appellate procedures for excerpts and respond. Review court's order on summary judgment for issues on appeal. Email to KAK with issues for AOB. Review court's ruling on evidentiary objections to determine material relevant to appeal for excerpts of record. Email to KAK with court's ruling and recommendation to include all evidentiary objections. Email from KAK re additional material for excerpts and respond re all affidavits/declarations filed by plaintiffs in opp to MSJ. Email from KAK re list of all pleadings for excerpt of record. Instructions to GMG re declarations in MSJ briefing. Review declarations. Email correspondence with KAK re inclusion of video evidence. Further email question from KAK re inclusion of Apple's declaration and respond with cites to rules and practice guide. Email question from KAK re transcript on appeal; research and respond. Follow up correspondence with KAK re transcript on appeal.	4.10
6/10/2016	KAK	Continued work in preparation for drafting opening brief on appeal; conference with KSR re excerpts of record and points to be made in brief	1.40
	KAK	FEES - Sign revised co-counseling agreement and forward same to co-counsel Shalov, with request to forward to clients to obtain required consents per Rule 2-200	0.20
6/11/2016	KAK	Continued work on arguments to be made in opening brief on appeal, including re-review of court's order granting summary judgment and parties' briefing; email to GMG re materials needed and cases to be pulled	2.80
6/13/2016	GMG	Review and respond to inquiry from attorney service re ETA for documents for excerpts of record; legal research for opening brief, compile and organize requested caselaw and dockets	0.50
	KAK	Review email from attorney service re status of excerpts of record; email to GMG re response to same	0.10
6/14/2016	GMG	Review pleadings and forward jurisdictional order to KAK; begin list of Shalov declaration exhibits cited in SJ briefing; discuss with KAK	0.80
	KAK	Review and respond to email from co-counsel Shalov re timing of draft of brief; continued work on outline of brief, including further review of rules governing required contents and excerpts of record; began drafting brief, with special focus on jurisdictional statement, standard of review, statement of related cases, and statement of the case; correspondence with attorney service re timing of excerpts of record; conference with GMG re same; review email from KSR re demonstratives used at SJ hearing	6.30
	KSR	Locate and review charts submitted to lower court to support argument on MSJs. Forward to KAK with comments. Instructions to GMG re drafts of charts for use in drafting opening brief.	0.40
6/15/2016	GMG	Search files and circulate original charts from summary judgment hearing; finish list of Shalov declaration exhibits cited in SJ briefing and email KAK re same; review Apple SJ filings and email KAK re citation to Boyer Exhibit J-5; compile, excerpt and rename	4.90

		<u>Hours</u>
	documents for excerpts of record and email/confer with KAK re same; review Boyer Exhibits B-I and email KAK re differences in wording; begin revisions to list of Shalov declaration exhibits cited in SJ briefing to include pin cites	
6/15/2016	KAK Continued work drafting opening brief on appeal; continued analysis of arguments to be made therein, including review of most relevant California Supreme Court authorities; analysis of historical materials regarding Wage Orders' hours worked language and possible arguments based thereon; continued analysis of materials to be included in excerpts of record, including careful review of exhibits to Boyer, Gallaway and Shalov declarations; conference with GMG re preparation of exhibits to Boyer declaration and other materials identified so far; review portions of excerpts prepared by GMG to date; discussion with KSR re portions of Apple evidence to be included and not included in excerpts, as well as substantive arguments to be made in brief; email to GMG re revising excerpts	8.40
	KSR Instructions to GMG re charts from SJ hearing for reference in drafting appellant's opening brief. Discussion with KAK re strategy for issues on appeal. Review and forward additional chart used in hearing to KAK and GMG. Further instructions to GMG re charts comparing relevant case authorities.	0.40
6/16/2016	GMG Finish revisions to list of Shalov declaration exhibits cited in SJ briefing to include pin cites and email KAK re same;	0.70
	KAK Continued evaluation of portions of record to be included in excerpts of record; review email from GMG re same	0.10
6/17/2016	GMG Review all orders re motions to seal and email KAK re items currently under seal; compile and excerpt documents for excerpts of record and confer with KAK re same; prepare formatted docket for excerpts and email KAK re same; compare Frlekin and Kalin hearing transcripts and email KAK re pagination; upload documents for excerpts of record to Counsel Press and email KAK re same	2.90
	KAK Continued review of materials needed for excerpts of records, including portions of lengthy Shalov declaration; email to GMG re additional portion of document (our motion) to be included; review and evaluate court's sealing order re Shalov declaration and email to GMG re same; correspondence with KSR re status of excerpts of record, including portions of hearing transcript to be included; careful review of SJ hearing transcript; correspondence with KSR re portions to include; review portions marked by KSR for inclusion and correspondence re same; make preliminary decision on portions to include and email to GMG re same; review and double-check all excerpts of record prepared by GMG for completeness; email to GMG re revising docket; review and approve revised docket; finished identifying portions of Shalov declaration to be included and conference with GMG re same; review version prepared by GMG; email to GMG re additional changes needed	5.10
	KSR Email from KAK re completing excerpts of record to provide to Counsel Press for Ninth Circuit AOB; respond. Review transcripts of hearings to determine documents for excerpts of record. Email correspondence with KAK re transcripts to include. Further email correspondence with KAK re Hall declaration and strategy for framing arguments in AOB, and effect on excerpts of record preparation. Further email correspondence with KAK re moved to strike entirety of Hall report and issues raised by Apple on appeal. Further email from KAK re Hall report. Review briefing for all references to Hall report and plaintiffs' objections. Further email correspondence with KAK re inclusion of transcripts in excerpts of record on appeal. Further email correspondence with KAK re portions of SJ transcript to include in excerpts. Review transcript and highlight portions for excerpt; circulate. Note to KAK re differentiate Kalin transcript. Further email correspondence with KAK re portions of transcript of MSJ to include in excerpts and compliments on Lee Shalov's argument below. Further discussion re importance of including some of Shalov argument to show points raised below. Email from KAK re which cases to cite in support of each of the	3.30

		<u>Hours</u>
	six control factors. Review charts used in MSJ and relevant case law. Draft revisions to chart with cites to best cases for each factor. Email to KAK re importance of briefing the fact that uncompensated activity was required. Email from GMG re materials sent to Counsel Press for preparation of excerpts of record.	
6/18/2016	KAK Continued work drafting opening brief on appeal, with particular focus on outline of legal argument section and additional review and analysis of case law; review and respond to email from KSR circulating updated chart of "control" cases	3.70
	KSR Review charts and cases with factors indicating employer control for appellant's opening brief. Draft revisions to chart showing additional control factors. Finalize and forward revised chart to KAK with comments re case authorities and strategy for addressing in AOB.	1.80
6/19/2016	KAK Continued work drafting opening brief on appeal, including further work identifying strongest arguments to be made, drafting outline, and analyzing applicable case law; evaluate updated chart of "control" cases prepared by KSR; continued evaluation of class certification order and whether it needs to be addressed in brief; continued work drafting statement of the case and section urging referral of California law issue to Cal. Supreme Court	6.70
6/20/2016	GMG Prepare final excerpted documents for excerpts of record and confer with KAK re same; upload final documents and email attorney service re same; search correspondence and email KAK re Department of Industrial Relations contact; email DIR re records request	1.40
	KAK Continued analysis of arguments to be made in opening brief, as well as most effective organization of arguments; make final decisions regarding pages to be included in excerpts of record and email GMG re same; correspondence to attorney service re logistics of preparing excerpts of record; correspondence to KSR re preparation of request for judicial notice of historical wage orders; draft email to attorneys Singer and Duchrow of CELA re possible amicus support; further correspondence with Singer re same; email to CAOC re amicus support; analysis of other potential amicus organizations; email to GMG re materials to request from DIR archive; review and reply to response from DIR re same; continued legal research and work drafting opening brief, with particular focus on sections summarizing district court's ruling and discussing "control" test for compensability	11.30
	KAK FEES - review email from co-counsel Gallaway circulating amended co-counseling agreement to clients; review and respond to questions from clients; review agreement as signed by clients Frlekin and Gregoroff	0.20
	KSR Email from KAK re drafting RJN and exhibits. Further email from KAK re requirements for RJN. Research re RJN in Ninth Circuit including judicial notice of California wage orders. Review Ninth Circuit rules re supporting declaration and email to KAK with response. Review declaration filed in Bluford re historical wage orders for RJN.	3.90
6/21/2016	GMG PACER research re <i>Alcantar</i> case, compile requested documents and email KAK re same; email DIR re public records request	0.70
	KAK Continued work drafting opening brief on appeal, with special focus on completing draft of argument section on "control" test; email correspondence with KSR regarding RJN of historical wage orders and arguments to be made therein; email to GMG re pulling appellate briefs filed in <i>Alcantar</i> ; review and evaluate same; identify portions to be included in RJN; conference with GMG re same; review excerpts prepared by GMG and forward to KSR for inclusion in RJN	13.60

		<u>Hours</u>
6/21/2016	KSR	4.50
<p>Email correspondence with KAK re basis for request for judicial notice and draft declaration. Continue research for a drafting of RJN to support AOB. Further discussion with KAK re relevance of wage orders and strategy. Further review similar declaration re historical wage orders filed in Bluford case. Email from KAK with two additional docs to add to RJN. Review Counsel Press drafts for AOB.</p>		
6/22/2016	GMG	2.20
<p>Review draft covers, index and excerpts of record and email KAK re revisions to index; email attorney service re Word file of index; email SJ briefs and transcript to CELA for amicus brief</p>		
	KAK	10.10
<p>Further work drafting opening brief on appeal, with particular focus on section distinguishing commute cases, section arguing that checks are both required and controlled, and completing statement of facts and statement of the case; review and respond to email from attorney service concerning oversized exhibits to RJN; review and respond to email from attorney Menhennet, who will be drafting an amicus brief for CELA; email to GMG re circulating portions of record to her; review email from attorney service circulating proof of excerpts of record, index and brief cover; review edits by GMG to index and email to GMG re additional revisions needed; complete initial draft of brief and circulate to co-counsel Shalov and Gallaway and KSR for review and comment; further correspondence with KSR re basis for, and arguments to be made in, request for judicial notice</p>		
	KSR	10.70
<p>Further research for RJN in support of AOB. Email correspondence with KAK re case authorities to support and strategy. Further discussion with KAK re strategy for RJN re plain meaning reading of wage order vs. RJN of legislative history where ambiguity in wage order. Further discussion re section in RJN on discussion of relevance of wage orders. Revise RJN; finalize draft to circulate and draft supporting declaration. Draft revisions and circulate revised, combined RJN and declaration. Review, research for and draft edits to AOB.</p>		
6/23/2016	GMG	5.90
<p>Confer with KAK re project status; make revisions to excerpts index, prepare redline and email KAK re same; proofread draft brief, check cites and quotes and draft table of authorities, review draft RJN prepared by KSR</p>		
	KAK	12.90
<p>Review of draft cover pages and index to excerpts of prepared by attorney service; email to attorney service re revisions needed; review and draft edits to index; conference with GMG re revisions to be made to index, including complexity presented when an exhibit is an excerpt of an excerpt; review his redline, make further edits and circulate to attorney service; correspondence with attorney service re logistical matters re brief; conference with GMG re brief-filing logistics and cite check of brief; review correspondence from Shalov re current draft of brief and argument that issues should be referred to California Supreme Court; draft reply correspondence re that issue and two other strategy decisions (namely, decisions not to challenge class cert. ruling or costs order on the merits); review correspondence from CAOC re possible amicus support; continued work drafting appellate brief, with special focus drafting argument section on suffered or permitted to work test for hours worked; began incorporating ER cites into brief; review and revise draft RJN and supporting declaration prepared by KSR; email to GMG re finalizing same; circulate current draft of brief, with new argument section to co-counsel Shalov and Gallaway and KSR for review and comment; review revised mockups of covers prepared by attorney service for brief and excerpts of record; email to service re problems with same and decision to use our own covers; email to GMG re preparation of same</p>		
	KSR	8.70
<p>Email correspondence with KAK re edits to and additional exhibits for RJN. Review revised draft of and draft edits to AOB; circulate. Further research for and email discussion with KAK re strategy and further points to discuss in brief. Draft further revisions to RJN and supporting declaration and circulate. Email from KAK re strategy re language of class cert order re proof of damages. Respond re don't challenge class cert order and procedural mechanisms for damages in this appeal. Email from KAK re strategy decision not to appeal costs; respond. Email from KAK re</p>		

Hours

RJN and respond styled as motion per Ninth Circuit rules. Further email discussion with KAK re strategy for referral request to Cal Supreme Court. Email to KAK re add point from Morillion re suffered or permitted to work test independently satisfied. Response from KAK and respond with text from Morillion. Further review of Morillion opinion and Vega authority cited in Alsup's MSJ opinion, and suggest adding point re Morillion distinguishing federal authority, expressly including Vega. Email from Shalov re passing addressing class cert ruling in AOB.

6/24/2016	GMG	Revise covers for MJN and declaration; review local rules re signatures and email KAK re same; review/proofread revised brief, insert record cites and email KAK re same; prepare final PDF of excerpts cover, MJN and declaration with exhibits and email KAK re same; prepare PDF of KAK notes re Boyer and Shalov declarations and email KAK re same; email KAK re remaining missing record cites; review new sections of revised brief, check cites and quotes and revise table of authorities	6.40
KAK		Continued work drafting appellate brief, including incorporating further comments of KSR and reviewing and filling in record cites, and drafting argument section arguing that plaintiffs' motion should have been granted; email to GMG re filing in record cites in statement of facts section; review cites compiled by GMG and began incorporating same into brief and further editing statement of facts section; correspondence with attorney service re filing logistics, including cover pages; email to GMG re additional cites needed for brief; review and approve final MJN and supporting declaration and exhibits; review and approve cover page for excerpts of record; correspondence with KSR re additional research needed for jurisdictional statement section of brief and certificate of compliance; review and incorporate results of KSR research into brief; further correspondence with co-counsel Shalov and KSR re arguments to be made concerning costs and decision not to argue that cost award was abuse of discretion, and confining argument to seek reversal of costs award along with judgment; email to GMG re completion of cite check on new argument section in brief	7.90
KSR		Email from KAK re substantive cite checking, including re subject matter juris and source of appellate jurisdiction. Correct cites and email to KAK with language re Ninth Circuit appellate jurisdiction. Further review of revised AOB. Email from Shalov re addressing costs in appeal. Further email explanation from KAK re appeal of costs order and response from Shalov re pass on costs issue. Further email from KAK re excerpts of record completed. Email from KAK re my comments re text concerning false choice and optional benefit arguments, and strategy re removing illusory choice argument. Review transcript for arguments on MSJ and respond to KAK re required uncompensated activity and deleting this argument. Further review and draft edits to AOB on section concerning suffered or permitted to work test. Research for and email to KAK re corrections to certificate of compliance, and forward alternate language for certificate. Email to KAK re rules on page and word limits for AOB. Further email discussion with KAK re suggestions on amendments to wage order 14 and further research. Email from KAK re additional cite checking; complete and respond. Email from KAK re final draft of brief; respond. Email to KAK re brief status and review.	5.60
6/25/2016	KAK	Continued work drafting appellate brief, with special focus on double-checking all ER cites in brief and revising statement of facts section, adding ER cites to all relevant evidence, drafting detailed introduction, revising statement of issues for review, editing to fit within word count limit, and incorporating further comments of KSR; circulate new draft to co-counsel Shalov and Gallaway and KSR for any final comments; review and respond to email from GMG re ECF registration in the Ninth Circuit for Monday's filing	10.10
KSR		Email to KAK re possible analogy to federal continuous workday argument; KAK response. Respond to KAK re logic for continuous workday argument analogy. Email from KAK requesting further review of final draft of AOB and specific terms used in brief; respond.	0.50

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		<u>Hours</u>	
6/26/2016	KAK	Analysis of status of components of tomorrow's filing; forward completed RJN and supporting declaration with exhibits, plus cover page for excerpts of record, to attorney service; forward current final draft of opening brief to GMG for completion tomorrow	0.20
	KSR	Email correspondence with KAK re further arguments for and edits to AOB. Review and draft edits to final draft. Circulate.	2.40
6/27/2016	GMG	Review and final proofread of brief and confer with KAK re same; prepare final PDF of brief and upload to attorney service with MJN, declaration and excerpts cover; email service re filing credentials; review filed brief, excerpts, MJN and declaration and forward to CAOC for use in amicus brief; email DIR re research request and forward response to KAK	3.90
	KAK	Review and incorporate comments of KSR on final draft of brief; final proof-read through brief and incorporate final edits; check and incorporate word count; conference with GMG re finalizing brief for filing; incorporate results of GMG cite-check; review and approve table of authorities and final brief; conference with GMG re finalizing brief and forwarding all documents to attorney service; review and approve final brief; correspondence with attorney service re finalizing all documents and filing today; analysis of next steps; review follow-up correspondence from GMG to DIR archive re PRA request; forward completed brief to attorney Menhennet, who is preparing an amicus brief for CELA; correspondence with Menhennet re filing CELA's brief by Friday; draft detailed memo with list of possible areas to be covered in an amicus brief and review further ideas from KSR re same; circulate to Menhennet; review notifications confirming filing of brief today; forward same to attorney Menhennet; review emails from GMG to Menhennet forwarding copies of filed MJN and excerpts of record; review and respond to email from Menhennet requesting consent of all parties to file amicus curiae brief; review clerk's order accepting brief and excerpts of record for filing and directing that paper copies be filed within 7 days; correspondence with attorney service confirming that they will deliver the required paper copies this week; follow-up correspondence to CAOC re amicus support; review email from Dion-Kindem re brief filed today and email to Shalov and KSR re same	3.20
	KSR	Email from KAK re brief to Counsel Press in final. Evaluate timing of amicus brief and topics to cover; draft email to KAK re topics; KAK response. Email from KAK forwarding comments from Peter Dion-Kindem and respond.	1.70
6/28/2016	KAK	Review and evaluate further correspondence from Shalov and KSR re brief filed yesterday	0.10
6/29/2016	KAK	Review voice mail message from Law360 reporter re Ninth Circuit brief; draft email to reporter in response; draft email to clients circulating copy of appellate brief filed this week; review and reply to their responses; follow-up email to CAOC re possible amicus support; review notification confirming filing of paper copies of Excerpts of Record today; follow up with attorney service re paper copies of brief; email to KSR re further follow-up needed by Friday if clerk has not indicated receipt of brief	0.30
	KSR	Email from KAK re filing AOB and excerpts of record and notification from clerk re receipt of brief.	0.10
6/30/2016	KAK	Review notification confirming receipt by clerk of 7 paper copies of brief; email to KSR re same	0.10
	KSR	Email from KAK forwarding clerk's notice of receipt of AOB; respond.	0.20

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			<u>Hours</u>
7/1/2016	KAK	Follow-up correspondence with attorney Menhennet re status of CELA amicus brief; review and evaluate draft of CELA's brief; prepare redline with comments and proposed changes and circulate to Menhennet; forward same to co-counsel Shalov and KSR	1.90
	KSR	Email from KAK re CELA's amicus brief. Calendar due date and review.	0.50
7/3/2016	KSR	Continue review of CELA amicus brief draft and Shalov comments and draft/send email to KAK with further comments.	0.50
7/4/2016	KAK	Review and respond to correspondence from co-counsel Shalov and KSR re draft CELA amicus brief	0.10
7/5/2016	KAK	Further evaluation of arguments to be made in supporting amicus brief; review revised amicus brief received today from attorney Menhennet; prepare redline with further comments and proposed revisions and circulate to Menhennet; forward same to Shalov and KSR; review enotification confirming filing of brief today; review rules concerning streamlined extensions for answering and reply briefs and response to amici curiae briefs	1.60
	KSR	Review new draft of amicus brief per KAK and comments re personal convenience arguments.	0.30
7/7/2016	KAK	Review and evaluate enotifications from clerk re filing of CELA's motion for leave to file amicus brief; review and evaluate email from defense counsel to appellate mediator requesting 60-day extension of time for answering brief; correspondence with KSR re impact on reply brief deadline; review response of appellate mediator; correspondence with KSR and co-counsel Shalov re same and possible procedural issues with this request; draft response indicating that we do not object but would request a similar accommodation for our reply	0.40
	KSR	Discussion with KAK re timing of reply brief. Email from Todd Boyer requesting 60-day extension to file respondent's brief. Email correspondence with KAK, LS re request. Sherwood (mediator) response re Apple requested extension; calendar.	0.30
7/11/2016	KAK	Review enotification confirming of extension of deadline for Apple to file its answering brief	0.10
7/15/2016	GMG	Contact DLSE regarding onsite document review and providing access to desired materials for review per KAK instructions	0.50
	KAK	Review email from DIR re proposed times to review archive documents; conference with GMG re scheduling same and confirming location of review; preparation for this review on Monday; compile materials needed for review; re-read relevant portions of opening brief; review and respond to emails from GMG re same archive materials	0.90
7/18/2016	GMG	Email KAK re mobile scanning service; review/organize scanned pages and separate in individual files	0.60
	KAK	Review and analyze IWC records at DIR archive in Oakland; mark selected records for scanning; review scanned materials and organize same; email to GMG re organization of electronic records; review additional materials of Office of Administrative Law referenced in DIR archive records; analysis of whether these materials will aid in our reply brief or in merits briefs if questions are referred to Supreme Court	4.90
7/27/2016	GMG	Review docket in Staples wage and hour action in LA and email Gallaway re same and lack of available documents online; confer with KSR re contacting Singer	0.40

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			<u>Hours</u>
7/27/2016	KSR	Email from Brett Gallaway re Staples decision in LA Superior Court. Further email correspondence with KAK and Brett Gallaway re status of pending MSJ decision. Email from GMG re docket and hearing on MSJ.	0.30
7/28/2016	KSR	Email from Brett Gallaway re Staples decision. Discussion with GMG re contacting Michael Singer to obtain opinion. Email from GMG re KAK contacting Singer.	0.30
8/1/2016	GMG	Email KAK re article re Staples case forwarded by Gallaway	0.10
	KAK	Review correspondence from co-counsel Gallaway re similar security check case in which class certification was just granted; review materials pulled by GMG; correspondence with plaintiffs' counsel in that case requesting copies of order and briefs; email to co-counsel re same; confer with KSR re impact of ruling	0.30
	KSR	Discussion with KAK re new, supplemental authority	0.20
8/2/2016	KAK	Follow up with co-counsel Gallaway re article on recent order in bag search case; forward same to plaintiffs' counsel Menhennet in that case	0.20
8/19/2016	KAK	Correspondence with plaintiffs' counsel re possible amicus support now that Supreme Court has granted the Ninth Circuit's request to resolve the "de minimis" question (<i>Troester v. Starbucks</i>) (Amicus)	0.20
8/22/2016	GMG	Review docket in Staples security check case and email KSR re same	0.10
	KSR	Review article re Nike bag check class cert decision. Email from Lee Shalov with full opinion; analyze and email to KAK, LS, BG re whether to submit as supplemental authority on appeal. Email response from Shalov. Per Shalov, review article re Staples decision and related email string re status. Instructions to GMG to search for Staples opinion on MSJ. Further email to Shalov et al. re Nike reference to representative sampling issue from Tyson Foods	1.40
8/23/2016	KSR	Discussion with KAK re supplemental authority and de minimis issue accepted for review.	0.30
8/24/2016	KAK	Review correspondence between co-counsel Shalov and KSR re new decision granting class certification of security search claims; brief review of decision; email to Shalov and KSR re same and re order accepting "de minimis" question in <i>Troester v. Starbucks</i> matter	0.30
	KSR	Email from KAK re citing new authority if 9th Cir. Refers case to Cal. Supreme Court; and status of Starbucks case re de minimis issue.	0.10
9/8/2016	KAK	Review correspondence from co-counsel Shalov re another similar pending bag check case; email to KSR re same	0.10
	KSR	Email from Lee Shalov re Law360 article re bag check case settlement; respond. Review summary of class cert arguments in Converse and cites to Nike. Email to Brett Gallaway re summary. Email from KAK re citing case in letter to Cal. Supreme Court if 9th Circuit certifies it.	0.30
9/14/2016	GMG	Review class cert order and docket in Rodriguez v. Nike and circulate to co-counsel; review docket and available documents in Whitten v Tilly's and circulate to co-counsel	0.60
	KSR	Email from Brett Gallaway requesting information relating to Law360 article re bag check case settlement. Respond and instructions to GMG.	0.20
9/16/2016	KAK	Analysis of timeframe for filing of defendant's brief and arguments to be made in reply brief	0.70

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			<u>Hours</u>
9/26/2016	KSR	Review Apple's opening opp brief and research re mistaken designation re 158d petition. Discuss with KAK and flag Apple's ECF errors.	0.70
9/27/2016	GMG	Review appellee's brief and appendix and email KAK re same	0.20
	KAK	Review enotifications re filing yesterday of Apple's brief and supplemental excerpts of record; email to GMG re same; review email from co-counsel Shalov re arguments made therein	0.10
9/28/2016	KAK	Draft response to email from Shalov re arguments made by Apple and points for reply; review additional enotifications from court; conference with KSR re characterization of Apple's brief as "answer to 158(d) petition"; review and evaluate this section; correspondence with KSR re no other deadlines triggered by this filing	0.40
	KSR	Email from Lee Shalov re date for reply brief on Ninth Circuit appeal. Review ECF notifications for Apple's filing; discuss with KAK. Respond to Shalov re Apple's filing missteps and forward last briefing schedule with suggestions for extension of time. Review/analyze Apple's opp brief and email correspondence with Shalov and KAK re issues raised in brief. Further email with KAK re Apple's improper ECF filing notice. Further email analysis and strategy re issues on appeal. Research for analysis and further email correspondence with Shalov and KAK re analysis of issues on appeal and response to Apple's arguments. Review/analyze Ulta opinion forwarded by Shalov and his comments.	2.50
9/30/2016	KAK	Review and evaluate Apple's appellate brief filed this week; analysis of arguments to be made in reply; review rules governing timing and length of reply; draft detailed email to co-counsel Shalov and KSR regarding Apple's brief and points for reply; draft email to Ninth Circuit mediator requesting 60-day extension for reply; review relevant new opinion forwarded by Shalov; locate and pull new decision cited in Apple's brief and forward same to Shalov and KSR	2.60
	KSR	KAK email response re arguments raised by Shalov and me re issues on appeal, and notifying mediator Sherwood of request for 60-day extension for reply brief. Review, analyze and response to KAK strategy on issues and arguments on appeal. KAK email to Sherwood re extension of time for reply brief. Email from KAK re thoughts on Ulta opinion; respond.	2.20
10/3/2016	KAK	Review and reply to correspondence from Ninth Circuit mediator confirming 60-day extension of time for reply brief; review and evaluate new district court orders involving similar bag check claims	0.80
	KSR	Email from mediator Sherwood granting extension of time to file reply brief; calendar. Email correspondence with KAK and Lee Shalov re issues and strategy for responding to Apple's opp brief. Further review/analysis of Apple's opp brief including luggage analysis; and research, analysis and email exchange with Lee Shalov re strategy for issues on appeal. Further email exchange with Shalov re legal analysis of control and suffered or permitted to work arguments. Review KAK's public policy arguments; comment.	1.60
10/4/2016	KAK	Review and evaluate email from co-counsel Shalov re arguments to be made in reply, in particular a section addressing public policy arguments made in Apple's brief; draft detailed response re same; review notes re documents pulled from DIR archive in July and analysis of whether they support further arguments for reply; review enotification confirming extension of time for reply brief	0.90
	KSR	Further review/analyze Apple's opposition brief. Email to KAK and Shalov re counter-argument for Apple's 10-piece luggage argument. Further email correspondence with KAK and Shalov re earlier commute vs. on-the-job control arguments. Further email correspondence with Shalov and analysis of arguments in Apple's opposition brief; discussion of choice and Watterson case. Further analysis	1.80

		<u>Hours</u>
	of arguments on appeal and email correspondence with KAK and Lee Shalov to address issues and strategy. Review analysis and analogies in prior email discussions and forward. Further email to Shalov and KAK re industry practices argument, and Ulta litigation and bag search practices. Email from Shalov re choice to avoid arguments. Review/analyze revised brief scheduling order. Calendar dates from mediator's order re briefing schedule.	
10/5/2016	KAK Further analysis of arguments to be made in reply brief; began research on theft-prevention options other than employee bag searches, and privacy implications of the latter; review recent Supreme Court "suitable seating" decision and evaluate extent to which employer's views and preferences are determinative	1.70
10/6/2016	KAK Continued legal research in preparation for drafting reply brief	0.90
10/7/2016	KAK Continued research in preparation for drafting reply brief, as well as analysis of points to be made in reply brief	0.60
10/11/2016	GMG Prepare appellate binder and confer with KAK re same	0.40
	KAK Continued analysis of points for reply and discussion with GMG re materials needed	0.20
10/18/2016	KAK Continued analysis of arguments to be made in reply brief concerning alternative ways to deter or prevent theft	0.30
10/27/2016	KAK Correspondence re draft of AOB in <i>Troester v. Starbucks</i> (Troester)	0.20
10/28/2016	KAK Review and evaluate opening brief on the merits in <i>Troester v. Starbucks</i> , in which Cal. Supreme Court accepted Labor Code questions from Ninth Circuit (Troester)	1.40
10/30/2016	KAK <i>Troester v. Starbucks</i> ; continued review of draft brief and email to plaintiffs' counsel with detailed comments (Troester)	1.20
10/31/2016	KAK Correspondence re comments on draft brief (<i>Troester v. Starbucks</i>)	0.20
11/2/2016	GMG Email Gallaway re appellate briefing	0.10
	KAK Review and evaluate amended Ninth Circuit rules effective 12-1-16 and assess impact on upcoming brief filing; email to GMG re same	0.20
11/9/2016	KSR Forward strategy emails to KAK for reply brief. Review/analyze earlier strategy emails to prepare to discuss with KAK. Email from KAK with draft of AOB; respond.	0.30
11/14/2016	KAK Compile materials needed for work on reply brief	0.50
11/15/2016	KAK Review prior correspondence with co-counsel Shalov and KSR re arguments to be made in reply brief; draft initial outline of reply brief	0.60
11/16/2016	KAK Draft detailed email to co-counsel Shalov re status of reply brief and research needed; review and reply to correspondence from Shalov re same; forward same to KSR re handling this project	0.50
	KSR Email from Lee Shalov re opinion letter re control test, for consideration in strategy on appeal; respond. Email from KAK re research for public policies arguments for ARB.	0.20
11/17/2016	KAK Continued evaluation of arguments to be made in reply brief	0.20
11/20/2016	KAK Analysis of status and decision to request extension of time for reply brief due to unexpected family member surgery set for next week; correspondence to co-counsel Shalov re same; email to Ninth Circuit mediator and defense counsel re same	0.30

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			<u>Hours</u>
11/21/2016	KAK	Review and compile materials needed for reply brief; review and evaluate favorable new class certification opinion handed down today (<i>Lubin v. Wackenhut</i>), which may have helpful language for reply brief; conference with KSR re same and extension request	0.70
	KSR	Discussion re request for extension of time to file reply brief. Email from KAK re request for extension.	0.20
11/22/2016	KAK	Review email from mediator confirming requested extension of time for reply brief and email from KSR in response thereto	0.10
	KSR	Email from Pete Sherwood granting extension to file reply brief; respond to Sherwood. Calendar; instructions to GMG re extension.	0.30
11/23/2016	KAK	Review enotification from Ninth Circuit confirming that clerk has entered extension of time for reply brief; correspondence with KSR re same	0.10
	KSR	Review/analyze notification from clerk granting request for extension of briefing. Email to KAK and GMG re extension granted and instructions to GMG to remove Saunders from case. Response from KAK re removing Saunders and reply.	0.30
11/28/2016	GMG	Review filed stipulation re depositions of exempt Apple store leaders and email KSR and KAK re same	0.20
	KAK	Review correspondence from attorney Hogue requesting copy of deposition transcript; email to KSR re checking whether requested transcript is covered by protective order	0.20
	KSR	Email from KAK forwarding request from Jeff Hogue re Danya Bonnett depo transcript. Review/analyze Bonnett depo transcript for confidential designation per request from Jeff Hogue. Review/analyze stipulated protective order. Email to KAK with transcript and suggestions to double-check any designation with Lee Shalov; response. Review stip re Bonnet depo. Instructions to GMG to check stip filed; response.	0.50
12/5/2016	KAK	Follow-up email to co-counsel Shalov re status of research needed on theft prevention in retail; began drafting reply brief and outline of arguments; double-check federal requirements for content of reply briefs; review amended Circuit rules on length of appellate briefs and new certificate of compliance form; email to GMG re same	0.80
12/6/2016	KAK	Continued work drafting outline of reply brief and analysis of strongest points in response to Apple's arguments; review and reply to emails from co-counsel Shalov re arguments for reply; research on employee theft prevention in retail, including review of treatises on subject at library	5.70
12/7/2016	GMG	Prepare book excerpts re loss prevention and email KAK re same	0.20
	KAK	Conference with GMG re treatise excerpts pulled yesterday at library; review same and forward to co-counsel Shalov with additional discussion of type of excerpts wanted; continued research on theft prevention in retail; continued work drafting reply brief	1.10
12/8/2016	GMG	Review record to search for requested evidence re various documents and Monkowski and Benjamin depositions and declarations and email/confer with KAK re same; email Gallaway re Cano exhibits	1.80
	KAK	Continued analysis of arguments for reply brief and work drafting outline of arguments; review relevant portions of record re Apple's chosen method of theft prevention and other methods mentioned in theft policies, email production and	4.10

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			<u>Hours</u>
deposition testimony; add cites to outline of arguments; analysis of how this supports arguments; correspondence with GMG re checking for ER cites as to certain documents from the record; discussion with GMG re same; review correspondence from GMG to co-counsel Gallaway re exhibits to Cano deposition			
12/9/2016	GMG	Review Cano exhibits and email KAK and Gallaway re same	0.20
	KAK	Continued work drafting outline of reply brief and reply brief, with special focus on section based on plain text of wage order's definition of "hours worked"	5.90
12/11/2016	KAK	Continued research on theft prevention in retail for reply brief; continued work drafting reply brief, with special focus on section addressing <i>Morillion</i>	4.30
12/13/2016	KSR	Email from Lee Shalov with Law360 report of recent jury trial loss by Apple, with Julie Dunn as trial counsel. Respond and further report from Lee. Review article re verdict in Felczer and email to Shalov, Gallaway, KAK responding. Review further article at link forwarded by Lee Shalov re verdict.	0.40
12/14/2016	KAK	Review news report forwarded by co-counsel Gallaway re verdict in attorney Hogue's case against Apple	0.10
	KAK	Continued work drafting reply brief, with special focus on discussion of <i>Morillion</i> and other case law	1.60
	KSR	Email from Lee Shalov re jury verdict against Apple/Julie Dunne; respond. Review/analyze article forwarded by Brett Gallaway; respond with comments.	0.40
12/15/2016	KAK	Review and reply to email from Shalov forwarding excerpts from treatises on preventing employee theft; preliminary review of these excerpts; email to Shalov and associate re additional information and sections needed; continued work drafting reply brief, with focus on discussion of case law construing the Wage Order	7.10
12/16/2016	KAK	Review and reply email from co-counsel Shalov's office circulating further excerpts from citable sources on theft prevention in retail; continued work drafting reply brief, including further work on <i>Morillion</i> argument section and structural organization of brief	3.80
12/17/2016	KAK	Continued work drafting reply brief, with special focus on section addressing <i>Overton</i> ; began review of additional excerpts from theft treatises forwarded by co-counsel	3.60
12/18/2016	KAK	Continued work drafting reply brief	0.60
12/19/2016	GMG	Review 9th Circuit ECF filing procedures and confer with KAK re same; prepare draft motion for judicial notice	1.80
	KAK	Continued work drafting reply brief, including further review of treatises on theft prevention; prepare initial draft of section on "policy" arguments; further work drafting discussion of federal cases cited by Apple; conference with GMG re logistical matters associated with filing this week; correspondence with co-counsel Shalov re current status of brief and recent verdict in similar case	7.30
	KSR	Further work on rog responses	0.20
12/20/2016	GMG	Research re iPod dimensions and email KAK re same; revise draft MJN and email KAK re same	0.70
	KAK	Continued extensive work drafting of reply brief, including research, with special focus on "suffered or permitted to work" test and introduction; circulate current draft to co-counsel Shalov and KSR for review and comment along with detailed transmittal message re remaining work necessary to finalize brief	13.40

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		<u>Hours</u>
12/20/2016	KSR Email to KAK re status of appellate brief; and response.	0.20
12/21/2016	GMG Proofread draft reply brief, check cites and quotes, draft table of authorities and confer with KAK re same; review 9th Circuit rules re cover format and email KAK re same; prepare PDF excerpts from Wilkinson and Repa employment law treatises and email KAK re same; review docket re CELA brief and order re motion to file and email KAK re same; review docket from Murphy v. CVS and email KAK re case status; confer with KAK re status of brief	5.30
	KAK Review and reply to preliminary comments of KSR and co-counsel Shalov re draft reply brief, especially policy arguments therein; continued work revising draft reply brief, including work on section arguing issues should be referred to Supreme Court and special focus on further revising policy argument section; conference with GMG re brief status and filing logistics; review and incorporate results of GMG cite check; review redline comments of KSR on yesterday's draft; continued work drafting improved policy argument section; circulate new section to KSR and Shalov for review and comment	10.10
	KSR Email from KAK re suffered or permitted to work section of Apple's opp brief; review/analyze. Email from KAK with draft reply brief; review/analyze. Review comments from Lee Shalov re policy issues in draft reply brief. Email to KAK and Lee Shalov with strategy to address policy issues. Review/analyze further email comments from Lee Shalov on draft reply brief. Email from KAK re status of draft brief and strategy for sections. Review/analyze draft reply brief circulated by KAK. Research for and draft redline; circulate. Email from KAK with revisions to reply brief.	2.70
12/22/2016	GMG Review documents for MJN and email KSR re same; draft KAK declaration, proof of service and certificate of compliance and circulate to KAK and KSR; review filing procedures and confer with KAK re same; review brief, final proofread and cite check and insert table of authorities; prepare final PDF of brief and certificates and circulate	3.90
	KAK Review and evaluate comments of KSR and Shalov on new draft of policy argument section in reply brief; draft emails in response; email to KSR re preparing motion for judicial notice; continued work drafting reply brief, with special focus on shortening brief to meet word count; evaluate impact of new <i>Augustus v. AMR</i> opinion and incorporate same into draft brief; final editing of brief; further review and incorporation of comments of KSR; emails to GMG re changes to table of authorities; finalize brief and circulate to KSR and Shalov for final review; review and approve certificate re word count compliance; review draft motion for judicial notice prepared by KSR and revise same; review declaration in support of motion and revise same; approve final drafts of all documents; discussions with GMG and KSR re logistics for filing brief by tomorrow; review email from Shalov approving final brief	7.70
	KSR Review draft reply brief and draft edits and comments. Draft motion for judicial notice of DIR records from OAL. Legal research for MJN. Finalize and circulate draft MJN. Discuss draft of MJN with KAK and revise. Instructions to GMG re exhibits to KAK declaration for MJN. Email from Lee Shalov with comments on draft re theft prevention treatises and respond. Email from KAK re Augustus opinion and review/comment. Draft further revisions to MJN and circulate draft. Email from Lee Shalov re language in Augustus. Review policy section of brief and further comments to KAK. Email from KAK re change order of exhibits in MJN; draft revisions and circulate. Review/analyze final version of brief circulated by KAK. Email to GMG re draft declaration iso MJN. Email from KAK re edits to declaration. Email from GMG with certificates of service for brief; review.	3.10
12/23/2016	GMG Review changes and prepare PDF of revised reply brief with certificates; finalize draft MJN and declaration, prepare PDFs with exhibits and certificates and circulate to KAK and KSR; file MJN with declaration via ECF and confer with KSR re same; file brief	2.30

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		<u>Hours</u>
	with certificates via ECF; review confirmation and filed documents and save to folder; circulate final drafts to co-counsel	
12/23/2016	KAK Final proofread and editing of reply brief to make final changes; review final PDF of brief with tables and certificate; correspondence with GMG and KSR re same, finalizing and filing today; review enotifications confirming filing of brief and MJN today; email to GMG re circulating same to co-counsel Shalov	1.20
	KSR Review drafts of reply brief, motion for judicial notice and supporting declaration. Email correspondence with KAK re corrections to reply brief and proof of service. Email from KAK re TOA and PDF. Instructions to GMG re fling logistics. Email from KAK re correction to certificate of service. Email from KAK re further edits to brief and TOA; discus with GMG. Further emails from KAK with edits to brief. Work with GMG on filing brief and MJN. Email from KAK re send filed docs to Shalov.	4.30
12/27/2016	GMG Review order re filed reply brief and prepare filing copies; email KAK re same	0.70
	KAK Review enotification confirming that court has accepted reply brief for filing and directing us to file paper copies; email to GMG re same	0.10
	KSR Review clerk's notice re reply brief filed; paper copies due.	0.10
12/28/2016	GMG Finalize filing copies and confer with KAK re same; arrange for delivery to 9th Circuit	0.60
	KAK Review and approve hard paper copies prepared by GMG in compliance with yesterday's order; email to co-counsel Shalov re same and next steps	0.20
12/30/2016	KAK Review correspondence from Ninth Circuit clerk re paper copies received but corrections needed; email to GMG re preparing and delivering new paper copies by Tuesday; email to clerk re same	0.20
1/3/2017	GMG Review 9th Circuit docket in <i>Troester v Starbucks</i> and email KAK re same; prepare filing copies as directed by court and email KAK re same; arrange for delivery to 9th Circuit	0.90
	KAK Follow up with GMG re submitting corrected hard copies of reply brief to clerk today; review and reply to email from co-counsel Shalov re expected timeframe for oral argument; correspondence with other attorneys re general experience in Ninth Circuit argument setting and typical timeframes; email to GMG re checking this in <i>Troester v Starbucks</i> ; review <i>Troester</i> docket and forward information to Shalov	0.40
1/4/2017	KAK Review enotification confirming submission of paper copies of reply brief; review and reply to emails from co-counsel Shalov re possibility of broaching settlement with Apple	0.20
1/23/2017	GMG Review available online information re Felczer v. Apple case and email KAK re same	0.20
	KAK Analysis of email from co-counsel Shalov re possible settlement and overbroad release in other wage & hour case against Apple in state court; draft reply email to Shalov and GMG re monitoring this; review public information on status of other Apple case (Felczer) and email to attorney Hogue re same; review and evaluate response from Hogue and verdict form from his case	0.60
1/27/2017	KAK Review enotification from Court stating that case may be set for oral argument on May calendar; review calendar and check availability; correspondence with co-counsel Shalov re same; began analysis of steps necessary to prepare for argument, including preparation of argument outlines	0.40

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			<u>Hours</u>
1/27/2017	KSR	Review Ninth Circuit notice re oral argument. Email from KAK re days for argument, court's calendar and argument preparation work.	0.30
1/28/2017	KAK	Began analysis of points to be made during oral argument and contents of oral argument outlines	0.40
1/30/2017	GMG	Review notice re oral argument; review appellate docket and 9th Circuit oral argument calendar and email KAK re same	0.40
	KAK	Correspondence with GMG re checking docket to determine names of 3-judge panel; per GMG, not indicated on docket yet	0.20
2/6/2017	GMG	Review 9th Circuit SF oral argument calendar for February, March and April and email KAK re same	0.30
	KAK	Continued analysis of steps necessary to prepare for oral argument in May; email to GMG re reviewing upcoming argument schedules in Ninth Circuit; review upcoming calendars and identify arguments to attend in February and April in preparation	0.60
2/10/2017	KAK	Review enotification re extension of time to file reply brief on the merits; email to plaintiffs' counsel requesting copies of final, as-filed opening brief and copy of answer brief on the merits; review email circulating same and began review (Troester)	0.30
2/23/2017	KSR	Discussion with KAK re briefing and watching for pertinent opinions.	0.20
2/28/2017	KAK	Review and reply to email from plaintiffs' counsel in <i>Troester v. Starbucks</i> re draft reply brief (Troester)	0.10
3/6/2017	KAK	Review email from class member with updated contact information; evaluate who is maintaining current class contact list and email to co-counsel Gallaway re same; correspondence with KSR re de minimis arguments made by Apple below and research needed	0.30
	KAK	Review final, as-filed merits brief in <i>Troester v. Starbucks</i> on de minimis issue; review and evaluate respondent's brief on the merits; analysis of arguments to be made in amicus curiae brief; began review of draft reply brief circulated by plaintiffs' counsel in <i>Troester</i> (Troester)	1.60
	KSR	Email from KAK re briefing of de minimis argument in district court. Review all plaintiffs' briefs and substantive orders; analyze basis for absence of de minimis briefing in second round of MSJs, and forward excerpts to KAK of briefing on issue. Response from KAK re further research and respond. Email from class member re new address; forward to GMG; email to Gallaway for Epiq to maintain.	1.20
3/7/2017	KAK	Continued review and analysis of draft reply brief in <i>Troester v. Starbucks</i> ; draft email to plaintiffs' counsel in <i>Troester</i> with comments and proposed revisions to draft reply; continued analysis of arguments for amicus brief (Troester)	2.40
3/15/2017	GMG	Review calendar for May oral argument in 9th Circuit and email KAK that we are not on calendar yet. Review docket and check dates for June oral argument and email KAK re same.	0.30
	KAK	Email to GMG re checking status of oral argument and panel assignment; review and evaluate new opinion certifying questions to California Supreme Court; review email from GMG circulating May calendar, which does not include our case; email to co-counsel Shalov re fact that argument will not happen in May after all	0.40
3/19/2017	KAK	Review and evaluate new opinion concerning circumstances under which issues may be referred to state supreme court; email to GMG re pulling same (Troester)	0.40

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			<u>Hours</u>
3/20/2017	GMG	Review <i>Troester</i> reply brief; review Supreme court rules re application for extension of time for amicus brief and email KAK re same (Troester)	0.30
	KAK	Correspondence with plaintiffs' counsel in <i>Troester v. Starbucks</i> re their final as-filed brief, deadline for amicus briefs and possible extension, and list of arguments they would consider helpful (Troester)	0.20
3/21/2017	KAK	Email to CAOC amicus committee re need for extension for <i>Troester v. Starbucks</i> amicus brief (Troester)	0.30
3/22/2017	GMG	Draft proof of service for application for extension of time to file amicus brief in <i>Troester</i> case and confer with/email KAK re same (Troester)	0.60
	KAK	<i>Troester v. Starbucks</i> amicus brief - Conference with GMG re intention to file extension request and need to prepare POS re same (Troester)	0.10
3/23/2017	KAK	Correspondence re CELA amicus committee co-chair position and <i>Troester v. Starbucks</i> (Troester)	0.20
3/24/2017	KAK	Further correspondence re coordination between CAOC and CELA on amicus brief; circulate reply brief on the merits to attorney Ari Stiller who is working on CELA's brief (Troester)	0.20
3/28/2017	KAK	Review enotification stating that Court is considering case for July 2017 oral argument calendar; review court's website to determine those dates and consider scheduling conflicts; correspondence with co-counsel Shalov and KSR re same; calendar date for either side to inform court of any scheduling conflicts	0.20
	KSR	Review court's calendar for July hearing; email from KAK re conflicts; respond; Shalov response.	0.10
3/31/2017	KAK	Review email from attorney Stiller with copy of CELA's original letter supporting review; follow-up with plaintiffs' counsel Leviant re possible topics to be addressed by an amicus; review voice mail from Stiller (Troester)	0.20
4/3/2017	KAK	Review and reply to email from attorney Stiller re proposed joint brief in <i>Troester v. Starbucks</i> (Troester)	0.10
4/4/2017	GMG	<i>Troester</i> - Draft application for extension of time and accompanying declarations, revise proof of service and email/confer with KAK re same (Troester)	2.20
	KAK	Review email from plaintiffs' counsel Leviant re possible topics for amicus support; telephone conference with attorney Ari Stiller re topics to be addressed in joint amicus brief for CELA and CAOC, as well as need to file extension request; email to GMG re preparation of initial draft of extension request; discussion with GMG re same; email to attorney Leviant re extension request and additional amicus support from other groups (Troester)	1.10
4/5/2017	GMG	<i>Troester</i> - Revise application for extension of time and accompanying declarations and confer with KAK re same; prepare email distro to all counsel and email KAK re same (Troester)	0.60
	KAK	Review and revise draft extension request prepared by GMG; circulate draft to CELA's counsel Stiller for him to complete his declaration; review revised request as edited by Stiller and forward to GMG for further edits; correspondence with CAOC committee confirming authority to request extension; draft email to defense counsel requesting their position on extension request (Troester)	0.80

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			<u>Hours</u>
4/6/2017	GMG	Troester - Finalize application for extension of time and confer with KAK re same; prepare signed PDF and arrange for filing and service; prepare PDF of filed application and circulate to co-counsel (Troester)	1.10
4/7/2017	KAK	Check docket re status of extension request (Troester)	0.10
4/10/2017	KAK	Check docket re status of extension request and sign up for enotifications (Troester)	0.10
4/12/2017	KAK	Review and reply to email from CELA counsel Stiller re status of extension request (Troester)	0.10
4/14/2017	KAK	Review and reply to email from co-counsel Shalov circulating order granting class certification of security search claims	0.20
	KSR	Email from Lee Shalov re EDCA opinion in bag check case. Review/analyze; review comments from KAK.	0.30
4/17/2017	GMG	Troester - Review amicus briefs from defense counsel and retailers and email KAK and KSR re same (Troester)	0.30
	KAK	Review enotification re order granting extension of time to file amicus brief of CAOC and CELA; email to GMG re calendaring same (Troester)	0.10
4/18/2017	GMG	Prepare binder for KAK with Troester appellate and amicus briefs (Troester)	0.30
4/20/2017	GMG	Review docket and check for 9th Circuit July oral argument calendar; email co-counsel re negative results	0.30
	KAK	Review and reply to email from co-counsel Shalov re any update on oral argument date; email to GMG re double-checking docket and to see whether July calendar has been posted; nothing yet	0.10
5/2/2017	GMG	Review 9th Circuit oral argument calendar and circulate to co-leads; calendar 7/11 oral argument date; check for identity of panel and email KAK re lack of same	0.40
	KAK	Review email from GMG re July calendar; review calendar setting our case for argument on July 10; correspondence with co-counsel Shalov re same	0.20
5/3/2017	GMG	Review 9th Circuit notice of hearing, electronics policy, current local rules and acknowledgment form; call clerk re acknowledgment form deadline and email co-counsel re same	0.40
	GMG	Troester - Review orders granting amicus filings, check docket re availability of briefs and email KAK re same (Troester)	0.30
5/10/2017	GMG	Troester - Email KAK re missing amicus briefs; revise appellate briefing binder	0.30
	KAK	Review and evaluate enotification re "acknowledgment of hearing notice" filed by defense counsel; email to GMG re checking rules re same; review further enotification and rules pulled by GMG; review and reply to email from co-counsel Shalov re coverage of oral argument	0.30
	KAK	Review order granting leave to file additional amicus briefs; draft email to plaintiffs' counsel Leviant requesting copies of all amicus briefs filed to date; forward same to GMG (Troester)	0.30
5/11/2017	GMG	Troester - Email Stiller re 3 additional amicus briefs; prepare revised appellate briefs binder for KAK; review email re wage order review project	0.30

		<u>Hours</u>	
5/11/2017	GMG	Prepare revised 9th Circuit acknowledgment form and email KAK re same	0.50
	KAK	Review enotifications re order granting leave to file CELA amicus brief and granting requests for judicial notice; review and evaluate previously-filed requests for judicial notice and assess impact of order granting same; correspondence with co-counsel Shalov and KSR re scheduling moot court session for July 10; review and evaluate materials linked to by Court concerning argument setting and acknowledgment form to be completed and filed prior to argument; review acknowledgment form filed by Apple; email to GMG re preparing same; review completed form as prepared by GMG and forward same to Shalov for review; email to Shalov re need to inform clients of upcoming argument and requesting that his associate do that; review rules re filing of supplemental authority letters prior to arguments; email to GMG re calendaring deadline to file same and pulling May and June argument calendars; identify argument dates to attend, including that set for June in <i>Watterson</i> ; review and reply to response of Shalov re acknowledgment form and advising clients; email to GMG approving form and instructions re filing with POS; began analysis of arguments to be made orally and assessing whether supplemental authority letters may be needed	2.40
	KAK	Review and forward to GMG additional amicus briefs received from plaintiffs' counsel Leviant; forward same to attorney Stiller for CELA; emails to GMG re historical wage order research assignment (Troester) (Amicus)	0.60
	KSR	Email with KAK and Lee Shalov re moot court session before 9th Circuit argument and preparation for same	0.20
5/12/2017	GMG	Review all iterations of Wage Order 5 back to 1919, prepare compilation of language re definition of "hours worked," overtime provisions and minimum wage, and email KAK re same	4.90
	KAK	Review and evaluate other amicus curiae briefs filed to date; continued analysis of arguments to be made in combined CELA/CAOC amicus brief; began work on timeline of amendments to statutory and Wage Order language in comparison to federal law (Troester)	4.10
5/15/2017	KAK	Continued analysis of arguments to be made in amicus brief; review and evaluate summary of wage order language prepared by GMG on evolution of definition of hours worked; review additional wage order language, including recording language, minimum wage language (which used to provide for weekly rather than hourly rates of pay), and overtime language; review AB 60 language and historical wording of Labor Code section 510, which now requires overtime pay for "any work" in excess of 8 or 40 hours (Troester)	6.60
5/16/2017	GMG	Confer with KAK and KSR re preparation for upcoming oral argument; review docket and briefs from <i>Watterson</i> case and email KAK and KSR re same	0.40
	KAK	Continued analysis of arguments for CAOC/CELA amicus brief, including further review of industry Wage Orders, legal research, and work on timeline; began drafting outline of points; correspondence with plaintiffs' counsel Leviant re relevant DLSE Enforcement Manual provisions (Troester)	4.80
	KAK	Conference with KSR and GMG re attendance at upcoming Ninth Circuit arguments, including <i>Watterson</i> argument; GMG to pull <i>Watterson</i> briefs; further discussion concerning oral argument preparation; review and evaluate California Supreme court's opinion in <i>Mendoza v. Nordstrom</i> and evaluate possible impact on arguments re interpretation of Wage Orders	0.60

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			<u>Hours</u>
5/16/2017	KSR	Discussion with KAK re Watterson appeal and potential impact on Frlekin hearing at 9th Cir, deadline for supplemental authority and watch for Watterson opinion, prep for moot court and hearing. Discussion re de minimis issue. Brief review/analysis of Watterson briefs.	0.50
5/17/2017	GMG	Troester - Revise compilation of Wage Order 5 excerpts and email KAK re same	0.30
	KAK	Correspondence with attorney Miles Locker re earlier versions of DLSE Enforcement Manual; began drafting amicus curiae brief; prepare for and participate in telephone conference with CELA's counsel Ari Stiller re status and allocation of work; continued work drafting brief and further research on regulatory history (Troester)	7.70
	KAK	Review and reply to correspondence from KSR re briefing on "de minimis" argument earlier in the case; review and evaluate class cert order by Judge Alsup holding that "de minimis" rule applies to California wage claims but that it presents a classwide issue	0.30
	KSR	Review email to KAK on references to de minimis argument in second round of MSJ briefing, and forward pertinent briefs/order to KAK. Review/analyze earlier rounds of briefing to locate/summarize de minimis arguments.	1.40
5/18/2017	GMG	Troester - Prepare PDF of DLSE opinion letter and manual excerpts and email KAK re same	0.20
	KAK	Continued work drafting amicus brief, with special focus on section addressing Civil Code section 3353 (de minimis or "trifles"); telephone call to attorney Locker at DLSE to arrange time to view historical DLSE Enforcement Manuals; visit DLSE offices to review and copy historical DLSE Enforcement Manuals and an additional opinion letter; analysis of same and incorporate into detailed timeline; additional legal research as suggested by historical manual provisions; continued work drafting brief; correspondence with plaintiffs' counsel re historical manuals obtained today (Troester)	8.30
5/19/2017	KAK	Continued legal research for amicus brief; continued work drafting brief, with special focus on section concerning historical development of relevant Wage Order provisions on compensation for "all hours worked" (Troester)	8.70
	KAK	Analysis of possible supplemental authority letter on <i>Mendoza v. Nordstrom</i> , decided this month by Cal. Supreme Court, on use of dictionaries to define terms in Wage Orders; review enotification re transmission of record to Court of Appeal	0.30
5/22/2017	KAK	Continued work drafting joint amicus brief, including analysis of best organization of arguments; correspondence with Ari Stiller re status (Troester)	5.70
5/23/2017	KAK	Continued work drafting joint amicus brief; review and incorporate draft sections circulated by attorney Stiller; circulate complete brief to Stiller, with detailed transmittal email re remaining tasks; email to GMG re proofread and cite check; email to KSR requesting comments on draft brief (Troester)	6.90
	KAK	Analysis of "de minimis" arguments made by Apple in earlier briefing and interplay with issue now before California Supreme Court in <i>Troester</i>	0.40
	KSR	Troester - Email from KAK requesting review and redline of amicus brief. Review/analyze/draft redline to amicus brief; short discussion with KAK re brief.	2.10
5/24/2017	GMG	Troester - Proofread amicus brief, check cites and quotes and draft table of authorities; email/confer with KAK re same	4.40
	KAK	Review and edit current draft of joint amicus brief; correspondence with Stiller and GMG re allocation of work needed to finalize brief; email to Stiller with substantive comments and proposed changes to his sections; draft introduction to brief; review	4.20

		<u>Hours</u>
	and incorporate redline provided by Stiller; draft additional further revisions; circulate current draft to GMG for cite check and KSR for review and comment; review and incorporate results of GMG cite check; further research and add additional cites to Portal-to-Portal Act; circulate current draft to attorney Stiller; discussion with KSR re status of her review (Troester)	
5/24/2017	KAK Review and evaluate recent decision on "control" test (<i>See's Candy II</i>) and assess impact and whether to submit to Ninth Circuit as supplemental authority	0.30
	KSR Instructions to GMG to provide details for Watterson argument at 9th Circuit.	0.20
	KSR Troester - Email from KAK re amicus brief. Draft redline with edits/comments and forward to KAK.	0.70
5/25/2017	GMG Troester - Proofread revised amicus brief, check cites and quotes and revise table of authorities; confer with KAK re same	1.60
	KAK Review comments and proposed edits from KSR and incorporate same into draft joint amicus brief; draft additional revisions; circulate final revised draft to attorney Stiller, CAOC committee chairs for approval, and plaintiffs' counsel; review and reply to emails from CAOC committee approving brief; follow-up email to Stiller re same; correspondence to GMG re logistical issues re filing next week (Troester)	1.60
5/26/2017	GMG Troester - Review counsel list and draft proof of service for amicus brief; email KAK re draft proof and table of authorities; finalize brief and email KAK re same; prepare original for signatures	3.30
	KAK Review and reply to email from attorney Stiller confirming CELA's approval of joint amicus brief; review draft POS and TOA prepared by GMG; email to GMG approving same and re logistics for finalizing and filing tomorrow; review final brief and email to GMG re finalization of same (Troester)	0.30
5/29/2017	KAK Review final brief as prepared by GMG; draft final revisions and email GMG re same; review article of interest re wage theft in San Francisco Chronicle this weekend and forward same to plaintiffs' counsel (Troester)	0.40
5/30/2017	GMG Troester - revise amicus brief per KAK final edits; re-paginate brief and confer with KAK re same; prepare final signed PDF and filing and service copies and arrange for service	4.60
	GMG Check for <i>Watterson</i> panel announcement and email KAK re same and location of briefs	0.20
	KAK Review and sign final amicus brief and discussions with GMG re filing logistics; review and reply to email from plaintiffs' counsel (Troester)	0.30
5/31/2017	GMG Troester - E-submit amicus brief to Supreme Court and arrange for filing; circulate conformed brief to co-counsel; email KAK re same	0.50
	KAK Correspondence with GMG re status of filing of amicus brief today; check docket; forward final brief to CAOC (Troester)	0.10
6/1/2017	KAK Correspondence to plaintiffs' counsel in <i>Watterson v. Garfield Beach CVS</i> re their upcoming oral argument and similar issues raised in our case	0.20
	KAK Check docket to confirm court's receipt of filing; review enotification re same (Troester)	0.10
6/9/2017	GMG Troester - Check docket and email co-counsel re filing of brief	0.10

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		<u>Hours</u>	
6/12/2017	KAK	Check argument schedule re sample oral arguments to attend this week in preparation for our argument on 7/11/17; conference with KSR re same	0.20
	KSR	Discussion with KAK re Watterson argument and panel.	0.20
6/13/2017	GMG	Update appellate binder per KAK request; review <i>Watterson</i> oral argument schedule and docket and email KAK and KSR re same; confer with KSR re location of <i>Watterson</i> briefs in network	0.40
	KAK	Continued preparation for oral argument, including review of arguments made in our briefs re <i>Watterson</i> decision; review appellate briefs on "control" issue filed in <i>Watterson</i> ; analysis of possible need for errata to our motion for judicial notice and email to GMG re same	3.70
	KSR	Emails with KAK re attending Watterson argument. Instructions to GMG re docket. Review/analyze Watterson opinion and quick look at briefs. KAK email re supp authorities; GMG response with docket.	0.40
6/14/2017	GMG	Review 6/16 MJN and confer with KAK re inaccurate exhibit descriptions; review MJN from <i>Watterson</i> case and email KAK and KSR re same; draft notice of errata, review local rules and email KAK and KSR re same	1.30
	KAK	Continued preparation for oral argument, including attendance at <i>Watterson</i> argument and other arguments in Ninth Circuit; post-argument discussion with KSR and email with co-counsel Shalov re points discussed by judges during argument and how they may impact what facts to emphasize in our case; re-read <i>Alcantar</i> dissenting opinion by Judge Smith; correspondence to KSR and Shalov re same; check rules re related cases and email to KSR and Shalov re same; discussion with GMG re checking previously-filed motion for judicial notice for possible error in description of one of the wage order exhibits; further discussion with GMG re same and need to file errata to correct error re Exhibit 2; further discussion with KSR re argument preparation	5.30
	KSR	Attend Watterson hearing at 9th Circuit to gauge arguments and questions from prospective panel on similar legal issues. Discussion with KAK re Watterson hearing and strategy for oral argument in Frlekin. Emails with KAK and Lee Shalov re cases not related. Further discussion with KAK, GMG re errata needed for request for judicial notice. Email from GMG re errata rules.	2.10
6/15/2017	GMG	Review filing procedures and contact ECF help desk re filing errata; forward response and confer with KAK re same; prepare PDF of corrected MJN with declaration and exhibits and confer with KAK re same; file via ECF	2.90
	KAK	Continued preparation for oral argument, including attendance at today's Ninth Circuit argument session; continued work drafting outline of oral argument points; review and revise draft errata prepared by GMG to correct error in motion for judicial notice; circulate same to KSR and co-counsel Shalov for review and comment; review email from Shalov approving same; discussion with GMG re procedure for filing; call to clerk re same; convert errata into a corrected motion, per clerk's instructions; prepare corrected supporting declaration; re-circulate to KSR and Shalov; discussion with GMG re finalizing same with exhibits; review and approve final corrected motion; review enotification confirming filing of same	6.20
	KSR	Discussion with KAK, GMG re Watterson argument and preparation for argument in Frlekin. Further emails re errata/corrected motion re wage orders. Notice correction motion filed.	0.30
6/16/2017	KAK	Continued work drafting outline of oral argument points; review enotification re order granting corrected motion for judicial notice, filed yesterday	0.90

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		<u>Hours</u>	
6/19/2017	KAK	Continued work drafting outline of affirmative argument points and responses to anticipated questions	1.30
6/20/2017	KAK	Continued work drafting outline of oral argument affirmative points and answers to anticipated questions; prepare statute sheet with text of relevant Wage Order language and statutes for use during argument	3.00
6/21/2017	KAK	Continued preparation for oral argument, including re-read of decisions that may be mentioned, including Stevens and Rutti from the Ninth Circuit; draft oral argument preparation to-do list	0.50
6/26/2017	KAK	Check for any relevant new Ninth Circuit decisions, including <i>Watterson</i> ; none yet; research regarding other potentially new decisions	0.60
6/27/2017	GMG	Check 9th Circuit calendar for panel names and email KAK re lack of same	0.10
	KAK	Check for relevant new authorities; continued work drafting oral argument outline; email to co-counsel Gallaway re advising clients of argument; email to GMG re checking for panel assignment; none yet	2.70
6/28/2017	KAK	Check for relevant new authorities; continued work drafting oral argument outline and otherwise preparing to deliver argument; check court's calendar for panel assignment (none yet); review email from co-counsel Gallaway to clients advising them of date of upcoming argument	2.30
6/29/2017	KAK	Continued preparation for oral argument, including refinement of outline; re-read excerpts of record and supplemental excerpts of record; continued re-reading of most relevant decisions likely to be discussed during the argument; check for relevant new authorities	4.50
6/30/2017	KAK	Continued preparation for argument, including further work on outline and organization of major points; conference with KSR re portions of outline and best approaches to particular issues; further work on statutory language chart to be used during argument; check for any relevant new opinions	5.40
	KSR	Meeting with KAK to discuss arguments and strategy for 9th Circuit argument, mini-moot court, and further preparation, e.g. check panel and whether opinion issued in <i>Watterson</i> .	0.70
7/3/2017	KAK	Review and reply to email to co-counsel Shalov re argument preparation and possibility that he won't be able to travel; email to KSR re same; check for relevant new opinions; check for panel assignment; email to KSR and co-counsel Gallaway re research on three assigned judges (Graber, Friedland and Marshall); preliminary review and analysis of judicial bios and email to KSR and Shalov re same	0.90
	KSR	Emails with Lee Shalov, KAK re Lee in hospital, won't participate in moot court session or hearing. Email from KAK with assigned panel; research panel and circulate info on each judge. Email from KAK re check Stevens, Rutti, Alcantar panels for overlap; research/analyze panels and respond.	1.30
7/6/2017	GMG	Review 9th Circuit day sheet listing panel; research re online comments and articles re panel members; prepare memo and email KAK re same	3.70
	KAK	Continued argument preparation and refinement of outline; review and reply to email from courtroom clerk confirming appearance on Tuesday; check for any relevant new opinions; review and evaluate correspondence from co-counsel Shalov concerning possible questions from panel; review and evaluate research on assigned panel pulled by GMG; email to co-counsel Gallaway re status of research on panel; circulate current outline to co-counsel Shalov	6.80

		<u>Hours</u>
7/6/2017	KSR Email from Brett Gallaway re decisions of panel; KAK response.	0.20
7/7/2017	GMG Confer with KSR re panel members and forward research re same; check excerpts of record for specific rulings re de minimus issue and confer with KSR/email KAK re same	0.40
	KAK Continued preparation for oral argument; review detailed comments of co-counsel Shalov on draft argument outline; incorporate same into outline; practice run-throughs of argument with KSR and lengthy discussions with KSR re strengthening the argument; forward outline to KSR for review and comment; review email from co-counsel Gallaway with decisions of interest by our three panelists; preliminary review of same and email to Gallaway re additional research needed; email to KSR re same	4.10
	KSR Prepare for moot court session with KAK to prepare for Ninth Circuit argument. Participate in moot court session with KAK. Instructions to GMG re loading excerpts of record for argument to laptop, other logistics. Review/analyze and forward to KAK court's orders re de minimis defense; and instructions to GMG to locate orders in excerpts of record. Review/analyze comments from Lee Shalov on arguments to raise; email to KAK with further analysis on "required" and "control" test. Response from GMG re cited docs not in excerpts of record. Further emails with KAK lack of relevance of de minimis issue, and support in event issue raised by Apple at argument on appeal. Review FLSA opinions circulated by Brett Gallaway from assigned Frlekin panel, and emails with KAK re opinions.	2.60
7/10/2017	GMG Review Shalov declaration exhibits from excerpts of record regarding "churn," "shrinkage" and "theft," extract relevant excerpts and confer with KSR and KAK re same; prepare files and settings on KSR laptop for tomorrow's oral argument and confer with KSR re same; check Watterson docket and email KAK re same	1.90
	KAK Review voice mail message from reporter seeking comment on upcoming argument; email to co-counsel Shalov re same; continued preparation for argument, including revisions to outline; check for new opinions; further practice run-throughs with KSR; continued work revising argument, reviewing cases, and reviewing briefs, and continued refinements of argument and outline	13.20
	KSR Instructions to GMG re excerpts of record concerning de minimis issue for Ninth Circuit argument. Discussion with KAK and instructions to GMG re issue of regular job duties and theft prevention; discussion with GMG re OCR and search for churn, theft, shrinkage etc. in excerpts of record. Moot court preparation with KAK for 9th Circuit argument. Further analysis of theft documents in record to support that checks were part of assigned duties; email cites and substance of evidence to KAK. Review evidence on theft prevention from GMG; forward to KAK for 9th Cir. outline. Instructions to GMG re docket. Email with KAK re logistics for argument. Further analyze and review loss prevention evidence and forward additional evidence to KAK for outline. Print/highlight docs from record re loss prevention duties to prepare for argument. Review/analyze opinions of panel judges forwarded by Brett Gallaway.	4.90
7/11/2017	GMG Confer with KAK and KSR re oral argument; review video of presentation; review audio file and research transcription services	0.90
	KAK Final preparation for oral argument; appear and present oral argument; pre- and post-argument discussions with KSR re strategy and next steps; review and reply to correspondence from co-counsel Gallaway and Wilkerson regarding argument and possible referral of questions to California Supreme Court; check applicable rules re deadline to file supporting letter in California Supreme Court if questions are referred; email to KSR and co-counsel re same and need to continue checking for <i>Watterson</i> opinion; check for <i>Watterson</i> opinion; correspondence with co-counsel Shalov re argument and next steps	3.60

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		<u>Hours</u>
7/11/2017	KAK	0.20
	KSR	3.20
7/12/2017	GMG	1.60
	KAK	0.40
	KSR	0.20
7/13/2017	KAK	0.30
7/14/2017	GMG	6.60
	KAK	0.10
7/17/2017	GMG	2.60
7/18/2017	KAK	0.20
7/21/2017	KAK	0.20
7/26/2017	GMG	0.10
	KSR	0.20
7/28/2017	GMG	0.10
7/31/2017	KAK	0.10
8/2/2017	KAK	0.20
8/4/2017	GMG	0.30
8/7/2017	KAK	0.40

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		<u>Hours</u>	
8/7/2017	KSR	Review/analyze order in Watterson; emails with KAK and GMG re effect on Frlekin 9th Circuit appeal.	0.30
8/16/2017	GMG	Review 9th Circuit order certifying question to CA Supreme Court and confer with KAK re same; calendar deadlines for letters in support/opposition and replies; review filing procedures in CA Supreme court and confer with KAK re same; review 9th Circuit service/filing procedures and email clerk re same	2.60
	KAK	Review enotification re opinion requesting decision from California Supreme Court on compensability issue; review and evaluate opinion; calculate deadline to file letters in support of or in opposition to certification; correspondence with KSR and co-counsel Shalov re same as well as anticipated procedure if questions are taken; email to GMG re deadlines for calendar and logistics for filing letter to Cal. Supreme Court electronically; discussion with GMG re same; telephone calls with reporters from the Daily Journal and the Recorder; draft emails to CAOC and CELA requesting amicus letters in support; began analysis of points to be made in letter in support of request for decision; review press coverage of opinion and circulate to Shalov and KSR; draft email to co-counsel Gallaway re advising clients of this development and advising them not to talk to the press; review correspondence from CAOC approving amicus request and email to Shalov and KSR re same	2.10
	KSR	Review 9th Circuit order certifying question to Cal SC; email to Shalov, Gallaway and KAK re certification. Email from Shalov re no certification on aspect of wage order Alsup also rejected. Review/analyze certification order and research rules and article concerning procedures for briefing/argument on certified questions; circulate research. Email from KAK re briefing schedule and argument procedures. Further emails with KAK and Shalov re calls with reporters and timing to respond to certification request. Email from KAK re additional issues to add to add to letter response, including certification of question re suffered or permitted to work. Discuss ruling with KAK. Email from KAK re CAOC amicus committee approved request to file letter support with Cal SC. Further email from KAK re research re certified questions and procedures. Review Recorder article re order certifying to Cal SC. Email from KAK re advising clients with advice not to talk to press; Gallaway response. Email from Shalov re no comments from Julie Dunne to press. Email from KAK re prediction of response from Cal SC by October.	1.10
8/17/2017	GMG	Call 9th Circuit clerk re filing procedures for letter to CA Supreme Court and email KAK re same; review email correspondence and circulate 9th Circuit briefs to potential CAOC amicus counsel	0.60
	KAK	Review further press coverage of Ninth Circuit opinion; review and reply to CAOC amicus committee members re amicus support; further correspondence with co-counsel Shalov and KSR re logistics and California Supreme Court rules, as well as procedure after Supreme Court proceedings conclude; review email from GMG re procedure for serving letter in support of accepting questions	0.80
	KSR	ECF notice re order to file briefs, excerpts etc. in Cal SC. Email from Gallaway with Law 360 article, and Shalov with Bloomberg article; review. Emails with Shalov and KAK re press and procedural deadlines if California Supreme Court accepts review, and rules in plaintiffs' favor. Email from Reuters reporter and forward to Shalov re response; email response from Shalov; forward to KAK. Email from KAK re bag check time estimate issue; respond. Email from KAK re CELA to file amicus brief in Cal SC, and draft of letter to Cal SC re certifying question. Email from KAK re correction to Daily Journal reporter on time estimate for checks. Email from Shalov re procedures assuming and after Cal SC review. KAK response re likely outcome if prevail on the merits in Cal SC, including remand back to Ninth Circuit and possible, supplemental briefing there; reference to <i>Mendoza v. Nordstrom</i> . Review/analyze <i>Mendoza</i> . Email from Shalov re Reuters interview.	1.30

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		<u>Hours</u>
8/18/2017	KAK Further correspondence with CAOC committee re amicus letters in support of accepting questions and coordination of same; correspondence to committee re interplay with "de minimis" issue raised in <i>Troester v. Starbucks</i>	0.40
8/22/2017	GMG Prepare draft letter to Supreme Court in support of certified question, draft proof of service and email KAK re same	1.10
	KAK Continued analysis of points to be made in letter in support of accepting questions; began drafting letter; email to GMG re preparation of draft of letter; review sample letters from <i>Troester</i> case forwarded by attorney S. Leviant; check Supreme Court docket for case number	0.50
8/25/2017	GMG Review CELA amicus letter and email KAK and KSR re same; review revised CELA amicus letter and email KAK and KSR re same	0.30
	KAK Review and evaluate letter in support of review filed by CELA; forward same to co-counsel Shalov; forward same to attorneys for CAOC who are working on a similar letter; review corrected CELA letter and forward same to Shalov and CAOC counsel; review of initial draft letter prepared by GMG and began work on revisions	0.40
8/28/2017	KAK Continued work drafting letter in support of accepting questions; review enotifications re filing of CELA submission and notice of appearance	2.80
8/30/2017	KAK Review and reply to email from attorney Stiller, for CAOC, re letters to Supreme Court in support of accepting questions for review	0.10
8/31/2017	GMG Draft cover letter to 9th Circuit and proof of service for letter to CA Supreme Court re certified question, prepare PDF of exhibit and email KAK re same	1.40
	KAK Continued work drafting letter to Supreme Court in support of accepting certified questions; review draft letter prepared for Bet Tzedek; correspondence with co-counsel Shalov and attorney Shiller re same; finalize draft letter and circulate to co-counsel Shalov and KSR for review and comment; discussion and correspondence with GMG re tasks necessary to complete this filing, including cover letter to Ninth Circuit and preparation of exhibit to be attached; review draft letter to Ninth Circuit, draft POS, and draft exhibit; email to GMG approving same; correspondence with counsel for amici curiae re status of their letters; analysis of whether to request that question be restated to cover "suffered or permitted to work test"; draft additional revisions to letter and re-circulate to KSR and Shalov for further comment	10.10
	KSR Review/analyze draft letter to Cal SC in support of accepting certified question from Ninth Circuit. Draft redline comments and email to KAK.	0.90
9/1/2017	GMG Proofread letter to CA Supreme Court, check cites and quotes and confer with KAK re same; review filing procedures and email counsel for CAOC and Bet Tzedek re same; finalize letter, exhibit and proof of service and email KAK re same; prepare PDF of 9th Circuit filing and email KAK re same; prepare hard copies for filing arrange for courier and confer with KSR re same; e-file letter with Supreme Court and 9th Circuit; review filed copies and invoices	4.10
	KAK Review comments of co-counsel Shalov on draft letter to Supreme Court; draft revisions to letter to incorporate same, including review of ER for cites concerning length of time taken by the searches on average; circulate revised letter; discussion with GMG re filing logistics; review and incorporate comments of KSR on draft letter; finalize letter and instructions to GMG re preparing exhibit and proceed with filing/service; review and reply to email from Bet Tzedek circulating their amicus letter; review and reply to email from CAOC circulating their amicus letter; forward same to Shalov, KSR and GMG; review and approve final PDF of letter with exhibit prepared by GMG and instruct GMG to proceed with filing/service; discussion with KSR re	2.20

		<u>Hours</u>
	possible settlement options at this stage of case; review enotifications confirming electronic filing and service of letter	
9/1/2017	KSR Review/analyze and draft redline to letter to Cal. Supreme Court in support of certified question. Finalize redline and circulate. Review/analyze further edits on email from KAK, including footnote re minutes elapsed during searches. Discussion with KAK re strategy. Discussion with GMG re issues with ECF filing and belt and suspenders, wet signature and courier + keep trying ECF approach. Further discussion with GMG re ECF system changed docs Cal Supr. Ct. would accept by efile on Sept. 1, but TrueFile system not updated to accept; submitted to TrueFile as backup to physical filing with wet signature, possible acceptance. Further discussion with GMG re electronic, belt and suspenders, filing, and apparent success. Review ECF notice of letter to Cal SC. Email from KAK re CAOC amicus brief. Review ECF notice re filing.	1.60
9/6/2017	KSR Review 9th Circuit notice re non-party Bet Tzedek Legal Services letter in support of certified question.	0.10
9/8/2017	GMG Check docket and email KAK and Shalov re lack of Apple response to certified question	0.10
	KAK Review and reply to email from co-counsel Shalov re whether we have received service of a letter from Apple; review enotifications re additional supporting letters filed this week	0.10
9/11/2017	KAK Review and reply to further correspondence from co-counsel Shalov re whether Apple can be expected to file a reply letter by this Friday and when we can expect a ruling from the California Supreme Court; double-check wording of rule re this Friday's deadline for reply letters; check docket	0.30
9/14/2017	KAK Review email from co-counsel Shalov re new bag check decision in which court applied de minimis rule from federal law; email to Shalov and KSR re status of <i>Troester v. Starbucks</i> , in which the California Supreme Court will be addressing this issue and forwarding amicus brief; check dockets re status; review reply of Shalov re same	0.30
	KSR Email from Lee Shalov re Nike bag check case opinion; pull and review.	0.20
9/19/2017	GMG Call clerk to confirm receipt of letters re certified question and email KAK re same	0.40
	KAK Check Supreme Court's docket for any other filed letters; email to GMG re calling clerk re missing entries on docket and to confirm proper filing of our letter in support of taking certified question; review and reply to response from GMG re discussion with clerk	0.20
9/20/2017	GMG Review emails re Supreme Court order taking up certified question; review 9th Circuit order and examples from other cases and email KAK re deadline and form for notice to 9th Circuit	0.80
	KAK Review docket entry and order granting Ninth Circuit's request to review questions; compare phrasing of question in Ninth Circuit's order to determine how it was rephrased; draft email to KSR and co-counsel Shalov and Gallaway re same; review rules and determine due date for our opening brief on the merits; further email to Shalov, Gallway, KSR and GMG re same; review responses of KSR, Shalov and Gallaway re same; draft email to amicus participants requesting support and projected due date for amicus briefs; email to GMG re preparation of notice to Ninth Circuit re accepted questions; began analysis of points for opening brief on the merits and consider whether an extension of time will be needed	0.80

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			<u>Hours</u>
9/20/2017	KSR	Emails with KAK, Lee Shalov, Brett Gallaway re Cal SC accepting question certified from 9th Circuit. Review/analyze order and circulate email re typo in certified question to resolve with court; KAK response.	0.30
9/21/2017	GMG	Review dockets and notices in similar cases and confer with KAK re notice to 9th Circuit re Supreme Court taking up certified question	0.30
	KAK	Review further correspondence from co-counsel Shalov; review email from co-counsel Gallaway to clients advising them of Supreme Court's ruling; review and reply to email from GMG re notifying Ninth Circuit of Supreme Court's order; discussion with GMG re same; analysis of anticipated amount of time before argument and decision; analysis of whether to seek extension of time to file opening brief and possible extended deadlines; discussion with KSR re same; preliminary analysis of work necessary to convert Ninth Circuit Briefing into Opening Brief on the Merits and need for RJN of historical Wage Orders	0.50
	KSR	Email from Cutler at Bloomberg re implications of Cal SC accepting certified question. Email from Gallaway reporting on court's acceptance of certified question to clients. Discussion with KAK re Bloomberg email, correction required to certified question and need to wait for order from court, briefing schedule and whether to seek extension, etc.	0.50
9/22/2017	GMG	Review order accepting certified question and circulate to KAK and KSR; review rules and begin to draft application for extension of time to file opening brief	0.60
	KAK	Draft email to GMG with instructions to prepare draft of extension request as well as plans for OBM and for a request for judicial notice of some of the documents from the Ninth Circuit RJNs; discussion with GMG re electronic filing logistics; review and evaluate copy of formal Supreme Court order and compare to wording of Ninth Circuit's issue; forward same to co-counsel Shalov and Gallaway; call to clerk re discrepancy and left message	0.40
	KSR	Discussion with KAK re briefing schedule ; reviewed filed order from Cal SC accepting certified question. Email comments from KAK re order and no rephrased question.	0.40
9/25/2017	GMG	Finish drafting extension request, draft proof of service and email KAK re same	0.90
9/26/2017	GMG	Review docket and 9th Circuit notice re Supreme Court acceptance of certified question and email KAK re same	0.30
	KAK	Check Supreme Court docket re status; review and reply to email from co-counsel Shalov re possible settlement discussions; email to GMG re notification to Ninth Circuit due tomorrow; review docket and copy of Supreme Court order as filed with Ninth Circuit, which complies with requirement to notify that court by tomorrow	0.20
9/27/2017	KAK	Review and reply to email from co-counsel Shalov with draft message to defense counsel suggesting settlement discussions; email to Shalov re summary of request for clarification of order, which did not actually rephrase the question although it said the question was being rephrased; review email from Shalov to defense counsel re possible settlement discussions	0.10
9/28/2017	GMG	Proofread letter to Supreme Court, check cites and quotes and confer with KAK re same; prepare attachment, proof of service and final signed PDF and email KAK re same	1.20
	KAK	Second call to clerk regarding fact that the Supreme Court's order says that the issue is being rephrased, but the phrasing matches that of the Ninth Circuit's order; per clerk's instructions, draft letter to Supreme Court requesting clarification; circulate draft letter to co-counsel Shalov and KSR for review and comment; circulate to GMG for proofread and cite check; review comments of Shalov and KSR and draft letter;	2.20

		<u>Hours</u>
	discussion with KSR re same; further correspondence to Shalov re same; review attachments and proof of service prepared by GMG; email to GMG re revisions needed; review and sign final draft of letter; discussion with GMG re filing tomorrow; review and revise draft of application for extension of time to file opening brief on the merits, and supporting declaration, initially prepared by GMG; circulate same to co-counsel Shalov and KSR for review and comment; email to Shalov re whether he wants to seek pro hac vice admission in Cal. Supreme Court	
9/28/2017	KSR Review/analyze draft letter from KAK to Cal. SC re certified question. Email to Shalov/JK re looks good as drafted and should not add search policy text.	0.30
9/29/2017	GMG Prepare final letter to Supreme Court; email KAK re filing; circulate conformed letter to co-counsel for filing today	0.60
	KAK Review and reply to email from co-counsel Shalov re pro hac vice application; email to GMG re status of letter re discrepancy in certified question, to be filed and served today	0.10
10/2/2017	GMG Review rules and examples and prepare draft MJN with declaration and proposed order for Supreme Court opening brief and email KAK re same	1.90
10/3/2017	KAK Review draft of motion for judicial notice prepared by GMG; email to GMG re revisions needed	0.20
10/4/2017	GMG Prepare revised draft motion for judicial notice and email KAK re same	0.70
10/7/2017	KAK Draft revisions to application for extension of time and supporting declaration; review Rules and add argument concerning complexity of issues; circulate same to co-counsel Shalov and KSR for review and comment; email to GMG re proofread and cite check; draft email to defense counsel Dunne and Boyer requesting their client's agreement not to oppose the application; review rules concerning service of extension requests on the client and email to GMG re same	0.60
10/9/2017	GMG Proofread extension request and declaration, check cites and numbers, prepare revised proof of service, review filing procedures and email KAK re same	0.90
	KAK Review and reply to email from defense counsel Dunne re extension request; draft further revisions to extension request; email to GMG re finalizing same; review revised application and POS prepared by GMG and email to GMG re further revisions needed	0.20
10/10/2017	GMG Review previous extension requests and email KAK re client information language in attached declarations; email KAK re proof of service language; prepare final signed PDF of extension request	0.60
	KAK Draft further revisions to application for extension of time; further correspondence with GMG re requirement for service on clients; review and reply to email from DIR attorney requesting copies of briefs; review voice mail message from this attorney; further email correspondence with DIR attorney re briefing schedule; follow-up email to defense counsel Dunne re her client's position on extension request; review and reply to email from Dunne stating that her client does not oppose the request; draft further revisions to extension request to reflect this and add language regarding an additional scheduling conflict that arose today; correspondence with GMG re finalizing same for filing tomorrow; review and approve revised POS prepared by GMG; draft email to clients regarding the anticipated extension request, to be served on them tomorrow; review and sign final application and supporting declaration	0.90
10/11/2017	GMG Prepare final extension request; prepare copies and arrange for filing and service; circulate to co-counsel	0.90

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		<u>Hours</u>
10/11/2017	KAK Review and approve final PDF of application for extension and supporting declaration; circulate same to clients by email	0.10
10/13/2017	KSR Email from Gregg Adam re amicus curae brief to Calif. Supreme Court, and issues. Respond to Gregg. Email from Brett Gallaway with LAW 360 article re Converse MTD order; review; respond. Adam response to email.	0.60
10/16/2017	KAK Review correspondence from attorney Gregg Adam re possible amicus support; review and reply to email from co-counsel Gallaway circulating article on de minimis ruling in another bag check case; check docket re status of application for extension of time and email to co-counsel Gallaway and Shalov re same	0.20
10/17/2017	KAK Returned call from attorney Gregg Adam re possible amicus support and left message; check docket re status of extension request; review enotification and docket entry stating that extension request was granted	0.10
10/18/2017	KAK Check docket to confirm length of extension granted yesterday; draft email to attorney Anne Stevason at DIR, who previously contacted me requesting copies of briefs, re extension of briefing schedule; review her reply	0.10
	KSR Email from KAK forwarding Cal Supreme Court order granting extension for briefing; calendar.	0.20
10/20/2017	GMG Review order extending deadline for opening brief and circulate to co-counsel	0.10
	KSR Email from Gregg Adam re amicus brief; forward with comments to KAK. KAK response re call to Adam and follow up.	0.30
	KAK Review email from attorney Adam re amicus support and reply to KSR re follow up	0.10
10/24/2017	KAK Prepare for and participate in conference call with KSR and attorneys Adam and Taylor re possible amicus support; forward copies of briefs in this case as well as <i>Troester v. Starbucks</i>	0.80
	KSR Conference call with KAK, Gregg Adam and Matthew Taylor re amicus brief related to their peace officers action. KAK email to Adam/Taylor with Troester amicus briefs on de minimis issue; quick review. Email from KAK to Adam/Taylor with Ninth Circuit Frlekin briefs; Adam response.	0.80
11/13/2017	KAK Review and evaluate potentially relevant new opinion on compensability of rest break time; preliminary legal research for opening brief due next month; review formatting and contents of sample AOBs filed in California Supreme Court following a Ninth Circuit reference	0.60
11/14/2017	KAK Further review of procedural requirements for opening brief; began preparing brief; draft initial outline of main sections of brief	1.70
11/27/2017	KAK Continued work drafting opening brief, with focus on factual background section and organization of arguments	3.90
11/28/2017	GMG Begin review of statement of facts in draft opening brief and check record cites.	1.90
	KAK Continued work drafting opening brief; email to GMG re checking ER cites in current draft of fact section of brief	0.30
11/29/2017	GMG Continue review of statement of facts in draft opening brief and check record cites.	1.40
	KAK Continued work on reply brief	0.20

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			<u>Hours</u>
11/30/2017	GMG	Finish review of statement of facts in draft opening brief and check record cites.	1.30
	KAK	Review and reply to email from co-counsel Shalov re status of opening brief due next month	0.10
12/4/2017	KAK	Review and reply to attorney Adam re last week's order granting review in their <i>Stoezl</i> case, raising related issues; check docket in that case and email to Adam requesting copies of briefing; continued work drafting opening brief, with special focus on expanded discussion of historical text of Wage Orders and rules applied by courts in construing the orders	3.90
12/5/2017	GMG	Emails with Legislative Intent Service and KAK re Labor Code 1174; library research at SF Main and SF Law to obtain definitions from Merriam-Webster 11th and American Heritage 4th editions	3.10
	KAK	Continued work drafting opening brief, with focus on regulatory history of wage order's language and definitions of "control" and "require"; correspondence with GMG re legislative history of Labor Code section 1174; correspondence with GMG re dictionary research for brief	3.30
12/6/2017	GMG	Westlaw research re <i>Integrity Staffing</i> cite; review Supreme Court filing rules and email KAK re same; further library research at SF Main and SF Law re definitions from Merriam-Webster 11th and American Heritage 4th editions	1.40
	KAK	Review dictionary definition excerpts obtained from library by GMG; discussion with GMG re same; incorporate same into draft opening brief; continued work drafting opening brief, with focus on argument that under Wage Order's plain text, check time is compensable; began drafting section of brief focused on <i>Morillion</i> ; discussion with KSR re status of brief; email to GMG re checking <i>Busk</i> cite; correspondence with GMG re filing logistics for brief and MJN in two weeks	6.10
	KSR	Discussion with KAK re status of opening brief and assistance needed	0.20
12/7/2017	KAK	Continued analysis of most persuasive arguments to be made in opening brief on the merits; continued work drafting opening brief, with particular focus on section addressing <i>Morillion</i> ; review current draft of motion for judicial notice; draft revisions to same; check applicable rules and statutes on judicial notice; draft email to KSR re research needed to locate Cal. Supreme Court cases to cite in place of Cal.App. cases in current draft; discussion with KSR re same	5.80
	KSR	Email from KAK requesting Cal. Supreme Court cites for MJN supporting brief. Begin Westlaw research for cases/cites.	1.50
12/8/2017	KAK	Continued work drafting opening brief, with focus on <i>Morillion</i> and <i>Overton</i> argument sections; analysis of most persuasive organization of these sections; incorporate results of GMG cite check of statement of facts section; revise statement of facts section to include paragraph on average length of check time; draft detailed email to GMG re preparation of exhibits to MJN; discussion with GMG re same; review and revise updated draft MJN prepared by GMG; review hard-copy printouts of historical Wage Orders to be attached to MJN, as prepared by GMG; discussion with GMG re enlarging certain Orders for legibility;	3.60
	GMG	Compile exhibits, prepare revised draft motion for judicial notice and email KAK re same; review historical wage order exhibits and confer with KAK re enlargement for legibility	1.60

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		<u>Hours</u>	
12/9/2017	KAK	Continued work drafting opening brief, with particular focus on section addressing <i>Morillion</i> ; update and strengthen draft section on wage orders to be liberally construed for protection of employees; analysis of arguments to be made on "suffered or permitted to work" test, including dictionary-based arguments	6.90
12/10/2017	KAK	Continued work drafting opening brief; further work on polishing, organizing and drafting additional portions of <i>Morillion</i> section; prepare initial draft of introduction; update cites to Ninth Circuit's order	8.90
12/11/2017	GMG	Research re hearing panel judges; compile biographical sketches, lawyer comments and interviews re Div. 7 panel judges and email KAK re same	2.30
	KAK	Email to co-counsel Shalov and KSR re status of opening brief and timing of drafts to be circulated this week; email to GMG re beginning work on cite check and status of MJN; extensive further work drafting opening brief, including work necessary to finish the discussion of <i>Morillion</i> and the control test; circulate current draft to Shalov and KSR for review and comment; review and reply to email from KSR re status of research needed for MJN	7.60
	KSR	Review comments on draft Cal Supreme Court opening brief from Lee Shalov. Email from KAK re status of appellate brief and request for comments; Shalov response. Email from KAK for additional case research/cites from Cal. Supreme Court. Further research and analysis and forward case cites to KAK. Email from KAK with draft Opening Brief on the Merits for review.	1.70
12/12/2017	GMG	Draft text for string cite wage order footnote and email KAK re same; review record cites in new and revised sections of draft opening brief, fill in blanks and confer with KAK re same; forward excerpts of record to coordinator for Hastings moot court for educational purposes	3.90
	KAK	Discussion with KSR re research needed for MJN; draft detailed email to GMG re checking additional record cites in current draft of brief and other tasks needed for brief; continued work drafting brief, with focus on argument section addressing the suffered or permitted to work test; draft email to co-counsel Gallaway re legal research point needed for brief; further correspondence with Gallaway and co-counsel Shalov re same; review and incorporate list of Wage Orders for footnote in brief, prepared by GMG; review and reply to correspondence from Hastings Law School requesting copies of excerpts of record	5.60
	KSR	Email from KAK re additional cites for MJN. Confer with KAK. Westlaw research re judicial notice of executive acts for appeal brief: summary case law and forward to KAK. Emails with KAK and Lee Shalov re review brief. Emails with Hastings re record on review for moot court; forward to KAK with comments.	1.40
12/13/2017	GMG	Proofread current draft of opening brief, check cites and quotes and confer with KAK re same; check record cites in new sections of brief and email KAK re same	3.80
	KAK	Continued work drafting section of brief addressing "suffered or permitted to work" test; analysis of best organization of points in support of argument; correspondence from co-counsel Gallaway and Shalov re request received from Hastings for copies of excerpts of record; correspondence with Hastings re same; review and preliminarily evaluate comments of Shalov on current draft of section on control test; review additional cite-check results from GMG and incorporate same into brief; email to GMG re more added ER cites to be checked; finalize "suffered or permitted to work" argument section and circulate new draft of brief to Shalov and KSR for review and comment on that section; forward draft of completed brief to potential amicus curiae supporters for review and comment	9.70

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		<u>Hours</u>
12/13/2017	KSR Westlaw research re judicial notice of executive acts for appeal brief: summary case law and forward to KAK. Emails with KAK and Lee Shalov re review brief. Review/analyze comments from Shalov. Review/analyze/draft redline edit to opening brief on the merits; research for comments. Email from KAK with draft of second suffered or permitted to work section; review and draft edits.	2.80
12/14/2017	GMG Check URLs in footnotes to draft opening brief, prepare corrected footnotes and email KAK re same; review additional record cites and email KAK re same; prepare MJN exhibits and confer with KAK re same	3.70
	KAK Re-read and analyze full draft of opening brief, completed yesterday, in preparation for drafting further revisions; continued evaluation of comments of co-counsel Shalov on control test argument; draft detailed email to Shalov and KSR re same; email to GMG re additional cites to be checked; prepare list of tasks to be completed in order to finalize and file the brief; discussions with GMG re status of MJN and exhibits thereto; review, evaluate and incorporate KSR redline and comments on draft of brief through control section; lengthy discussion with KSR re her comments and proposed revisions; correspondence with attorney Michael Rubin re possible amicus support; review additional research by KSR for motion for judicial notice; incorporate same into current draft of MJN and draft final changes; email to GMG re cite check of MJN; review physical hard-copy exhibits to MJN as prepared by GMG; incorporate MJN cites into draft brief; draft additional revisions to brief to incorporate comments of KSR and Shalov as well as additional edits to strengthen and clarify the arguments; additional legal research for brief	13.50
	KSR Further legal research for Cal. Supreme Court cases/cites to support MJN. Summarize and circulate. Emails with KAK re Shalov comments to control test section and further work. KAK response re Cal. SC cites.	2.90
12/15/2017	GMG Review rules re pagination of MJN exhibits and confer with KAK re same; revise MJN, proofread and check cites and quotes; prepare PDF and email KAK re same; prepare filing and service copies and arrange for binding	6.70
	KAK Continued analysis of most persuasive way to present argument regarding "choice" issue; review and evaluate comments of amicus attorney Mara regarding how the <i>Vega</i> footnote argument is presented; further correspondence with Mara re same; discussion with KSR re this issue, as well as overall status of brief and additional research; continued work drafting further revisions to brief; review and sign final MJN and supporting declaration; discussion with GMG re exhibits thereto; review PDF of final MJN with exhibits and correspondence and discussion with GMG re changes needed; finish new draft of brief and circulate to co-counsel Shalov and KSR for review and comment, including list of final cites and research needed; email correspondence with Shalov and KSR re various aspects of the "suffered or permitted to work" test and most persuasive arguments to make; telephone conference with co-counsel Shalov re current draft of brief, possible additional record cites, and reframing certain arguments about whether the Checks are "required"; review and reply to email from KSR re certain cites in draft brief	6.60
	KSR Review/analyze draft brief and draft edits/comments in redline; circulate. Legal research and cite-checking for arguments in footnotes. Emails with GMG re excerpts of record. Review further comments from Shalov and KAK responses. Discussion with KAK re further work on brief. Review further comments from Shalov and discuss with KAK. Further emails with KAK on Vega issue. Further emails with KAK re cites in footnotes. Review/analyze draft "suffered or permitted to work" section and draft and circulate redline with comments. Further email re no bright line rule for when activity on work premises does not qualify, including waiting for another work activity to start, e.g. new assignment.	3.10

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		<u>Hours</u>
12/16/2017	KAK Continued analysis of feedback received on current draft from attorney Mara and co-counsel Shalov; draft additional revisions to brief, with focus on sections arguing about the distinctions between controlled, required and unavoidable conduct, as well as <i>Vega</i> and <i>Morillion</i> argument sections; incorporate comments of KSR on section addressing suffered or permitted to work test; review and evaluate comments of attorney Gregg Adam and reply to his email; analysis of remaining work to be done; email to Shalov and KSR circulating current draft of brief for review; review and reply to email from KSR re status of remaining cite issues needed for last four footnotes; review and reply to email from Shalov re status of additional cites to be prepared by his office	8.80
12/17/2017	KAK Continued work drafting revisions to opening brief, including rewriting the introduction and drafting other revisions to strengthen the arguments; additional factual and legal research; review email from KSR re remaining research issues for brief; incorporate additional cites pulled by KSR; check word count; circulate new draft to co-counsel Shalov and KSR for review and comment	8.10
	KSR Review/analyzes and email to KAK re impact of Greer decision. Continue cite checking/research for OBM. Review/analyze new draft of brief on the merits circulated by KAK; draft redline with edits/comment and circulate. Email from KAK to review revised draft.	1.90
12/18/2017	GMG Proofread opening brief, check cites and quotes, prepare final PDF of brief and confer with KAK re same; prepare filing and service copies and arrange for binding	7.90
	KAK Review email from co-counsel Shalov approving draft of brief circulated last night; review email from KSR circulating additional comments and incorporate same; full read-through of draft brief in order to make final edits; draft final edits to brief, including introduction and edits needed to meet word count; email to GMG re final ER cite to be checked; incorporate results of GMG cite check of current draft; review and revise TOA; final revisions to draft, including all internal cross-references; discussion with and review email from KSR regarding Tim Cook quotation to be inserted in brief; draft revisions necessary to insert this quotation, with supporting cite, and remain within the word count; draft additional final revisions; correspondence with co-counsel Shalov re same; further discussion with GMG re logistical issues; review and sign final hard copy of brief; review final hard copy of MJN as prepared by GMG for filing and service tomorrow; discussions with GMG re logistics related to finalizing the brief; review and reply to correspondence from attorney Michael Rubin re possible amicus support; review and circulate final PDF of brief and MJN to co-counsel Shalov; circulate final PDF of brief to possible amicus supporters including attorneys Rubin, Mara and Adam	5.20
	KSR Review/analyze new draft of brief on the merits circulated by KAK, with completed intro. Draft redline with edits/comments and circulate. Email from KAK re Jobs quote and fact research to find comments from Tim Cook re people wouldn't leave home without their iPhone. Discuss quote/interview with KAK and where to insert in brief. Emails and further discussion re Cook quote and pagination/word count. Discussion with KAK re cc of brief to Hastings. Email to GMG with instructions to forward brief.	3.70
12/19/2017	GMG Call clerk re electronic submission of MJN; submit opening brief electronically; arrange for filing by vendor and service by mail; confer with KAK re completion of filing; prepare PDF of filed brief and MJN and circulate to co-counsel; review 2009 Brinker RJNs and compile wage orders to forward to Miles Locker	3.70
	KAK Draft email to clients circulating copy of opening brief to be filed today, with instructions not to speak to the press about the case; began analysis of possible points for reply brief and prepare notes re same; review final bound hard copies of opening brief, which will be filed today along with bound MJN; calculate and record current deadlines for answer and reply briefs; email to GMG re same; review prior correspondence received from attorney Stevason from DLSE; call to attorney	2.60

		<u>Hours</u>
	Stevason and left message re filing of opening brief today; telephone call to and lengthy discussion with attorney Miles Locker from DLSE; draft email to Locker regarding requested materials and email to GMG re compiling same; draft detailed email to co-counsel Shalov and KSR re matters discussed with Locker; review replies from Shalov and KSR; draft email to attorney Stevason forwarding copies of our opening brief and MJN; check docket re status of filing; confirm with GMG that brief and MJN were successfully filed; email to Shalov and KSR re same	
12/19/2017	KSR Emails with KAK, Shalov re possible amicus support from DLSE. GMG email to Hastings moot court with requested record on appeal. KAK email to plaintiffs with cc OBM. Further email from KAK re DLSE former chief counsel amicus support; respond re statutory history. Email confirmation brief and MJN filed.	0.30
12/20/2017	GMG Transmit wage orders from Brinker MJNs to attorney Locker; review Office of Administrative Law website and send inquiry re access to archives	1.20
	KAK Review reply from DLSE attorney Stevason acknowledging receipt of brief and MJN; review and evaluate correspondence from DLSE attorney Locker regarding attempt to locate additional relevant DLSE materials; draft reply re same; email to GMG re attempting to obtain records directly from the Office of Administrative Law; review enotification from Supreme Court confirming yesterday's filing; check docket; review and evaluate potentially relevant new opinion handed down yesterday	0.80
12/21/2017	GMG Prepare draft notice of change of firm affiliation with proof of service and email KAK re same	0.30
12/22/2017	GMG Revise draft notice of change of firm affiliation into notice of incorporation and email KAK re same; review response from OAL re information request and email KAK re same	0.30
12/27/2017	GMG Teleconference with OAL reference attorney re background materials on 1990 OAL Determination 11; review and organize materials received in response and email KAK re same	0.90
	KAK Review response from OAL re request for documents related to 1990 determination	0.10
12/28/2017	GMG Further review of materials received from OAL and email/confer with KAK re same; email OAL re specific documents sought	0.80
	KAK Email to GMG re reviewing documents provided by OAL to determine whether the relevant DLSE response is among them; review index prepared by GMG; email to GMG re further inquiry to be made OAL regarding DLSE response; discussion with GMG re same; review further request from GMG to OAL	0.30
1/2/2018	KAK Evaluate status of records request from Office of Administrative Law and possible other sources to locate needed document from DLSE	0.20
1/3/2018	KAK Review correspondence from defense counsel regarding their intent to seek a 60-day extension to file their answer brief; correspondence with co-counsel Shalov re same; check docket and impact on schedule; draft response email to defense counsel stating that we will not oppose the request; forward to KSR; discussion with KSR re same, citation issue in opening brief, and new timeframe for our reply; email to GMG re further examination of documents provided by OAL	0.30
	KSR Discussion with KAK re Boutros handling oral argument, and briefing issue, and further moot court prep for argument. Emails with KAK, Lee Shalov re Apple's extension request.	0.40

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			<u>Hours</u>
1/4/2018	GMG	Review correspondence from OAL counsel and email KAK re same	0.10
1/5/2018	GMG	Review document received from OAL and confer with KAK re same; draft response to OAL attorney requesting other materials	0.30
	KAK	Review DLSE response document obtained today from the OAL to confirm that this is the document quoted in the OAL letter cited in our brief; review citation as used in our brief; correspondence with GMG re same and requesting additional documents in OAL's records; draft email to co-counsel Shalov and KSR forwarding DLSE response document; analysis of need for possible further motion for judicial notice	0.40
	KSR	Emails with KAK re Office of Administrative LAW DLSE response; review; respond.	0.20
1/6/2018	KAK	Continued analysis of arguments for reply brief, including possibly persuasive hypotheticals to use regarding the definition of compensable "hours worked"; analysis of new issue on which Supreme Court has ordered briefing in pending case <i>Dynamex v. Superior Court</i> , to be argued next month; review and evaluate order directing supplemental briefing in <i>Dynamex</i> on potentially relevant issue; check docket and availability of copies of briefs, including brief previously filed by DLSE	1.10
1/8/2018	GMG	Email OAL attorney re files re 1989 request for determination; review and organize materials received from OAL and email KAK re same	1.10
1/10/2018	GMG	Review CAND case management order and local rules and prepare draft notice of incorporation with proof of service	0.40
1/11/2018	GMG	Review 9th Circuit local rules and call clerk re same; prepare draft notice of incorporation with proof of service; review order extending deadline for Apple brief, calendar dates and email KAK re same	0.50
	KAK	Review enotification from court stating that extension of time for answering brief is granted; correspondence to GMG re receipt of application	0.10
1/12/2018	GMG	Review class cert order in Eddie Bauer bag check case and email KAK and KSR re same	0.30
	KAK	Review defendant's application for extension of time for answer brief, received six days after mailing; check Supreme Court's docket re same; review co-counsel correspondence re new bag check class certification decision relying heavily on class certification order in this case; review and evaluate this decision and forward same to co-counsel Shalov and Gallaway; review and forward additional press coverage about our case	0.30
	KSR	Review/analyze articles re Eddie Bauer bag check decision granting class cert. Circulate. Instructions to GMG to pull opinion. Analyze Eddie Bauer opinion and discussion of Frlekin. Further emails with KAK re articles on argument.	0.50
1/16/2018	GMG	Review order granting extension, calendar dates and email KAK and KSR re same; review Heinke letter to court in Troester case and email KAK and KSR re same	0.20
1/17/2018	KAK	Detailed review and analysis of complete DLSE Response to Request for Determination in OAL proceeding 89-018; review and evaluate exhibits cited therein and other documents provided by OAL as part of its file in this proceeding; email to GMG re research needed to locate 1946 AG opinion letter cited in 1977 memorandum; forward copy of complete DLSE Response and Op. Ltr. 1988.01.05 to attorney Locker; draft email to GMG re preparation of new motion for judicial notice with copy of DLSE Response	2.50

		<u>Hours</u>
1/18/2018	KAK Telephone call from attorney Yoni Moskowitz re possible amicus support; email to GMG re forwarding opening brief on the merits to attorney Moskowitz; review and reply to email from attorney Lockyer re DLSE Response to Request for Determination, circulated yesterday; email to GMG re additional research issue to check regarding DLSE Response and request to forward MJN and excerpts of record to Moskowitz	0.30
1/19/2018	GMG Forward excerpts of record and MJN to Moskowitz	0.20
1/22/2018	KAK Review and reply to correspondence re attending upcoming moot court for <i>Dynamex</i> case regarding the definition of employ; email to GMG re pulling briefs from this case	0.10
1/25/2018	KAK Review and reply to email from attorney Michael Rubin re upcoming <i>Dynamex</i> oral argument addressing definition of "employ", which may be relevant on appeal	0.10
1/26/2018	GMG Download and review briefs in <i>Dynamex</i> case and email KAK re same	0.80
	KAK Further correspondence with attorney Rubin re upcoming <i>Dynamex</i> oral argument and began reviewing parties' and amici supplemental briefing on definition of "employ"; analysis of potential impact on our case; analysis of how definition of "work" may impact application of three-prong <i>Martinez</i> test for whether a defendant "employs" someone and draft detailed analysis of same; correspondence to Rubin re same	3.20
1/29/2018	GMG Email KAK re reception date of OAL documents; draft request for judicial notice re DLSE response to request for determination and email KAK re same; WWW research re 1946 AG opinion letter cited OAL materials and email KAK re same; review DLSE response, search for exhibits and email KAK re same	2.40
	KAK Conference with KSR re strategy of filing a standalone motion for judicial notice of the just-located DLSE document; discussion with and email to GMG re status of preparing draft MJN; review responses from GMG re additional DLSE materials obtained from OAL; additional analysis of impact of issues to be argued next week in <i>Dynamex</i> ; review and evaluate reply letter brief from defendant in <i>Dynamex</i> re "employ" issue	0.80
	KSR Discussion with KAK re potential DLSE amicus and strategy on whether to file DLSE doc in new MJN.	0.30
1/30/2018	GMG Prepare revised MJN, exhibit and proof of service and confer with/email KAK re same	0.80
	KAK Review and revise draft MJN of DLSE response document, prepared by GMG; further analysis of best means to get this document before the Court; circulate same to co-counsel Shalov and KSR for review and comment and to GMG to check dates in draft; review and reply to email from GMG stating that dates are correct; review and reply to further email from co-counsel Shalov re draft MJN; email to KSR re review issues raised by Shalov more closely; review response from KSR and reply from Shalov deferring to our decision; email to GMG re finalizing MJN for filing tomorrow	0.90
	KSR Review/analyze draft motion for judicial notice of DLSE response. Review comments from Lee Shalov and review full DLSE document for any negative content, review draft MJN, and circulate further comments/analysis to KAK. Further comments on DLSE response from KAK.	0.80
1/31/2018	GMG Finalize MJN, prepare signed PDF and confer with KAK re same; arrange for filing in Supreme Court and service by mail; prepare PDF of filed MJN and circulate to co-counsel	2.70

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		<u>Hours</u>	
1/31/2018	KAK	Review revised draft MJN prepared by GMG; email to GMG re additional changes needed; re-read DLSE document one further time and evaluate how it fits with arguments contained in opening brief; review and sign final MJN; discussion with GMG re filing logistics; review email from GMG with final filed motion for judicial notice; forward same to attorney Stevason of DLSE	1.20
2/2/2018	GMG	WWW research and travel to law library to look for 8/29/46 AG opinion letter; email KAK re lack of success	1.80
2/5/2018	KAK	Review and reply to email from GMG re results of attempt to locate AG opinion letter cited in early IWC documents from OAL's file; review and reply to email from CELA's counsel Menhenet re requesting that a similar issue be certified to the California Supreme Court by the Sixth Circuit in a security search case against Amazon	0.20
2/20/2018	GMG	Revise draft Supreme Court notice of firm name change, prepare final PDF and confer with KAK re same; arrange for filing and service via US Mail	1.10
3/9/2018	KAK	Review and evaluate new Supreme Court opinion construing Wage Orders and DLSE Enforcement Manual (<i>Alvarez v. Dart Container Corp.</i>) and assess impact on our case; email to GMG re pulling opinion and briefing from that matter	0.40
3/12/2018	GMG	Compile briefs in <i>Alvarado v Dart</i> case and email KAK re same	0.30
3/16/2018	KAK	Review correspondence from defense counsel re oral argument availability; review docket and court's letter to counsel re argument setting (Troester)	0.10
3/19/2018	KAK	Review correspondence from co-counsel Shalov re respondent's brief due today; review email from defense counsel providing courtesy copy of brief and MJN; forward same to co-counsel and KSR; review preliminary comments from Shalov and KSR re same	0.20
	KSR	Email from KAK re Apple's Opp Brief; Review Apple's Opp Brief to Cal. Supreme Court. Circulate comments; comments from Shalov.	0.50
3/20/2018	KAK	Review and reply to email from co-counsel Shalov re retroactivity argument included in Apple's brief; forward letter brief from <i>Augustus</i> , filed last year on retroactivity issue; review and respond to further correspondence from Shalov re arguments for reply brief; continued review and analysis of Apple's brief; check rules re deadline for opposition to Apple's motion for judicial notice; forward brief and motion for judicial notice to various possible amicus supporters including CAOC, CELA and Bet Tzedek; email to attorney Stevason of DLSE forwarding copy of answer brief and motion; correspondence to co-counsel Shalov re these efforts to round up amicus support; review several email responses from potential amicus participants	1.30
	KSR	Review/analyze Apple opposition brief. Emails with team re Apple opposition brief and citations to "travel time" in Morillion opinion. Email from KAK re documenting all Apple misrepresentations of fact and law in opposition brief. Email from KAK re retroactivity brief; Shalov email re travel time mentions in Morillion.	0.90
3/21/2018	KAK	Review and reply to email from attorney Mara re amicus support; plan out timeframe for working on reply brief and began analysis of length of extension needed	0.10
3/25/2018	KAK	Analysis of whether to oppose Apple's motion for judicial notice and possible grounds for opposition	0.20
3/27/2018	KAK	Email to GMG re preparing initial draft of 60-day extension request for reply brief	0.10
3/28/2018	GMG	Prepare draft request for extension of time with proof of service and email/confer with KAK re same	0.50

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		<u>Hours</u>
3/28/2018	KAK Draft detailed email to KSR re Apple's motion for judicial notice, my thoughts on various possible responses thereto, and checking procedures for opposing same if we decide to oppose; discussion with KSR re deadline to oppose motion for judicial notice; draft email to defense counsel asking whether they will oppose a 60-day extension of time to file our reply brief	0.30
	KSR Email from KAK re potential challenges to Apple's MJN and strategy issues. Review/analyze Apple's MJN for response. Research for opposition to motion. Email to GMG with calendar date for response. Draft summary of basis for opposition to Apple's motion for judicial notice of manager declaration.	1.90
3/29/2018	GMG Review docket and files, check for inclusion of Monkowski depo and exhibits in record for opposition to Apple MJN and email KAK and KSR re same; prepare draft opposition to MJN and email KSR re same; prepare draft motion to augment record with POS and email KSR re same	2.10
	KAK Review and reply to response from defense counsel stating that they will not oppose extension request for reply brief; review email and memo from KSR re grounds to oppose Apple's MJN, which seeks judicial notice of a declaration filed in the district court but not included in Ninth Circuit excerpts of record; further correspondence with KSR and co-counsel Shalov re whether to oppose and possibility of filing additional excerpts from the deposition of the witness and exhibits thereto; check our opening brief regarding exhibits already cited on the point; further correspondence with KSR and Shalov re same; correspondence with GMG re confirming whether this complete deposition transcript, with exhibits, were lodged with the district court	0.60
	KSR Emails with KAK and Lee Shalov re Apple's motion for judicial notice and research re record wrt Monkowski depo and strategy on whether to oppose. Emails to KAK and Shalov with strategy points and filing of all depo transcripts in district court. Email from KAK with request to draft opposition to MJN. Review/analyze prior Monkowski declarations and deposition transcript and all depo exhibits for any statements conflicting with MJN declaration. Email to KAK and Shalov summarizing two depo exhibits for possible inclusion in counter motion to augment the record. Email to GMG requesting analysis of record to see whether the exhibits included in any form. Further emails with KAK and Shalov re motion to add Monkowski exhibits if not introduced in another form already in the record. Instructions to GMG re drafts of opposition to motion for judicial notice and motion to augment the record. Further research on motion for judicial notice and draft opposition.	3.50
3/30/2018	KAK Discussion with KSR re decision not to file opposition to motion for judicial notice, but to instead seek judicial notice or to augment the record to include additional responsive materials from record	0.20
	KSR Further research on motion for judicial notice and draft opposition. Further discussion with KAK re case authorities and decision not to oppose motion. Discussion with KAK re notifying Shalov and preparation of motion to augment record/or for judicial notice with Monkowski depo excerpts and exhibits and any other materials in the record. Email to Shalov re no opp to MJN, but will move to augment with other materials from Monkowski depo and district court record when we file reply brief.	2.60
4/2/2018	GMG Finalize request for extension and email KAK re same; arrange for filing and service	0.80
	KAK Review and revise draft request for extension of time prepared by GMG; check rules re same; correspondence to co-counsel Shalov re same; discussion with and email to GMG re finalizing and filing same today, as well as requirements for service on clients and format of POS; review and sign final application; review enotification confirming filing; draft email to clients with status update and circulating copy of extension request; review further enotification re filing and discussion with GMG re delivering	1.40

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		<u>Hours</u>
	filing to court tomorrow; review and reply to email from attorney Y. Moskowitz re amicus support	
4/2/2018	KSR Response from Shalov re not opposing MJN. Email from KAK re request for extension of time to file brief. KAK email to plaintiffs re extension.	0.30
4/3/2018	GMG Arrange for hard copy filing of request for extension; prepare PDF and circulate filed request to co-counsel	0.40
	KAK Discussion with GMG re filing and re-serving extension request for reply brief today; review docket and file-stamped extension request; review and reply to correspondence from Bet Tzedek re scheduling call next week to discuss amicus support; correspondence with co-counsel Shalov re participating in call	0.20
4/4/2018	KAK Further correspondence with amicus Bet Tzedek re call next week and copy co-counsel Shalov	0.10
4/5/2018	KAK Careful review and evaluation of defendant's answer brief on the merits; analysis of strongest points to be made in reply brief; review and evaluate comments of attorney Y. Moskowitz on answer and possible points for reply suggested by him; review enotification from court re order granting extension of time to file reply brief, as requested through June 8, 2018; check docket to confirm extension; review calendar notice indicating that <i>Troester</i> case has been scheduled for oral argument and evaluate impact of same, and possible timing of decision in <i>Troester</i>	4.30
4/6/2018	KAK Correspondence re potential moot court in preparation for upcoming oral argument in <i>Troester</i>	0.20
4/9/2018	KAK Lengthy discussion with KSR re points for reply brief, responses to arguments made by Apple, and motion to augment the record; continued analysis of strongest points for reply brief; review formal order granting extension of time for reply; correspondence confirming time for tomorrow's call with attorneys for Bet Tzedek re amicus issues	1.30
	KSR Discussion with KAK re arguments for reply brief, strategy, case authorities, motion to augment the record, etc.	0.70
4/10/2018	KAK Prepare for and participate in conference call with attorneys representing Bet Tzedek re potential amicus support; draft email forwarding copies of additional briefing	1.30
4/12/2018	KAK Further correspondence with plaintiffs' counsel and attorney Michael Rubin re oral argument preparation in <i>Troester</i> , including impact of assignment of pro tem Justice Grimes	0.20
4/16/2018	KAK Continued analysis of points for reply brief; continued analysis of points for amicus participants; draft email to attorney Stevason at DLSE forwarding copy of order granting extension of time for reply brief; further correspondence with attorney Saltzman re upcoming oral argument in <i>Troester</i>	0.60
4/23/2018	KAK Discussion with KSR re deadlines for amicus briefs and response thereto, if reply brief is filed on current due date of June 8; locate forward email to sent last week attorney Stevason from DLSE re order extending reply brief deadline	0.20
4/25/2018	KAK Review and evaluate relevant new Supreme Court opinion concerning persuasive weight of DLSE interpretations of law and reconfirming rule that wage and hour laws are construed in light most favorable to employees	0.40
4/26/2018	KAK Telephone call from attorney Moskowitz from Gregg Adam's office regarding amicus support and following up on his email with suggestions regarding points for reply brief	0.10

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			<u>Hours</u>
4/27/2018	KAK	Review and evaluate order modifying recent <i>Alvarado v. Dart</i> opinion; continued analysis of this opinion	0.40
4/30/2018	GMG	Review Supreme Court opinion in <i>Dynamex</i> case and email KAK re same	0.30
	KAK	Review and evaluate Supreme Court's new <i>Dynamex</i> opinion handed down today and begin analysis of best ways to use it in reply brief; continued work on outline of reply brief; preparation to attend tomorrow's argument in <i>Troester</i>	2.10
5/1/2018	KAK	Attend oral argument in <i>Troester v. Starbucks</i> re de minimis issue; evaluate potential impact on issues presented by this case and strategies suggested for oral argument; draft summary of argument and forward same co-counsel Shalov and KSR along with recent favorable opinions in <i>Alvarado</i> and <i>Dynamex</i>	3.60
	KSR	Email from KAK re oral argument in <i>Troester</i> on de minimis issue and related decisions. Respond.	0.20
5/2/2018	KAK	Discussion with KSR re arguments to be made in reply brief, especially regarding impact of purported stipulation regarding the reasons bags were brought to work and checking Apple's brief for any misstatements of fact or incorrect cites; continued analysis of arguments for reply brief	1.20
	KSR	Review Law360 reports re <i>Troester</i> developments. Discussion with KAK re misrepresentations in Apple's brief and strategy for reply; issues for amicus brief; strategy/research re ADA claims not including in class claims certified, etc.	0.50
5/4/2018	KAK	Review and evaluate new Ninth Circuit opinion addressing "control" test under California law; email to GMG re pulling merits briefs from PACER	0.20
	GMG	Legal research for reply brief and email KAK re same	0.20
5/7/2018	KAK	Continued analysis of points for reply brief and conference with KSR re research assistance	0.60
	KSR	Discussion with KAK re research needed for reply brief on appeal to Calif Supreme Court.	0.30
5/8/2018	KAK	Continued analysis of impact of Ninth Circuit's new <i>Sali</i> opinion; review appellate briefs pulled by GMG in the <i>Sali</i> case; email to GMG re pulling additional briefs	0.40
5/9/2018	GMG	Review docket and class cert appellate briefs in <i>Sali</i> case and email KAK re same	0.30
	KAK	Continued analysis of points for reply brief; continued work on outline of reply brief	0.30
5/10/2018	KAK	Continued analysis of points for reply brief; continued work on outline of reply brief; began drafting argument section regarding Wage Order's plain text; review and evaluate additional appellate briefing in Ninth Circuit <i>Sali</i> case pulled by GMG and assess possible citation of <i>Sali</i> in retroactivity section of reply brief	4.90
5/11/2018	KAK	Discussion with attorney Michael Rubin re status and best ways to approach DLSE re possible amicus support; evaluate possible approach of suggesting in reply brief that Supreme Court request amicus input from DLSE; continued analysis of strongest points for reply brief, including point that employers sometimes require employees to remain on premises during breaks as a theft-prevention measure	0.30
5/12/2018	KAK	Continued analysis of strongest arguments for reply brief; check docket to confirm information learned yesterday that letters have been filed in <i>Dynamex</i> asking Court to hold that rulings apply prospectively only, similar to retroactivity argument asserted by Apple in this case; draft email to plaintiffs' counsel requesting copies of those letters	0.30

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			<u>Hours</u>
5/14/2018	GMG	Review amicus letters in Dynamex case and email KAK re same	0.20
	KAK	Evaluate retroactivity argument asserted by Apple and impact of similar retroactivity request pending in <i>Dynamex</i> ; email to plaintiffs' counsel in <i>Dynamex</i> requesting copies of letters just filed requesting retroactive ruling	0.20
5/16/2018	KAK	Continued work drafting reply brief, with focus on argument section re plain text of Wage Order and statutory construction rules; legal research for reply brief, including review of decisions cited by Apple; discussion with KSR re status and timeframe for circulating draft for comment	4.80
	KSR	Discussion with KAK re appellate briefing and amicus briefs and issues.	0.20
5/17/2018	KAK	Telephone discussion with attorney Aaron Kaufmann, co-chair of CELA amicus committee, re amicus support on retroactivity issue	0.10
5/18/2018	KAK	Continued work drafting reply brief on the merits; email to Bet Tezdek lawyers re amicus support	2.10
5/19/2018	KAK	Continued work drafting reply brief, with focus on plain language argument section; additional legal research for brief	4.70
5/20/2018	KAK	Continued work drafting reply brief, with focus on retroactivity argument section	2.80
5/22/2018	KAK	Review and reply to status inquiry received today by email from an unnamed class member; forward updated address information from this class member to co-counsel Gallaway and KSR	0.10
	KSR	Emails with KAK and class member re status of case.	0.20
5/25/2018	KAK	Continued work on reply brief on the merits; email to Bet Tzedek lawyers to schedule further call to discuss amicus support; brief discussion with KSR	0.80
	KSR	Discussion with KAK re flagging misrepresentations and arguments in Apple's opp brief, to prepare reply.	0.20
5/27/2018	KAK	Continued work drafting reply brief on the merits; review notes re projects for KSR; create list of projects and forward same to KSR; re-read relevant portions of record regarding court's order concerning class members with "special needs" to bring bags to work; evaluate need to augment record to include additional excerpts of class certification hearing transcript	6.10
5/28/2018	KAK	Continued work drafting reply brief on the merits, with focus on argument section addressing district court's special needs ruling; continued evaluation of additional record pages to be included in motion to augment the record; review and evaluate Wage Orders' current and historical text requiring employers to provide storage space for employees' personal belongings	4.10
5/29/2018	GMG	Review rules and filing protocol re reply brief and email KAK re same	0.20
	KAK	Continued work drafting reply brief on the merits, with focus on best organization of arguments related to <i>Morillion</i> and other commute cases; discussion with KSR re status and documents to be included in motion to augment record; email to GMG re filing logistics and anticipated components of filing, including preparation of an index of the exhibits to the motion to augment	6.90
	KSR	Research re remedies under FEHA and ADA, for disability discrimination claims; confer with KAK re motion to augment record.	2.20

		<u>Hours</u>	
5/30/2018	KAK	Continued work drafting reply brief on the merits, with focus on section addressing <i>Morillion</i> and other cases cited by Apple; draft email to KSR re additional legal research question; review and reply to email from co-counsel Shalov re status; forward email with legal research question to Shalov; prepare for and participate in conference with Bet Tzedek attorneys re amicus support	10.20
	KSR	Further research re remedies under FEHA and ADA, for disability discrimination claims. Emails with KAK re issue of California Supreme Court's acceptance of Ninth Circuit's findings on certification. Research re findings issue, etc.	4.30
5/31/2018	KAK	Continued work drafting reply brief on the merits, with focus on <i>Morillion</i> section and "suffered or permitted to work" section; review email from co-counsel Shalov re legal research project	7.80
	KSR	Research re remedies under FEHA and ADA, for disability discrimination claims. Emails with KAK re issue of California Supreme Court's acceptance of Ninth Circuit's findings on certification. Further research for reply brief.	4.40
6/1/2018	GMG	Email KAK and KSR re deposition filed and not filed with district court; review excerpts of record and Shalov class cert declaration re documents to be included in motion to augment record and email/confer with KAK and KSR re same; begin initial proofread/cite check of reply brief; email KAK re <i>Dynamex</i> cite	3.40
	KAK	Continued work drafting reply brief, with focus on section addressing suffered or permitted to work test correspondence with KSR re research completed so far and documents she is gathering on theft prevention being part of employees' regular job duties; review documents forwarded by KSR; incorporate same into reply brief; further correspondence with KSR re research and additional record cites; correspondence with GMG re documents to be attached to motion to augment the record; discussion with GMG re cite check and filing logistics	8.40
	KSR	Email with KAK re theft deterrence arguments and evidence for reply brief. Research issues and evidentiary support for Cal SC reply brief, including issue of treatment of 9th Circuit's factual findings by Cal SC and remedies issues. Emails with KAK re research. Instructions to GMG re exhibits to draft MJN. Email to KAK re exhibits for motion to augment the record. Further research re remedies and emails to KAK re damage caps and remedies under FEHA and Title VII. Emails with KAK and GMG re depos filed with the district court. Draft string cite for remedies footnote in reply brief. Further instructions to GMG re record below and exhibits for motion to augment. Emails with GMG and KAK re whether depos publicly filed or under seal. Email from KAK re further depos to include in motion; respond. Email from GMG re all deposition transcripts filed in district court, for exhibits to motion to augment. Review/analyze transcripts. Further email confirmation from GMG re depos filed in district court. Emails with KAK re Monkowski depo, subject of Apple's RJN. Continue reviewing/analyzing all depo transcripts, briefs and exhibits for motion to augment the record. Forward relevant depo excerpts to KAK for motion to augment. Further remedies research and forward Rutter Group sections to KAK.	3.90
6/2/2018	KAK	Continued work drafting reply brief on the merits, with focus on section addressing Apple's procedural arguments, including purported "stipulation" re "special needs"; draft extensive revisions to section addressing the plain text of the Wage Orders	7.80
	KSR	Research for reply brief, including review of all depo transcripts filed with district court. Forward further excerpts to KAK. Emails with KAK re California employee depo excerpts. Email from KAK with loss prevention paragraph for reply brief; review/analyze respond with edits. Email from KAK with current draft of reply brief needing further citations. Work on citations.	2.10

Hours

6/3/2018	KAK	Continued work drafting reply brief on the merits, with continued focus on revisions to plain text section; prepare completed draft of brief with all sections included; evaluate current word count and next steps in order to complete brief; correspondence with KSR re additional cites on point that the Checks deter theft for everyone in stores; incorporate those additional cites into draft argument section on suffered or permitted to work test; correspondence with attorney Lockyer re incomplete version of 1988 opinion letter on DLSE website; began work needed to shorten brief; draft to-do list re remaining tasks; circulate current draft to KSR	7.30
	KSR	Emails with KAK re depo cites for reply brief. Follow up emails re depo exhibits. Research for reply brief. Email from KAK with loss prevention paragraph for reply brief; review/analyze respond with edits. Email from KAK with current draft of reply brief needing further citations. Work on citations.	2.20
6/4/2018	GMG	Review documents identified by KAK and KSR and draft motion to augment the record with index and email KAK re same; prepare numbered exhibits for MAR and email KAK and KSR re same; proofread draft brief, check cites	4.60
	KAK	Continued analysis of strongest arguments for reply brief on the merits; continued work drafting reply, with focus on retroactivity section and introduction; continued work drafting additional revisions to reduce word count; further correspondence with GMG re documents to be included in motion to augment; review draft of index to motion to augment prepared by GMG; forward same to KSR; correspondence with co-counsel Shalov re research on whether Ninth Circuit's factual findings are conclusive in the Supreme Court; circulate current draft brief to Shalov and KSR for review and comment	8.40
	KSR	Further research for reply brief. Review, analyze and draft edits to draft reply brief. Further research for brief on Ninth Circuit findings of fact on certified questions. Emails with KAK re citations for brief: further research and add cites. Forward research to KAK on findings of fact. Review/analyze final draft of motion to augment the record and emails with KAK re draft. Emails with KAK re further review of draft reply brief. Email from Shalov with authorities re findings of fact issue. Further cites from Shalov for reply brief on findings of fact. Review/analyze index of additional documents to include in motion to augment record; respond to KAK. Review numbered pdf from GMG for motion to augment. Comments from Shalov on draft reply brief; KAK response re arguments from Morillion. Review/analyze and draft redline to reply brief; email from KAK re amicus briefs.	4.20
6/5/2018	GMG	Review rules and filing procedures and confer with KAK re same; draft proof of service; proofread draft brief, insert MAR and MJN cites and email KAK re same	2.80
	KAK	Draft additional revisions to reply brief on the merits, including revisions to shorten and tighten arguments; review and reply to emails from co-counsel Shalov re additional arguments to be included; discussion with KSR re status of motion to augment; circulate revised draft of reply brief	6.60
	KSR	Research for and draft motion to augment record on appeal to accompany reply brief. Forward to KAK prior arguments prepared to oppose Apple's RJN filed with its opposition brief. Further emails with KAK re Monkowski declaration may not be accepted for truth of the matters asserted in it; response. Further research for California Supreme Court authority on this point and forward authorities to KAK; KAK response. Further emails and research re judicial notice of facts stated in declaration. Further research and forward authorities to KAK. Email with KAK re cites to Boyer's declaration in Motion to Augment. Further review/analyze revised reply brief from KAK; draft redline and circulate. Email from Shalov with Sali case attachment re categories of time for control issue; review/analyze Sali decision. Emails with KAK and Shalov re policy arguments. Further email from Shalov attaching Bono opinion; review/analyze. Email from KAK re Bono.	4.70

		<u>Hours</u>	
6/6/2018	GMG	Review files and email KAK sample briefs re retroactive application of ruling; review motion to augment and docket and email KSR re docket numbers of exhibits	0.60
	KAK	Continued work drafting revisions to reply brief on the merits; review and evaluate comments of attorney Rubin on draft circulated yesterday; evaluate revisions needed to introduction; began drafting revised introduction; review emails from KSR circulating draft of motion to augment; discussion with KSR re status of same as well as ways to focus introduction to more directly address "unavoidably required" argument, per comments of co-counsel Shalov	7.60
	KSR	Further draft motion to augment. Circulate and follow up questions to GMG. Further edits to motion and recirculate. Emails with KAK re reply brief draft; review/analyze new draft of reply brief and draft redline edits.	3.40
6/7/2018	GMG	Review rules, confer with KAK and call clerk re filing procedure; proofread reply brief, check cites and quotes, finalize and add table of authorities and email KAK re same; proofread motion to augment record, check cites and quotes and email KSR re same; prepare final signed PDFs with proof of service and confer with KAK re same; prepare filing and service copies and arrange for binding	5.90
	KAK	Continued work drafting revised introduction; circulate same to KSR for review and comment; review and reply to email from co-counsel Shalov re status and when the next draft will be circulated; review and incorporate KSR redline comments; draft additional edits to meet word count; circulate final draft to KSR and Shalov for any last edits; email correspondence and discussion with GMG re filing logistics; review and revise draft of motion to augment record and supporting declaration, prepared by KSR; review and reply to email from Bet Tzedek attorney Hadl re draft circulated earlier in the week; draft reply to email from attorney Rubin re amicus support; draft email to CAOC amicus committee liaison re amicus support; review and reply to email from Shalov re final draft of brief and next steps, including amicus briefing; review final version of brief prepared by GMG complete with TOA; draft final edits; review POS and discussion with GMG re changes needed; review and approve further edits from KSR to motion to augment; review and sign final motion to augment with supporting declaration; review and sign final brief	5.10
	KSR	Draft edits to motion to augment. Review/analyze changes from KAK and draft further edits. Compare numbered exhibits for further edits and finalize. Review/analyze draft introduction to reply brief. Draft comments and forward to KAK. Emails with KAK re introduction to brief and review alternate intros. Emails with KAK re further edits to reply brief for word limit. Draft revisions to motion to augment and instructions to GMG re docket numbers. Draft declaration iso motion to augment. Emails with GMG re exhibits to motion. Check and finalize exhibits. Instructions to GMG for filing. Final read through last draft of reply brief and forward corrections/edits to KAK. Email from Cibulka with feedback on Delta document involving Keay.	2.20
6/8/2018	GMG	Electronically submit brief to Supreme Court; arrange for filing and service of brief and motion and confer with KAK re same; prepare PDF of filed documents and circulate to co-counsel	1.80
	KAK	Discussion with GMG re status of today's filing; circulate final reply brief to amicus participants; circulate same to co-counsel Shalov; circulate same to clients; prepare for and participate in call with attorney Michael Rubin re advice on approaching DLSE for possible amicus support; draft emails attempting to forward reply brief to attorney Anne Stevason of DLSE; call to attorney Stevason and left message re unsuccessful attempt to deliver these emails; draft email to GMG re preparation of initial draft of notice of errata to opening brief on the merits; review email from GMG circulating file-stamped brief and motion to augment; check docket; review notification from court confirming filing; review email from defense counsel requesting electronic copy of brief; draft email to defense counsel forwarding filed brief and motion; review voice	1.10

			<u>Hours</u>
		mail message from attorney Lara of DLSE indicating that attorney Stevason has left; draft email to Lara forwarding brief	
6/8/2018	KSR	Email from KAK to plaintiffs forwarding reply brief on the merits to Cal Supreme Court.	0.10
6/11/2018	GMG	Prepare draft notice of errata and proof of service and email KAK re same	0.70
6/12/2018	KAK	Review and reply to email from attorney Kaufmann re deadline for filing amicus briefs; double-check docket re same	0.10
6/13/2018	KAK	Draft follow-up email to Lindsay Lara at DLSE re possible amicus support	0.10
6/14/2018	KAK	Review and revise draft errata to opening brief, prepared by GMG; review draft POS; email to GMG re finalizing and filing same tomorrow	0.20
	KSR	Email from KAK re Frlekin possible issues in her absence, including call re amicus brief; add to "to do" list.	0.20
6/15/2018	GMG	Finalize errata, prepare signed PDF and confer with KAK re same; arrange for filing and service	1.60
	KAK	Review and sign final notice of errata, to be filed today; review email serving courtesy copy of first defense-side amicus brief; preliminary review of same; check rules re response deadline; forward same to co-counsel Shalov and KSR; forward same to attorney Kaufmann who is preparing CELA's amicus brief; draft email to proposed amicus participants re absence next week; follow-up email to Ms. Lara of DLSE re amicus support; draft email to defense counsel circulating notice of errata and advising them to contact KSR next week in my absence; draft email to GMG and KSR re handling of any matters that may arise next week	0.70
	KSR	Email with KAK re amicus brief filed, and time to file answers; calendar. KAK errata to reply brief filed. KAK email to Lindsay Lara at DLSE re amicus brief.	0.30
6/21/2018	GMG	Review Apple response to motion to augment record and email KAK and KSR re same	0.10
	KSR	Review/analyze amicus brief of Wash. Legal Counsel. Email from Shalov with comments. Review/analyze Apple's response to motion to augment the record on appeal.	0.40
6/25/2018	KAK	Review emails from attorney Kaufmann circulating draft CELA amicus brief; forward same to co-counsel Shalov and KSR; email to KSR re status of follow-up last week with DLSE regarding amicus support; discussion with KSR re defendant's opposition to motion to augment record, received last week; call to DLSE and left message	0.50
	KSR	Further review/analyze Apple's opposition to motion to augment; discussion with KAK re DLSE amicus brief and contacting DLSE re who will prepare. Email from KAK with CELA brief; Shalov comments re brief.	0.40
6/26/2018	KAK	Telephone call from attorney Kaufmann re CELA amicus brief; began review of same; review and reply to email from attorney Stiller for Bet Tzedek re extension of time to file amicus brief; draft email to attorneys Mara and Turley re CAOC amicus brief; call to attorney Locker at DLSE; draft email to several DLSE attorneys regarding attorney Stevason's departure and request for amicus support; began review of draft amicus brief for CELA	1.30
6/27/2018	KAK	Review and reply to email from attorneys Mara and Turley re time for call to discuss status of amicus brief; follow-up email to attorneys Adam and Moskowitz re amicus support	0.10

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			<u>Hours</u>
6/29/2018	KAK	Continued review of draft CELA amicus brief on retroactivity; email to attorney Kaufman re correction of a couple of typos and filing brief at his convenience; check docket re status; follow-up correspondence with attorneys Mara and Turley re call to discuss amicus brief	0.30
7/1/2018	KAK	Review email from attorney Mara re record excerpts needed for CAOC amicus brief; reply and copy KSR re locating same	0.10
	KSR	Email from KAK re Dave Mara's request for Apple employee handbook. Search record for handbook.	0.30
7/2/2018	GMG	Review Bet Tzedek extension request and email/confer with KSR and KAK re same; email Coelho re service list for amicus brief	0.30
	KAK	Review detailed email from attorney Mara regarding points for CAOC's amicus brief; discussion with KSR re same and his request for additional record documents; draft email to Mara re same and matters to be discussed during call today; review extension request filed by amicus Bet Tzedek; follow-up email to attorney Kaufmann re status of CELA amicus; prepare for and participate in call with attorney Mara; further discussion with KSR re ER excerpts requested by Mara	0.90
	KSR	Emails and discussion with KAK re CAOC amicus argument on confidentiality requirements in "handbook." Email from Dave Mara re evidence to locate in record re this argument for amicus brief. Review Bet Tzedek extension for briefing and calendar. Further email from Dave Mara re addressing control issues in amicus brief.	0.60
7/3/2018	GMG	Call with Coelho re case number for amicus brief	0.10
7/5/2018	KAK	Review draft amicus brief received from attorney Mozkowitz; prepare redline with proposed changes and circulate back along with comments; review enotification re order entered Tuesday granting leave to file defense-side amicus brief of Washington Legal Foundation	0.60
7/6/2018	KAK	Check docket re status of filing of amicus briefs and extension requests; follow-up email correspondence with counsel for CELA re filing of its amicus brief this week	0.20
7/9/2018	KAK	Review email from attorney Mara and draft amicus curiae brief of CAOC; review and evaluate brief; prepare redline with minor proposed changes and circulate same back to Mara; check docket re status; preliminary review of service copy of amicus curiae brief of Employer's Group, received by mail; correspondence to attorney Stiller re status of extension request	0.50
7/10/2018	GMG	Review order granting Bet Tzedek extension and circulate to KAK and KSR; revise KAK appeal binder and prepare new binder of amicus briefs	0.70
	KAK	Review enotifications re order granting extension of time to Bet Tzedek; check docket re same; draft detailed email to GMG re determining what amicus briefs have been submitted and preparing list thereof; check rules and determine projected deadline for response to all amicus briefs, given extension granted to Bet Tzedek; discussion with KSR re same; correspondence with attorney Kaufmann's office re status of CELA's brief and requesting copy of filed brief; forward same to GMG; review and reply to email from attorney Mara re CAOC's filed brief; forward same to GMG along with list of amicus briefs that I'm aware of to date; began analysis of points for joint response to amicus briefs; review and reply to email from Mara re arguments made in Paul Hastings brief on behalf of employer-side entities	0.50
	KSR	Discussion with KAK re schedule and review peace officer's amicus brief. Review/analyze Calif. Peace Officer's Assn. amicus brief and MJN. Review court's order granting leave for extension to file amicus brief; calendar.	0.50

		<u>Hours</u>	
7/11/2018	GMG	Review Retail Federation and Chamber of Commerce amicus briefs and prepare searchable PDFs; prepare revised amicus binder and confer with KAK re same	0.60
	KAK	Check today's docket re amicus brief filings; discussion with GMG re preparation of list of amicus briefs and binder; review same; draft detailed email to co-counsel Shalov and KSR re five amicus briefs received to date, anticipated brief of Bet Tzedek, status of attempts to obtain amicus support from DLSE, and deadline for consolidated answer to amicus briefs; preliminary review of two additional amicus briefs received in today's mail; email to Shalov and KSR re same; forward same to CAOC counsel Mara; review Supreme Court's order in <i>Troester</i> denying defendant's application to file post-argument supplemental brief; check <i>Troester</i> docket re status; review and evaluate example consolidated answers to amicus briefs; review and reply to email from counsel for CELA re status of their brief	1.10
	KSR	Email from KAK re sum total of amicus briefs, no DLSE brief, and deadline to respond. Review/analyze amicus briefs, including from U.S. and California Chamber of Commerce. Email from KAK re additional amicus briefs received; quick review. Court order extending time to file amicus briefs, calendar.	0.70
7/12/2018	KAK	Review and reply to emails from KSR re information requested by CAOC counsel Mara for amicus brief; check docket re status	0.10
	KSR	Emails re amicus briefs. Email to KAK re arguments related to Apple's handbook and CORE training modules. Research depositions with testimony related to Apple handbook and forward excerpts to KAK. Review court's order granting amicus extension; calendar.	0.40
7/18/2018	KAK	Began review and analysis of new ninth Circuit opinion on "control" test (<i>Rodriguez v. Taco Bell</i>); forward same to co-counsel Shalov, along with request for him to review defense-side amicus briefs and provide comments on which points are most important to refute in answer; review and reply to response from Shalov re same; forward new opinion to CAOC attorney Mara	0.40
7/19/2018	KAK	Review, evaluate and reply to further correspondence from CAOC counsel Mara re impact of new <i>Rodriguez v. Taco Bell</i> opinion, with copy to Bet Tzedek counsel Stiller	0.20
7/22/2018	KAK	Continued review and analysis of new Ninth Circuit opinion on "control" test (<i>Rodriguez v. Taco Bell</i>)	0.40
7/23/2018	GMG	Review supplemental authority letter re Taco Bell case and email KAK and KSR re same; confer with KAK and KSR re distinguishing this case; emails with KAK re conference dial-in	0.40
	KAK	Review, evaluate and reply to correspondence from co-counsel Shalov re best time and way to address new <i>Rodriguez v. Taco Bell</i> opinion; follow-up email to counsel for Bet Tzedek re status of their amicus brief; correspondence to schedule time to discuss; discussion with GMG and KSR re timeframe for filing answer to amicus briefs, which depends on when the Court grants leave to file the last timely-submitted application; review notifications re numerous orders granting leave to file briefs; review supplemental authority letter from defense-side amicus participants re <i>Rodriguez</i> ; forward same to co-counsel, Bet Tzedek counsel Stiller, and CAOC counsel Mara; continued evaluation of <i>Rodriguez</i> opinion and how best to distinguish same	1.10
	KSR	Email from KAK re supplemental authority letter from amicus. Review/analyze Taco Bell opinion. Emails with KAK and Shalov re whether and when to brief this case and strategy. Emails to KAK and Shalov re not work under test for suffered or permit to work. Review/analyze letter to court from amicus re Taco Bell. Discussion with KAK re amicus letter and distinguishing the case. Email from KAK re call with Dave Mara re CAOC briefing of Taco Bell. Calendar call and email to KAK to change call-in	1.10

		<u>Hours</u>
	number due to call conflict. KAK email to GMG re call-in. KAK email re Watterson opinion as relates to Taco Bell.	
7/25/2018	GMG Review orders granting leave to file amicus briefs and emails with KAK re same	0.30
	KAK Continued analysis of arguments to be made regarding new <i>Rodriguez</i> opinion; review and reply to email from co-counsel Shalov re tomorrow's call with amicus participants; telephone call from attorney Leviant, plaintiff's counsel in <i>Rodriguez</i> and discussed numerous matters re facts and arguments made in that case; review and reply to email from Leviant circulating appellate briefs from <i>Rodriguez</i> ; review enotification re filing of <i>Troester</i> opinion by Supreme Court tomorrow; follow-up email to amicus colleagues re tomorrow's call, expected opinion, and inviting Leviant and Shalov to participate; review orders granting leave to file amicus curiae briefs, received today; email to GMG re checking same; began close review of defense-side amicus briefs in preparation for tomorrow's call; circulate selected defense-side amicus briefs to Bet Tzedek counsel Stiller and Hadl	3.80
7/26/2018	KAK Continued preparation for today's call re <i>Rodriguez</i> opinion; review and evaluate Supreme Court's opinion in <i>Troester v. Starbucks</i> , handed down today; participate in lengthy conference call with co-counsel Shalov, KSR and amicus counsel re <i>Rodriguez</i> and <i>Troester</i> and impact on case; post-call email correspondence re same; review and reply to email from attorney Stiller requesting copies of additional amicus briefs; review and reply to email from attorney Moskowitz re impact of <i>Troester</i> and additional research needed; re-read and close analysis of impact of <i>Troester</i> on our case, as well as on possible rehearing petition in <i>Rodriguez</i>	4.60
	KSR Discussion with KAK re <i>Troester</i> opinion on de minimis issue. Telephone call with Dave Mara et al. re Taco Bell opinion and arguments/strategy for response to amicus briefs, and further amicus briefs. Follow up email from KAK re summary.	0.80
7/27/2018	GMG Review <i>Troester</i> opinion issued yesterday and confer with KAK re same	0.20
	KAK Continued analysis of impact of new <i>Troester</i> opinion on both this case and <i>Rodriguez v. Taco Bell</i> ; draft detailed email to plaintiffs' counsel in <i>Rodriguez</i> re points for possible rehearing petition and best strategy approach for such petition; draft detailed email to co-counsel Shalov and Gallaway re research assistance needed on whether an employer, for purposes of theft prevention, may lawfully impose a no-bags rule; discussion with GMG re next steps	1.60
	KSR Email from KAK re <i>Troester</i> and Taco Bell opinions and further research for argument Apple could not have prohibited employees from bringing bags to work.	0.80
7/31/2018	KAK Review correspondence from co-counsel Shalov confirming that his office will research issue of legality of rule prohibiting employees from bringing bags as a theft-prevention measure; email to plaintiffs' counsel in <i>Rodriguez</i> re status of rehearing petition, due tomorrow; review and evaluate his response re same summarizing points for petition	0.20
	KSR Email from KAK re issues to address in consolidated answer to amicus briefs, and request for Shalov to research some issues; Shalov response. Review issues list.	0.30
8/1/2018	KAK Review email from plaintiffs' counsel in <i>Rodriguez</i> , Scott Leviant, re rehearing petition to be filed in that case; review draft of rehearing petition; prepare redline with comments and suggested edits; circulate back to attorney Leviant	0.80
8/2/2018	KAK Review and reply to email from attorney Stiller circulating draft of Bet Tzedek amicus brief	0.10

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			<u>Hours</u>
8/3/2018	KAK	Careful review and evaluation of draft Bet Tzedek amicus brief; prepare redline with comments; circulate same to attorneys Stiller and Hadl; review correspondence from co-counsel Shalov re same; telephone discussion with Shalov re certain arguments made in draft brief that may have misapprehended the proceedings below; further analysis of same; prepare second redline with additional comments; circulate same to Stiller and Hadl with detailed transmittal email re focus of brief	3.30
8/4/2018	KAK	Review and evaluate new draft of Bet Tzedek amicus brief, circulated by attorney Stiller; email to co-counsel Shalov and Stiller re same and timing of filing next week	0.30
8/7/2018	KAK	Continued analysis of arguments for combined answer to amicus curiae briefs; began drafting outline of combined answer	1.30
8/8/2018	KAK	Draft email to attorney Stiller re status of Bet Tzedek amicus brief to be filed today; review his response confirming that brief has been finalized and submitted for filing	0.10
8/9/2018	GMG	Review Lao v H&M class cert order and email KAK and KSR re same	0.20
	KAK	Review information forwarded by KSR on relevant post- <i>Troester</i> bag-check decision; email to GMG re pulling same; review and evaluate same	0.30
8/14/2018	GMG	Prepare revised binder of amicus briefs and confer with KAK re same	0.40
	KAK	Review enotifications re filing of rehearing petition and request for modification of opinion in <i>Troester</i> ; email to GMG re same; review and evaluate new California Supreme Court opinion in matter referred by Ninth Circuit and assess relevance to upcoming briefing	0.30
8/16/2018	GMG	Review order re extension in <i>Troester</i> and email KAK re same	0.10
	KAK	Review and reply to email from attorney Leviant re denial of rehearing petition in <i>Rodriguez v. Taco Bell</i> ; check docket re status of Bet Tzedek amicus brief; no action yet	0.10
8/23/2018	KAK	Review enotification re order accepting Bet Tzedek amicus curiae brief for filing; check docket; calculate deadline to file consolidated answer to amicus curiae briefs; draft email to co-counsel Shalov, KSR and GMG re same, and re status of research re legality of rule prohibiting bags, to be done by Shalov's office; evaluate possible extension request of several weeks for this brief in view of other calendar commitments	0.30
8/24/2018	GMG	Review order re filing Bet Tzedek amicus brief and email KAK re same	0.10
8/29/2018	KAK	Review enotification re letter from Supreme Court re finality of <i>Troester</i> opinion; review order modifying opinion and denying rehearing; email to plaintiffs' counsel in <i>Troester</i> requesting copy of letter from defense counsel seeking modification of opinion	0.20
8/31/2018	KAK	Review and evaluate new DOL opinion letter on compensability under the FLSA of certain "voluntary benefits" time similar to <i>Watterson</i> opinion; review email from plaintiffs' counsel in <i>Troester</i> circulating defendants' rehearing letter request	0.20
9/3/2018	KAK	Review email from plaintiffs' counsel in <i>Troester</i> and send further follow-up requesting copy of rehearing petition; review article on Apple's outside theft problem which could be mitigated if Apple chose to enable "bricking" function in its merchandize; evaluate how this argument fits into to final brief	0.20
9/12/2018	GMG	Review docket and counsel list, draft proof of service for extension request and confer with KAK re same	0.90

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		<u>Hours</u>
9/12/2018	KAK Evaluate possible two-week extension request for answer to amicus curiae briefs; review email from co-counsel Shalov with preliminary results of research on illegality of employer policies prohibiting bags at work, and possible disparate impact on female employees; correspondence with Shalov and KSR re possible extension request; check rules and prepare draft of extension request; circulate same to Shalov and KSR; review email from Shalov re same; draft email to defense counsel requesting their non-opposition; email to GMG re preparation of this filing	1.00
	KSR Emails with KAK and Shalov re research needed for answer brief and possible extension.	0.30
9/13/2018	GMG Prepare final signed PDF of extension request and proof of service and confer with KAK re same; prepare service copies and arrange for filing and service; circulate conformed application to co-counsel	1.40
	KAK Review and reply to email from defense counsel re extension request; email to GMG re finalizing same for filing and service today; review and sign final extension request; draft email to clients and co-counsel circulating same	0.30
9/18/2018	GMG Review notice granting extension, calendar new date and confer with KAK re same	0.20
	KAK Review enotifications re order granting extension of time to file answer to amicus briefs; check docket to confirm	0.10
9/20/2018	KAK Review email from co-counsel Shalov re useful new 6th Circuit opinion on definition of work (<i>In re Amazon/Busk v. Integrity Staffing</i>); review and evaluate new opinion, which is extremely helpful on this issue; reply to Shalov re same; evaluate possible supplemental authority filing by an amicus participant; forward new opinion to amicus counsel Mara, Stiller and Moskowitz	0.60
9/21/2018	GMG Review Apple extension request and circulate to co-counsel	0.10
	KAK Continued analysis of new 6th Circuit opinion; evaluate arguments to be made re same in consolidated answer to amicus curiae briefs; review extension request filed by defense counsel, received today; follow-up email to amicus curiae counsel re submitting supplemental authority letter on new <i>Amazon/Busk</i> opinion; preparation of materials needed for work on consolidated answer; legal research re recent California Supreme Court opinions on questions certified from Ninth Circuit	0.90
	KSR Emails with KAK and Shalov re 6th Circuit opinion that security searches are work.	0.20
9/22/2018	KAK Continued analysis of arguments for combined answer to amicus curiae briefs; careful review of new <i>Amazon/Busk</i> opinion from Sixth Circuit; evaluate how best to use this precedent; legal research re adoption history of NV and AZ regulations cited in opinion and where they fit into overall adoption history of federal and California definitions of compensable time; continued evaluation of policy arguments for answer, including related to other methods of theft prevention imposing less burden on employees; review draft of brief on theft prevention, prepared for Ninth Circuit reply but ultimately deleted from that brief; evaluate portions of same to be used in answer; careful re-read of <i>Troester</i> opinion and analysis of best ways to utilize opinion in answer	6.40
9/23/2018	KAK Continued analysis of strongest arguments for consolidated answer brief; continued review of <i>Troester</i> opinion; carefully review and evaluate current and historical wage orders for provisions on lockers, sanitary napkins, exemptions, cash shortages, and other provisions; review and evaluate certain statements as to the basis; review and evaluate Labor Code provisions limiting theft-prevention burden that can be placed on employees; analysis of organization of arguments for consolidated answer briefs	5.10

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			<u>Hours</u>
9/24/2018	GMG	Legal research re <i>Lao v. H&M</i> and <i>Busk v. Amazon</i> cases and email KAK re same	0.40
	KAK	Continued work on developing arguments for consolidated answer to amicus briefs, including continued legal research; review rules re length and formatting requirements of brief; continued work drafting outline of brief; began drafting brief itself, with focus on responses to arguments made in Retail Federation amicus brief; email to plaintiffs' counsel in <i>Troester</i> requesting readable copy of rehearing petition filed by Starbucks; review his response; review and evaluate <i>Troester</i> rehearing petition and assess impact; email GMG re obtaining copies of briefing in relevant cases	3.70
9/25/2018	KAK	Continued work developing arguments for consolidated answer to amicus briefs; re-read defense-side amicus briefs and organize points into outline for answer; re-read plaintiff-side amicus briefs and add relevant points to outline	4.10
9/26/2018	GMG	Legal research for amicus response brief and email KAK re same	0.30
	KAK	Continued analysis of arguments for consolidated answer to amicus curiae briefs, including best organization and framing of arguments; additional legal research; review and evaluate briefing of Apple's appellate counsel Boutrous in another pending appeal on the "control" test; email to GMG re research assistance	3.30
9/27/2018	KAK	Continued work on outline and analysis of arguments for answer to amicus briefs; review and reply to email from co-counsel Gallaway re similar pending action against Sephora	0.90
9/28/2018	KAK	Continued work drafting consolidated answer to amicus curiae briefs, with focus on section addressing decisional law including <i>Morillion</i>	2.80
10/1/2018	KAK	Continued work drafting consolidated answer to amicus curiae briefs, with focus on section addressing case law arguments made by employer-side amici on "control" test	3.10
10/2/2018	GMG	Draft Supreme Court notice of change of address and email KAK re same	0.40
	KAK	Continued work drafting consolidated answer to amicus curiae briefs; additional legal research re same; continued analysis of best organization and presentation of arguments	4.80
10/3/2018	KAK	Continued work on consolidated answer to amicus curiae briefs, with focus on drafting section addressing textual arguments on "control test" and reorganizing section on decisional law construing "control" test	7.40
10/4/2018	KAK	Continued extensive work drafting consolidated answer to amicus briefs, with focus on section discussing <i>Morillion</i> and other decisional law; careful analysis of how best to distinguish and address new <i>Rodriguez</i> opinion; draft argument section concerning <i>Rodriguez</i> ; draft revised outline of section addressing defense-side hypotheticals	10.80
10/5/2018	GMG	Begin to proofread draft brief, check cites and quotes	1.30
	KAK	Continued extensive work drafting consolidated answer to amicus briefs, with focus on section discussing hypotheticals posited by employer-side amici; prepare initial draft of control test argument section and circulate same to co-counsel Shalov and KSR for review and comment; additional email correspondence with Shalov and KSR re <i>Bono</i> and <i>Rodriguez</i> decisions; forward those decisions and recent briefing by defense counsel on <i>Bono</i> ; email to attorneys Leviant and Mara re possibility of providing feedback on argument concerning <i>Rodriguez</i> ; circulate excerpt of draft to them for that purpose; continued analysis of best way to address <i>Rodriguez</i>	12.30

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			<u>Hours</u>
10/5/2018	KSR	Review appellate brief draft. Review Bono footnote and circulate comments. Review Shalov comments. Further review of current draft and comments to KAK re Rodriquez, left turn, etc.	0.50
10/6/2018	KAK	Continued extensive work drafting consolidated answer to amicus curiae briefs, with special focus on revising section on legality of "no-bag" rules and section on "suffered or permitted to work" test; draft detailed email to KSR requesting assistance locating certain citations for brief	9.60
	KSR	Email from KAK with request for evidentiary cites for appellate brief; respond.	0.30
10/7/2018	KAK	Continued extensive work drafting consolidated answer to amicus curiae briefs, with special focus on revising section on "suffered or permitted to work" test, vagueness and retroactivity arguments; prepare and circulate draft to co-counsel Shalov and KSR for review; review and reply to email from KSR re cites requested yesterday	8.60
	KSR	Further email with KAK re cites for brief.	0.20
10/8/2018	GMG	Proofread current draft brief, check cites and quotes	0.90
	KAK	Review and proofread entire draft of answer to amicus briefs; evaluate and draft additional revisions to strengthen and streamline brief, with focus on improving argument that security searches are supposedly employee benefits, including additional cites to record demonstrating that checks are part of Apple's employee conduct manual; draft additional revisions to discussion of federal definition of work; review redline comments from attorney Leviant and incorporate certain suggested revisions into brief; additional legal research on selected points for brief and incorporate same; evaluate points for introduction and draft introduction to brief; circulate revised drafts to co-counsel Shalov and KSR for final review and comment	12.70
	KSR	Email from KAK with new draft of brief and request for cites. Review appellate brief and circulate comments. Further emails with KAK re citations; review record and send cites to KAK.	1.10
10/9/2018	GMG	Review final draft brief and confer with KAK re pagination; revise and finalize and confer with KAK re same; submit brief electronically; prepare filing copies and arrange for filing by courier; prepare service copies and arrange service by mail; prepare PDF of filed brief and circulate to co-counsel	6.40
	KAK	Final proofread of brief; draft final revisions; email to and discussion with GMG re finalizing tables and hard copies for filing; review email from co-counsel Shalov approving final brief and inquiring re projected oral argument date; review Supreme Court calendars and dockets re same; email to Shalov re time between answers to amicus brief and oral argument in several recent cases, and next steps including watching for any supplemental authorities and advising court of any calendar conflicts; check upcoming calendars and argument dates; record upcoming dates for purposes of noting conflicts; review final brief with TOA as prepared by GMG; make final changes and advise GMG that brief is final; review and sign final brief; follow-up email to GMG re status of filing today; review email from GMG circulating stamped copy of brief; check docket to confirm filing (not updated yet)	2.30
10/10/2018	GMG	Draft CAND and 9th Circuit notice of change of address and confer with KAK re same; confer with KAK re possible oral argument dates	0.60
	KAK	Review and reply to email from co-counsel Shalov re when we can expect to receive defendant's response to amicus briefs; review notification confirming filing of our brief yesterday as well as defendant's brief; check docket to confirm same; email to GMG re notice of change of address in this case; discussion with GMG re same and re calendaring dates to be kept clear as possible Supreme Court argument dates	0.30

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			<u>Hours</u>
10/11/2018	GMG	Finalize Supreme Court change of address and confer with KAK re same; draft letter to clerk, prepare filing and service copies and arrange for filing and service via US Mail; check Supreme Court oral argument calendars and email KAK re same	2.10
	KAK	Review and reply to email from co-counsel Shalov re work allocation post-remand; review and reply to email from GMG re anticipated oral argument location; review and evaluate other pending wage and hour cases that may be argued in coming months; further analysis of impact of certain aspects of Dynamex opinion in preparation for oral argument	0.70
10/12/2018	GMG	Finalize CAND address change notice and file/serve via ECF; teleconference with 9th Circuit clerk re address change	0.50
10/15/2018	GMG	Review Apple response to amicus briefs and email KAK re same; prepare revised amicus binder	0.60
	KAK	Preliminary review of defendant's combined answer to amicus briefs	0.40
11/14/2018	KAK	Review and reply to email from co-counsel Shalov re status of oral argument setting; check current online calendar and forward link to Shalov; review email and article from co-counsel Gallaway re proceedings in <i>Troester v. Starbucks</i> after Cal. Supreme Court's opinion; locate and review post-transfer unpublished opinion from Ninth Circuit reversing district court's decision; evaluate and circulate same to co-counsel	0.30
11/15/2018	KAK	Review and evaluate new Court of Appeal opinion on compensable "hours worked" (<i>Hernandez v. Pacific Bell</i>); assess impact on arguments and possibility of supplemental authority letter; draft detailed email to co-counsel Shalov and Gallaway re same	0.70
11/30/2018	KAK	Review and evaluate amended opinion issued today by Ninth Circuit in <i>Sali v. Corona Regional Med Ctr.</i>	0.10
12/10/2018	KAK	Review and evaluate new opinion from California Supreme Court handed down today on Wage Orders (<i>Girard v. Orange Coast</i>); assess potential impact on arguments pending in our case	0.20
1/3/2019	KAK	Check Supreme Court's website re oral argument calendaring; February dates not set	0.10
1/15/2019	KAK	Review and evaluate new US Supreme Court opinion on early federal definition of term "employment"; assess potential impact on pending appeal; check docket for February argument calendar; none posted yet	0.50
1/17/2019	KAK	Continued review of new US Supreme Court opinion and analysis of possible supplemental authority letter; check announcement of Supreme Court's February calendar; case not set for argument	0.10
1/24/2019	KAK	Further analysis of possible supplemental authority letter re new U.S. Supreme Court opinion, <i>New Prime v. Oliveira</i> ; review and evaluate respondent's brief and amicus curiae brief, and early 20th century dictionary definitions cited therein; re-read relevant merits briefs; evaluate and conclude that no supplemental authority letter is indicated re this case	1.60
1/25/2019	KAK	Analysis of scheduling initial moot court for this summer and having co-counsel Shalov file his pro hac vice application	0.10
2/4/2019	KAK	Review and evaluate new published opinion, <i>Ward v. Tilly's, Inc.</i> , on historical wage orders and regulatory history re reporting time pay requirement; assess intersection with arguments we are making re definition of hours worked	0.40

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		<u>Hours</u>
2/13/2019	KAK Draft email to GMG re preparing pro hac vice application papers for co-counsel Shalov in California Supreme Court; check latest Supreme Court oral argument calendar notifications; case not yet set; evaluate need for moot court this summer	0.10
2/21/2019	GMG Search files for examples, review rules and State Bar guidelines; prepare draft pro hac vice application for Shalov with memo, declarations and proof of service and email KAK re same	3.80
4/2/2019	GMG Locate and compile Stoetzl appellate briefs and email KAK re same	0.30
	KAK Review and reply to email from reporter re tomorrow's oral argument in <i>Stoetzl v. State of California</i> ; evaluate status and issues to be addressed in that case; evaluate latest potentially relevant authorities and prepare list of cases to review; check docket re status; no oral argument date set yet	0.30
4/15/2019	KAK Review press coverage of jury trial involving similar theft-prevention searches and forward same to co-counsel Shalov and KSR	0.10
4/30/2019	GMG Review draft pro hac vice application for Shalov and applicable local rules and circulate to co-counsel	0.20
	KAK Review email from co-counsel Shalov re status of argument setting; reply re same and re need to prepare and file his pro hac vice application; email to GMG re circulating rules and current drafts of same; review reply of Shalov re same	0.10
5/1/2019	GMG Review signed Shalov declaration and pro hac registration and filing procedures and confer with KAK re same	0.30
	KAK Review signed declaration received from co-counsel Shalov in support of pro hac vice application; email to GMG re same; discussion with GMG re applicable rules and finalizing these materials for filing next week	0.10
5/3/2019	KAK Preliminary review of information regarding new opinion on retroactivity of Supreme Court's wage and hour rulings; email to GMG re locating and pulling this new opinion	0.10
5/9/2019	GMG Prepare draft supplemental authority letter to Supreme court with POS and email KAK re same	0.80
	KAK Draft email to GMG re preparation of initial draft of supplemental authority letter on new <i>Vasquez</i> opinion	0.10
5/13/2019	KAK Close review of new Ninth Circuit opinion on retroactivity and analysis of whether supplemental authority letter is indicated	0.70
6/28/2019	KSR Review article about and opinions from 9th Cir. on Nike/Converse bag check suits and forward to KAK, Lee Shalov for impact on Frlekin appeal.	0.30
7/1/2019	KAK Review emails from KSR and co-counsel Gallaway re new Ninth Circuit opinion on security search time (<i>Rodriguez v. Nike</i>); review and evaluate opinion; email to KSR, Gallaway and co-counsel Shalov re same; review and evaluate new opinion from California Supreme Court, <i>Stoetzl</i> , handed down today; evaluate impact on issues and whether to file notice of supplemental authority; email to KSR, Gallway and Shalov re same	0.60
	KSR Emails with Brett, Lee and KAK re Nike opinion and effect on pending appeal.	0.30
8/6/2019	GMG Review draft pro hac vice materials, rules and procedures and email KAK re same	0.30

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		<u>Hours</u>
8/6/2019	KAK Discussion with GMG re status of pro hac vice application for co-counsel Shalov; evaluate possible letter to court re scheduling conflict during October argument week; check docket for latest calendar notices	0.20
8/8/2019	GMG Confer with KAK re Shalov pro hac application; prepare final signed PDF and filing copies	0.40
	KAK Review pro hac vice application forms prepared by GMG and applicable Rules; correspondence with GMG re finalizing same for filing and service; discussion with GMG re finalizing pro hac vice application; review and execute final application and supporting declaration; email to GMG with instructions to file/serve same this week	0.30
8/9/2019	GMG Attempt to file Shalov pro hac (payment website down; filing rejected for lack of proof of payment) and email KAK re same	0.40
8/12/2019	GMG Upload Shalov pro hac application to state bar website and pay fees; email proof of payment and approval to attorney service to add to filed application	0.70
	KAK Discussion with GMG re status of filing pro hac vice application today; review various enotifications pertaining to submitting this application to state bar and paying fees; forward information to co-counsel Shalov	0.20
8/13/2019	KAK Review voice mail message from Supreme Court clerk re pro hac vice application submitted Friday; returned call and left message; email to GMG re possible call from clerk; review final, as-filed pro hac vice application and forward same to co-counsel Shalov	0.20
8/15/2019	KAK Review and evaluate order granting request to restate question and directing parties to file supplemental briefs on issue of technology devices; evaluate impact and next steps; draft detailed email to co-counsel Shalov and Gallaway and KSR re same	0.30
8/16/2019	KSR Emails with KAK re court's order for supplemental briefing.	0.20
8/19/2019	KAK Analysis of status and next steps, including need to reach out to amicus curiae supports for possible supplemental brief; continued analysis of points for supplemental brief	0.10
8/20/2019	GMG Review order for supplemental briefing and circulate to co-counsel	0.20
	KAK Review past amicus briefs and draft email to plaintiff-side amicus authors re court's order re supplemental briefing and requesting their continued support; review and reply to emails from attorneys Kaufmann and Mara re same; continued analysis of points to be made in supplemental brief to be filed next week; review and evaluate past filed briefs including Apple's answer to amici briefs, and began drafting outline of points for supplemental brier	3.40
8/21/2019	KAK Continued analysis of arguments for supplemental brief	0.20
8/22/2019	KAK Email to GMG re anticipated components of next week's supplemental brief filing and associated logistics; follow-up email to attorney Mara re possible amicus support	0.10
8/23/2019	KAK Began drafting supplemental brief on restated question; review and evaluate rules regarding length of brief; re-read court's order directing that briefs be filed, which is silent on length; legal research to update case law and identify any new relevant decisions to address in supplemental brief; review and evaluate numerous recent cases to potentially be cited; continued work drafting supplemental brief; discussion with GMG re status of brief and filing logistics for next week	5.90

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			<u>Hours</u>
8/24/2019	KAK	Continued work drafting supplemental brief on restated question; review record for additional cites pertaining to tech checks specifically and incorporate same into draft brief	2.90
8/25/2019	KAK	Continued work drafting supplemental brief on restated questions, including continued review of record and incorporation of record cites relevant to technology checks	3.50
8/26/2019	GMG	Proofread draft supplemental brief, check cites and quotes	1.60
	KAK	Continued extensive work drafting supplemental brief; email to GMG re preparation of tables; draft email to co-counsel Shalov and Gallaway and KSR circulating current draft along with detailed transmittal message; forward draft brief to attorney Mara for review	5.90
	KSR	Review KAK draft of supplemental brief and provide comments.	0.50
8/27/2019	GMG	Proofread revised supplemental brief, check cites and quotes and finalize table of authorities; prepare final signed PDF and confer with KAK re same; prepare filing and service copies	2.10
	KAK	Review email from co-counsel Shalov approving draft brief; review and reply to email from attorney Mara with suggested revision to draft brief; draft further revisions to brief to streamline and strengthen arguments; check word count, finalize and circulate to KSR and GMG for review, proofread and cite check; review and reply to email from KSR re substantive issue raised by draft; review results of GMG cite check and email to GMG with instructions to incorporate edits into current draft; review draft TOA and discussion with GMG re revisions needed; review and sign final supplemental brief; review POS; discussion with GMG re logistics of service and filing tomorrow	1.40
	KSR	Review/analyze draft supplemental brief from KAK; forward with comments. KAK response. Email from KAK re any further comments on brief.	0.50
8/28/2019	GMG	Upload supplemental brief to Supreme Court; arrange for filing and service of hard copies and email KAK re same; prepare PDF of conformed brief and circulate to co-counsel; review Apple supplemental brief	0.90
	KAK	Follow-up email to GMG re status of today's filing of supplemental brief; review email from GMG confirming that brief was successfully filed and served; review file-stamped brief; review email from defense counsel circulating their supplemental brief and requesting emailed copy of ours; reply and forward copy of our brief to defense counsel	0.10
8/31/2019	KAK	Locate and review current Supreme Court online docket to confirm whether any amicus participant filed a supplemental brief; none appear on docket	0.10
9/3/2019	KAK	Draft status update email to clients and forwarded copy of answer to amicus briefs and supplemental brief filed last week; review response from client; correspondence with co-counsel Shalov re response thereto; draft reply to client requesting time for call to discuss; review and reply to email from client re same; review and analyze defendant's supplemental brief on "tech" checks; began analysis of points for reply due next week; legal research for reply; began drafting reply	1.90
	KSR	KAK email to clients re California Supreme court argument status. Response from client and KAK email re reply. Shalov response. Further emails with KAK and Shalov re client. Call with KAK to discuss. Further emails to set up call to discuss with Shalov.	0.10
9/4/2019	KAK	Further correspondence with co-counsel Shalov re call tomorrow with client; discussion with KSR re same	0.10

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			<u>Hours</u>
9/5/2019	KAK	Continued analysis of points for supplemental reply brief; continued work drafting supplemental reply brief, with focus on sections covering "control" test and "suffered or permitted to work" test, as well as introduction to brief; preparation for call with client, including discussion with KSR re matters to cover with client; email to client re call logistics; call to client and left voice mail; further correspondence with KSR and client to confirm new call time	7.20
	KSR	Pre-call with KAK for call with client. Emails with KAK re call and emails with client to reschedule. Calendar.	0.40
9/6/2019	GMG	Proofread draft supplemental reply brief, check cites and quotes and draft table of authorities	1.70
	KAK	Continued work drafting supplemental reply brief, with focus on retroactivity section; draft revisions to all sections to improve strength and readability of brief; circulate draft brief to KSR and co-counsel Shalov and Gallaway for review and comment; email to GMG re cite check and tables; forward draft brief to attorney Mara	2.50
	KSR	Review/analyze draft reply to Apple's supplemental brief.	0.30
9/9/2019	GMG	Proofread supplemental reply brief, check cites and quotes; update brief and confer with KAK re same	0.90
	KAK	Draft email to GMG re status of cite check and TOA preparation; review draft TOA; email to GMG re changes needed; correspondence with GMG re checking and finalizing word count; discussion with GMG re filing logistics; continued preparation for call with client; dialed in for call with client and KSR and wait for client to dial in; email to client re rescheduling call; brief discussion with KSR re draft reply brief and suggested edits thereto; review email from KSR circulating redline with suggested edits to reply brief	0.40
	KSR	Draft and circulate comments to reply to Apple's supplemental brief to Cal. SC. Scheduled call with client; reschedule and discuss status with KAK.	0.40
9/10/2019	GMG	Prepare final signed PDF of reply brief and email KAK re same; prepare filing and service copies	0.80
	KAK	Review and evaluate redline comments of KSR on draft reply brief; incorporate same and draft additional revisions to brief; email to KSR and co-counsel re final brief; email to GMG re final brief; follow-up email to GMG re status; check docket for oral argument calendar	0.70
9/11/2019	GMG	Arrange for filing and service of supplemental reply brief; upload to Supreme Court; prepare PDF of filed brief and circulate to co-counsel	0.80
	KAK	Review email from GMG confirming filing and service today of supplemental reply brief; re-check online docket re oral argument setting; case not set for argument in October	0.10
9/16/2019	GMG	Review Apple Supplemental Reply Brief and circulate to co-counsel	0.20
	KSR	Review;analyze Apple's supplemental reply brief submitted to California Supreme Court.	0.40
9/20/2019	KAK	Review email from Supreme Court clerk and calendar notification letter; forward same to co-counsel Shalov and Gallaway and KSR, along with links to upcoming argument calendars for purposes of checking our schedules; record deadline to notify court of any conflicts	0.20

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			<u>Hours</u>
9/20/2019	KSR	Letter from Cal. SC re setting case for oral argument; email from KAK re court's letter.	0.20
9/23/2019	KSR	Email from KAK re conflicts for oral argument before Cal. SC; respond. Further emails with KAK and Shalov re conflicts.	0.20
9/25/2019	KAK	Review email from clerk circulating letter responding to defense counsel's request on oral argument dates and indicating that argument will likely not be set in November; forward same to co-counsel and KSR	0.10
	KSR	Email from KAK re conflicts for oral argument before Cal. SC; respond.	0.20
9/26/2019	KAK	Draft email to defense counsel Boutrous requesting that he forward his letter to the court re oral argument dates; review this letter and forward same to co-counsel; review and evaluate calendar and check against court's posted argument dates; evaluate likely argument dates in view of this week's correspondence; conclude that no letter to court is needed re unavailability on certain possible argument dates	0.40
9/27/2019	KAK	Review and reply to further email from client re scheduling call; final check of calendar and confirm no need to send any calendar conflicts to Supreme Court, which would be otherwise due today	0.10
9/30/2019	GMG	Prepare revised binder for oral argument and confer with KAK re same	0.30
	KAK	Review email from client requesting to reschedule call planned for today; reply to confirm same; further analysis of request from defense counsel Boutrous that oral argument not be scheduled on December 3-5, and best response thereto; draft email to Boutrous requesting his reasons; review response from Boutrous re his scheduling problems due to meetings on those dates; evaluate calendar and travel requirements were argument set for Dec. 2 or 6; prepare draft response email to Boutrous declining request; forward same to co-counsel Shalov and KSR for review and comment	0.50
	KSR	Email from KAK re scheduled call with client. Client response. Email from Boutrous to court re conflict; KAK email re response to Boutrous and strategy. Shalov response.	0.40
10/1/2019	KAK	Review reply from Shalov re response to defense counsel Boutrous re his scheduling problems; finalize and send response to Boutrous; email to KSR in preparation for call today with client; discussion with KSR in preparation for this call; call to conference line, but client did not dial in as scheduled; draft follow-up email to client proposing other call times; preliminary review of new Ninth Circuit opinion on "control" test (<i>Taylor v. Cox</i>); evaluate and make note of need to schedule moot court time in November	1.10
	KSR	Telephone call with KAK in preparation for call with client re class rep status and pending appeal. Telephone call with KAK awaiting client; emails to reschedule call.	0.30
10/2/2019	KSR	Email from KAK re call to prepare for call with client; respond. Call with Kim to prepare for client call to discuss Cal. SC oral argument and case status.	0.30
10/7/2019	GMG	Westlaw research re case cited in Apple reply brief and email KAK re same	0.20
	KAK	Further review of defendant's supplemental reply brief and email to GMG re pulling cited decisions; review materials forwarded by GMG	0.40
10/8/2019	KAK	Review new opinion, <i>Gonzales v. San Gabriel Transit</i> , on retroactivity and evaluate whether to submit as supplemental authority	0.10
10/11/2019	KAK	Check correspondence with client regarding scheduling time for telephone discussion; evaluate next steps in view of difficulty connecting and recommendation to make by email; draft follow-up email to client with update on case status; review	1.10

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		<u>Hours</u>
	and evaluate recent Ninth Circuit Cox decision, cited in Apple's latest brief, and preliminary analysis of whether to file supplemental brief	
10/23/2019	KAK Evaluate status of correspondence with client; draft follow-up email to client; forward latest correspondence with update to co-counsel Shalov and KSR; review and reply to response from client re status; forward same to Shalov and KSR; review email from court clerk in response to defense counsel's scheduling request	0.20
	KSR Emails with KAK, Shalov and client re status of oral argument on Cal SC certified question. Emails with KAK re communications with client re case status. Email from Kim re client reply.	0.30
10/24/2019	KAK Review letter from Supreme Court clerk rejecting defense counsel's request re December argument dates; forward same to co-counsel Shalov and KSR	0.10
10/28/2019	KAK Review email from co-counsel Shalov re anticipated notice from clerk of argument date; draft detailed response re court's normal procedure for announcing its argument calendar; review schedule for available moot court dates to prepare for argument; and further correspondence with Shalov re same	0.20
10/29/2019	KAK Review and reply to email from co-counsel Shalov re possible moot court dates; email to KSR and GMG re same	0.10
11/7/2019	KAK Review email from co-counsel Shalov re pro tem justice assigned; check docket re same; check docket for other case in which defense counsel Boutrous is arguing and requested arguments not be double-set; evaluate likelihood that case will be set on December calendar; reply to Shalov with link to biographical information of pro tem justice	0.20
	KSR Email from Shalov re judge assigned to case. Review background.	0.20
11/12/2019	KAK Check Supreme Court document re oral argument setting; no argument date set today	0.20
11/13/2019	GMG Review notice of oral argument and emails re same; prepare appearance form and email KAK re same	0.30
	KAK Check Supreme Court docket re oral argument setting; review emails from clerk indicating that matter is set for argument on December 4, 2019 at 9:00 a.m. in LA; correspondence with co-counsel Shalov, KSR and GMG re same; review draft of appearance form prepared by GMG; email to GMG re changes needed; began evaluating schedule for preparation and scheduling moot court session(s)	0.50
	KSR Email from Kim re case set for oral argument and plans for moot court; calendar. Email from court with appearance sheet. Began preparation.	0.30
11/14/2019	KAK Reply to email from clerk re argument setting with request that co-counsel Shalov be copied on future correspondence; evaluate schedule and best timeframe for moot court; email to KSR re her schedule; began preparation for argument, including review of most recent briefs	1.20
	KSR Further emails with KAK re date set for oral argument. Discussion with attorneys re moot court on November 22 to prepare for oral argument. Emails with KAK re scheduling moot court sessions.	0.40
11/15/2019	KAK Continued oral argument preparation, including review and analysis of defendants' supplemental reply brief; review and reply to email from attorney Rubin re upcoming oral argument; further correspondence with KSR re scheduling of moot court and assistance from other attorney "justices"	0.80

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			<u>Hours</u>
11/15/2019	KSR	Email to KAK re counsel available for moot court prep for oral argument before Cal Supreme Court; response.	0.30
11/18/2019	KAK	Review and evaluate clerk's instruction sheet for oral argument and calendar deadline to submit supplemental authorities; continued preparation for oral argument	0.20
11/19/2019	KSR	Discussion with KAK re prep for oral argument.	0.20
	KAK	Conference with KSR re moot court preparation	0.20
11/20/2019	GMG	Email completed appearance sheet to Supreme Court clerk; confer with KAK and KSR re upcoming moot court and oral argument; legal research re <i>Ridgeway v Walmart</i> case and email KAK re same	0.40
	KAK	Continued oral argument preparation, including analysis of preparation schedule and tasks necessary for preparation; email to GMG re same; call with co-counsel Shalov to discuss moot court schedule and argument logistics; legal research to identify any recent supplemental authorities; email to GMG re pulling additional briefing from <i>Ridgeway v. Wal-Mart</i> ; review and evaluate further brief pulled by GMG; email correspondence with various attorneys re moot court assistance and circulate briefs to these attorneys; correspondence with attorney Leviant re use of his conference room in downtown LA for further preparation on day before argument; email to Shalov re same	4.30
	KSR	Email from KAK to counsel to set up moot court session for oral argument to California Supreme Court on certified questions. Counsel responses to schedule and email from KAK forwarding all briefing. Further email from KAK scheduling moot court sessions and calendar. Email to KAK re attending oral argument. Continued preparation for moot court sessions	0.90
11/22/2019	GMG	Prepare oral argument binder and MJN binder and confer with KAK re same	0.40
	KAK	Continued oral argument preparation, including work on revised outline and preparation of list of materials to be compiled and reviewed; review motions for judicial notice and discussion with GMG re preparing binder of MJNs; review motion to augment record, response thereto, and attachments stating that internal loss prevention is responsibility of all employees; correspondence with attorney Rubin to schedule strategy call; review and reply to email from co-counsel Shalov re argument week logistics; telephone conference with attorney Rubin and discussed several strategy issues; calculate anticipated deadline for opinion (90 days after argument date); draft email to clients apprising them of upcoming oral argument; review and reply to responses of two clients; circulate dial-in for Monday's moot court/prep. meeting; evaluate additional possible attendees at moot court sessions; email to counsel for Bet Tzedek with invitation to participate	5.90
	KSR	KAK email to clients re upcoming oral argument at Cal Supreme Court re certified questions. Client responses. Email from KAK re moot court session. Continued preparation.	0.30
11/24/2019	KAK	Continued oral argument preparation, including extensive work drafting argument outline; review and reply to emails from Bet Tzedek attorneys re participation in moot court set for 12/2 and forward briefs to them; rehearse delivery of argument using outline; evaluate and draft responses to anticipated questions	7.90
11/25/2019	GMG	Prepare for and participate in moot court; prepare revised Supreme Court binder and confer with KAK re same	3.20
	KAK	Continued preparation for oral argument and revisions to argument outline; participate in moot court prep. meeting with KSR, co-counsel Shalov, and attorneys Rice and Jones; practice argument and discuss numerous strategy issues; post-meeting	4.70

		<u>Hours</u>
	discussion with KSR re argument; review voice mail message from clerk re check-in on argument date; returned call and discussion with clerk; additional research in preparation for argument	
11/25/2019	KSR Review/analyze briefing and prepare for moot court session for Cal Supreme Court oral argument.	1.20
	KSR Review/analyze briefing and prepare for and participate in moot court session for Cal Supreme Court oral argument.	3.20
11/26/2019	KAK Began drafting revised argument outline based on feedback from yesterday's moot court	0.10
11/27/2019	KAK Continued oral argument preparation, including work on revised outline	0.30
11/29/2019	KAK Continued preparation for oral argument	0.20
11/30/2019	KAK Continued preparation for oral argument; review docket entry indicating that all motions for judicial notice and to augment record have been granted; review court's oral argument summary page with justices seating chart	1.30
12/1/2019	KAK Continued preparation for oral argument, including refinement of oral argument outline and re-review of relevant decisions; practice delivery of argument	5.80
12/2/2019	GMG Review order re RJNs and circulate to co-counsel; prepare for and participate in second moot court	4.80
	KAK Continued extensive preparation for oral argument, including re-read of relevant cases; continued work on flash cards for argument preparation purposes; continued refinement of argument outline; participate in moot court with KSR, GMG, co-counsel Shalov, and attorneys Mara, Schiller and Hadl; email to attorney Leviant to confirm use of his conference room tomorrow afternoon; post-moot court emails; prepare all materials needed for argument	11.70
	KSR Prepare for and moot court prep for Cal SC argument with KAK, Lee Shalov, amicus counsel, etc. Further preparation with Shalov and KAK.	2.20
12/3/2019	KAK Travel to Los Angeles for oral argument; multiple conferences with co-counsel Shalov re strongest points for argument; to courthouse and discussion with clerk re procedure; attend oral argument session; continued further extensive oral argument preparation, including re-read of relevant cases and memorization of likely questions; meeting at attorney Leviant's office in further preparation for argument; continued practice delivering oral argument outline and refinement of outline	12.30
12/4/2019	KAK Final preparation for oral argument; to courthouse and present oral argument before California Supreme Court; post-argument discussions with co-counsel Shalov; post-argument email to KSR and GMG; review and reply to email from KSR; return travel to San Francisco	10.20
	KSR Observe Cal. Supreme Court argument. Post-argument emails with team.	0.80
12/5/2019	KAK Post-argument email correspondence with KSR, co-counsel Shalov and several other attorneys; review Law 360 coverage of argument	0.30
	KSR Emails with KAK re Cal. Supreme Court argument.	0.10
12/7/2019	KAK Further correspondence with attorney Mara re oral argument	0.10

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			<u>Hours</u>
12/9/2019	KAK	Organize argument materials and research folders for later use after opinion is handed down	0.60
1/6/2020	KAK	Review and evaluate relevant new Ninth Circuit opinion (<i>Ridgeway v. Wal-Mart</i>); forward same to co-counsel Shalov; preliminary assessment of whether to submit as supplemental authority; review and reply to email from Shalov re same	0.30
1/7/2020	KAK	Continued review and analysis of Ninth Circuit <i>Ridgeway</i> opinion; review and evaluate supplemental authority rules; evaluate advisability of supplemental authority submission; began drafting supplemental authority letter; correspondence with attorney Rubin re potential submission and strategy considerations	2.60
1/8/2020	KAK	Continued analysis of advisability of submitting supplemental authority letter re <i>Ridgeway</i>	0.30
1/10/2020	GMG	Draft proof of service, prepare PDF of supplemental authority letter and arrange for filing and service; calls with clerks and confer with KAK re proof of service issue (service on 9th Circuit not needed); email courtesy copy to Apple counsel	2.60
	KAK	Discussion with KSR re possibility of submitting supplemental authority letter on <i>Ridgeway</i> ; draft revised version of letter with cites to portions of briefs supported by new decision; circulate same to KSR for review; circulate same to co-counsel Shalov; review and reply to response from KSR re same; review response of Shalov re same; legal research to confirm no other new authorities have been handed down for inclusion in letter; draft final revisions to letter; email to GMG re letter, enclosure and POS to be prepared for service today; review and sign final letter; discussion with GMG re filing logistics and emailing courtesy copy to Apple's counsel before COB today; telephone call from Supreme Court clerk re proof of service and indicating that letter must be served on Ninth Circuit; discussion with GMG re same; review applicable rules which do not appear to include such requirement; review voice mail from clerk re service issue; telephone call to clerk re service issue; review email from GMG with courtesy copy of letter to defense counsel	1.80
	KSR	Review Kim's letter to Cal. SC re <i>Ridgeway</i> opinion and circulate comments. Further emails with Kim re <i>Ridgeway</i> opinion. Discussion with Kim re sending supplemental authority re 9th Cir. Opinion to Cal Supreme Court. Review draft letter to Cal Supreme Court re <i>Ridgeway</i> opinion and review/analyze opinion. Reply email to KAK re draft letter. Review email exchange with Michael Rubin re submitting letter. Respond to Kim.	1.20
1/27/2020	GMG	Review response to supplemental authority letter and email KAK and KSR re same	0.10
	KAK	Review and evaluate defendant's letter in response to supplemental authority letter on <i>Ridgeway</i> ; evaluate same; email to KSR and co-counsel Shalov with preliminary thoughts on same	0.10
	KSR	Review Apple's letter to court re Rodriguez case; review Rodriguez; email to Lee and Kim re improper to reargue that case.	0.40
1/28/2020	KAK	Review further correspondence from KSR and co-counsel Shalov re whether to file letter replying to Apple's response, received yesterday; draft reply letter; circulate same to KSR and Shalov for review and comment; review recent decisions citing <i>Ridgeway</i> ; forward one such decision to KSR and Shalov; review and reply to emails from KSR and Shalov with comments on letter; draft revisions to letter based on comments of KSR; circulate revised draft	1.40
	KSR	Emails with Kim and Lee re whether to file further argument in response to Apple's improper supplemental argument of Rodriguez. Further emails with Kim and Lee re supplemental submission to address Apple's arguments on Rodriguez. Email from Kim with newly published Chavez order; review/analyze. Circulate comments to Kim	0.50

and Lee re order and whether to cite to court as supplemental authority.
Review/analyze draft letter from Kim to court objecting to Apple's discussion of Rodriguez, and raising a conditional point to refute. Circulate edits/comments to draft letter.

1/29/2020	GMG	Proofread letter, check cites and quotes and prepare final signed PDF of supplemental authority reply letter and confer with KAK re same; submit electronically to court and arrange for hard-copy filing; prepare service copies and arrange for delivery; review order and email KAK re deadline to notify 9th Circuit of any ruling; prepare PDF of conformed letter; review KAK email re call from clerk	2.90
	KAK	Draft final revisions to objection to Apple's response to supplemental authority letter; forward same to GMG with instructions re filing and service today; review and execute final letter as prepared by GMG; evaluate dates to be triggered by issuance of opinion; email to GMG re checking Ninth Circuit order; review rules and deadline for potential rehearing petition; email to GMG re calendaring same; review and record likely deadline to advise Ninth Circuit of issuance of opinion; telephone call from deputy clerk re letter submitted for filing today; left voice mail message for clerk re same; email to co-counsel Shalov and KSR summarizing discussion with clerk	0.70
1/30/2020	KAK	Continued review and evaluation of new ruling in <i>Chavez v. Converse</i> ; review voice mail message from clerk re letter brief filings; returned call to clerk	0.30
	KSR	Email from Kim re clerk's position on supplemental authority letters and Kim's response.	0.20
2/11/2020	KAK	Review enotification indicating that opinion will be issued on Thursday 2/13/20; review and reply to email from co-counsel Shalov re same, and advising him of time when opinions are generally posted and available online	0.10
	KSR	Emails with Kim and Lee Shalov re timing of issuance of court's opinion and next steps.	0.10
2/12/2020	KAK	Evaluate need to inform clients that opinion will be issued tomorrow and advise them of possible press calls; email to co-counsel Shalov re emailing clients re this; follow-up email to Shalov re same; review email from co-counsel Gallaway to clients re same; review and reply to email from Bloomberg reporter; review her prior press coverage; review docket to confirm and check status of supplemental authority letters; review and re-calendar deadlines triggered by opinion (for notification to Ninth Circuit and any rehearing petitions)	0.30
2/13/2020	GMG	Review Supreme Court opinion and confer with KAK re same; review Troester docket and order re activity following Supreme Court opinion and email KAK re same	0.90
	KAK	Review and evaluate opinion handed down today, in which California Supreme Court ruled in our favor on compensability and retroactivity, and adopted all of our arguments; circulate copy of opinion to KSR and co-counsel Shalov and Gallaway; correspondence with KSR, Shalov and Gallaway re same; discussion with KSR re same and next steps in case; telephone call from co-counsel Shalov re same; correspondence with clients re same and forwarded copy of opinion; review and reply to responses of clients; telephone calls and email correspondence with numerous reporters in legal and mainstream press; review preliminary press reports; review and reply to numerous emails from amicus participants and other interested attorneys; preliminary evaluation of next steps in case, including notification of Ninth Circuit and possible further briefing in Ninth Circuit; email to GMG re format of notification to be filed by next week; close re-read of opinion and further evaluation of impact on case going forward, including argument to be made in Ninth Circuit that court should reverse with directions to grant plaintiffs' summary judgment motion; re-check Ninth	3.90

		<u>Hours</u>
	Circuit briefing re this procedural argument; review preliminary press coverage of opinion	
2/13/2020	KSR Emails with team re Cal. Supreme Court opinion. Review/analyze Cal. Supreme Court opinion and emails with Team. Discussion with Kim re opinion and effect, next steps. Email from Kim to class reps re opinion. Further emails with team re opinion. Email from Frlekin regarding effect of opinion. Kim response. Review responses re opinion. Forward request from Associated Press to Kim for comment; response.	1.50
2/14/2020	GMG More research re post-opinion activity in Troester and Mendoza and email KAK re same	1.30
	KAK Continued review of press coverage and correspondence with amicus participants and other interested attorneys re impact of opinion; telephone discussion with co-counsel Shalov re likely next procedural steps in Ninth Circuit; emails to GMG re pulling dockets in similar cases (Troester and Mendoza) to check Ninth Circuit procedures; review materials pulled by GMG, which indicate that procedures vary by panel; further correspondence with Shalov re same; email to GMG re checking procedure for filing copy of opinion in Ninth Circuit; continued analysis of next steps in case in view of favorable opinion	2.40
	KSR Further analysis of opinion.	0.20
2/15/2020	KAK Continued analysis of Cal. Supreme Court opinion and impact on case going forward; re-read Troester opinion on "de minimis" defense, which Apple has raised, and evaluate impact thereof on case going forward	0.90
2/18/2020	GMG Review inquiry from purported class member and email KAK re same; emails with KAK re possible filing of Supreme Court opinion in 9th Circuit	0.40
	KAK Review further press coverage forwarded by co-counsel Galloway; review and evaluate email from Galloway re status of damages analysis survey work done earlier in case; draft replies including thoughts on possible mediators and mediation, and damages work to be done for purposes of settlement vs. trial; review email from KSR with additional thoughts on damages work to be done; review and reply to email inquiry from possible class member; review voice mail message from possible class member; email to Galloway re returning this call; review email from Galloway confirming he will respond; correspondence to GMG re preparing initial draft of notice required to be filed by Thursday; draft language for notice and circulate to GMG; further correspondence with GMG re logistical questions surrounding this filing	0.80
	KSR Email from Galloway re expert survey and damages analysis. Review/analyze damages study analysis from 2014 circulated by Brett Galloway. Email to team re percentages of employees/store and number/minutes/search developed in earlier study/estimates and response to Galloway's approach for estimating forward based on Cal. Supreme Court opinion. Further emails with Brett and Kim re potential for Ninth Circuit to reverse MSJ ruling by Alsup, and arrange call to discuss damages/Ninth Circuit ruling and potential remand. Discuss with Kim. Review Law360 article re opinion and corporate responses. Comments from Kim on article. Further email from Brett re need for additional discovery on damages. Email from Kim re probable Ninth Circuit briefing before remand to district court and potential mediators. Further emails with team re analysis for possible mediation vs. discovery on damages for trial. Email from Brett re returning class members calls with questions about opinion.	1.20
2/19/2020	GMG Prepare PDF of filed Supreme Court opinion and circulate to co-counsel; call 9th Circuit clerk re filing Supreme Court opinion and email KAK re same; prepare notice with exhibit and email KAK re same	0.80

		<u>Hours</u>
2/19/2020	KAK Review file-stamped copy of opinion, received today; correspondence with GMG re filing this version with our notice to the Ninth Circuit, due tomorrow; review draft notice prepared by GMG per instructions yesterday; review and reply to email from co-counsel Shalov re same, and proposed changes to current draft of notice; circulate current draft of notice to Shalov for review; review and reply to email from GMG re instructions received from Ninth Circuit clerk re procedure to file this notice	0.20
2/20/2020	GMG Prepare revised PDF of notice to 9 Circuit re Supreme Court opinion and email KAK re same; arrange for filing via ECF; confer with KAK and KSR re ruling and next steps; revise 9th Circuit bill of costs and email KAK re same; prepare service copy and arrange for mailing	1.40
	KAK Revise draft notice to Ninth Circuit to indicate that certified question was answered "yes"; circulate revised draft to co-counsel Shalov; review email from Shalov approving same; email to GMG re finalizing same and filing today; review and approve PDF of revised notice with exhibit, prepared by GMG; review enotification confirming filing of notice in Ninth Circuit; discussion with KSR and GMG re anticipated next steps in Ninth Circuit and timing thereof, post-remand damages discovery and analysis needed, possible settlement discussions, possible triable issues that remain, and other strategy and logistical matters; email to GMG re pulling copy of Apple's original opposition to our summary judgment motion; preliminary review and evaluation of same; email to KSR and co-counsel Shalov and Gallaway re possible arguments Apple may raise in Ninth Circuit re impact of Supreme Court's opinion	1.20
	KSR Meeting with KAK re strategy for potential brief to Ninth Circuit if required re next steps for court, and discuss strategy for damages study and further discovery. Review/analyze further chart prepared for prior mediation with Judge Spero. Email from Kim re Apple's contentions re further triable issues. Further email from Kim re Apple's contentions re triable issues.	1.00
2/21/2020	KAK Evaluate and draft further follow-up email to potential class member who resided in California but worked for Apple at a store in D.C.; legal research re residence issue; forward same to co-counsel and KSR with thoughts on issues presented by his question about California residents; further discussion with KSR re strategy and next steps	0.40
	KSR Discussion with KAK re next steps in Ninth Circuit and district court. Email from Kim re contact from employee at Apple DC store while California resident. Review and respond. Gallaway response.	0.60
2/24/2020	GMG Review Apple letter to Supreme Court and email KAK re same	0.10
2/25/2020	KAK Review enotification re letter to Ninth Circuit from defense counsel; evaluate letter; correspondence with co-counsel Shalov and KSR re same and no need for immediate response	0.30
	KSR Review/analyze Apple's letter to court re petition for reconsideration. Emails with Kim re whether any need to respond.	0.30
2/26/2020	KSR Email from Gallaway with Law360 article re Cal. SC opinion; review.	0.20
2/27/2020	KSR Discussion with KAK re next steps in Ninth Circuit and district court. Review Apple's briefs re triable issues and notes to file. Review damages analysis in district court for next steps.	1.20
	KAK Conference with KSR re upcoming deadlines and tasks	0.20

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			<u>Hours</u>
2/28/2020	GMG	Review Apple petition for rehearing, calendar response deadline and email KSR re same	0.60
	KSR	Review/analyze Apple's petition for rehearing. Calculate due date for answer to petition and calendar.	0.50
3/1/2020	KSR	Further review/analyze Apple's petition for rehearing in the California Supreme Court. Research California Rules of Court and calculate date to file an answer. Calendar. Draft and circulate email to team re date answer due.	0.90
3/2/2020	KAK	Review enotification re filing of rehearing petition by Apple and correspondence between KSR and co-counsel Shalov re same, including deadline to file answer; check rules governing rehearing petitions; review and analysis of rehearing petition and began outline of points for answer; telephone discussions with Shalov re petition, points for answer, and allocation of work; email to GMG re authorities cited in petition to be pulled; began review of same; correspondence with Shalov's office re pulling second cited law review article; began review and analysis of same; review enotification re order granting Court 60-day extension of time to rule on rehearing petition; evaluate impact in case and check applicable rules re such extensions; email to KSR and co-counsel re same	2.70
	KSR	Email from Gibson Dunn re petition for rehearing. Email from Lee Shalov to organize call to address Apple's petition for rehearing; respond. Review/analyze court's order re extension to rule on petition; email from Kim re normal extension. Further email from Kim re her call with Lee, McLaughlin research and Kim working on outline for response to petition.	0.30
3/4/2020	KAK	Continued analysis of points for answer to petition for rehearing; email to GMG re filing logistics; discussion with GMG re same; review additional press coverage and practitioner analysis of opinion; began drafting answer to petition, including additional analysis of points to be made and further legal research; re-read relevant portions of summary judgment order and class certification order; locate portions of briefing on flaws in Hall report; email KSR re same	2.80
	KSR	Email correspondence with KAK re assistance needed for answer to rehearing petition	0.20
3/5/2020	KAK	Continued work drafting answer to rehearing petition, including legal research; email to co-counsel Shalov and KSR re status	2.30
	KSR	Emails with Kim re draft brief (Cal SC answer) and arguments to be made therein.	0.20
3/6/2020	GMG	Review rules and research filing logistics for answer to petition for rehearing	0.60
	KAK	Continued work drafting answer to rehearing petition, including analysis of best organization and structure of points in opposition to rehearing; additional legal research; additional review of relevant portions of record for purposes of incorporating into draft answer; circulate current draft to GMG for purposes of cite check	7.80
3/7/2020	KAK	Continued extensive work drafting answer to petition for rehearing; additional legal research; circulate draft to KSR and co-counsel Shalov and Gallaway for review and comment, and request for assistance on one citation issue needed for brief	5.60
3/8/2020	KAK	Review and evaluate comments of co-counsel Shalov on draft answer to rehearing petition; draft additional revisions to answer; circulate new draft to KSR and co-counsel Shalov and Gallaway	3.60
	KSR	Email from Kim with draft of answer to petition for rehearing and request to search for cites; respond; began work on cites.	0.40

		<u>Hours</u>
3/9/2020	GMG	2.90
	Proofread answer to petition, check cites and quotes and email KAK re same; prepare final signed brief and confer with KAK re filing and service; arrange for physical filing and mail service of brief; circulate file-stamped brief to co-counsel	
	KAK	1.70
	Draft final edits to answer to rehearing petition, for purposes of clarity and strengthening; circulate current draft to KSR and GMG for further review and cite check; review and reply to email from KSR re final citations to record needed for brief; locate earlier letter brief in which these cites were included and forward same to KSR for double-checking; review email from KSR re cites to be included in brief; draft further revisions to brief, including adding these cites and point that many class members were searched multiple times per day; review and incorporate results of GMG cite check; email to GMG and KSR re current final draft brief; review final including TOA prepared by GMG; email to GMG re final corrections needed; review emails from KSR re typographical errors and correspondence with GMG re incorporating these changes; sign final brief; further correspondence with GMG re status of filing; review email from GMG confirming successful filing and circulating filed brief; forward courtesy copy of filed brief to defense counsel with information that their service list needs updating, and forward copy of previously-filed notice of change of address	
	KSR	3.10
	Email from Kim with revised draft of answer to petition for rehearing. Further email from Kim re footnotes cites needed for answer to petition for rehearing; respond. Review draft answer and prior letter brief for cites and review all cited docs in excerpts of records. Email to Kim re cites to change and draft edits. Review/analyze revised draft of answer and circulated edits; check cites for other edits/typos in quotes from cited cases and circulate. Review/analyze final draft and forward edits to Kim. Email from Gary with final draft of answer; Kim email directing final edits. Emails with Kim and Gary re final edits. Email from Gary with file-stamped answer to petition. Kim email to Apple's counsel with instructions to change our firm address in their records.	
3/10/2020	KAK	0.50
	Review as-filed version of answer; analysis of next steps in case now that answer has been filed, including research needed on presumption that arises from Apple's failure to record the compensable search time as required by law, possibility that Supreme Court will need to reach and resolve "suffered or permitted to work" test if rehearing were to be granted, and need to advise clients of rehearing petition developments; discussion with KSR re same; email to KSR and co-counsel re "suffered or permitted to work" test coming into play if Court were to grant rehearing; draft email update to clients and circulate answer to petition, filed yesterday	
	KSR	0.30
	Emails with Kim and Lee re answer to petition for rehearing and next steps. Discussion with Kim re contacting class reps re motion. Email from Kim to class reps.	
3/16/2020	KSR	2.20
	Email with Kim re research projects in anticipation of remand to Alsup. Email from Kim re Northern District order re altered court procedures due to pandemic. Legal research re remand issues concerning liability and damages.	
	KAK	0.30
	Evaluate and draft further email to KSR re research needed for post-remand proceedings	
3/17/2020	KAK	0.60
	Review enotification re letter from clerk advising parties that decision is final; evaluate impact and implication that rehearing petition was denied; correspondence with co-counsel and KSR re same and logistical issues re obtaining mailed service copy; locate email address for Supreme Court clerk and draft email to clerk requesting emailed copy of letter; further correspondence with clerk re same; review general order re court operations and automatic extensions; assess impact; circulate same to KSR and GMG; review and reply to email from clerk in response to inquiry	

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			<u>Hours</u>
3/17/2020	KSR	Emails with Lee, Brett and Stu re email from Cal SC and monitoring office for hard-copy letter. Email from Kim re Ninth Circuit extension on briefing. Further email from Kim re notice from Cal. Supreme Court and probability it means petition for rehearing denied; respond. Shalov response re tracking Cal. Supreme Court letter; Kim response; Brett reply.	0.20
3/19/2020	KSR	Review/analyze article re status of matters pending in Alsup's court, amid the pandemic. Circulate comments to team. Review/analyze email from Kim re expected "facts" that Apple will contend are in dispute in communication to the Ninth Circuit for remand to the district court. Legal research regarding "contested" facts and proving damages in light of Apple's failure to record hours worked.	2.50
3/20/2020	KAK	Check docket to confirm status; docket entry re file-closing letter has been removed; evaluate impact and possibility that file closing letter was issued in error	0.10
3/22/2020	KAK	Draft email to co-counsel and KSR re probability that file closing letter was issued by clerk in error; evaluate next steps in case and work that can be done between now and ruling on rehearing petition	0.20
	KSR	Email from Kim re docket entry for "letter to counsel" gone and maybe issued in error; date denial of rehearing final is March 16; and status of Cal S.C. operations; calendar. Continued research.	0.70
3/23/2020	KAK	Correspondence with KSR re status and scope of research needed for post-remand motion practice on impact of presumption arising from defendant's failure to record all hours worked as required by Wage Order 7	0.20
	KSR	Emails with Kim re legal research on proof of damages and presumption re Apple's failure to record hours worked. Continue research.	1.50
3/26/2020	KSR	Continued legal research re damages issues anticipated for remand.	3.60
3/27/2020	KSR	Continue legal research re damages issues anticipated for remand.	3.30
3/30/2020	KSR	Email from Kim re projects on remand. Research for presumption re hours unrecorded by Apple for bag checks.	2.80
	KAK	Evaluate status and email KSR re research projects	0.20
3/31/2020	KSR	Continue legal research on damages and liability issues that could/will arise on remand.	1.60
4/1/2020	KSR	Legal research on issue of presumption re Apple's failure to record check time, to prove damages.	1.40
4/3/2020	KSR	Research re presumptions attached to Apple's failure to keep time.	1.30
4/6/2020	KSR	Emails with KAK re deadline for Cal. Supreme Court to rule on rehearing petition and research for remand to Alsup.	0.20
	KAK	Check rules and anticipated timeframe for order on rehearing petition; email to KSR re same and status of research	0.20
4/9/2020	KSR	Review article re status of matters on Alsup's docket amid pandemic.	0.20
4/15/2020	GMG	Review 2015 expert survey and emails re same	0.20

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		<u>Hours</u>
4/15/2020	KAK Review extensive correspondence between KSR and co-counsel Gallaway re prior damages calculations; review and reply to email from co-counsel Shalov re impact of emergency orders on current deadline for Supreme Court to grant or deny rehearing	0.20
	KSR Review/analyze materials prepared for Spero mediation and email attachments from Brett re survey results. Email to Brett re no affidavit attached; response. Further emails with Brett and team re damages analysis and history of survey and prior damages evidence. Email from Lee Shalov re status of operations of California Supreme Court amid the pandemic wrt ruling on petition for rehearing. Research court operations status and respond to Lee. Kim response. Email from Gallaway with survey responses and review/analyze data. Email to Gallaway with questions re survey data. Email response from Gallaway re protocol for survey based on Apple's sample class member data, etc. Further email response from Gallaway re survey and respond. Review Kriegler emails re prior damages study forwarded by Brett. Legal research re proving damages in the absence of recorded data from Apple.	4.70
4/16/2020	KAK Review further correspondence between KSR and co-counsel Gallaway re prior damages analysis; review and reply to emails from Gallaway re possible settlement structures and proposed mediators; locate and forward previously-circulated mediator information	0.20
	KSR Further email from Brett with background re 2015 damages survey and analysis and prior analysis re presenting to court/Apple. Review/analyze and respond to team re research and next steps. Further emails from Brett and Kim re damages analysis and prospective mediators. Further email from Brett proposing claims-made structure for proving damages. Email from Kim with response to claims-made approach. Response from Brett and discussion of Doordash case cited by Kim and potential mediators. Email from Kim regarding discussion of potential mediators. Further email from KAK re prior discussions re potential mediators.	1.40
4/17/2020	KSR Email from Brett re list of potential mediators.	0.20
4/20/2020	KSR Email from Kim requesting I respond to Brett's email re proposing mediation to Apple. Response.	0.20
4/27/2020	KSR Emails with Kim re damages research and research re potential motions on remand. Review prior damage study and begin damages research.	4.50
4/28/2020	KSR Further research re potential motion to decertify the class.	4.90
4/29/2020	KAK Discussion with KSR re status of research projects for anticipated motion practice before Judge Alsup after remand	0.10
	KSR Review article re deadlines in Alsup's court. Discussion with Kim re Judge Alsup's current schedule and potential for Apple cert petition and further briefing before 9th Circuit, as well as research for potential motions to decertify and method to prove damages. Continue research re potential Apple motion to decertify and authorities re proof of damages where employer failed to maintain records of hours worked.	2.60
4/30/2020	KSR Further legal research for damages memo.	3.60
5/1/2020	KSR Further legal research for damages memo. Emails with Brett Gallaway re Amazon bag check case settlement and review article.	3.80
5/5/2020	KSR Review/analyze legal research re liability and damages issues and summarize for damages memo.	1.20
5/7/2020	KSR Review Recorder article re Judge Alsup's expected action on report and recommendation in favor of Apple and Cisco. Forward to team with comments re remand. Email from Lee Shalov re call from Julie Dunne. Response to Shalov re	0.80

		<u>Hours</u>
	potential settlement discussions and/or mediation, and research to support damages. Further emails with Shalov re Apple's intent re mediation.	
5/8/2020	KAK Review and reply to correspondence from co-counsel Shalov re call received from Apple's counsel Dunne, possibly re settlement; review and evaluate Supreme Court's applicable orders extending filing deadlines due to pandemic; review Rules and evaluate impact on rehearing-related deadlines in our case; review orders related to deadline to file cert. petition in U.S. Supreme Court; draft detailed email to co-counsel, KSR and GMG re conclusion that Court's deadline to act on rehearing petition remains May 13, as ordered in March, and need to prepare to file notification in Ninth Circuit, assuming petition is denied; review email from Shalov summarizing discussion with Dunne re settlement; evaluate same and reply	0.80
	KSR Email response from Kim re Julie Dunne's call to Shalov and potential settlement discussions or mediation. Emails from Shalov re call with Dunne to discuss settlement; review Shalov summary. Respond re Zoom call to discuss and eta for damages memo. Email from Kim re eta for order on motion for reconsideration and court's orders re COVID-19 and effect if no order. Further emails to set date/time for conference call. Email from Lee re further call with Dunne re exploring settlement or mediation and Apple's view of the case. Further research on liability and damages issues to prepare for conference call.	1.50
5/11/2020	KSR Emails to confirm conference call for Tuesday. Further legal research for and draft memo re proving damages for conference call.	4.70
5/12/2020	GMG Search files for summary of Apple video evidence, check files for playability and email KSR re same	0.60
	KAK Preparation for co-counsel strategy call re settlement discussions; review and evaluate memorandum by KSR re damages issues; re-read order granting class certification for comments on "claims" process; participate in lengthy strategy call with co-counsel Shalov and Gallaway and KSR; check docket re status of rehearing petition; locate and forward information on possible mediators	2.40
	KSR Finalize current draft of memo re proving damages for conference call. Circulate memo with Excel of damages analysis from Spero mediation in 2015. Conference call with Kim, Lee, Brett to discuss potential mediation with Apple. Review/analyze Apple's discovery responses re when it halted bag/tech checks; circulate rog response to team. Review/analyze list of Apple's video production and send email instructions to GMG re summary of video evidence (for evidence of time required for a search). Emails from Gary re analysis of video evidence from Apple. Email from Brett attaching settlements in other bag check actions in the Northern District. Review/analyze attachments and Brett's summary. Emails re notice to Ninth Circuit re Cal Supreme Court denial of Apple's petition for rehearing. Review/analyze final draft of notice and circulate comments. Legal research re damages issues and Alsup orders on claims-made settlements.	5.20
5/13/2020	KAK Check docket for ruling on rehearing petition; review new docket entry stating that rehearing petition was denied; email to co-counsel and KSR re same; preliminary evaluation of next steps	0.10
	KSR Further legal research for Alsup orders re claims-made settlements. Email from Kim re court's order denying petition for rehearing; review and respond. Draft and email summary of authorities re claims-made settlements to team with excerpts. Further legal research re liability and damages issues to prepare for potential mediation.	2.40
5/14/2020	GMG Review 9th Circuit website for new covid order; review draft notice to court, check filing procedures, prepare exhibits and email KAK re same	0.60

		<u>Hours</u>
5/14/2020	KAK Review and evaluate summary by co-counsel Gallaway of base damages and interest under prior survey; email to Gallaway re need to prepare rough calculations of statutory penalties; review and reply to email from Gallaway re time for next strategy call; draft email to clients advising them of order denying rehearing; evaluate information to be provided to Ninth Circuit and possible supplemental briefing; correspondence with co-counsel Shalov re possible further briefing; review prior notice filed in Ninth Circuit's and Apple's letter re rehearing petition, filed in February; prepare initial draft of Ninth Circuit filing; check docket and rules on finality; finalize and circulate draft to co-counsel and KSR; review email from Shalov to defense counsel Dunne requesting documentation of date when onsite searches supposedly stopped; email to GMG re costs bill to be filed in Ninth Circuit after further opinion or order issued; review general orders related to the pandemic and email to GMG re filing logistics; review and reply to email from Shalov re draft filing; prepare revised draft of filing and re-circulate	2.10
	KSR Email from Shalov to Dunne re evidence re date Apple ceased bag and tech checks. Email from Shalov responding to summary of Alsup orders re claims made settlements. Review/analyze email from Brett with calculations of potential damages based on initial 2015 survey. Further emails with team re those calculations and statutory penalties. Calendar call for Monday to discuss case status. Emails with Lee and Kim re further briefing to the Ninth Circuit and request for ruling on plaintiffs' motion for summary judgment re liability. Kim email to class reps re Cal. Supreme Court's denial of Apple's request for rehearing. Email from Shalov re whether to request supplemental briefing to Ninth Circuit. Review/analyze allegations of Consolidated Complaint re violation of Labor Code sections 203 and 226, to prepare for call with Brett per Kim's request to incorporate these statutory penalties into survey analysis. Legal research re operation of these penalties for discussion with Brett. Further review/analyze Gallaway's survey analysis and damages estimate in light of allegations of Consolidated Complaint. Email from Kim with draft of letter to Ninth Circuit regarding supplemental briefing and requests for resolution after Cal. Supreme Court denial of rehearing. Email to team with comments on Kim's draft. Accept and calendar call with Brett re damages calculations.	2.80
5/15/2020	GMG Prepare final PDF of notice to 9th Circuit with exhibits and circulate to co-counsel; arrange for filing and service via ECF; review filed notice	0.40
	KAK Review correspondence from co-counsel Shalov approving revised draft filing circulated yesterday; review final version with exhibits prepared by GMG; email to GMG re final revision needed; review notification confirming filing	0.10
	KSR Research and prepare for and call with Brett Gallaway to discuss calculations to add statutory penalties to Brett's damages analysis using 2015 survey results. Draft notes to file re discussion with Brett to prepare for team call to discuss settlement demand. Review and comment on final letter to Ninth Circuit.	1.80
5/18/2020	GMG Research re Apple throttling settlement; email KAK re mediator	0.20
	KAK Review notification and "response" filed by Apple regarding next steps in Ninth Circuit; prepare for and participate in strategy call with KSR and co-counsel; discussed numerous matters including points for reply to be filed this week, additional research needed, and next steps re mediation; email to GMG re pulling information on mediator used in Apple data speed settlement, recently reported; review information pulled by GMG and circulate same to KSR and co-counsel; review email from defense counsel Dunne responding to request for documents substantiating claim that unpaid searches stopped in late 2015; evaluate same and correspondence with KSR and co-counsel re same; began drafting reply to Apple's filing today regarding next steps in Ninth Circuit; legal research re same	4.90

		<u>Hours</u>
5/18/2020	<p>KSR Review/analyze Apple's response to notice to Ninth Circuit re denial of rehearing petition. Review earlier research and summarize and circulate to the team in preparation for conference call further authorities re representational evidence to prove both liability and damages. Email from Lee requesting to forward Apple's notice; forward along with Alsup's class cert order in prep for conference call and with excerpt from Alsup's order appearing to require class members to prove they stood in line long enough to "deserve compensation." Further prepare for and participate in conference call with Lee, Kim and Brett to discuss potential mediation with Apple, Apple's response to our notice to the Ninth Circuit, and case law regarding potential motion for decertification by Apple and proving damages.</p> <p>Review/analyze Brett's Excel calculation of damages pursuant to Labor Code sections 203 and 226, for the class members provided by Apple as of 2015.</p> <p>Legal research regarding willful/intent requirements for statutory damages under Labor Code sections 203 and 226. Summarize research and draft and circulate email memo re willfulness elements under sections 203 and 226 and construing authorities. Review/analyze email from Gallaway with additional authorities and comments. Email from Kim with pertinent language from Cal. Supreme Court opinion re retroactivity. Respond to Kim re Alsup, the Ninth Circuit and the Cal. Supreme Court in other language indicated this was an unsettled area of California law. Email from Lee re willful element and question of valid defense.</p> <p>Further legal research regarding availability of civil penalties for PAGA claim under 226.3 or 2699(f). Research authorities awarding PAGA penalties and selections of penalties under default and other sections. Research differences between penalties available to class under statutory penalties scheme vs. PAGA. Draft and circulate email memo summarizing research with request for Brett to recalculate damages based on civil penalties under PAGA claim. Email from Julie Dunne in reply to Lee's response to Apple's suggested discussion of settlement and/or mediation. Email from Lee commenting on Dunne's email re mediation, and further emails re potential mediators. Email from Gallaway re information plaintiffs will require prior to mediation to calculate damages, including full class list. Further emails with Kim and Lee re information required from Apple as pre-condition to mediation. Further emails re potential mediators, including some used previously by Apple.</p>	5.90
5/19/2020	<p>GMG Proofread draft reply brief, check cites and quotes and email KAK re same; prepare PDF of draft reply brief with exhibits and circulate to co-counsel; prepare revised exhibits and email KAK re same; prepare PDF of final reply brief with exhibits and arrange for filing/service via ECF</p>	1.10
	<p>KAK Continued work drafting reply to Apple's response re Ninth Circuit next steps; review and evaluate emails from co-counsel Shalov re points for reply; further legal research; circulate draft reply for review, comment and cite check, with instructions to GMG re preparation of exhibits; review emails from co-counsel Shalov and Gallaway approving draft reply; review and forward recent order by N.D. Cal. judge on trial scheduling; review comments of KSR on draft reply; prepare further revisions; review exhibits prepared by GMG and email to GMG re change needed; review and approve final exhibits; email to GMG re finalizing and filing brief; review notification re filing of brief and forward same to co-counsel Shalov and Gallaway</p>	3.10
	<p>KSR Further research of legal issues to prepare for mediation, including procedures and case authority regarding civil penalties under Labor Code sections 203 and 226, and case law concerning motions to decertify where defendant argues not all class members suffered injury and no records kept. Forward prior emails to Lee re damages analysis. Email from Lee with points to include in reply to Apple's response to plaintiff's notice to 9th Circuit on denial of rehearing petition. Further email from Lee with authorities to add; Kim response to suggested arguments. Kim response. Review/analyze Kim's draft of reply to Apple's notice to Ninth Circuit re instructions on remand to district court and Apple's request for supplemental briefing; circulate</p>	4.30

		<u>Hours</u>
	suggested edits; Kim response. Review Lee's suggested edits. Review final. Continue research re method of calculating PAGA civil penalties. Review N.D. Cal. orders circulated by Kim re current court protocols amid pandemic.	
5/20/2020	GMG Confer with KAK and KSR re case status and next steps	0.20
	KAK Evaluate next steps as to possible mediation; correspondence with co-counsel Shalov re same, including thoughts on several proposed mediators; discussion with KSR and GMG re status of research on statutory penalty and PAGA issues in anticipation of mediation as well as other next steps in case	0.40
	KSR Discussion with Kim and GMG re calculating PAGA damages, statute of limitation and calculation method, etc., and apparent Apple intention not to file cert petition. Fact research on date PAGA claims added to complaint, and further legal research re statute of limitations and calculation of violations for PAGA claims and relation back issue. Further fact research re date of letter to LWRA. Email to Kim re date PAGA claims added to complaint, and summarizing authorities for relation back and how to calculate as second violation, amount, and from what date. Further review/analyze legal research re civil penalties pursuant to PAGA. Legal research re allocation of settlement funds in Northern District and Alsup opinions.	3.40
5/21/2020	KAK Review draft email from co-counsel Shalov to defense counsel Dunne re settlement; email to Shalov approving same; review final email from Shalov to Dunne; review and evaluate N.D. Cal. general order re court operations issued today; circulate same to KSR and co-counsel; review and evaluate email from KSR re PAGA claim and limitations period	0.20
	KSR Email from Lee with draft of email responding to Apple's suggestion for settlement discussions/mediation. Review/respond. Review Lee's final email to Julie Dunne re mediation. Review N.D. General Order re courthouse restrictions and procedures. Email from Kim re further General Order. Response from Kim re email on PAGA penalties. Further legal research re PAGA penalties and prior damages study prepared for mediation, to prepare for call to update.	2.40
5/26/2020	GMG Review final approval motion and stipulation of settlement in Richardson case for plan of allocation and email KSR re same	0.30
	KSR Email to Lee and Brett forwarding email re PAGA civil penalties and statute of limitations and computation with comments re mediation brief. Further legal research regarding Alsup orders re plan of allocation where employer records insufficient. Email to GMG with request to pull motion for preliminary approval before Alsup in Richardson action, for research on plan of allocation for class settlement. GMG response and review/analyze plan of allocation. Summarize and forward allocation authorities to team. Emails with Brett in preparation for team call re statutory and civil penalties. Call with Kim, Lee and Brett to discuss discovery needed from Apple for mediation, preparation and contents of mediation brief, further work for expert in calculating statutory and civil penalties. Note to file re research declarations and testimony to support check time average and minimum amount on which to calculate damages. Email Gallaway to Brian Kriegler re intent to update damages study for mediation. Kriegler response to Gallaway email. Further research re PAGA claims to inform update of damages study.	3.20
	KAK Prepare for today's strategy call; review correspondence between KSR and co-counsel Gallaway re status of legal research on allocation and statutory penalties; participate in strategy call and discuss numerous issues including mediation strategy, data needed from Apple, and further expert analysis to be completed	0.60
5/28/2020	KSR Further review/analyze Alsup's class cert order re class members must prove they stood in line long enough to "deserve compensation," which appears to address de minimis rule rather than how the class will prove damages once the de minimis issue	1.30

is discarded, to prepare issues for mediation. Review/analyze order of Ninth Circuit requiring supplemental briefing on Apple's alleged "factual disputes." Forward order to Lee, Brett, Kim with comments. Calculate and calendar due dates for briefs and circulate with request that Lee's office file response since Gary will be out.

Review/analyze Apple's response to plaintiff's notice of denial of rehearing to the Ninth Circuit, for Apple's alleged factual disputes to be briefed. Re-circulate Apple's response and text of alleged factual disputes, with analysis that Cal. S.C. opinion considers and subsumes two of the arguments. Review subsequent court order Dkt. No. 356 which appears to be the same Ninth Circuit order requiring briefing. Emails from Kim re response brief ordered by Ninth Circuit, strategy, and work flow given paralegal's scheduled absence. Further email from Kim re Ninth Circuit to decide vs. remand. Email from Brett re filing of response brief.

Email from Kim re research on large PAGA awards and discussion of PAGA issues arising in recent cases. Further emails from Kim with authorities re PAGA claims. Review same.

5/28/2020	KAK	Review notification and order from Ninth Circuit directing further limited briefing on purported "factual disputes"; review emails from KSR re same; email to co-counsel re same and preliminary thoughts; record deadlines; analysis of PAGA-related issues and forward materials to KSR re same; review email from attorney Kindem inquiring re status	0.60
5/29/2020	KSR	Review/analyze PAGA materials from Kim. Begin drafting damages sections of mediation brief. Further legal research re liability and absence of employer records of hours worked for mediation brief.	1.60
6/1/2020	KSR	Emails with KAK re due date for supplemental brief ordered by Ninth Circuit and status of mediation discussions. Further review/analyze PAGA materials from KAK to inform further PAGA research for Ninth Circuit supplemental briefing and for mediation and motions on remand.	0.90
6/2/2020	KSR	Further research issues re PAGA and other issues expected to arise on remand and relevant to further briefing ordered by Ninth Circuit, including Apple's inability to move to decertify PAGA claims, how PAGA penalties would be distributed on settlement given nature of claims in complaint (failure to pay wages due), authorities re alleged fact issues precluding summary judgment, etc.	4.80
6/3/2020	KSR	Further legal research re issues concerning PAGA claims.	3.80
6/4/2020	KSR	Further review bag check settlement cases forwarded by Gallaway. Further legal and factual research regarding PAGA claims for memos re motions on remand and for 9th Circuit supplemental brief ordered by the court re alleged factual issues. Email from KAK with Konica Minolta opinion; review/analyze.	4.50
6/5/2020	KSR	Emails with Gallaway and KAK re further new authorities on bag check cases. Review/analyze these authorities. Email from Shalov re Dunne's position that Apple wants plaintiffs to agree to stay to pursue mediation. Response to Shalov re whether email or call from Dunne; further emails with Shalov and review/analyze email from Dunne with incorrect email address for me. Response to Shalov re Dunne email and proposed stay pending mediation. Email from Gallaway re Dunne email; review Dunne email for Gallaway's address and forward to Gallaway with response. Further emails with Gallaway re Dunne at DLA Piper and negative court opinions for Littler. Further email from KAK re email re mediation from Julie Dunne and response to request for stay. Further legal research re Alsup opinions on PAGA settlements; and other PAGA litigation issues for motions on remand.	5.40
	KAK	Review email from co-counsel Shalov re defense counsel's latest position re possible mediation; review email from defense counsel Dunne re same; email to Shalov, Gallaway and KSR re same and next steps; review email from Gallaway and reports	0.30

		<u>Hours</u>
	on recent decisions and settlements involving compensability issues; review unpublished Court of Appeal opinion re same; email to co-counsel and KSR re same	
6/8/2020	KSR Evaluate deadline for Apple's supplemental brief to Ninth Circuit. Review/analyze cases researched re summary judgment on liability for Labor Code violations, for supplemental brief.	2.60
6/9/2020	KAK Continued analysis of points for supplemental reply brief, due this month; evaluate new appellate opinion construing "hours worked" and whether to seek publication; check docket re status and email KSR re research needed	0.60
	KSR Research re summary judgment motions and labor code allegations for supplemental brief in Ninth Circuit.	3.50
6/10/2020	GMG Confer with KAK and KSR re potential arguments in Apple supplemental brief and assistance needed	0.30
	KAK Discussion with KSR and GMG re points for supplemental brief on purported factual disputes, and legal research to be completed	0.30
	KSR Discussion with KAK and GMG re strategy for and authorities supporting issues for supplemental briefing in Ninth Circuit on Apple's alleged factual issues precluding summary judgment. Emails with Gallaway and KAK re temp checking cases that cite to Frlekin; review article.	0.40
6/11/2020	KAK Review enotification re filing by defendant of supplemental brief as ordered by Ninth Circuit; began review of same; forward copy of same to co-counsel Shalov and Gallaway; review emails from KSR circulating preliminary research for purposes of response brief	0.20
	KSR Emails with Gallaway and KAK re temp checking cases that cite to Frlekin. Review/analyze Apple's supp brief to 9th Cir re alleged factual issues precluding summary judgment for plaintiffs. Draft notes for responding to Apple's alleged issues with reference to its opp to MSJ below. Circulate. Further emails with KAK re authorities for reply brief.	2.60
6/12/2020	KAK Continued review of defendants' supplemental brief; email to co-counsel and KSR re scheduling time to discuss	0.20
	KSR Further research for reply to Apple's supp brief to Ninth Circuit re alleged factual issues precluding summary judgment. Further emails with KAK, Shalov, Gallaway re setting up call to discuss reply brief.	4.30
6/15/2020	KAK Review correspondence with KSR and co-counsel re moving strategy call to today, instead of tomorrow; continued review and analysis of Apple's supplemental brief, and points for our response; review memo from KSR re points for response; email to KSR re status of research; review preliminary research memorandum prepared by KSR; prepare for and participate in call with co-counsel and KSR and discussed response to defense counsel Dunne re settlement and work necessary to prepare supplemental brief and request for judicial notice, due next week; further call with KSR re legal research needed for supplemental brief; review enotification re notice of withdrawal of counsel by Littler attorney for Apple	3.60
	KSR Further research for reply to Apple's supp brief to Ninth Circuit re alleged factual issues precluding summary judgment. Further emails with KAK, Shalov, Gallaway re setting up call to discuss reply brief.	5.10

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		<u>Hours</u>	
6/16/2020	KAK	Continued analysis of points for supplemental brief; review response email from defense counsel Dunne re mediation; review enotification re submission of paper copies of Apple's brief; review and reply to email from KSR with additional legal research for supplemental brief	0.10
	KSR	Shalov email to Dunne re data plaintiffs require to prepare for mediation, and position on Apple's request for stip to stay action. Email response from Dunne. Emails with KAK re research.	0.20
6/17/2020	KAK	Continued evaluation of points for supplemental brief, including legal research and review of relevant portions of record; begin drafting supplemental brief; review and reply to email from co-counsel Shalov re review of record on how summary judgment procedure was ordered	2.10
	KSR	Emails with Shalov and KAK re fact research for Ninth Circuit supp brief. Review/analyze Apple's supp brief to 9th Circuit re factual issues precluding SJ for plaintiffs. Further legal research for supp brief. Email to KAK, Shalov, Gallaway re arguments to make on de minimis issues based on Troester exceptions and Apple's cites to district court record rather than excerpts of record. Shalov response to Dunne re response to plaintiffs' request for data for mediation. Email from Shalov re background of cross-motions for summary judgment, to determine issues and scope, and Apple's procedural arguments, for Ninth Cir. supp brief. Email from Gallaway re he's fact-checking Apple's citing issues re excerpts of record.	3.70
6/18/2020	KAK	Continued work on supplemental brief, including legal research; review and reply to email from co-counsel Gallaway re reliance on cites not included in excerpts of record or supplemental excerpts of record; review draft list of data points needed for mediation, circulated by Gallaway	0.60
	KSR	Email from Gallaway with list of data required for mediation with Apple; review and response to Gallaway. Review/analyze Gallaway's analysis of Apple's cites to district court docket vs. excerpts of record. KAK response to Gallaway's email. Further review/analysis of records cited in Apple's brief to Ninth Circuit. Legal research re excerpt of record requirements. Email to KAK summarizing this research. Further review/analysis of Apple's brief for legal research. Continue legal research for response.	3.80
6/19/2020	KAK	Review and reply to email from co-counsel Shalov re list of data points needed for mediation; review and reply to email from KSR re legal research on consequences of violating rule requiring excerpts of record; continued work drafting supplemental brief, including legal research; review email from defense counsel Dunne re proposed mediators; correspondence with Shalov and KSR re same and need to research the names proposed; preliminary research on proposed mediator Ross and further correspondence to co-counsel re same; evaluate items to be included in supplemental excerpts of record and motion for judicial notice	7.30
	KSR	Email from Julie Dunne re proposed mediators; review/analyze list. Shalov response. Email from KAK requesting research on mediators; respond. Email from KAK re Alsup settlement rules and request for Shalov/Gallaway to research. Shalov response. Search for and forward information to Shalov for further research. Email from KAK re Jeff Ross background. Review/analyze Alsup notice in Logitech and Ninth Circuit ruling. Research proposed mediators and generate summary. Further emails with KAK re Alsup settlement rules. Email from KAK re further case authorities regarding excerpt of record requirements. Respond. Further emails with KAK re post-class cert settlement talks and Alsup rules.	3.20
6/20/2020	KAK	Continued work drafting supplemental brief, including additional legal research	3.60

		<u>Hours</u>
6/22/2020	KAK	6.60
	Continued work drafting supplemental brief; further analysis of documents for motion for judicial notice and supplemental excerpts of record; prepare initial draft of motion for judicial notice with supporting declaration; email to co-counsel and KSR re status of brief; email to KSR re research needed for motion for judicial notice; review research by KSR regarding Apple's three proposed mediators; email to KSR re same; review and reply to email from KSR to co-counsel re same; draft email to co-counsel regarding need to prepare draft supplemental excerpts of record and asking their office to prepare same; review and reply to email from co-counsel's office re same	
	KSR	3.80
	Continue research on Apple's proposed mediators and generate summary. Finalize summary and forward to KAK with comments. Further emails with KAK re same. Email from KAK re draft of Ninth Circuit response. Email from KAK requesting legal research for request for judicial notice to file with brief; respond. Email from KAK responding to research re Ninth Circuit excerpts of record. Further emails with KAK and co-counsel re proposed mediators. Legal research re judicial notice of California Supreme Court pleadings, orders, etc. Summarize research and forward to KAK with comments. Further legal research for RJN. Forward additional authorities to KAK with comments.	
6/23/2020	KAK	5.10
	Review KSR legal research for motion for judicial notice; email to KSR re adding cites to current draft of MJN; forward current draft of MJN; review and revise new draft prepared by KSR; double-check and finalize list of pages to be included in exhibits to MJN; continued work drafting brief, including legal research; circulate current draft to co-counsel for review and comment; circulate draft of MJN for review, along with exhibits and instructions to paralegal re preparing exhibits; review and reply to email from co-counsel Shalov re proposed mediators; further research re proposed mediators; forward same to Shalov, KSR and co-counsel Gallaway for discussion; further work editing draft brief for length; review rules and prepare certificate of compliance; circulate new draft within word-count limit for review; check PACER docket to confirm Apple filed no supplemental excerpts of record with its supplemental brief	
	KSR	5.40
	Emails with KAK and Shalov re setting up call to discuss potential mediators. Email to KAK re drafting MJN for Ninth Cir. Supp brief. Email response from KAK with draft of MJN and request to add text and cites. Review/analyze draft. Draft text and add cites to draft MJN and forward to KAK. KAK response. Email from KAK with draft of supplemental brief to Ninth Cir. Review/analyze and draft edits; circulate. Email from KAK re additional research re Apple's proposed mediators, and forwarding same; review. Review/analyze revised draft of supp brief from KAK. Email from KAK re logistics of MJN.	
6/24/2020	KAK	2.30
	Review and reply to email from co-counsel's office re current draft of brief; incorporate this correction; review redline comments of KSR and incorporate same into brief; make further revisions to strengthen brief and finalize certificate of compliance; review and approve TOA; review and reply to emails from co-counsel Shalov and Gallaway with further comments on draft brief; correspondence with co-counsel's office re logistics for finalizing brief and status of supplemental excerpts of record; review and approve exhibits to motion for judicial notice, prepared by co-counsel's office; review complete MJN with exhibits; email to co-counsel's office re additional changes needed; review email from KSR and redline with results of check of ER cites; incorporate same into current draft of brief; draft further edits for word count purposes; circulate latest draft to KSR and co-counsel; correspondence with co-counsel Gallaway re status of supplemental excerpts of record	
	KSR	4.90
	Review/analyze KAK's draft of Ninth Circuit supp brief. Draft redline edits and comments and circulate. Emails with team re supplemental excerpts of record. Review/analyze revisions to MJN. Email from KAK to check ER cites. Cite check ER cites and draft redline with comments re strategy and revising cited materials. Circulate redline with comments. Email from KAK with revised draft of brief; review/analyze for final edits and circulate redline edits. Email from Gallaway re cites	

to ER and district court docket entries. Further emails with KAK and Gallaway re district court cites. Response from KAK re district court cites. Email from KAK with Draft10 of supp brief; review/analyze and email to KAK with final edits; KAK response re final edits. Email to KAK re case/pin cites. Email from co-counsel with final MJN; review. KAK email re bookmarking. Email from Beyersdorf with supplement ER; review. Email from KAK with Draft11 of supp brief; quick review. Email from KAK with additional research re Apple's proposed mediators. Emails with Shalov, Gallaway, KAK to set call time to discuss Apple's proposed mediators. Further research for mediation brief issues.

6/25/2020 KAK	Review current drafts of briefs, supplemental excerpts of record, and MJN circulated by co-counsel's office; correspondence with co-counsel's office re final revisions needed for each document; review and approve final version of MJN; review further comments on proposed mediators and forward same to KSR and co-counsel; correspondence to confirm time of strategy call to discuss mediators; review enotification confirming filing of brief, supplemental excerpts, and MJN; draft email to co-counsel re next step, which is to prepare and submit paper copies in format required by rules; correspondence with co-counsel to confirm they will handle paper copy preparation and delivery; review enotification from court stating brief and excerpts are accepted and requiring paper copies by next Thursday; prepare for and participate in strategy call with KSR and co-counsel and discussed mediators, mediation timing and strategy, next steps in Ninth Circuit, and other matters; review email from co-counsel Shalov to defense counsel re mediators and data needed prior to mediation; review and reply to email from Shalov re Judge Alsup's general order on settlement discussions in class action; review file and locate "reminder to counsel" re settlement discussions; circulate same to co-counsel and KSR; review and reply to email from Shalov re same	1.40
KSR	Emails confirming conf call. Email from KAK with additional listserv comments re Apple's proposed mediators; review. Conference call with Shalov, Gallaway and KAK to discuss mediators to propose to Apple. Research regarding requirements and calculation of penalties pursuant to PAGA, and difference between applicable civil and statutory penalties. Emails from KAK re supp brief ready to file and bookmarking requirement. Email from Paul with final of MJN; quick check. Email from KAK re requirement for paper copies with tan covers to court. Review court's filing notice re brief and requirement to file paper copies within 7 days; Gallaway response, will handle. Shalov email to Dunne re plaintiffs willing to accept Jeff Ross as mediator and time frame of mid-Sept, plus request for status of data requested. Email from KAK re Alsup's rules and statements re mediation; Shalov response re Alsup standing orders. Continue research re PAGA claims for damages analysis for mediation and discussion in mediation brief. Notes to file. Further email from KAK with Alsup order day after class cert re settlement discussions; review/analyze. Shalov response. KAK reply re continue research re Alsup position on settlement discussions post-class cert.	4.80
6/26/2020 KSR	Some ltd work on Frlekin research for damages calculations to be run by expert when Apple produces data for mediation	2.10
6/29/2020 GMG	Search files for example certificate to be filed with paper copies and email KAK re same; circulate example to co-counsel	0.60
KAK	Review and reply to emails from co-counsel Gallaway re paper copy submission required by Ninth Circuit and requesting assistance from GMG; review reply from defense counsel Dunne re mediators and mediation data; review and reply to email from GMG re certification required for paper copies; review email from GMG to co-counsel circulating example certificate for paper copies; review and evaluate new California Supreme Court opinion potentially relevant to rate of pay owed for search time; forward same to KSR for further review and analysis; review response from KSR re same	0.60

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		<u>Hours</u>
6/29/2020	KSR	4.20
Further research for damages calculations-statutory and civil penalties-to be run by expert when Apple produces data for mediation. Email with KAK re research on calculations. Email from Gallaway re hard copy binding/mailing of supp brief and requirements. Email from KAK with opinion in Oman v. Delta and request to analyze in context of Frlekin damages issues. Review/analyze opinion and email analysis and comments to KAK. Further email from co-counsel re logistics for paper copies of supp brief. Further emails re certification for paper mailing.		
6/30/2020	KAK	0.10
Review email correspondence between GMG and co-counsel re status of delivery of paper copies required by Ninth Circuit; discussion with GMG re same		
7/1/2020	KAK	0.20
Review and evaluate email from defense counsel Dunne re proposed mediators; discussion with KSR re same, including Dunne's failure to mention data production; discussion with KSR re PAGA penalty issues; review email from KSR to co-counsel Shalov and Gallaway re latest message from Dunne and next steps, as well as status of submission of paper copies; review reply from Gallaway re same		
	KSR	3.80
Email from Julie Dunne re Jeff Ross and Judge Ghandi's availability for mediation. Discussion with KAK re next steps including contacting Shalov & Gallaway and seeking mediation dates from Plaintiff's proposed mediators, as well; also checking with Shalov re status of paper copies of briefs to Ninth Circuit. Email from Shalov re Apple preference for mediator choices. Email from Gallaway re supp brief paper copies overnighted. Paul Beyersdorf confirmation. Further emails with Tripper Ortman's office re mediation calendar. Further legal research issue on PAGA cases for mediation brief.		
7/2/2020	KAK	0.20
Review, evaluate and reply to email from KSR re latest message from defense counsel Dunne, mediator availability, and next steps		
	KSR	4.60
Emails with Shalov, KAK and with Julie Dunne regarding availability of mediators, response to use of Ghandi, potential dates and eta for receiving data for mediation from Apple. Email to Shalov, KAK, Gallaway re Dunne doesn't mention Ortman's schedule, and checking his availability. Shalov response. Further email from KAK re scheduling mediation and determining alternate mediators' availability. Contact Tripper Ortman's office regarding waitlist for mediation and email to team. Contact offices of plaintiff's suggested mediators: Layn Phillips, Carl West, and Robert Kaplan re calendars, and report to team re availability. Email from KAK re eta for Apple's data for mediation, comments on Ghandi, and potential mediation schedule. Review court's notice re receipt of paper copies of supp brief. Dunne response re plaintiffs' request for data for mediation and eta. Shalov email to Dunne re consideration of Ghandi and eta for data. Dunne response. Further research for mediation re damages.		
7/5/2020	KSR	0.40
Review/analyze response from Julie Dunne to request for class data for mediation. Email from Gallaway analyzing Apple's response. Respond. Email from Shalov re strategy to respond to Apple's email re data request for mediation; respond.		
7/6/2020	KAK	0.10
Review email from defense counsel Dunne declining to produce significant portions of data requested for mediation; review and evaluate correspondence from Gallaway, Shalov and KSR re same and response; draft email approving proposed response to Dunne; review further emails between Shalov and Dunne		
	KSR	5.20
Emails from KAK and Shalov re response to Apple's push-back on data requested for mediation. Emails with Shalov and Julie Dunne re Dunne's request for call to discuss and Shalov's absolute position on Apple's one-way intervention and minimum wage arguments. Further review email from Gallaway with analysis of Dunne's arguments and emails with Gallaway, Shalov and KAK with further analysis and discussion of strategy. Telephone call from Megan in Layn Phillips' office re available dates for mediation. Email to Shalov, KAK and Gallaway circulating dates. Further research damages issues raised by Dunne and draft memo re issues for mediation and		

		<u>Hours</u>
	prospective motions on remand to Judge Alsup. Review notice paper copies of supp brief filed in 9th Cir. Further email from Shalov to Dunne re one-way intervention position and minimum wage arguments in mediation.	
7/7/2020	KAK Review and reply to email from KSR re available dates of proposed mediator Layn Phillips; review further email from defense counsel Dunne requesting call to discuss data issues for mediation; telephone discussion with co-counsel Shalov re same and how to respond; review and reply to co-counsel correspondence scheduling strategy call for tomorrow	0.20
	KSR Email from Dunne with request for call to discuss issues re proposed mediation. Email to KAK, Shalov, Gallaway re strategy and availability for call. Review Alsup article re resuming courtroom trial and circulate. Email from KAK re proposed mediators. Further email from Gallaway re one-way intervention issues. Shalov response re Phillips. KAK email request to circulate dates when response received from Judge West's office.	0.30
7/8/2020	KAK Prepare for and participate in strategy call with KSR and co-counsel Shalov and Gallaway, and discussed defense counsel's points re damages calculations, impact on mediation, and best response thereto; locate and re-circulate to KSR decision potentially relevant to regular vs. minimum wage argument	0.70
	KSR Prepare for and participate in conference call with Shalov, Gallaway and KAK to discuss response to Julie Dunne's email pushing back on request for data to support mediation. Email from KAK with Delta case in context of Apple's argument re data and calculating damages based on minimum wage rate. Review/analyze Delta case and respond to KAK with analysis and applicable text. Emails with Shalov and Julie Dunne re call to discuss issues for mediation. Further research re damages/penalties issues for mediation.	4.10
7/9/2020	KSR Legal research on Apple's position re minimum wage damages calculation in preparation for Shalov's call with Julie Dunne. Email to Shalov re response to Apple's position and forward supporting authorities for call. Email from Shalov reporting on call with Julie Dunne. Response to Shalov re timing of mediation to allow for receiving data from Apple. Continue legal research re calculating damages for mediation, including on issues such as minimum wage issue pursuant to Labor Code 1194 (First Cause of Action in the operative Complaint), per Julie Dunne (vs. claims concerning statutory and civil penalties, to which minimum wage measure does not apply).	5.40
7/10/2020	KSR Further research re issues for mediation and motions upon remand to Alsup.	2.30
7/13/2020	KSR Further draft table and memo re damages and application of civil and statutory penalties, and construing case law.	1.20
7/14/2020	KSR Further legal research of construing case law for damages issues.	1.40
7/15/2020	KSR Continue research for mediation brief on damages and construing authorities/all issues for all Labor Code statutes in complaint. Continue notes for mediation brief.	0.80
7/16/2020	KSR Continue research for mediation memo on damages/penalties.	2.50
7/17/2020	KSR Further research to update case law re damages and further analysis of Kriegler's (EconOne) earlier damages computation. Email to KAK, Shalov, Gallaway re we need additional data beyond that already requested from Apple to calculate damages/penalties for overtime claims and should request from Apple for mediation. Research re motion to decertify the class.	3.60

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		<u>Hours</u>
7/20/2020	KSR Further review/analyze Brian Kriegler's damages analysis from 2015 and Apple's punch data that Kriegler relied up for that analysis. Email to Shalov, Gallaway, KAK re additional punch data needed from Apple and whether to request. Email response from Shalov re there's been no word from Dunne re data requested, so we shouldn't reach out. Reply to Shalov.	1.90
7/21/2020	KAK Review correspondence between KSR and co-counsel Shalov re status and additional data needed for mediation; review response from defense counsel Dunne re mediation; evaluate same, including whether to agree to proposed mediator Ortman and on what terms; review prior comments on Ortman; email to KSR and co-counsel re same; continued legal research on wage rate (minimum or contract) applicable to unpaid search time and further review of recent California Supreme Court opinion	0.30
	KSR Response from Shalov re abandon mediation if no response from Dunne re data request. Email from Julie Dunne regarding Ortman mediation availability and Apple's response to request for data. Email to Shalov re Dunne's position and feasibility of October 1 mediation date, given no eta for data; and suggestions for next steps and data request if mediation to go forward. Email response from Shalov re selection of Apple's proposed mediators. Email response from KAK re Ortman and West. Research Ortman online calendar for other availability and email the team re Oct. 8 available. Review summary of required data. Email from KAK re Judge West availability. Review prior emails re Judge West and follow up call to his office. Email to team re Judge West availability in November. Email from Gallaway re lead time needed prior to mediation for requested data, to allow for our expert to review and prepare damage study. Further emails re opinions on mediators and data. Email from KAK re agreement to Ortman with caveat we get data by prescribed time.	1.90
7/22/2020	KSR Further emails with KAK and Shalov re data and mediation date. Discussion with KAK re additional research on damages issues to prepare for work with EconOne for mediation and to prepare for motions upon remand to Alsup. Continue research for EconOne damages analysis. Email from Shalov to Dunne re Ortman fine for mediation but we cannot do it on 10/1 and will need requested data by 9/1.	3.70
7/23/2020	KAK Review, evaluate and reply to correspondence between KSR and co-counsel re data needed for mediation, date of mediation, and Apple's proposed mediators	0.10
	KSR Email from Matthew Riley re Ortman's availability for mediation. Emails with Julie Dunne, KAK and Shalov re mediators and proposed dates. Further research for and draft memorandum re status of request for data for mediation and calculation of damages/penalties. Email to team re suggestion for confirming and requesting data from Apple for mediation, sample for agreement, and eta.	4.20
7/24/2020	KAK Review and evaluate further correspondence between KSR and co-counsel re data needed for mediation and contacting defense counsel Dunne re same	0.10
	KSR Email from Shalov requesting I contact DLA Piper with plaintiffs' request for data for purposes of mediation. Respond to Shalov. Further review/analyze punch data previously produced by Apple for request. Email from Gallaway re agreement with data list. Email to Gallaway re data request follow up to Dunne. Draft and send email to DLA Piper with list of documents/data requested for mediation, including production of data sample, and commitment to date for full production. Continue drafting memo for damages analysis for mediation.	3.20
7/25/2020	KSR Email response from Julie Dunne regarding request for data for mediation. Review/analyze and send email to Shalov, Gallaway, KAK re proposed response.	0.40

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		<u>Hours</u>
7/26/2020	KSR Email response from Shalov re proposed response to Julie Dunne pushing back on plaintiffs' data request for mediation. Emails with KAK and Gallaway re response to Dunne.	0.20
7/27/2020	KAK Review and evaluate email from defense counsel Dunne once again refusing to produce data needed for mediation; review, evaluate and reply to correspondence between KSR, Shalov and Gallaway re same and best response; review email from Shalov to Dunne re scheduling time for phone conference to discuss and reserving date for mediation; correspondence with KSR, Shalov and Gallaway re selection of mediator	0.20
	KSR Email from Shalov regarding data requested from Apple. Emails with Gallaway to set up call to discuss. Shalov email to Dunne re mediation schedule. Email from Matthew Riley re Ortman not available October 1. Further emails with Riley and team re mediation with Judge Ghandi. Email from KAK regarding selection of mediator. Telephone call with Gallaway to discuss selection of mediators and data required for mediation/strategy for call with Dunne to discuss required data to calculate outside exposure of Apple needed to defend any settlement, as well as to calculate class member share. Draft detailed summary and circulate to KAK and Shalov. Draft and send email to Dunne to set up call time to discuss data requirements. Email from Shalov re mediator selection. Further emails with Shalov, KAK and Gallaway re mediators. Telephone call to Judge West's office re available dates for mediation. Re-check Ortman's mediation calendar. Emails with Gallaway and Julie Dunne to set up call to discuss requested data for mediation. Calendar. Further research for damages and excepted issues for motions on remand to Judge Alsup. Includes further research on issue re proof of damages in absence of time records for Checks by Apple. (Furry v. East Bay Pub.)	5.10
7/28/2020	KSR Prepare for and participate in telephone conference call with Julie Dunne, Matthew Riley and Gallaway to discuss data required for mediation and prospective mediators and schedule. Email and follow-up telephone call with Gallaway to further discuss data sample requested of Apple, claims pleaded and basis for damages and next steps. Gallaway email summarizing call. Email from Matthew Riley re dates available on Ghandi's calendar for mediation. Forward to Shalov, Gallaway, KAK with response. Email to Gallaway re Trialgrafix. Further research for damages study by EconOne and case law post-2015 on claims in complaint, Labor Code sections, and damages based on Labor Code pursuant to PAGA and UCL.	4.20
7/29/2020	KAK Review and evaluate detailed summary by co-counsel Gallaway re call with defense counsel Dunne re discovery needed for mediation and possible mediation dates; review email from defense counsel re available dates in October; reply to co-counsel re availability in October and need to advise clients; further correspondence with co-counsel and KSR re same	0.30
	KSR Emails from team re available on Oct. 20 for mediation with Ghandi. Further emails with Gallaway re Trialgrafix for online hearings. Email from KAK re check with class reps for availability. Email to Gallaway re class reps who attended mediation with Spero in 2015; Gallaway response re 2015 mediation and protocol for 2020 mediation. Further emails with KAK re notifying class reps of status and supplemental briefing to Ninth Circuit. Emails with team re remote mediation protocol. Emails with Gallaway and Brian Kreigler re further damages work to prepare for mediation. Further research for damages study by EconOne and case law post-2015 on claims in complaint, Labor Code sections, and damages based on Labor Code pursuant to PAGA and UCL.	4.10
7/30/2020	KAK Evaluate status and email to co-counsel and KSR re need to reply to defense counsel re mediation date; review emails between co-counsel and defense counsel re same	0.10

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			<u>Hours</u>
7/30/2020	KSR	Emails with Gallaway and KAK re confirming mediation date with Apple; Gallaway email to Riley. Email confirmation from Riley re Apple availability for mediation on Oct. 20. Continue drafting damages memo for mediation.	2.80
7/31/2020	KAK	Review correspondence from mediator's office confirming mediation with Judge Ghandi for 10/20/20 to be done remotely; review guidelines from mediator's office for conducting remote mediations	0.20
	KSR	Email from Ghandi's office confirming mediation date and protocol. Shalov response. Continue drafting damages memo for mediation.	3.20
8/3/2020	KSR	Email from Shalov re last day to cancel mediation if data not provided; check calendared dates.	0.20
8/10/2020	KSR	Draft damages memo for mediation.	4.10
8/11/2020	KSR	Review email from Gallaway summarizing call with Dunne and Riley re Apple's data for mediation. Review mediation schedule. Email to Shalov, Gallaway, KAK re requesting status from Dunne/Riley on data. Response from Shalov. Further email to KAK, Shalov, Gallaway re Apple's agreement to produce data sample for agreement before full report, and documentation supporting end of bag check policy, for purposes of mediation. Further analysis of EconOne damages study from 2015 and further draft memoranda re damages calculations and legal authorities addressing each alleged measure of damages. Email from KAK re request to Apple for eta on data for mediation. Email to Julie Dune and Matt Riley requesting eta for mediation data and documentation of end of check policy.	5.20
8/12/2020	KSR	Discussion with KAK re status of data request to Apple. Email from Dunne re Apple working on mediation data and eta of next week. Continue research for damages memo for EconOne damages analysis for mediation.	2.80
	KAK	Discussion with KSR re status of mediation preparation, research on damages issues, and status of Ninth Circuit proceedings; review correspondence between KSR and defense counsel Dunne re status of data production needed for mediation	0.20
8/13/2020	KAK	Review, evaluate and reply to correspondence from KSR and co-counsel re available dates with mediators and need to follow up to confirm date and procedure for mediation with Judge Ghandi; review email from co-counsel Gallaway to Ghandi's administrative assistant	0.10
	KSR	Email from Tripper Ortman's office re mediation dates available. Email to KAK, Shalov, Gallaway re whether to accept dates. Response from Shalov. Respond to Shalov re Ghandi's last date to cancel without penalty. Shalov reply re will follow up with Ghandi. KAK response re Ortman dates vs. Ghandi. Follow up emails with KAK. Further damages research.	1.50
8/14/2020	KSR	Shalov email re confirming Ghandi's mediation protocol and last day to cancel. Gallaway email to Ghandi's office. Continue damages research for mediation.	1.70
8/17/2020	KSR	Email from Matt Riley re status report on Apple's production of sample data for mediation; respond to Riley. Gallaway email to JAMS re engagement agreement; JAMS response. Email from Gallaway with link to mediation agreement and re cancellation date; calendar. Continue drafting damages memo	3.70
8/18/2020	GMG	Calendar mediation cancellation deadline and email KAK re same	0.10

		<u>Hours</u>	
8/18/2020	KAK	Review correspondence from JAMS re mediation; review mediation agreement; record deadline to cancel mediation without penalty; email to GMG re same; further analysis of Supreme Court's recent Oman opinion and assess applicability to rate at which search time must be paid; draft detailed email to KSR re same	1.10
	KSR	Email from Shalov re confirmation of mediation with Ghandi. Continue drafting damages memo. Email from KAK re opinion in Oman v. Delta Air Lines re contracted wage rate vs. minimum wage rate for damages analysis.	0.80
8/19/2020	KSR	Continue drafting damages memo. Review/analyze evidence by store chart from early mediation for evidence underlying Check duration assumptions. Review/analyze Apple declarations re Check time and highlight testimony re unincluded wait time for Checks. Email to KAK re damages memo in process. Draft redline to evidence by store chart including this testimony, for consideration of next steps on representative evidence issues. Further emails with KAK re opinion in Oman v. Delta Air Lines re contracted wage rate vs. minimum wage rate for damages analysis. Review/analyze quoted text. Email from JAMS confirming payment for mediation. Email from Shalov forwarding JAMS schedule for mediation briefing; calendar schedule. Review/analyze post-Troester cases for supplemental authority to Ninth Circuit.	3.90
8/20/2020	KSR	Email from Matt Riley re status report on Apple's production of sample data for mediation; respond to Matt. Continue research for and drafting damages memo.	3.50
8/21/2020	KAK	Review email from KSR re status of damages research; telephone discussion with KSR re same, as well as follow up with defense counsel needed re damages data and confirming mediation	0.20
	KSR	Research re supplemental authority on Troester/Rodriguez. Email to KAK re Frlekin projects on supplemental authority and damages study for mediation. Telephone call with KAK re case status, Apple execution of agreement with mediator, strategy for data from Apple and mediation brief. Email to Shalov re Apple executing agreement with Ghandi. Further research re Troester/Rodriguez.	2.80
8/23/2020	KSR	Email from Matt Riley responding to request for eta on Apple's data production for mediation; respond. Email from Shalov forwarding email from Riley re Apple signed Ghandi agreement for mediation.	0.30
8/24/2020	KAK	Review and evaluate emails re status of Apple's production of sample data; review correspondence between co-counsel Gallaway and damages expert; locate and review correspondence re mediation brief deadlines and email to GMG re calendaring same	0.10
	KSR	Further Research re supplemental authority on Troester/Rodriguez/Starbucks. Email from Gallaway to Kriegler, Econ One re eta for Apple's data and update on damages study needed for mediation. Continue draft of memo re damage study and updated authority on damages issues, all bases. Email from Kriegler re Apple's updated data and availability for new damages calculations for mediation.	1.80
8/25/2020	KSR	Continue research for damages memo.	2.50
8/26/2020	KSR	Emails with Gallaway and Matt Riley re eta for Apple's data to calculate damages for mediation. Continue research for damages memo.	2.10
8/27/2020	KSR	Email from Stephanie Barraza at JAMS re Notice of Mediation; review notice, calendar. Continue research for damages memo for mediation.	0.90
8/28/2020	KSR	Further evidence and legal research for damages memo.	1.10

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		<u>Hours</u>	
8/31/2020	KAK	Evaluate status and review latest emails from defense counsel indicating that data sample should have been produced last week; email to co-counsel and KSR re next steps	0.10
	KSR	Email from KAK re Apple's response re promised data production for mediation. Response from Gallaway re no word from Apple. Continue research for damages memo for mediation, to advise EconOne on calculation of damages and statutory and civil penalties.	3.30
9/1/2020	KAK	Review follow-up email to defense counsel from co-counsel Gallaway re failure to produce data sample last week as promised; review email from Shalov to Dion-Kindem; review response from Dion-Kindem; further correspondence with Shalov and evaluation of next steps	0.10
	KSR	Draft damages memo for mediation. Email to KAK re ongoing work on damages issues for mediation. Gallaway email to Matt Riley re eta for Apple's mediation data; Riley response re data production. Email from Gallaway re no Apple eta for data and may not come in time for mediation, plus need sample first for correct format.	2.50
9/2/2020	GMG	Review 9th Circuit opinion remanding case back to CAND and confer with KAK and KSR re next steps; research re 9th Circuit bill of costs, prepare draft and email KAK re same; research re CAND bill of costs	2.80
	KAK	Review enotification re new opinion issued by Ninth Circuit; review and evaluate new opinion and assess impact on case and next steps; correspondence with co-counsel Shalov and Gallaway and KSR re same, in particular issue of whether prior costs award is also reversed and whether to file rehearing petition requesting clarification of this point; review email from Shalov re not filing rehearing petition; email to GMG re deadline to file appellate costs bills in Ninth Circuit and district court, and timeframe for same; discussion with GMG re same; review emails from reporters re new opinion and returned reporters' calls; review and circulate press coverage; email to co-counsel Gallaway re need to advise clients of latest opinion and status of mediation; review email from Gallaway to clients re same	2.10
	KSR	Review/analyze Ninth Circuit opinion reversing Alsup's summary judgment order with directions to grant plaintiffs' summary judgment motion. Emails with KAK, Shalov and Gallaway re impact of opinion and deadline to file motion for costs; calendar. Further emails with team re mediation and costs and potential need for costs to be addressed in order. Further review/analyze opinion. Further emails with team re addressing costs issue and reaching out to Julie Dunne to resolve informally. Email from Gallaway with form bill of costs and review. KAK response re not addressing costs issue to Alsup. Review filed memo re opinion. Further email from KAK re limited to appellate costs and GMG to prepare drafts. Email from KAK with press articles about opinion; review. Email from Shalov re articles. Email from KAK with request to contact clients about opinion; Shalov and Gallaway comment. Email from Gallaway to class reps and Frlekin re opinion. Review Recorder article re opinion. Continue research for damages memo. Discussion with KAK re mediation and next steps after opinion.	3.70
9/3/2020	GMG	Detailed review and reconciliation of unbilled costs and expense report; review CAND rule re issuance of mandate and email KAK re same	2.60
	KAK	Further correspondence with GMG re preparation of costs bills and deadlines for same; follow-up email to co-counsel Shalov re getting back to attorney Dion-Kindem re mediation; review further press inquiries and forward same to co-counsel for response	0.10
9/4/2020	GMG	Analyze rules and expenses for CAND bill of costs, prepare memo and email KAK and KAR re same	2.80

		<u>Hours</u>	
9/4/2020	KAK	Review follow-up email from co-counsel Shalov to defense counsel Dunne re failure to timely produce data needed for mediation; review draft email from Shalov to attorney Dion-Kindem re mediation; reply to Shalov re same and following up with him next week; review email from defense counsel with data sample; review correspondence between co-counsel and KSR re same	0.10
	KSR	Shalov email to Julie Dunne re clock ticking on data Apple must provide for mediation; email to Shalov regarding still need data sample and opportunity to respond to any missing data in format. Email from Matt Riley re data Apple intends to provide for mediation and eta. Email from Shalov requesting review of bullet list and response re adequacy. Email to Gallaway re setting up call to discuss. Review/analyze Riley's bullet list. Email from Gallaway with list of inadequacies in Apple's proposed data sample, including proof of end date of Checks. Respond to Gallaway and set up call time to discuss before response to Apple. Calendar call time. Emails with GMG re KAK out of office and need to alert Shalov's office to file memo of costs.	1.80
9/7/2020	KSR	Prepare for and telephone call with Gallaway re Apple's data sample. Email from Gallaway with draft email to Dunne/Riley re inadequacies with data sample and proximity of mediation date; respond to Gallaway re termination date data to add to list. Draft damages memo for mediation. Review Gallaway's email to Matt Riley re issues with Apple's data sample	3.30
9/8/2020	GMG	Search files and prepare all receipts for expenses that are possibly allowable for CAND bill of costs; prepare summary chart and email KSR re same	2.70
	KSR	Response from Tripper Ortman's office re back on waitlist for mediation. Continue to draft memo re damages study for mediation, in light of Ninth Circuit's order re summary judgment in plaintiffs' favor. Emails with GMG re bill of costs; review GMG's summary memo re allowable costs in preparation for call to discuss.	3.60
9/9/2020	GMG	Confer with KSR re status of CAND cost bill and turning it over to co-counsel for completion and filing	0.30
	KSR	Call with GMG Gray to discuss allowable costs for costs bill. Review GMG's itemization of Kralowec firm costs and receipts. Review GMG's attachments for email to McLaughlin re costs bill. Emails with GMG to arrange call time to discuss. Forward attachments to Shalov and Gallaway with information about costs and request to prepare costs bill. Response from Shalov re costs bill; reply. Continue research for issues to address in damages memo.	2.60
9/10/2020	KSR	Email from Julie Dunne with response to push-back on Apple data for mediation; review and draft and send email to Shalov, Gallaway and KAK with proposed response. Further emails with Gallaway and Shalov re data required and proposed response, and Apple's evidence re date for end of Checks policy. Analyze Apple's proposed data in light of damages memo re revisions to EconOne 2015 damage study for mediation. Email to Gallaway re okay to send proposed email to Julie Dunne re sample data with eta for full report. Call with GMG re bill of costs. Email from Shalov re presumed dates Checks ended for purposes of damages study. Review email from Gallaway to Julie Dunne re data for mediation. Continue research for and drafting damages memo for revised EconOne damages study.	2.80
9/12/2020	KSR	Response from Tripper Ortman's office re back on waitlist for mediation. Continue to draft memo re damages study for mediation, in light of Ninth Circuit's order re summary judgment in plaintiffs' favor. Emails with GMG re bill of costs; review GMG's summary memo re allowable costs in preparation for call to discuss.	4.10
9/13/2020	KSR	Continue research for and drafting of damages memo for mediation.	3.60

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		<u>Hours</u>	
9/14/2020	GMG	Circulate 9th Circuit bill of costs to co-counsel; email co-counsel re number of copies allowed in 9th Circuit bill of costs; emails with KAK re CAND bill of costs	0.70
	KAK	Review correspondence between KSR, co-counsel and defense counsel re mediation data and information to be produced by defendant; review emails produced by defendant re suspension of bag and technology search policy in 2015; review correspondence re costs bills due in Ninth Circuit and CAND; further correspondence with co-counsel, GMG and KSR to confirm allocation of work and deadlines for these filings; review memo and lists from GMG re CAND costs bill; emails to GMG and KSR re apparent problems with same and additional work needed; review draft Ninth Circuit costs bill and applicable rules and instructions; check excerpts of record and briefs; review and reply to email from co-counsel re same and final discrepancy to be checked before filing	0.90
	KSR	Check calendar for due date for costs bill; emails with GMG re date to file. Email from Gallaway re due date for costs bill; respond. Email from KAK re dates for submission of two separate costs bills. Respond to KAK. Emails with GMG and Gallaway re information for costs bills. Email from Shalov regarding date for Apple's data production and following up with Apple Gallaway response. Gallaway email to Julie Dunne re eta for Apple's data. Gallaway response re date to file costs bill and McLaughlin will file. Further email from KAK re status of two, separate costs bills and procedures and due dates. Gallaway response. Email with KAK re status of damages memo for mediation. Further email from GMG re 9th Circuit bill of costs, form and instructions. Further emails with KAK and Gallaway re CAND costs bill. Email from GMG re scans for expenses. Further emails from KAK re costs bills and allowable costs Gallaway response re filing bills of costs. Continue drafting damages memo. Email from Matt Riley re Apple's eta for production of data for mediation with Judge Ghandi.	5.80
9/15/2020	GMG	Confer with KAK re CAND and 9th Circuit bill of costs; finalize and file 9th Circuit bill of costs via ECF	0.30
	KAK	Review email from GMG re opening brief cost on Ninth Circuit costs bill; re-read draft costs bill; email to GMG and team re final version of costs bill to be filed by tomorrow in Ninth Circuit; review materials forwarded by GMG to co-counsel last week re district court costs bill; re-check rules and past example costs bill; draft detailed email to co-counsel clarifying items that can be claimed, work to be done to complete the costs bill, and deadline for same; further correspondence with co-counsel Gallaway re same; discussion with GMG re same; review and evaluate new opinion potentially relevant to damages calculations; review enotification confirming filing of costs bill in the Ninth Circuit; review email from co-counsel to damages expert re timeframe of expected data production and completing data analysis in time for scheduled mediation	1.10
	KSR	Email from Gallaway to Brian Kriegler (expert) at EconOne re Apple's agreement to produce certain data for damages study in preparation for mediation, and question whether EconOne will have time to revise damages analysis in time for mediation on this schedule. Emails with GMG, Gallaway and KAK re costs bill in 9th Circuit. Continue drafting damages memo for EconOne damages analysis revisions for mediation.	3.90
9/16/2020	KAK	Review emails between co-counsel Gallaway and damages expert re timeframe for data analysis work prior to mediation; review enotification re new general orders which will be applicable on remand; email to GMG re pulling and reviewing same	0.10
	KSR	Email to KAK re status of damages memo for EconOne work to prepare for mediation with Apple. Emails with Brian Kriegler of EconOne and Gallaway re updated damages analysis for mediation and eta for receipt of Apple's data. Continue drafting damages memo for mediation.	2.50

			<u>Hours</u>
9/17/2020	GMG	Review new CAND general orders re COVID procedures and email KAK re same	0.10
	KAK	Review email from defense counsel Hamburger and Boutros with tardy rehearing petition and motion for relief; review voice mail from defense counsel re same; preliminary review of petition and motion; forward all to co-counsel Shalov and Gallaway and evaluate response; further correspondence re same; telephone discussion with Shalov re same, as well as other issues related to upcoming mediation; draft email to Hamburger and Boutros advising that we oppose the motion to file tardy rehearing petition; review enotifications confirming filing of petition and motion today	0.50
	KSR	Email request from KAK to forward draft of damages memo. Emails with KAK re Apple's request not to oppose petition for rehearing in the Ninth Circuit. Review/analyze Apple's late-filed petition for rehearing en banc. Review/analyze Apple's petition for panel rehearing.	0.80
9/18/2020	GMG	Review Apple petition for rehearing and motion to file, review rules re response to motion for leave and email KAK re same; review order granting motion and calendar deadline for response to petition	0.50
	KAK	Review and reply to email from reporter re defendant's rehearing petition; further correspondence re same; email to GMG re pulling rule on opposition schedule for ordinary motions; review and reply to GMG's response re same; review enotifications indicating that court has granted leave to file tardy petition and requested an answer; evaluate impact of same; email to KSR and co-counsel re same and confirm allocation of work	0.30
	KSR	Response to KAK re circulating draft of legal research memo to update damages analysis for mediation. Review order granting Apple's request to file late petition for rehearing. Review second order re Apple's petition for panel rehearing, date, page limit. Calendar. Email from KAK re court's orders; strategy; delay of mandate. Email from Gallaway re due date for mediation statements; calendar. Email from KAK re division of labor on answer to petition for rehearing and mediation brief. Continue finalizing draft of damages research memo for EconOne analysis in preparation for mediation.	2.70
9/19/2020	KAK	Check for data production promised by Apple yesterday; email to co-counsel re need to follow up; review replies from co-counsel re same	0.10
	KSR	Continue research and drafting to finalize draft of damages memo for EconOne update to damages analysis for mediation.	2.80
9/20/2020	KSR	Continue research and drafting to finalize draft of damages memo for EconOne update to damages analysis for mediation. Email from Matt Riley at DLA Piper re Apple was unable to produce data as promised on Friday due to "some issues in the data"; new eta early this week.	3.20
9/21/2020	KAK	Review email from defense counsel re further delay in production of data for mediation; review response of co-counsel Gallaway re same; began close review and analysis of rehearing petition; email to co-counsel re impact on defendant's mediation positions of court's pending request for answer to rehearing petition	0.30
	KSR	Emails with KAK re eta for data from Apple for mediation, and available mediation dates from Tripper Ortman's office. Email from Gallaway to Matt Riley re late data production from Apple and need for date certain to keep mediation date. Email from Riley re new Thursday eta for Apple's data production. Continue research for and finalizing memo for damages analysis for mediation.	5.20

			<u>Hours</u>
9/22/2020	KSR	Continue research for and finalizing memo for damages analysis for mediation. Gallaway email to EconOne re delay in Apple production and query whether EconOne can complete analysis on time for mediation given late production; Kriegler response in affirmative. Review article re Apple's position on Ninth Circuit order.	4.70
9/23/2020	GMG	Confer with KAK and KSR re upcoming mediation, rehearing petition and cost bill; research alternative dates for Ross and Gandhi and email KAK and KSR re same; review order and rules re CAND cost bill deadline and add placeholder to calendar	1.20
	KAK	Discussion with KSR and GMG re status of defendant's data production and impact on mediation, status of damages memo, scheduling call to discuss whether to proceed with mediation, and obtaining mediators' availability; email to co-counsel re scheduling strategy call; review replies confirming time for call	0.30
	KSR	Emails with KAK re eta for data from Apple for mediation, and available mediation dates from Tripper Ortman's office. Email from Gallaway to Matt Riley re late data production from Apple and need for date certain to keep mediation date. Email from Riley re new Thursday eta for Apple's data production. Continue research for and finalizing memo for damages analysis for mediation.	5.90
9/24/2020	GMG	Review Apple rehearing petition and prepare chart of record cites with corresponding cites to excerpts of record and email KAK re same	1.80
	KAK	Review email from KSR circulating damages calculation analysis memo; preliminary review of same in preparation for tomorrow's call; review email from GMG re availability of mediator Ghandi; evaluate possible agreement to extend deadlines for mediation briefs in lieu of postponing or cancelling mediation; continued review and analysis of rehearing petition; began drafting answer to rehearing petition, including outline of points to be included; draft detailed email to GMG re checking cites in Apple's rehearing petition; review list of checked cites prepared by GMG; email to GMG re additional information needed; review email from KSR circulating additional materials for tomorrow's call; review further email from GMG circulating additional documents needed for response to rehearing petition	1.40
	KSR	Email from GMG re no dates on waiting lists for Jeff Ross and no upcoming dates for Judge Ghandi. Draft edits/corrections to damages memo in preparation for EconOne analysis and mediation. Further review redline to evidence by store chart. Email to team with attached documents/evidence referred to in damages memo.	1.40
9/25/2020	KAK	Evaluate matters to discuss during strategy call; further review of damages analysis memo prepared by KSR; review correspondence from co-counsel Gallaway and Shalov to defense counsel re failure to produce mediation data and cancellation of mediation if data is not produced by Monday; correspondence to confirm rescheduling of strategy call to Monday	0.80
	KSR	Email from defense counsel Riley re still no data from Apple. Shalov email re will contact Apple re no data by Monday, plaintiffs will cancel mediation. Gallaway email to Riley re reason Apple data for mediation still not produced. Emails with KAK, Shalov, Gallaway re postponing call to discuss data and cancelling mediation date. Further email from KAK re mediation briefs. Email to Ortman's office re mediation waiting list. Response from Ortman's office re available dates in January.	0.30
9/28/2020	GMG	Unpack and review mediation data provided by Apple, upload for file sharing and email co-counsel re same; email KAK re upcoming mediation date	1.30
	KAK	Email correspondence confirming today's call; continued evaluation of defendant's rehearing petition and work drafting response; review and reply to email from co-counsel Gallaway re docket cites needed for response and possible submission of further supplemental excerpts of record; prepare for and participate in strategy call with co-counsel Shalov and Gallaway and KSR and discussed numerous issues	4.10

including cancelling mediation, anticipated timeframe for ruling on rehearing petition, and arguments to be made in response to rehearing petition; review correspondence from Shalov to mediator cancelling mediation; review responses and voice mail from defense counsel Dunne claiming that data will be produced today; further correspondence with co-counsel and KSR re same and next steps; review email from defense counsel with data production; forward same to GMG; correspondence with co-counsel and KSR re same and whether to proceed; review correspondence between Shalov and mediator reconfirming mediation date

9/28/2020 KSR	<p>Emails re conference call time. Conference call with Shalov, KAK, Gallaway re no data from Apple so we'll cancel mediation; Ortman mediation dates; arguments to oppose Apple's petition for rehearing, etc. Email to team re further discovery on remand to Alsup and research for prospective motions. Email from Shalov forwarding text from Julie Dunne re Apple will produce data today, and further email discussion re whether to cancel mediation in face of that. Emails from Gallaway re evidence in the record on de minimis issue and what to cite to Ninth Circuit. KAK email re whether this evidence in Ninth Circuit excerpts of record. Further email to team re whether to accept Ortman's January mediation date and cancel with Ghandi. Email from JAMS confirming mediation cancelled. Email from Shalov forwarding text of Dunne's voicemail re Apple will produce data within one hour. Email from Matt Riley with Apple's data. Emails with team re accessing data. Emails with team re whether time sufficient to review and process data before Ghandi mediation, or whether still need to cancel. Emails with Judge Ghandi's office and Shalov re preserving mediation date. Email to Gallaway to set up call to discuss discovery that may be needed when case is back before Judge Alsup; as well as lack of basis for any decert motion, etc. Emails with Gallaway to set up call to discuss Apple's data production and instructions to EconOne for damages analysis for mediation. KAK email re Gallaway and me to handle damages analysis; email to KAK confirming analysis should include PAGA penalties, and requesting review of UCL remedy analysis. Email from GMG with link to Apple downloaded data. Review data. Emails re forwarding data to EconOne for damages analysis; Gallaway email to Kriegler with data. Kriegler email for credentials to download. Email from Gallaway re excerpts of record for evidence discussion in Ninth Circuit brief. KAK response. Shalov email re mediation back on at JAMS: JAMS confirmation. Email from Melissa Daniel at EconOne re downloading Apple data. Further email from Melissa Daniel with preliminary damages analysis and to set up conference call to discuss. Review/analyze Daniel's analysis. Further research to update damages memo.</p>	4.50
9/29/2020 KAK	<p>Continued review and analysis of damages memo prepared by KSR; prepare redline with comments; circulate same to KSR; review correspondence between damages expert, KSR and co-counsel re defendant's data produced yesterday and preliminary calculations based thereon; further correspondence with KSR re several damages issues; review and reply to co-counsel Gallaway re docket cites needed for response to rehearing petition</p>	0.70
KSR	<p>Emails with Gallaway and Melissa Daniel at Econ One re Apple's new data and damages calculations. Further review Melissa's damages summary and compare damages measures to calculations in damages memo. Emails with GMG Gray re Apple data. Email from Gallaway re calculations for compensatory damages in EconOne analysis; Daniel's response re answer in formulas tab; further analyze EconOne damages attachment. Emails with Gallaway and Melissa to set up call to discuss changes to methodology for damages calculations; calendar call. Email from KAK with comments and questions re damages memo and methodology for damages study, including contract rate vs. minimum wage; respond. Further emails with KAK re Check time assumption in EconOne study. Email response to KAK and further emails. Review, research for, and draft edits to damages memo for EconOne analysis. Further emails with KAK re using both contract rate and minimum wage rate for damages analysis, for comparison. Confirm conference call with Gallaway and</p>	2.60

Melissa; calendar. Emails with Gallaway and KAK re excerpt of record issues for further briefing in Ninth Circuit.

9/30/2020	KAK	Further correspondence with KSR re approach to damages and possible call to discuss same; review and reply to email from KSR re matters discussed during today's call with damages experts and clarifications of data calculations, obviating need for group strategy call; review correspondence with experts; review further email from co-counsel Gallaway to defense counsel re deficiencies in data production	0.20
	KSR	Emails with KAK regarding further issues concerning calculation of damages for mediation. Further emails with KAK re EconOne damages analysis and assumptions made. Further emails with KAK re set up call to discuss approach to damages calculations. Prepare for and telephone call with Gallaway, and Brian Kriegler and Melissa Daniel from EconOne re damages analysis. Telephone call with Gallaway to follow up on issues raised with EconOne. Further analysis and send email with instructions for 1194.2 and PAGA calculations to EconOne. Email from Melissa Daniel at EconOne with Apple Mediation Workbook. Analyze all damages and penalties formulas and send email to Melissa to confirm several points and approve the rest. Further emails with Gallaway and Melissa Daniel, and emails with Matt Riley at DLA Piper, re discrepancy in number of employees reflected in Apple's data. Riley response re Apple looking into class data question. Further email with KAK re arranging call with Gallaway and Shalov to address damages issues. Email to KAK resolving issue re Check time assumptions in EconOne analysis. Email with Gallaway to set up call to discuss cutoff for PAGA calculations. Further emails with Gallaway and Melissa Daniel re number of members in EconOne's 2015 damages analysis. Email from Melissa Daniel re number of class members in 2015 analysis and attaching updated workbook re Apple's new data. Review/analyze EconOne workbook. Further email from Gallaway to Matt Riley with further challenges to number of employees included in new data. Further emails with Melissa Daniel re calculation of PAGA penalties; review/analyze EconOne mediation workbook re PAGA cutoff. Further emails with Gallaway and Melissa Daniel re discrepancies in number of employees represented in Apple data; and issue regarding pay dates. Further analysis of EconOne study and emails with Daniel re principal damages, liquidated damages and pre-judgment interest.	3.40
10/1/2020	KAK	Evaluate content of mediation brief, including whether it should include argument re attorneys' fees and costs shiftable to Apple; email to co-counsel and KSR re same; review response from Shalov re same; review further follow-up email from co-counsel Gallaway to defense counsel re continuing problems in data production; review further correspondence with experts re ongoing data analysis for mediation	0.20
	KSR	Emails with Gallaway and Matt Riley at DLA Piper regarding class list and data for entire class, as well as production of employee handbook showing end of Checks policy. Email from Shalov regarding prior damages estimate sent to Todd Boyer, and response regarding addition of one-year of damages for current class list and additional one of added class members, as well as PAGA penalties that would go to the State. Email from Melissa Daniel re damages calculations for mediation; analyze workbook formulas according to Melissa's email and respond, including re interest calculation. Further response from Matt Riley re Apple employees paid bi-weekly; Gallaway email forwarding to Melissa Daniel and Daniel response re day of the week employees paid for damages analysis. Further email from Gallaway re discrepancy in Apple's production for class members and expectation of receiving additional data.	1.60
10/5/2020	KAK	Review email from mediator's office confirming deadline for mediation briefs; review correspondence between co-counsel Shalov and attorneys Dion-Kindem and Blanchard to confirm strategy call this week; further analysis of arguments for answer to rehearing petition and work on current draft	0.30

		<u>Hours</u>
10/6/2020	GMG	0.20
	Prepare revised fee and cost estimate and email KAK re same; review and respond to KAK email re Friday filing	
	KAK	5.60
	Continued work drafting answer to rehearing petition, including legal research, with focus on sections addressing Apple's failure to provide adequate appellate record and whether record establishes that Apple waived "de minimis" defense; review docket materials cited by Apple and develop arguments based thereon for brief; continued work on brief; draft email to GMG re anticipated tasks this week to prepare brief and possible further excerpts of record; review and evaluate email from co-counsel Gallaway re damages analysis and proposed initial demand; review email from Shalov re status of mediation statement due this week	
	KSR	2.30
	Email from Shalov re eta for draft mediation statement and need to formulate settlement demand. Review updated damages analysis and prepare for call with Gallaway to discuss settlement demand. Telephone call with Gallaway to formulate settlement demand to Apple for mediation. (48 minutes). Email from Gallaway summarizing damages scenarios and basis for settlement demand. Email from Julie Dunne re Apple will not be sharing its mediation brief.	
	KAK	1.30
	FEES - Review updated chart of lodestar and expenses prepared by GMG; correspondence with KSR and GMG re updating with estimated time through end of September; review updated chart and figures prepared by GMG; circulate estimated lodestar and costs information to co-counsel Shalov for purposes of mediation; correspondence to confirm call with attorneys Dion-Kindem and Blanchard; preparation for this call, including discussion with co-counsel Shalov; participate in conference call with Shalov, Dion-Kindem and Blanchard; post-call discussion with Shalov; review follow-up email from Shalov to Blanchard	
	KSR	0.20
	FEES - Emails with KAK re lodestar for mediation. Further emails with KAK and GMG re updating lodestar figures and costs.	
10/7/2020	GMG	2.10
	Prepare text searchable excerpts of record; review employee declarations and deposition transcripts in record for references to clocking in with handheld devices and email KAK re same	
	KAK	6.30
	Continued work drafting answer to rehearing petition, including legal research, with focus on section addressing Troester and section addressing Apple's proposed revised language; draft emails to GMG re reviewing record for cites on Apple's ability to track search time using device apps; review record cites identified by GMG; review cites identified by co-counsel Gallaway; draft revisions to brief to incorporate ER cites on this point; draft further revisions for clarity and persuasiveness; draft introduction; finalize and circulate current draft answer to co-counsel and KSR for review and comment; review and evaluate email from defense counsel stating that their mediation statement may be late and they may elect not to exchange it; correspondence with co-counsel to schedule strategy call to discuss mediation and next steps; review email from co-counsel Shalov circulating draft mediation statement; preliminary review of same; review correspondence between co-counsel Gallaway and defense counsel re deficiencies in Apple's data production	
	KSR	1.50
	Email from Shalov with draft of mediation statement. Emails with Shalov & team re call time to discuss draft and settlement strategy. Emails with Gallaway Gallaway, Julie Dunne, Matt Riley (for Apple) and GMG re Apple's production of new and corrected employee data for mediation. Emails with Shalov, KAK and Gallaway to set up call to discuss settlement demand. Email from Shalov re lodestar and costs for mediation statement and to formulate settlement demand. Email request from Shalov to review discussion in mediation brief re damages for claims alleged in complaint. Review/analyze. Calendar call to prepare for mediation/settlement demand. Email from KAK with draft Answer to Apple's Rehearing Petition. Review.	

		<u>Hours</u>
10/8/2020	GMG Unpack supplemental mediation data and circulate to co-counsel; proofread draft answer to petition, check cites and quotes and email KAK re same; check filing procedure and email KAK and KSR re same	1.30
	KAK Continued review and evaluation of current draft of mediation statement; prepare redline with broad comments on content of same; circulate draft to co-counsel and KSR; continued work on answer to rehearing petition, including revisions to strengthen brief and additional legal research; circulate new draft to co-counsel and KSR; preparation for today's strategy call with co-counsel, including list of topics to be addressed; participate in strategy call and discussed numerous issues related to mediation, initial demand, call with mediator, and other matters; review emails from KSR and GMG with edits to draft brief; incorporate same into draft brief, and draft further revisions to strengthen brief and meet page limit; finalize draft and re-circulate to KSR and GMG with transmittal email instructions; review emails from co-counsel Shalov to defense counsel re their refusal to exchange mediation briefs, and to mediator requesting conference call	4.10
	KSR Further review/analyze draft Answer to Rehearing Petition circulated by KAK. Draft/circulate comments and edits along with prior memo addressing holding/text from Tyson Foods re proof of unpaid hours worked where employer fails to record. Further emails with KAK re draft Answer. Emails with Gallaway and Matt Riley re plaintiffs' concerns re discrepancies in class list and Apple's data production. Gallaway email to Daniel at EconOne re Apple's deficient production, and request for revised damages analysis with assumptions. Email response from Melissa Daniel re effect of change in numbers on EconOne's Apple Mediation Workbook. Review/analyze revisions to workbook. Email from KAK with revisions to draft mediation statement; review. Review email from Peter Dion-Kindem commenting on EconOne damages analysis; emails with KAK and Shalov re comments. Email from GMG with file transmitted by Matt Riley with updated Apple data for mediation; review/analyze. Emails with Gallaway and Matt Riley re corrected number of opt-outs per class administrator. Shalov email to Dunne re Apple's position on exchanging settlement offers and demand in absence of exchange of mediation briefs. Emails from JAMS with Zoom, etc. info for mediation; calendar. Conference call with team re settlement demand and call with Judge Ghandi re Apple's refusal to exchange mediation briefs and other issues prior to mediation. Shalov email to Stephanie Barraza at JAMS re call with Judge Ghandi. Email from Shalov re comments to draft mediation statement and discussion of representative testimony and class cert order re claims process. Email from KAK with revised Answer to Rehearing Petition and request to review section re Tyson Foods. Review/analyze. Email from GMG re filing logistics re ECF options.	3.80
10/9/2020	GMG Proofread final draft answer to petition, check cites and quotes and circulate to KAK and KSR; prepare final PDF and circulate for approval; arrange for filing and service via ECF; review filed brief and circulate to co-counsel	1.60
	KAK Review and reply to email from co-counsel Shalov re comments on draft mediation statement, circulated yesterday; draft further revisions to answer to rehearing petition, including significant edits to section on aggregate and representative methods of proof; circulate new draft of brief to KSR, GMG and co-counsel; review emails from KSR re final changes to brief; review final brief with tables prepared by GMG; correspondence with KSR and GMG re final review and changes needed; prepare for and participate in further strategy call with KSR and co-counsel re mediation, possible pre-mediation opening demand, and timing of opening demand; review and reply to email from Judge Ghandi's assistant re possible call early next week; review emails between co-counsel Gallaway and clients re authorization of proposed settlement demands; follow-up correspondence to Gallaway re same; follow-up email to GMG re status of finalizing and filing answer today; review and approve final PDF of answer, prepared by GMG; review notification confirming successful filing; review email from Gallaway to mediator circulating plaintiffs' mediation statement	5.30

		<u>Hours</u>
10/9/2020	KSR	2.90
<p>Review/analyze latest draft of Answer and circulate further edits. Email with team re ECF options for Answer. Email from Gallaway with survey of sample class members produced by Apple in 2014, in preparation for conference call. Review/analyze survey and summary. Further email from Gallaway re number of survey participants who stated they went through Checks (58%). Conference call with team to discuss mediation brief, settlement demand, computation of damages, etc. Review final draft of Answer to Petition for Rehearing; email comments to KAK. Review/analyze article re claims-made rates for consumer cases and circulate link. Email from KAK with footnote text for Answer brief; review and email comments/edits to KAK with further points re Hall report cited by Apple. Review/analyze final edits to Answer brief and forward edits/comments to KAK. Shalov email to JAMS re pre-mediation conversation with Judge Ghandi; response from JAMS; KAK reply re plaintiffs' counsel only. Gallaway email to plaintiffs/class reps for authority in advance of mediation. Class rep responses. Email to team re prospect of service awards for plaintiffs. KAK email re class rep responses.</p>		
10/11/2020	KSR	0.30
<p>Email from JAMS re submission of brief re JAMS Access; Gallaway response. Email from client re work needed from class reps for later submission of request for service awards.</p>		
10/12/2020	KAK	2.30
<p>Review correspondence from GMG re court notice that no paper copies of answer to rehearing petition need be submitted now; review email from Judge Gandhi assistant re submission of mediation statement; review response of co-counsel Gallaway re same; review and evaluate further correspondence from clients re proposed settlement amounts for mediation purposes; review email from co-counsel Shalov re settlement demand, including draft email to defense counsel Dunne; email to Shalov re holding off sending until after our call with Judge Ghandi; correspondence to confirm time for call with Judge Gandhi re upcoming mediation; preparatory call with co-counsel and KSR; participate in call with mediator, co-counsel and KSR re mediation process and strategy issues; lengthy further conference call with co-counsel and KSR re settlement demand, timing of same, and best way to present same; revised draft of settlement demand email to Dunne to be prepared by Shalov</p>		
	KSR	3.80
<p>Gallaway email to JAMS re mediation brief. Email from Shalov with draft of settlement demand email to Dunne. Review/analyze. Emails with Shalov and Julie Dunne re whether Apple will share mediation brief to plaintiffs prior to receipt of plaintiffs' settlement demand. KAK response re holding off on demand. Emails with team to set call with Judge Ghandi and pre-call with team to prepare. Pre-call with team to discuss agenda for call with Judge Ghandi re expectations for mediation, protocol, lack of mediation brief exchange from Apple, etc. JAMS response re Judge Ghandi's availability. Conference call with Judge Ghandi. Follow up call with Shalov, Gallaway, KAK re whether to exchange settlement demand prior to mediation, given Apple's position on mediation briefs, etc.; formulate demand. Follow up call with KAK re demand and legal research for mediation. Research Alsup opinions referring to Tyson Foods and Ridgeway re evidence to support claims. Emails with team re information for class reps to analyze for settlement demand and authority. Emails from Gallaway reporting on calls with class reps. Email from GMG with final draft of Answer to Petition for Rehearing; quick review. Gallaway email to JAMS with final mediation brief and EconOne damages analysis.</p>		
10/13/2020	GMG	0.20
<p>Extract Alsup cases selected by KSR and email KAK re same</p>		
	KAK	1.40
<p>Review email from KSR with results of legal research on Alsup's orders post-Tyson Foods; review and evaluate these decisions; correspondence with KSR re same and additional research for mediation; review and evaluate revised settlement demand email prepared by Shalov; prepare redline with proposed revisions to demand; circulate back to Shalov, Gallaway and KSR with transmittal email explaining substantive changes; review email from KSR re proposed changes; review email from Shalov to defense counsel Dunne relaying demand; further preparation for mediation; review email from defense counsel with additional information on number of class</p>		

members; review and reply to email from Gallaway re same, indicating that our estimate was almost exactly spot on; review email from Dunne in response to our demand claiming our case is worth only \$1-3 million; correspondence with co-counsel re reviewing these decisions and fact that most if not all pre-dated the Supreme Court's opinion on compensability

10/13/2020	KSR	Review/analyze draft Answer to Rehearing Petition circulated by KAK. Circulate comments and edits along with prior memo addressing holding/text from Tyson Foods re proof of unpaid hours worked where employer fails to record. Conference calls with Shalov, Gallaway, KAK re settlement demand. Review draft email from Shalov to Dunne re settlement demand and comment. Email from KAK with edits/comments to draft settlement email to Dunne. Email from Matthew Riley re plaintiffs' request for additional class member data through the end of December 2015. Shalov final email to Dunne; review. Email from Gallaway analyzing Riley email wrt EconOne damages assumptions. Email from JAMS requesting list of attendees for mediation. Email from Julie Dunne responding to settlement demand; review/analyze. Emails with team regarding research to distinguish cases cited by Dunne re wage and hour settlements. Research re cases cited by Dunne. Follow up email with KAK re Alsup cases referring to Tyson Foods and results of research re Alsup references to Ridgeway (none); and research re inferences where employers fail to track time. Response from KAK with request for additional research for mediation. Email from Shalov re further research needed to distinguish Apple's cases and support plaintiffs' demand re wage and hour settlements; KAK response. Further response from KAK re division of labor for mediation research; Gallaway response re dates of Apple's cited decisions; KAK reply. Shalov email re research on all relevant off-the-clock cases.	3.70
10/14/2020	KAK	Review and evaluate draft email to defense counsel Dunne in response to her cited cases on sizes of recent bag check settlements; email to co-counsel approving same; review and evaluate chart prepared by co-counsel listing reasons Dunne's cited cases are distinguishable; correspondence with co-counsel re same, revisions proposed by KSR, and providing same to mediator	0.30
	KSR	Further emails with team re research for mediation related to Apple's response to demand. Further review/analyze email from Julie Dunne responding to settlement demand and citing bag check settlements. Further emails with Shalov, KAK, Gallaway re response to Dunne's email and legal research. Continue research re cases construing bag check cases cited by Dunne. Review draft chart from Shalov to send to Dunne re Apple's bag check cases are pre-class cert in those cases, pre-Troester, and pre-decisions of Cal. Supreme Court and 9th Circuit in our action on liability. Email to Shalov with suggested revisions to chart. Further emails with team re chart. Email from Shalov with proposed draft of email to Dunne re cited bag check cases. Email to Shalov with suggested edits. Further emails with KAK and Shalov re draft to Dunne. Gallaway email to JAMS with list of mediation attendees on plaintiffs' side. Shalov email to Julie Dunne responding to plaintiffs' settlement demand.	3.40
10/15/2020	GMG	Review further mediation brief; email KAK re same and cancellation of mediation	0.20
	KAK	Review and evaluate draft confidential mediation statement, describing latest exchanges with defense counsel; email to co-counsel approving same; review email from co-counsel to mediator delivering same; review and approve draft email to attorneys Blanchard and Dion-Kindem; review and evaluate nuisance-value settlement offer made by Apple; correspondence with co-counsel re same, including decision to cancel the mediation; review emails to mediator and Apple from co-counsel Shalov cancelling mediation	0.20
	KSR	Review/analyze draft confidential mediation statement from Shalov. Research cases cited in statement and draft and circulate redline edits. Emails with KAK and Shalov re statement. Review final version of mediation statement from Jason. Emails with	2.90

Jason and Gallaway re final version of mediation statement and filing. JAMS response re mediation statement. Email from Dunne with low-ball settlement offer and asserted rationale; review/analyze. Emails with team re Dunne's email with Apple's offer. Email from Shalov to Dunne canceling mediation; email to Shalov re need to communicate the low-ball offer to class reps. Shalov response. Shalov email to JAMS to cancel mediation.

10/16/2020	KAK	Telephone call from co-counsel Shalov re call received from mediator Gandhi, who is urging the parties to proceed with Tuesday's mediation; discussion with Shalov re same and next steps; email to KSR re same; review further email from Shalov summarizing discussion with Gandhi; review email from Gandhi to the parties; reply to Shalov re same; review email from Apple confirming they will participate in mediation; further correspondence with co-counsel re when to respond; further preparation for mediation	0.30
	KSR	Email from KAK re Judge Gandhi call to Shalov to convince plaintiffs to proceed with mediation, despite Apple's response to demand. Email from Shalov summarizing discussion with Judge Gandhi. Emails with team re proposed response. Email request from Shalov to research wage statement penalties issues raised by Dunne. Legal research to respond to Dunne email. Email from Judge Gandhi in response to parties' communications on cancellation of mediation. Further emails with team re strategy and further research. Email from Julie Dunne re Apple's intention to proceed with mediation. Email from Shalov requesting research re Apple's Hall report and rulings on admissibility; KAK responses re Hall report. Review/analyze court's order re Hall report, as well as motion to strike.	2.30
10/17/2020	KSR	Per request from Shalov, legal research regarding Dunne's argument that plaintiffs do not have valid claim for wage statement penalties if wage statement reflects all hours that were actually paid. Draft and circulate summary of research in preparation for potential revived mediation, including distinctions between our facts and Maldonado. Email from Shalov forwarding email from Peter Dion-Kindem re mediation brief. Respond to Shalov re eta for response; Shalov reply. Legal research re authorities addressing construction of Labor Code section 204, private right to bring claim, and available of PAGA penalties for violation of Section 204 on our facts.	3.10
10/19/2020	KAK	Review correspondence between co-counsel and KSR re additional research to be completed in preparation for mediation; email to Shalov re whether plaintiffs' participation in mediation has been confirmed; review email from mediator to Shalov re same; correspondence with co-counsel and KSR re allocation issues, possible additional penalties, and other matters in preparation for mediation	0.20
	KSR	Further legal research re Apple's contentions re damage study for mediation. Summarize damages analysis and circulate. Further research for additional mediation issues re damages/penalties. Circulate summary. Emails with Gallaway and Melissa at EconOne re damages analysis revisions for mediation. Email to Gallaway to request confirmation that all penalties listed as available are included in EconOne damages analysis. Further research to address damages theories/statutes raised by Dion-Kindem. Draft and circulate summary of PAGA penalties sought in complaint and included in EconOne analysis; and further research required on case law developed since court issued summary judgment order. Draft summary of law concerning Labor Code section 1197.1 raised by Dion-Kindem. Emails with Shalov re opinions discussing remedies where employers fail to keep records of hours worked. Emails with Gallaway confirming no private right of action or no available relief under statutes cited by Dion-Kindem. Fact and legal research re letter to LWDA and basis for plaintiffs' claims. Draft and circulate summary and analysis of authorities construing Labor Code section 1194 and availability of PAGA penalties. Further emails re PAGA penalties available for violations of 1194. Further legal research to address Dunne's discussion of straight time re minimum wage basis to calculate damages. Draft and circulate analysis of relevant authorities and discuss strategy. Emails with Shalov re amount these further PAGA penalties with add to EconOne	4.60

damages analysis. Email to KAK re status of mediation. Further emails with Shalov re status of mediation. Email from Matt Riley with Apple's production of further data requested for mediation. Emails with Shalov re strategy for claims-made trial. Gallaway response re mechanisms for recent claims-made settlements (vs. trial). Further team email discussion re mediation strategy. Email from Shalov requesting response to Dion-Kindem re statutes cited in his email re damages/penalties. Further legal research and emails with Gallaway re statutes alleged in plaintiffs' complaint and availability of penalties; no private right of action under 1197.1. Emails with Gallaway and Melissa Daniel of EconOne re damages analysis for mediation, including basis for non-inclusion of damages/penalties pursuant to statutes cited by Dion-Kindem. Email from JAMS in preparation for mediation; respond. Further research JAMS Zoom procedures for mediation.

10/20/2020	KAK	Continued preparation for mediation with Judge Gandhi; correspondence with KSR confirming mediation time; participate in all-day mediation with Judge Gandhi, along with KSR and co-counsel Shalov and Gallaway; conferences with KSR and co-counsel regarding strategy; conferences with mediator; case did not settle; discussion with KSR and co-counsel of response to attorney Dion-Kindem re his emails on damages issues; review draft email, prepared by Gallaway, to attorney Dion-Kindem re damages issues; review final email from Shalov to Dion-Kindem; post-mediation call with Shalov and KSR	8.10
	KSR	Emails with KAK confirming mediation still on following Apple's data production. Email with Gallaway and Melissa Daniel re additional files produced by Apple. Email from Melissa Daniel at EconOne with updates to mediation workbook; review. Further emails with Gallaway and Melissa re effect of changes to workbook, in preparation for mediation and discussion of prospective damages. Further email from Melissa re use of new, actual data from Apple vs. prior extrapolations. Emails with Shalov re good faith defense in preparation for mediation. Research and respond. Further email to Shalov re strategy for Apple's de minimis defense wrt failure to record time. Participate in mediation with Judge Ghandi. After mediation meeting and phone call with co-counsel. Further legal research for response to Peter Dion-Kindem re statutes he cited in email to Shalov re mediation statement (statutes no relevance). Email from Gallaway with draft response to Peter D-K re cited statutes re damages/statutory penalties. Draft inserts to Gallaway's email response to Dion-Kindem and send to Shalov; Shalov email response re wait times; email from Gallaway with revisions; Shalov email to Peter D-K with final response re cited statutes and report on status of mediation. Further email from Shalov re conclusion of mediation without settlement. Further mail from Peter D-K re statutory basis for damages under PAGA. Email discussion with Shalov.	7.70
10/21/2020	GMG	Confer with KAK and KSR re mediation results and next steps	0.40
	KAK	Evaluate next steps in view of unsuccessful mediation yesterday; began work on legal research needed for anticipated briefs on evidentiary presumptions and trial plan; review email from co-counsel Gallaway to clients summarizing events at yesterday's mediation and fact that mediation was unsuccessful; review correspondence between KSR and co-counsel re further response to attorney Dion-Kindem re damages issue; conference with KSR and GMG re strategy call to prepare lists of tasks to complete on remand, allocation of projects, allocation of work between firms, whether Alsup allows remote participation in hearings, and other matters related to post-remand litigation	0.80
	KSR	Emails with Shalov re responding further to Peter Dion-Kindem re damages measures. Telephone discussion with KAK and GMG re preparation for resuming prosecution of case before Judge Alsup, including re-opening of any discovery and any other affirmative filings and defensive research. Further discuss procedural posture at end of case and connection to Hall Report on which Apple depends, and possible motion for decertification. Email from Shalov with link to FTC page re settlements; respond to Shalov re FTC claims-rate publication I cited previously to	1.70

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		<u>Hours</u>
	Alsup and circulated. Email from Gallaway to class reps re report on mediation; email to Gallaway re confidentiality reminder to class reps; Gallaway email to class reps. Email from KAK re division of labor on projects/co-counseling agreement; review.	
10/23/2020	KSR Emails with Shalov regarding further response to Peter Dion-Kindem re cited sections for stacked PAGA penalties. Review earlier email string with Dion-Kindem's comments, conduct further legal research to respond, and draft and send email with follow-up response to Dion-Kindem re no availability of further, stacked PAGA penalties on our complaint.	1.20
	KSR FEES - Email from Peter Dion-Kindem with time records from Peter and Lonnie Blanchard. Email to Shalov re billable time.	0.20
10/27/2020	KAK Legal research for anticipated briefing on representative vs. individual proof of damages; review and evaluate most recent Ninth Circuit decisions relevant to damages proof issues we expect to face	1.50
	KAK FEES - Review and reply to email from co-counsel Shalov re incomplete time and expense information provided by attorneys Kalin and Blanchard and next steps	0.20
10/28/2020	KAK Review, evaluate and reply to email from co-counsel Shalov re damages projections and possibility of further settlement discussions with help of mediator Gandhi, as well as legal research needed on possible methods of proof of damages; review KSR response re same	0.20
	KSR Email from Shalov with Gallaway's chart and analysis of probable recovery from claims-made settlement or trial process; review. Email from KAK in response re mediator and additional research re Tyson Foods issues. Reply to KAK.	0.60
10/29/2020	KAK Review enotification and order amending opinion on "de minimis" issue; correspondence with co-counsel and KSR re impact of same, and next steps, including potential timing of issuance of mandate; review several press inquiries re amended opinion and correspondence with co-counsel Gallaway re response thereto	0.30
	KSR Review/analyze order of Ninth Circuit modifying opinion. Email from KAK summarizing order. Circulate comments and further email from KAK re decision on waiver issue and date for memo of costs. Reply. Gallaway and Shalov comments re order. Email from Shalov re issuance of mandate; KAK response.	0.30
11/2/2020	KAK Review and reply to further press inquiry re amended opinion issued last week	0.10
11/3/2020	GMG Review 9th Circuit bill of costs and email KAK to confirm there are no more costs to add	0.20
	KAK Evaluate next steps in Ninth Circuit in view of issuance of amended opinion, including possible amended costs bill; email to GMG re checking rules and whether any further costs may be submitted; review and reply to response from GMG re same	0.10
11/6/2020	GMG Review 9th Circuit mandate filed in CAND, check deadline for CAND bill of costs and email co-counsel re same	0.20
	KAK Review and reply to email from co-counsel Shalov re call received from mediator Gandhi re impact of Ninth Circuit opinion; evaluate whether to proceed with further settlement efforts; draft detailed email to Shalov, co-counsel Gallaway and KSR re problem with Apple's decision not to exchange mediation brief, which allowed us no opportunity to respond to certain defenses, which seem to have persuaded Gandhi, impairing his usefulness going forward, absent opportunity to submit further mediation briefing	0.30

		<u>Hours</u>	
11/6/2020	KSR	Review Ninth Circuit mandate. Email from Lee Shalov re call from Judge Gandhi re Ninth Circuit ruling and potential for further mediation. Email from KAK re mandate triggering cost bill. Further email from KAK re Judge Gandhi's analysis of Ninth Circuit ruling, prospect of and strategy for further mediation, and suggestion to submit supplemental mediation briefs. Email from GMG re date costs bill due; calendar. Review research on Walmart, Tyson Foods and similar cases for discussion of trial plan.	1.50
11/9/2020	GMG	Review expenses for CAND bill of costs and emails with KAK re same; prepare revised chart and documentation and circulate to co-counsel	0.60
	KAK	Review and evaluate enotification and mandate issued by Ninth Circuit last Friday, and email from GMG re district court costs bill deadline triggered by its filing; review and reply to email from putative class member re status of case and fact that no payments to class members have yet been authorized or made; review reply from class member; correspondence with co-counsel Gallaway re costs bill due this Friday, to be filed in district court; locate and forward previous emails on narrow categories of costs that may be claimed; correspondence with GMG re same and updating our firm's chart of recoverable costs; review emails between GMG and co-counsel re same and circulating updated chart of costs; review and reply to emails from co-counsel Shalov re possible expert on representative testimony and legal research project to be done by his office on alternative methods of proof; review and reply to email from Shalov re other law firms should not have any appellate costs since they did no work on the appeal, so no need to obtain costs information from them; review and reply to email from Gallaway re form to be used for this filing and how to complete it	0.80
	KSR	Email from Shalov re Jason Giaimo will prepare analysis of relevant cases in which representative testimony used at trial. Emails with KAK and Shalov re prospective experts - statistician and survey. Email from KAK to confirm Lee's office working on bill of costs due Friday; Gallaway response and request for any costs from our firm. KAK reply re appellate related costs only. Shalov response re possible costs from Dion-Kindem and Blanchard; KAK reply. Email from GMG attaching costs chart and backup; review; KAK response. Email from GMG with corrected chart.	0.40
11/12/2020	GMG	Confer with KAK and KSR re case status and upcoming tasks, including filing of cost bill	0.40
	KAK	Discussion with KSR re legal research on methods of representative proof in order to plan for trial; discussion with KSR re needed discovery memo and other next steps in case given impending issuance of 9th Circuit mandate and remand; draft follow-up email to co-counsel re status of appellate costs bill due tomorrow; review draft costs form, schedule itemizing costs, and supporting receipts, circulated by co-counsel; detailed email to co-counsel re changes needed	0.80
	KSR	Discussion with KAK re Shalov's email on representational testimony and examining earlier research; also preparing memo on discovery status including Apple's refusal to produce witness on video evidence underlying Hall report - status at the close of discovery. Discussion with GMG and KAK re bill of costs due tomorrow. Discussion with KAK re date for Apple cert petition and requirement to reverse mandate; likely eta of order from Alsup. Review/analyze Apple's Hall report and exhibits and court's order on plaintiffs' motion to strike it, to address in any further, potential mediation sessions and when case resumes before Alsup.	0.90
11/13/2020	GMG	Confer with KAK re cost bill filing; review filing instructions, prepare PDF for filing and email co-counsel re same; file cost bill via ECF and circulate filed copy	0.60
	KAK	Correspondence with co-counsel to confirm their office will finalize memorandum of costs, due today; review final documents prepared by co-counsel; email to co-counsel approving same; telephone discussion with GMG re filing logistics and co-counsel's	0.70

inability to complete filing; check rules regarding this filing; double-check current rules on courtesy copies, suspended due to pandemic; email to GMG re same; review email from GMG to co-counsel re division of tasks necessary to complete filing today; review notification confirming filing; review email from co-counsel to clerk circulating required courtesy copies; review email from co-counsel Shalov circulating research memorandum on possible methods of damage proof; correspondence with KSR re same and next steps; review email from KSR to co-counsel re additional research needed

11/13/2020 KSR	Emails with GMG, Paul Beyersdorf and team re filing of bill of costs. Email from Jason Giaimo with memo addressing cases concerning representative testimony; review/analyze. Emails with KAK re analysis and KAKs request to discuss with Giaimo. Email to Giaimo and team requesting focus on federal cases (issue of federal rules), authorities binding on Alsup, cases citing Ridgeway and Tyson Foods, etc. Review/analyze prior legal research and memo re Ridgeway, Tyson Foods and other cases discussing representative testimony at trial. Email response from Giaimo re Ninth Circuit research and dearth of applicable cases. Continue research.	3.20
11/16/2020 KAK	Review, evaluate and reply to email from co-counsel Shalov re next steps to get case moving before Judge Alsup; review email from Shalov circulating draft letter to Alsup; review detailed email from Shalov re conversation with potential expert	0.20
KSR	Email from Shalov re Apple sending awarded costs to McLaughlin. Email from Shalov re requesting case management conference; Kim response. Email from Shalov with draft letter to Judge Alsup requesting conference. Email from Shalov summarizing discussion with consulting survey expert re potential representative sample and issues with Apple's 52 stores, etc. Review expert qualifications and materials. Further email from Shalov re same.	0.80
11/17/2020 KAK	Review memorandum from co-counsel and co-counsel correspondence re results of legal research on possible methods of "representative" proof; evaluate same and analysis of possible alternative approaches; closer review of email summarizing call with potential expert; draft detailed further correspondence on this issue; correspondence to schedule time for strategy call tomorrow; review and reply to correspondence re proposed letter to Judge Alsup; further correspondence re same and inviting defense counsel to join; review correspondence re costs owed by Apple after Ninth Circuit mandate; review email from Shalov to defense counsel re proposed letter to Alsup	0.80
KSR	Email from Shalov re finalizing and sending letter to Alsup requesting CMC. Email from KAK re local rules on mandate; Shalov response re CMC rules; KAK reply to send letter; whether to include Apple so joint request. Email to Shalov re Alsup view on ex parte communications; and suggest submit as joint request for CMC with Apple. KAK response. Emails with team to set up conference call to discuss next steps in district court and strategy. Emails with KAK to prepare issues for conference call. Shalov response to suggestion for joint CMC request. Shalov email to Dunne re joint CMC request. Email from Shalov with expert reports from other actions; review for call. Email from KAK re representative testimony issues and relevance of liability vs. damages phase. Further email from KAK re trial plan and prospective experts. Email from Shalov requesting further research for trial strategy; KAK response re research re impact of employer's failure to keep records of hours worked on trial plan; Giaimo response re representative testimony cases. Review/analyze my prior memo re representative testimony and additional research files, and conduct further research, in response to Shalov's request. Review Apple's filed motion to substitute attorney. Further email from KAK re research for cases imposing evidentiary or other sanctions for employers' failure to keep time records; Giaimo response. Email from Shalov re state court research and call from Judge Gandhi requesting revised settlement demand.	2.80

		<u>Hours</u>
11/18/2020	KAK	2.90
	Review email from defense counsel confirming joint letter to Judge Alsup; prepare for and participate in lengthy call with co-counsel Shalov and Gallaway and KSR re call received from mediator, next steps to proceed in mediation discussions, litigation strategy going forward, and other matters; post-call discussion with Shalov; post-call discussion with KSR re additional legal research to be completed; further correspondence to co-counsel re strategy and next steps; review email from co-counsel re their difficulty in completing filing of joint letter to Alsup; telephone discussion with GMG re same; review email from GMG to co-counsel re same; review email confirming filing of letter by co-counsel	
	GMG	0.40
	Review request from co-counsel to e-file letter to judge and call KAK re same; check co-counsel e-filing credential and email co-counsel re same	
	KSR	3.10
	Email from Julie Dunne re joint request for status conference with Judge Alsup, and requested text; Shalov response re will file; emails with Shalov and GMG re filing issues. Emails with KAK to prepare for strategy call. Team call to discuss mandate, trial plan and potential mediation with Apple. Email to KAK re follow-up ideas for trial strategy after team call. Call with KAK regarding letter requesting status conference and impact on mediation, etc. Further analyze Gallaways chart re prospective claims-made class recovery for trial strategy; review email from Gallaway re claims-made recoveries. Continue to review and summarize prior research re representative testimony and impact of employer failure to maintain records of hours worked. Email from KAK to set another call to discuss trial strategy once case in back before Alsup/issues for CMC. Email from Shalov re proposed strategy re letter and for CMC. Further email from KAK re claims-made procedure strategy and call to discuss. Email from KAK re Apple settlement of iPhone throttling action and potential impact on mediation. Shalov response re call with expert. Review filed letter to Alsup re joint request for CMC.	
11/19/2020	KSR	1.40
	Review filed joint request for CMC. Email from Shalov re report to Gandhi on new settlement demand. Continue review/analysis of representation testimony research notes and further legal research for trial strategy.	
11/23/2020	KAK	0.10
	Evaluate current status and probable next events in case, in view of submission last week of letter to Judge Alsup; draft email to KSR and GMG re activity that may occur in case this week, and checking for any orders from Judge Alsup, including possibly on Friday 11/27/20	
	KSR	0.20
	Review notice re new Ninth Circuit rules; circulate to KAK/GMG. Emails with KAK re watch for scheduling order from Alsup and/or further communication from Judge Gandhi re mediation.	
11/25/2020	KSR	1.70
	Continue legal research for trial plan re representational testimony, surveys, approved trial devices in wage and hour actions.	
12/1/2020	KAK	0.10
	Review and evaluate notification and minute order setting case management conference before Judge Alsup; review email from co-counsel Shalov re same; review notification re order granting substitution of defense counsel	
	KSR	0.20
	Review court's notice setting CMC; calendar and review audio procedures. Email from Shalov re call to prepare for CMC and staffing. Review order on Apple's motion re sub counsel.	
12/2/2020	KAK	0.20
	Review and evaluate email from co-counsel Shalov re call received from mediator Ghandi with defendant's response to our latest move in settlement, status of research on claims rates, status of preparation for CMC, and other next steps, including scheduling strategy call; reply to Shalov re time for strategy call tomorrow	

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		<u>Hours</u>	
12/2/2020	KSR	Email from Shalov with summary of conversation with Judge Gandhi re mediation and Apple's settlement offer; and to set up call to discuss; respond. KAK and Gallaway responses re call time.	0.20
12/3/2020	GMG	Review emails re CMC statement and notice of case management conference and email KAK re same	0.10
	KAK	Prepare for and participate in strategy call with KSR and co-counsel Shalov, Gallaway and Giamo; discussed numerous matters including latest range offered by defendant in mediation with Gandhi, points for supplemental mediation statement to be submitted to Gandhi, points to be addressed during upcoming CMC with Judge Alsup, and preparation of trial/case plan; post-call discussion with KSR re allocation of work and next steps; email to GMG re checking/pulling recent orders; review email from KSR to co-counsel re rule requiring joint CMC statement; review response from Shalov re same; further evaluation of alternative methods of proof and possible discovery orders or sanctions obtainable due to defendant's failure to keep records of hours worked; draft email summarizing possible orders and requesting further input	1.80
	KSR	Telephone conference with Shalov, KAK, Gallaway and Giamo re discussion with Judge Gandhi re Apple's position on further mediation session and movement on settlement; and preparation of trial plan and issues for proving damages or adopting claim form procedure, etc. Telephone call with KAK to further discuss issues to research for supplemental mediation brief. Research local rules re Joint Case Management Conference Statement; calendar, circulate rules and email regarding statement required and due date; response from Lee. Review/analyze Apple's Hall report and plaintiffs' motion to strike it, to address in supplemental mediation brief. Review status of discovery re video recordings at cutoff. Email to KAK Apple's objections to plaintiffs' 30(b)(6) depo notice re video evidence and Apple's declaration of Steve Smith in attempted response to depo notice in lieu of depo; response from KAK and request re drafting section for supplemental mediation brief. Research Alsup's standing order re effect of refusal to produce 30(b)(6) witness. Further review/analyze plaintiffs' motion to strike Hall report. Draft bullet points for inclusion in supplemental mediation brief re Hall report and Apple's video evidence. Email from Gallaway re bag check case settlements to review for mediation.	4.80
12/4/2020	KAK	Review and reply to email from co-counsel Shalov re next steps on pending costs bill filed in district court and Apple's deadline to object; review emails from KSR re points about Dr. Hall's report to be included in supplemental mediation statement, and circulating draft list of points to be incorporated into statement; preliminary review of same	0.20
	KSR	Email from Shalov with draft of Joint Case Management Statement. Review/analyze. Research for and draft redline to Joint Case Management Statement; circulate redline. (1.9) Email from Gallaway with further edits to Joint Case Management Conference. Lee email to Dunne with draft of Joint Case Management Stmt. Emails with Shalov and KAK regarding procedure and time for court to approve costs. Email from Shalov summarizing discussion with Gilardi re claims rate and strategy for mediation. Email from Gallaway re Apple's time to object to bill of costs expired. Email from Gallaway re summary from Epiq of robust notice procedure for claims made damages at trial.	2.20
12/7/2020	GMG	Confer with KAK and KSR re upcoming mediation and filing of joint CMC statement	0.30
	KAK	Review correspondence between co-counsel and KSR re draft joint case management conference statement; review and evaluate draft statement, including statements re trial plan; continued evaluation of same; review email from co-counsel Shalov to defense counsel Dunne circulating same; email to Shalov re date for further mediation session with Judge Gandhi; discussion with KSR and GMG re points for	0.70

supplemental mediation statement; review and reply to email from Shalov indicating Gandhi is available for a further session this Saturday

12/7/2020	KSR	<p>Emails with KAK and Shalov re contact with Judge Gandhi for mediation session date. Discussion with KAK and GMG re draft status conference statement and claims made issues for trial, and distinguishing claims-made trial strategy from claims-made settlement. Further email from KAK to team regarding response from Gandhi and distinguishing claims-made trial procedure from claims-made settlement, not on offer. Review/analyze prior emails and attachments with analysis of authorities re claims-made settlements in this court, and forward to Kim. Email from Shalov forwarding email from Gandhi to set up further mediation session. Respond re time, availability, and setting up prep call. Further emails with Gallaway and Shalov re mediation session, notifying plaintiffs, and strategy. Further legal research regarding Apple's good faith defense in the context of PAGA claims, for potential second mediation session. Email from Shalov with Gandhi's inquiry re mediation on Saturday, December 12. Respond to Shalov re time for mediation and setting up call to discuss strategy; and notification to class reps; Gallaway response re contact with class reps and further team emails re strategy for authority. Email from Shalov re discussion with Judge Gandhi re supplemental mediation statement.</p>	3.50
12/8/2020	KAK	<p>Review email from defense counsel re draft joint case management statement and circulating defense section; preliminary review of same; review correspondence between co-counsel Shalov and KSR re statement and next steps</p>	0.10
	KSR	<p>Email from Matt Riley objecting to draft Joint Case Management Conference Statement. Email from Shalov with question about rules and to arrange conference call to discuss substance. Research for judge's standing order on Case Management Conference Statements; circulate Standing Order with pasted text from rules. Review/analyze Apple's draft, separate Case Management Conference Statement. Further legal research on issues regarding Apple's good faith defense to various claims, including PAGA claims, for supplemental mediation statement and potentially to address Apple's statements in CMC statement.</p>	2.40
12/9/2020	KAK	<p>Review further correspondence regarding revised joint case management statement; review email from co-counsel Shalov circulating new draft to defense counsel; review correspondence from mediator confirming further session this Saturday and circulating conference information; correspondence with co-counsel to schedule next strategy call in preparation for mediation; review list of points to be included in supplemental mediation statement; prepare draft of mediation statement document; draft sections on amended opinion, de minimis defense, and Dr. Hall report; update legal research; circulate draft to KSR and correspondence with KSR re status of section on good faith defense; email to co-counsel re status of draft supplemental statement; review email from KSR and redline including good faith section; draft revisions to brief, in particular to "good faith" section; email to KSR circulating same with comments on additional changes needed; further correspondence with KSR re same; finalize and circulate draft to co-counsel</p>	3.90
	KSR	<p>Emails with Gallaway, Shalov and Apple counsel re edits to Case Management Conference Statement. Emails with KAK regarding draft of supplemental mediation brief; review/analyze KAK's draft. Further research issues regarding Apple's good faith defense; review affirmative defenses in Answer re good faith; research all claims in consolidated complaint and case law construing willfulness showing and good faith defense. Review/analyze and draft redline edits to KAK's draft supplemental mediation brief on all issues including Hall Report. Draft insert section regarding Apple's good faith affirmative defense and application to issues of control and de minimis arguments re Checks. Circulate redline. Email from KAK with revised draft of supplemental mediation statement; review/comment. Emails with team to set of conference call to prepare for mediation with Apple and Judge Gandhi on 12/13/20. Email from JAMS setting mediation; calendar. Further emails from JAMS re Zoom instructions; review. Emails with team re Apple's edits to Joint Case Management</p>	3.70

Conference Statement and filing logistics. Email from Matt Riley with Apple's revisions to CMC Statement; review; further emails with Shalov and Matt re Statement and filing. Review filed Statement. Email from KAK re research needed for additions to supplemental mediation statement.

12/10/2020	KAK	Review email from co-counsel Gallaway and updated draft of mediation statement; prepare redline with comments and proposed edits on new section added to statement on estimated claims rates and revised damages projections; circulate same to co-counsel and KSR; review further updated draft circulated by Gallaway; prepare additional comments in redline and circulate same; review and evaluate final joint statement as filed yesterday; prepare for and participate in strategy call with co-counsel and KSR re additional section to be added to mediation statement on Apple's arguments about decertification and positions to take in upcoming further mediation session; draft section for mediation statement on Apple's decertification arguments; circulate same to co-counsel with request that they finalize; review correspondence between Gallaway and clients re mediation positions	4.70
	KSR	Emails from KAK and Gallaway with revised drafts of supplemental mediation brief. Review drafts. Email from Shalov re adding section addressing Apple's discussion of motion to decertify in joint case management conference statement. Review Apple's discussion in joint case management conf statement; email from KAK re adding section. Telephone call with team to prepare for mediation with Apple and Judge Gandhi. (1.0 call) Notes to file re strategy for case management conference. Email from Gallaway to class reps re settlement authority; email to Gallaway re add "confidential" notation and remind class reps that settlement discussions cannot be shared/are confidential. Response emails from class reps. Emails with KAK to finalize supplemental mediation brief. Email from Gallaway with chart for mediation brief re claims administration and potential response rates; review. Review final drafts of mediation statement and comment. Further emails re finalizing and filing. Further emails re mediation strategy and potential settlement demand. Email from KAK with final version of supplemental mediation statement with language re Apple's threatened motion to decertify the class; review.	3.30
12/11/2020	KAK	Review email from co-counsel to mediator Gandhi circulating final supplemental mediation statement; review same; correspondence with co-counsel re same	0.20
	KSR	Emails re supplemental mediation brief. Prepare for mediation.	1.10
12/12/2020	KAK	Final preparation for mediation, including legal research relevant to risk of decertification; participate in further mediation session with Judge Gandhi, KSR and co-counsel; conferences with KSR and co-counsel re mediation strategy and offers; post-mediation evaluation of next steps	7.30
	KSR	Mediation with Judge Gandhi. Emails regarding strategy post-mediation on settlement demand, and communicating with Judge Alsup re mediation as follow-on to CMC Statement.	7.30
12/14/2020	KAK	Continued evaluation of next steps in view of unsuccessful mediation; draft email to KSR and co-counsel re concerns about what may have been communicated to Apple through mediator that may be inaccurate re plaintiffs' positions; review replies re same; review correspondence scheduling strategy call for tomorrow in preparation for this week's CMC	0.30
	KSR	Email to Shalov responding to his re language in Apple's CMC. Emails with team following up on mediation and in preparation for CMC. Emails with team to set up call to prep for CMC. Prepare notes for call to prepare for CMC.	0.80
12/15/2020	KAK	Prepare for and participate in strategy call with KSR and co-counsel in preparation for tomorrow's CMC; legal research on grounds for decertification motion and whether such motions must be based on changed circumstances, such as new facts or law;	4.60

correspondence with KSR re this research; draft memorandum listing useful decisions; circulate same to co-counsel Shalov et al.; legal research on decisions by Judge Alsup also involving claims process; draft detailed email to co-counsel circulating same, along with recap of list of legal issues potentially to be resolved by Alsup prior to class notice that may impact content of notice

12/15/2020	KSR	<p>Email from KAK re text in Apple's CMC statement; further email from KAK re relation to Ninth Circuit's opinion. Call with Shalov, Gallaway and KAK to prepare for case management conference. Legal research regarding potential motion by Apple for decertification. Emails with KAK re sub-issues and split research. Review/analyze KAK's summary of authorities re standards for motion for decertification. Draft redline to KAK's authorities adding additional cases, and circulate with text of local rule stating requirements for motion for reconsideration. Further research and circulate amended redline with further authorities on standard on motion to decertify a class. Circulate Eddie Bauer opinion with comments. Email from KAK re research on cases employing claims process for damages; review authorities and comment. Emails with team regarding potential language required for notice to the class in claims-made damages approach. Further emails with KAK re research to prepare for CMC. Review KAK's summary of relevant authorities re motion for decertification. Further emails with team re language from Eddie Bauer opinion.</p>	4.10
12/16/2020	KAK	<p>Further preparation for CMC; review further emails from KSR re grounds for decertification; review and reply to co-counsel Shalov re "new law" ground for decertification motion; check judge's calendar and call-in procedures; circulate information to co-counsel and KSR; appear at CMC; correspondence with Shalov during CMC re points to be made; post-CMC correspondence with KSR and co-counsel re scheduling call to discuss next steps; post-CMC call with KSR and co-counsel Shalov and Gallaway re next steps; review confirming email from Shalov to mediator Gandhi that plaintiffs' last offer is rescinded; review reply from Gandhi; review email from co-counsel Gallaway re recent bag check settlement; review correspondence from Gallaway to clients with status update</p>	2.10
	KSR	<p>Prepare for CMC. Email to KAK in preparation for CMC. Emails with team re telephonic hearing instructions. Email from KAK re construction of Cal. SC opinion. Participate in case management conference. Follow up emails and follow up call with Shalov, Gallaway and KAK to discuss strategy for any amended class cert motion, motion for summary judgment, submission of proposed claims procedures, etc. Email from Gallaway and review/analyze attachments from Epiq re expected claims-made rates. Email from Shalov to Judge Gandhi confirming plaintiffs' last demand in mediation session rescinded; Gandhi response. Emails with team re edits to Epiq's attachments for inclusion in plaintiffs' notice plan. Emails from Gallaway to class reps reporting on mediation and CMC; class rep responses. Email from Gallaway with article re settlement of Walgreen's bag check case.</p>	3.60
12/17/2020	GMG	<p>Review depositions on file and prepare summary log, review 2015 emails re transcripts and email KAK and KSR re same</p>	0.90
	KAK	<p>Review and reply to follow-up correspondence from co-counsel Shalov and Gallaway re appellate costs owed by Apple; review email from Shalov re strategy decision on whether to seek an order expanding class membership or damages period; evaluate and reply; further correspondence with Shalov re need for tailored notice for any new class members regarding their opt-out rights; review correspondence between KSR and GMG re class member depositions already taken; review enotifications re transcript orders</p>	0.40
	KSR	<p>Emails regarding strategy for MSJ in preparation for strategy call on 12/18. Email to GMG for depo count for issues to address in trial plan. Email to team regarding Alsup statements in CMC and strategy for motion requesting summary judgment for plaintiffs based on Ninth Circuit opinion; and research re claims-made trials. Email from Shalov re strategy to seek to amend class period. Email from Gallaway re</p>	2.90

strategy on class period; Shalov response re state of evidence re class period. Further email from KAK re strategy on class period and additional class notice. Review/analyze court's minute entry on CMC; calendar dates for plaintiffs' motion re class period and summary judgment. Review/analyze clerk's notice setting 2/25 hearing on plaintiffs' scheduled motion. Further email from Shalov re articulation of new class period and no need for new notice to the class; further email from KAK re new notice required if add class members up through Apple's alleged Check end date of 12/17/15. Review transcript orders. Continue research for trial plan as discussed on team call. Response email from GMG with number of depositions taken (for trial plan).

12/18/2020	KAK	Preparation for today's strategy call, including list of agenda items, review of email from KSR re research on claims-made trial procedures and review of prior bid received from Epiq; participate in strategy call with KSR and co-counsel Shalov and Gallaway; review email from Shalov circulating transcript just received from court reporter; forward same to GMG; review and evaluate transcript and assess impact on strategy of certain instructions given by Judge Alsup	1.40
	KSR	Conference call with team regarding strategy and filing motion for summary judgment and proposed notice; further discuss research re claims-made trial and addressing court's statements at CMC re duration of Checks. Research re claims-made trials, including Briceno v. ConAgra case cited by KAK. Email to GMG re number of depositions taken during discovery period for trial plan. Emails with team re transcript of CMC.	2.60
12/21/2020	KSR	Continue claims made trial research for trial plan.	1.50
12/23/2020	KSR	Email to Shalov re formulated strategy consistent with Alsup comments discussed in article; KAK response. Email from Shalov re requesting stip from Apple on summary judgment and expanding class consistent with Apple's current contentions re date Check policy ended. Emails with team re press coverage of CMC.	0.80
	KAK	Review and reply to emails from co-counsel Shalov re contacting defense counsel re possible stipulation to adjust class definition, and status of promised outline of motion re issuance of class notice/claim forms and case plan; review emails between Shalov and defense counsel Dunne re status of payment of appellate costs awards; reply to defense counsel Riley re same; review response from Riley, which contradicts previously-provided information from defense counsel Dunne re status of payment of these costs	0.10
12/28/2020	KSR	Notes to file re may still need briefing on rep testimony to claims-made trial, as well as briefing on how court came to perceive that Checks took only seconds.	0.40
12/29/2020	KSR	Email from Shalov to Dunne requesting Apple to stipulate to extend the class period from "to the present" to Apple's contended end date of the Check policy (i.e. Dec. 17, 2015); evaluate impact and check facts asserted by Dunne.	0.60
12/30/2020	KSR	Dunne email response to Shalov's request for Apple stip to clarify/extend class period to Dec. 17, 2015 (date Apple contends was end of Check policy).	0.20
1/4/2021	KAK	Discussion with KSR and GMG re status of motions due on 1/21/20 and next steps; review correspondence between co-counsel Shalov and defense counsel Dunne re possible stipulation to expand class definition; discussion with KSR re same; email to Shalov re same, as well as status of outline of motion for issuance/approval of class notice, claim form and case plan; review, evaluate and reply to email from class member re status	0.50
	KSR	Discussion with KAK re motion for summary judgment, trial plan, additional research, etc. Review/analyze email from Dunne re extending class period. Email from KAK to team re responding to Julie Dunne's email; and eta for motion re notice plan.	0.70

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			<u>Hours</u>
1/5/2021	KAK	Review email from Shalov re following up with defense counsel Dunne re her request for authority to stipulate to change the class definition; review email from Shalov to Dunne re same	0.10
	KSR	Email response from Shalov re eta for notice plan/trial plan. Shalov email response to Dunne re stip to extend class period. Legal research re claims made trial for notice plan and trial plan.	3.20
1/6/2021	KSR	Dunne email reply re stip to extend class period. Evaluate.	0.20
1/7/2021	KSR	Emails from Shalov with drafts of trial plan. Review/analyze Shalov's draft of Damages Trial Plan. Further legal research for and draft redline with comments and edits to Shalov's draft; circulate. Emails with Shalov and Julie Dunne re call to discuss areas of potential agreement for trial procedures. Shalov email reply to Dunne re stip to extend class period. Email from Shalov re CMC transcript sent to Gandhi and voicemail message from Gandhi; Gallaway email suggestion re response to Gandhi.	2.40
1/8/2021	KAK	Review and evaluate email correspondence re call from mediator Gandhi; reply re response thereto; review correspondence between Shalov and defense counsel Dunne re proposed stipulation re class definition and upcoming call to discuss; review and evaluate draft trial plan prepared by Shalov's office; correspondence with Shalov et al. to confirm this should be converted to the form of a motion; review redline comments of KSR on draft trial plan; prepare redline with additional detailed comments; circulate same to co-counsel with transmittal message on further changes needed; review and reply to further email from KSR re same	1.40
	KSR	Further email to team re addressing court's perceptions re Check time in briefing on notice/trial plan. Email from KAK with comments re trial/notice plan; review/analyze comments and further review notice plan and respond to KAK re schedule to address affirmative defenses. Email response from KAK re rate of pay issue and authorities to address in notice/trial plan. Review/analyze transcript of CMC before Judge Alsup. Email from KAK with suggested response to Gandhi. Email from Shalov re adding Jason Giaimo to distro for case. Email from KAK re filing notice and trial plan in form of motion; Shalov response; Shalov email re strategy for addressing Apple's affirmative defenses.	1.80
1/10/2021	KSR	Email from Shalov with draft of notice plan for notice to the class. Research for and draft redline edits and comments; circulate.	1.10
1/11/2021	KAK	Review co-counsel emails circulating draft components of motion for approval of class notice, claim form and case plan; further correspondence with co-counsel Shalov re strategy approach for case plan and opportunity and timing for presentation of defenses	0.20
	KSR	Email from Jason Giaimo with draft of proposed order for motion on notice plan; review. Emails with KAK and Shalov re strategy for motion to approve notice plan and timing for court to address affirmative defenses. Further emails re rate of pay issue. Email from Julie Dunne re motion to approve notice plan and response to proposed stipulation to expand class period. Legal and fact research for issues related to trial plan and to address court's statements in CMC re length of time of Checks and evidence in the record.	1.80
1/12/2021	KAK	Review, evaluate and reply to further email from co-counsel Shalov re strategy approach on case plan; review and evaluate email from defense counsel Dunne re class membership and damages period; draft detailed email to co-counsel and KSR with thoughts re same and response; review email from co-counsel Shalov re call from mediator Judge Gandhi and scheduling time to discuss	0.30

		<u>Hours</u>
1/12/2021	KSR	1.70
<p>Emails with KAK and Shalov re proposed stip to add class members and/or expand class period; further email from KAK re class period. Legal and fact research re original class cert order and case authorities re expanding class period. Email from Shalov re call with Judge Gandhi and emails to set call time to discuss. Continue research re evidence in the record re Check times to address Alsup's comments in CMC.</p>		
1/13/2021	KAK	1.10
<p>Review emails confirming time of today's strategy call; prepare for and participate in call with KSR and co-counsel re latest call from Judge Gandhi re mediation and next steps, as well as response to latest correspondence from defense counsel Dunne re proposed stipulation to expand class membership and damages period; review email between co-counsel Gallaway and notice administrator re class list used for 2015 class notice in order to confirm employment cutoff date therein; draft detailed reply to Dunne confirming her agreement to extend class damages period, requesting formal document production, and proposing further discussions on expanding class membership period; review email from KSR to co-counsel circulating comments on draft claim form</p>		
	KSR	3.40
<p>Continue drafting redline to draft class notice. Emails to set conference call. Conference call with Shalov, Gallaway and KAK re call to Shalov from Judge Gandhi and strategy for prospective continuation of mediation with Apple. Emails with Epiq and Gallaway re previous class notice. Review/analyze Apple's class list from December of 2014 and circulate with questions regarding class list used by Epiq for original notice to the class. Review/analyze draft claim form from Epiq. Email from Lauren McGeever (Epiq) in answer to questions re prior class notice. Further emails with Gallaway and Epiq re prior class notice. Review/analyze and draft redline edits and comments to claim form and circulate to Gallaway/Jason to forward to Epiq. Email from KAK to Julie Dunne re stipulation to expand class period and production of documents supporting Apple's contention re class period. Further emails with Gallaway and Lauren McGeever re prior class notice, to determine Apple's class list parameters for prior notice, to frame stip to expand class notice.</p>		
1/14/2021	KAK	1.90
<p>Evaluate work necessary to complete motion for entry of summary judgment, due next week; prepare list of components of this motion; email to KSR re same and re preparing stipulation confirming defendant's agreement to expand class period; review email from co-counsel Giaimo circulating latest draft of motion for approval of notice and case plan; review and evaluate current draft claim form, circulated by co-counsel; review redline comments of KSR; prepare redline with comments and proposed edits and circulate same; prepare updated redline of claim form; correspondence with co-counsel Giaimo re same; create new redline and circulate same to co-counsel</p>		
	KSR	3.80
<p>Email from KAK re renewed motion for summary judgment and request to draft accompanying stipulation re revised class definition; respond. Review class definition in class cert order for stipulation. Review/analyze KAK's comments to claim form. Email from KAK with revisions; review. Email to KAK re redline to draft claim form. Research rules and substantive requirements for stipulation to revise class definition to include additional workweeks for existing class members. Email from Jason Giaimo with drafts of trial plan on damages, revised draft claim form, declaration or Hyte, etc.; review/analyze. Emails with KAK and Jason re prior edits to claim form. Email from Lauren McGeever of Epiq with response to questions re prior class list and employment cutoff dates for first notice to the class, to determine dates for proposed stipulation to extend the class period for same class members.</p>		
1/15/2021	KAK	0.40
<p>Review email from class member regarding apparently unrelated employment class action settlement against Apple; draft reply email to this class member; email to KSR and GMG re researching this other apparent settlement and need to review settlement documents; review and reply to email from co-counsel Shalov re next steps if defense counsel does not sign formal stipulation reflecting agreement re class definition; review email from defense counsel Dunne confirming receipt of my</p>		

		<u>Hours</u>
	message regarding production of documents reflecting termination of check policy and requesting that Apple reconsider expanding class membership	
1/15/2021	KSR Email from Gallaway requesting I forward class list from Apple in December 2014 to Epiq to compare with list of class members who received original notice. Locate and forward class list to Lauren at Epiq. Continue drafting Stipulation re class definition. Emails with KAK and Shalov re stipulation with Apple on class definition and strategy if Apple does not respond. Response from Lauren McGeever re class list and request for Excel of Apple's class list from our firm records; forward to McGeever; McGeever response re comparison with Epiq notice list; reply. Legal research for stipulation re class definition, including district court power to alter class definition after cert order. Finalize stipulation and forward to KAK. Emails with KAK re class member email inquiries. Email response from Julie Dunne re response to proposed stipulation to expand class period. Email from KAK re class member inquiries re case status and claim form that may be for another Apple action. Search for any direct class member inquiries and respond to KAK.	5.80
1/16/2021	KAK Review and reply to further email from class member; review email from KSR circulating draft stipulation; review, evaluate and revise draft stipulation; circulate same to co-counsel Shalov and Gallaway with list of remaining issues; review email from Shalov approving draft stipulation; finalize and circulate to defense counsel Dunne; email to KSR re drafting proposed order or judgment on liability in plaintiffs' favor; further correspondence with KSR re content and title of same, research needed, and tasks for GMG; draft notice of motion and motion for approval of stipulation expanding class definition and entering judgment on liability in plaintiffs' favor; circulate draft motion to KSR with list of issues to consider; review response of KSR re same and redline comments; draft further revisions to motion; finalize and circulate to co-counsel; review and evaluate current draft motion for approval of notice and case plan; prepare redline with comments and proposed edits; circulate same to co-counsel; review and evaluate current draft of Hyte declaration; draft email to co-counsel with comments on same	7.50
	KSR Email from KAK circulating revised draft of stipulation and order re class definition; review/analyze. Email from KAK requesting draft of form of judgment to accompany motion for entry of order re liability; respond. Review/analyze KAK's draft of motion re liability and draft redline edits/comments; send to KAK. Further emails with KAK re strategy and format for motion. Further emails with KAK re edits to stipulation re class period. Emails with KAK and Gallaway re data point to complete in stipulation. Emails regarding Hyte declaration (Epiq) iso motion to approve class notice. Legal research for proposed order on motion re order on liability. Emails with KAK re proposed order. Text and phone call with GMG re PACER research for proposed order. Work with GMG on research for proposed order. Email to KAK re case caption and drafts consistency. Review/analyze Ninth Circuit opinion wrt proposed order on liability and circulate text to KAK re motion. Emails with KAK re cites needed for proposed stipulation and answer required from Epiq on prior notice dates. Further emails with KAK re research for proposed order and strategy.	3.90
1/17/2021	GMG Review KSR list of cases with severed liability, download dockets and email KSR re same	1.40
	KAK Review and evaluate emails from KSR re draft Hyte declaration and claim form, and circulating proposed changes to claim form	0.10
	KSR Emails with team re publications appropriate for class notice, including Sacramento Bee. Email from KAK with question about Hyte declaration statements on rights of heirs of deceased class members under California law. Review/analyze these provisions in Hyte dec and draft and circulate alternate text. Review/analyze authorities for GMG's PACER analysis for proposed order on motion re order on liability. Email to GMG with highlighted authorities for docket review. Review/analyze current draft of sample claim form circulated with Hyte declaration,	3.90

and email comments from HYTE. Draft redline edits and forward to Gallaway and Jason to relay to Epiq. Email from GMG attaching orders from my research re proposed order for ruling on liability. Further email from GMG re docket research. Review/analyze dockets and orders circulated by GMG re orders on motion re liability.

1/18/2021	GMG	Review dockets of KSR cases with severed liability, summarize subsequent proceedings and email KSR re same	1.80
	KAK	Review emails from co-counsel to claims administrator regarding current draft of notices and other matters; reply re issue of newspapers to be used for published notice; review and reply to email from co-counsel Shalov re issue of class member depositions; review and reply to further response from Shalov; review email from KSR re same; review emails from KSR circulating redlines with proposed edits to draft notices, notice of motion and HYTE declaration	0.20
	KSR	Email from Giaimo with revised versions of claim form and HYTE declaration. Email from Giaimo with revised notice of motion re class period and draft long and short-form notices. Review/analyze v.3 draft of long form notice to the class. Draft and circulate redline edits and comments. Review/analyze short form postcard and notice to non-responders. Draft and circulate redlines and comments. Review/analyze notice of motion re approval of notice to the class and claim form; legal research for edits/comments; draft edits/comments and circulate redline. Email from Giaimo re local rules pertaining to notice of motion; review/analyze rules and respond. Review/analyze Declaration of Robert HYTE (Epiq) iso motion for approval of notice plan; research for and draft edits and comments in redline; circulate redline.	5.20
		Emails with and voicemail from GMG re research for MSJ. Email from GMG re research on dockets where plaintiffs were granted summary judgment on issue of liability only, for proposed order; Review/analyze attached orders and judgments and email to KAK and GMG re procedural issue for proposed order on MSJ. Respond to GMG and request further PACER research. Review/analyze prior court comments re claims process and draft/circulate email with summary and strategy for depositions issue in proposed notice/trial plan. Emails with team re strategy re potential for depositions wrt draft claim form. Emails with Gallaway and Epiq re proposed additional number of class members who did not receive original notice. Email from Gallaway with revised proposed order re expanding the class period; review/analyze. Email from Giaimo to HYTE re declaration and procedure to update class member addresses. Further emails with team re revisions to notices to class.	
1/19/2021	GMG	Review dockets of KSR cases with severed liability, continued research on subsequent proceedings and email KSR re same	3.30
	KAK	Review, evaluate and reply to correspondence from notice administrator re newspaper circulation and California papers to be included in proposed notice; review and reply to email from co-counsel Giaimo re address updating to be done by administrator prior to mailing, and including additional published notice platforms; further correspondence with KSR re same; review and reply to email from co-counsel Shalov re time for call; telephone call with co-counsel Shalov re status of mediation and status of motions due this week, including issue of whether Apple should be entitled to depositions and how to revise brief in support of motion on class notice; legal research re standards normally governing discovery from unnamed class members; review email from KSR on entry of liability "judgment" and example orders compiled by KSR and GMG; review example orders; further correspondence with KSR re same and additional research needed; draft follow-up email to co-counsel re status of their review of draft motion for entry of orders expanding class damages period and granting summary judgment, previously circulated; review email from co-counsel Shalov approving draft motion; review email from defense counsel Dunne purporting to add conditions to prior agreement to extend class period; email to co-counsel same; evaluate best response thereto, including revision of draft motion if no stipulation is finalized; reply to Dunne re same; review and reply to email from	1.90

co-counsel Gallaway re issues raised by Dunne and reliance on Apple's documents re check policy termination date

1/19/2021	KSR	<p>Emails with KAK, Giaimo, Shalov and Epiq regarding newspapers to add to notice plan. Emails with Epiq personnel and Gallaway regarding class list and number of class members for original notice dissemination, and updating class list. Emails with KAK regarding form of order for MSJ and legal research. Further legal research re form of order and potential judgment. Emails with team re prior opt-outs to address in notice plan. Summarize research and circulate. Research further Judgments from GMG's PACER research and further Westlaw research for relevant authorities on MSJ re liability only, and forward to KAK with analysis/summary. Email from Julie Dunne responding to plaintiffs' request for stip to add workweeks and class members up to December 17, 2015, Apple's contended last day of Check policy. Respond to team re strategy on Apple's proposal re stip. Further responses from Shalov and Gallaway re Apple's proposal. Further email from Lauren McGeever (Epiq) re official list of class members who received original class notice; further emails with Gallaway and McGeever re official list and source. Research for and further emails with KAK and Epiq re newspapers to include in notice plan. Further emails with KAK re procedural status and proper form of order for MSJ on liability. Review/analyze Jason's draft of MPA iso motion to approve notice plan. Further review draft of MSJ. Email from Julie Dunne re proposed stipulation to expand class period and production of supporting Apple documents re end of Checks. Emails from KAK, Shalov and Gallaway re strategy for negotiating stip. KAK email to Dunne re revised stip to expand class period and timeline for production of Apple's docs supporting end of Checks policy.</p>	3.30
1/20/2021	GMG	<p>Proofread motion for entry of judgment and check cites and quotes; email KAK re request for judicial notice and organize exhibits</p>	0.40
	KAK	<p>Review email from co-counsel Giaimo circulating latest drafts of motion to approve notice and case plan; reply to Giaimo re same; prepare revised draft of stipulation re class period; circulate same to defense counsel Dunne, along with reiterated request for formal production of documents re date when check policy ended; prepare revised draft of motion for approval of stipulation re class period and to grant summary judgment; review redline comments of KSR re same; telephone discussion with KSR re status of components of tomorrow's filing and preparing proposed order granting summary judgment on liability; review and reply to email from co-counsel Shalov re status of same; call to defense counsel Dunne and left message re status of stipulation and production of documents; prepare draft of request for judicial notice of three opinions; circulate same to co-counsel and GMG; review and evaluate draft proposed order prepared by KSR; correspondence with KSR re same and changes needed; review and evaluate revised draft; prepare revisions to draft proposed order; draft additional revisions to motion; circulate both to KSR; draft follow-up email to Dunne; evaluate next steps in event Dunne fails to agree to stipulation; review email from KSR re revised proposed order and motion; circulate these drafts to co-counsel with summary of next steps; draft email to GMG confirming components of tomorrow's filing; review and evaluate revised draft of brief in support of motion to approve case plan; emails to co-counsel with detailed comments on same; email to KSR re reviewing new draft notices</p>	2.70
	KSR	<p>Email from Giaimo with revised drafts of notice re approval of class notice, etc. Telephone call from KAK requesting me to draft proposed order for MSJ and to review motion re class notice and supporting papers. Draft proposed order for motion for summary judgment. Circulate draft to KAK with comments and strategy. Review and draft revised redline to notice of motion re MSJ on liability; circulate. Emails with KAK re interplay between class period stip and notice of motion on MSJ. Draft revisions to draft proposed order re MSJ and circulate. Further emails with KAK re proposed order and draft further revisions; forward to KAK. Review revised drafts from KAK of notice of motion and memo re MSJ; circulate comments. Emails with KAK and Jason re format issues for MSJ and notice plan motion; research and</p>	3.80

respond. Email from Jason with revised versions of MPA iso motion to approve notice plan; long and short-form notices; Hyte dec.; review/analyze. Draft redlines to draft notices to the class and circulate with further comments. Email from Hyte at Epiq with revisions to draft notices and his declaration. Emails with KAK and Giaimo re revised drafts of motion to approve notice plan and interplay with stip to expand class period. KAK email to Dunne with revised joint stip re expanding class period. Further email from Jason re Hyte edits to motion re notice plan and supporting docs. Email from KAK circulating RJN iso MSJ; review. Emails with KAK and Julie Dunne re whether Apple will stipulate to expanded class period. Email from KAK re revised versions of proposed order on MSJ and MSJ, and comments re strategy in event Apple will not stip to expand class period. Email from KAK requesting I review most recent drafts of sample claim form, notices, Hyte dec, and MPA re motion to approve notice plan.

1/21/2021	GMG	Proofread motion expand class period and check cite and quotes; finalize motion and declaration, the motion for entry of order and the RJN and email/confer with KAK re same; arrange filing via ECF and email proposed orders to judge; review co-counsel's filed motion re class notice and email them re same	2.70
	KAK	Evaluate status of motions due today in view of defense counsel Dunne's failure to reply to repeated follow-up efforts regarding draft stipulation and document production related to date on which Apple contends check policy was terminated; prepare list of revised papers to be finalized and filed today; review past email correspondence and prepare draft declaration re emails confirming agreement to expand class damages period and produce documents; circulate same to KSR and co-counsel; prepare new proposed order to be filed in place of stipulation; prepare new standalone motion to expand class period; draft revisions to motion for entry of judgment; circulate these drafts to KSR and co-counsel; email to KSR re preparation of proposed order granting request for judicial notice; email to GMG re components of filing and decision to file two standalone motions; review and reply to email from co-counsel Giaimo re anticipated timing and sequence of filing motions; review email from Dunne stating her client is still reviewing proposed stipulation; reply to Dunne re when promised document production will be made; review email from Giaimo re revised drafts of motions; incorporate comment of Giaimo; reply to Giaimo re same; further correspondence with Giaimo re formatting issues; review and reply to email correspondence re class definition issue; telephone discussion with co-counsel Shalov re same and review August 2015 filings and order, confirming that parties agreed, and court ordered, that class membership would extend through August 10, 2015; email correspondence and call to GMG re status; discussion with GMG re status of components of filing and remaining tasks to complete all components; correspondence with GMG and KSR re filing logistics; review email from Giaimo circulating final version of all components of motion re class notice; prepare redline with final proposed changes and circulate; review final PDFs of all components of two motions, prepared by GMG; email to GMG re changes needed to several documents; review revised final PDFs; email to GMG approving same and directing him to proceed with filings; review enotifications confirming filing of both motions and delivery of proposed orders to chambers; email to co-counsel re status of filing of their motion; review enotification confirming filing of same and delivery of proposed orders to chambers	3.20
	KSR	Emails with KAK re proposed order for RJN iso MSJ. Emails with KAK and Giaimo re local rules re motions for MSJ and notice plan; research/summarize and circulate. Emails with team re proposed revised class definition and rules re class member self-identification; and impact of no agreement from Apple on proposed stip to expand class period. Review/analyze court's prior order approving joint notice plan and respond to KAK re strategy for MSJ with expanded class period. Research for and draft proposed order on RJN iso MSJ; circulate. Emails with KAK and GMG re filing options for order re expanded class period as request for miscell relief. Further emails with KAK re filing procedures for MSJ; review court's comments at CMC and circulate re miscell relief. Email from Dunne re proposed stip to expand class period.	2.90

		<u>Hours</u>	
	<p>Emails with team re logistics for filing collective motions. KAK response to Dunne email and request for eta on docs to support end of Apple's Check policy. Email from KAK re divided motions necessitated by lack of response on stip from Apple. Email from KAK with revised RJN re MSJ. Email from Shalov re further defining expanded class period in motion to define members. Further email from Dunne re eta to respond on proposed stip re expanding class period. Emails with KAK and GMG re filing rules for proposed orders on the two motions. Emails with GMG and KAK re class member inquiry on case status.</p>		
1/22/2021	KAK	<p>Review email from GMG re research on other employment-related Apple settlements; email to GMG re additional research needed; review email from co-counsel Giaimo re pro hac vice application to be filed; review enotification re filing of this application; review enotification re court's order denying application</p>	0.10
	GMG	<p>Legal research re other Apple cases and email KAK re same</p>	0.40
1/24/2021	KSR	<p>Email from Shalov re call from Gandhi. Check availability of other mediators and circulate available.</p>	0.20
1/25/2021	KAK	<p>Review and evaluate detailed email from co-counsel Shalov re conversation with mediator Gandhi and possibility of using different mediator; review and reply to email from KSR re checking availability of other proposed mediators; discussion with KSR re same; draft reply email to KSR and Shalov re same and possibility of also checking mediators previously proposed by plaintiffs; review enotification re filing corrected pro hac vice application by co-counsel Giaimo; review enotification re order granting same; review email from defense counsel Dunne circulating revised draft of stipulation re class damages period; review and reply to email from KSR re same; draft further revisions to stipulation; circulate to KSR and co-counsel for review and comment; review email from Shalov approving same; correspondence with co-counsel and KSR re availability of other mediator</p>	0.90
	KSR	<p>Email from KAK re checking other mediators for availability. Telephone call and follow up email re availability. Forward response to team with recommendation. Discussion with KAK re mediators. KAK email to team re grabbing other mediator's open date. Emails re other mediator's availability. Email from Julie Dunne with proposed edits to plaintiffs' draft stipulation re modifying the class period. Review and email to KAK responding to Apple's proposed edits. Email from KAK with redline edits to Dunne's proposed changes to stipulation; research for and draft edits to KAK's redline; circulate with applicable local rules. Email from Shalov re alternate mediator.</p>	2.40
1/26/2021	KAK	<p>Further correspondence with alternate mediator re availability; review and reply to emails from KSR and co-counsel re same; review redline from KSR with comments on draft stipulation; incorporate comments and prepare further revisions; finalize new redline; circulate same to defense counsel Dunne; review and reply to Dunne's response</p>	0.90
	KSR	<p>Emails with KAK re edits to Apple's proposed changes to stipulation re modifying class period. Review/analyze KAK's revised draft sent to Apple. Email from Julie Dunne re redline to stip; respond to Dunne. Email from KAK re another mediator's availability for mediation; further emails with team re alternate mediator. KAK email to Dunne with further edits to draft stip; review; Dunne response.</p>	1.10
1/27/2021	KAK	<p>Review, evaluate and reply to email from defense counsel Dunne stating that they have questions about draft stipulation circulated yesterday and requesting time for call; review and reply to email from KSR re same</p>	0.10

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			<u>Hours</u>
1/27/2021	KSR	Email from Julie Dunne re issues with revisions to draft stipulation re class definition. Emails with KAK re participating on call and discussion of issues prior to call with Dunne. Further emails with KAK and Shalov re potential discussion of settlement with Apple and staffing this call.	0.20
1/28/2021	KAK	Prepare for conference call with defense counsel Dunne re draft stipulation; review and reply to further email from co-counsel Shalov re same; participate in conference call with Dunne; draft detailed email to co-counsel and KSR summarizing matters discussed with Dunne; review reply from KSR re same; review email from KSR re notice received from mediator re available February date; correspondence with co-counsel and KSR re whether to propose this date to Apple; draft email to Dunne re this available date	1.10
	KSR	Emails from KAK summarizing call with Julie Dunne re draft stipulation to clarify/extend class period and no discussion re settlement. Email to team re strategy re Apple's proposed stip that plaintiffs will not reopen discovery on last date of Check policy, etc. Email from Shalov re whether Apple intends to produce again or waive confidentiality re mediation production; KAK response re production after Court signs order expanding the class. Email from alternate mediator's office re cancellation and available mediation date; forward to team with comments; respond. Emails with KAK and Shalov re further discussions with Gandhi.	0.90
1/29/2021	KSR	Email from Dunne with further proposed edits to stipulation re clarifying class period; review/analyze proposed edits.	0.20
1/31/2021	KSR	Further review/analyze proposed edits from Dunne re stip on class period. Draft and circulate comments to team re Apple's proposed edits.	0.30
2/1/2021	KAK	Review and evaluate email from defense counsel Dunne declining to take advantage of available mediation date with alternative mediator; forward same to KSR and co-counsel; correspondence with KSR and co-counsel re any response; review and evaluate email from Dunne with revised stipulation re class damages period; review comments of KSR re same and reply thereto; prepare new redline version of stipulation and circulate to KSR and co-counsel for review; further correspondence with KSR re same; follow-up correspondence to Shalov re whether the new version is fine; review email from co-counsel Shalov approving same; finalize and circulate to Dunne	0.50
	KSR	Email from KAK with revised draft of stip re modifying class definition; review/analyze and circulate comments. Further emails with KAK and Shalov re comments. Email from KAK forwarding Dunne response re open date for mediation; respond to KAK re strategy. Further emails with Shalov and KAK re mediation strategy. Review/analyze Apple employee declaration cited in opp to MSJ.	2.20
2/2/2021	KSR	Further review/analyze Apple's opposition to MSJ and cites to employee declarations. Review/analyze original declarations and draft response points to text cited by Apple. Emails to KAK with response text and cites.	4.90
2/3/2021	KAK	Review email from defense counsel Dunne circulating further proposed revisions to draft stipulation and proposed order extending class damages period; evaluate proposed revisions; email to co-counsel and KSR re same; review and evaluate response from KSR; review response from co-counsel Shalov; prepare further redline with revisions and circulate; review reply from KSR re same; evaluate best way to present new redline to Dunne, including other possible compromise positions to discuss with Dunne if she resists our latest changes; draft detailed email to Dunne circulating new redline and addressing two remaining points of disagreement, and authorizing her to sign and file my version, and requesting that she call me if she has issues with our changes; review email from Dunne indicating that her client agrees to our changes; review notification confirming filing of stipulation by Dunne	0.60

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			<u>Hours</u>
2/3/2021	KSR	Further review/analyze Apple's opposition to MSJ and cites to employee declarations. Review/analyze original declarations and draft response points to text cited by Apple. Emails to KAK with response text and cites.	1.00
2/4/2021	GMG	Review filed stipulation re class period and circulate to co-counsel; review Apple opposition filing and circulate to co-counsel; review and log Apple production	0.40
	KAK	Email to GMG re circulating oppositions due today when they are filed; correspondence with GMG and KSR re defense counsel's apparent failure to circulate proposed order to chambers along with stipulation and whether rules require this; review replies from KSR re same; review enotification re filing of order on stipulation; review and evaluate order; review email from defense counsel with formal production of documents related to termination of search policy, pursuant to signed order; forward same to GMG	0.30
	KSR	Emails with KAK and Shalov regarding negotiations and strategy over stip re class period. Emails with KAK and GMG re Apple's failure to submit Word version of proposed order when it filed the stip. Legal research re local rules and Alsup standing orders re proposed orders and respond to KAK re Apple's requirement to submit Word version of proposed order. Review/analyze court's order granting stipulation re class period. Email to KAK re order and Apple's opposition to motion for order per Ninth Circuit opinion. KAK email re Apple's opposition to motion for MSJ on liability and to approve notice plan. Email from Matthew Riley with formal production of documents Apple contends support date for end of Check policy. Review/analyze Apple's opposition to MSJ on liability. Emails with team scheduling call to discuss replies to Apple's opps to motion for MSJ on liability and to approve notice plan.	1.70
2/5/2021	KAK	Review enotifications re filing of oppositions by Apple yesterday and email from GMG circulating same; preliminary review of oppositions; review and reply to email from co-counsel Shalov re same and scheduling strategy call to discuss replies; review and reply to email from co-counsel Giaimo re page limit for reply briefs; review further email from Giaimo with link to applicable local rule; review and reply to email from class member with updated contact information; forward same to GMG for tracking	0.40
	KSR	Email from Shalov re argument for reply to Apple's opp. Email from KAK re reply briefs to Apple's opps on MSJ and to approve notice plan. Emails from Giaimo re page limit for replies. Emails to set up call to discuss replies.	0.60
2/7/2021	KSR	Further review of Apple's opposition to MSJ and notice plan and draft points for team conference call re replies. Review/analyze Apple's opposition to motion to approve notice plan.	1.00
2/8/2021	GMG	Review proposed orders for motion filed on 1/21 and email KAK re same	0.20
	KAK	Continued review and analysis of Apple's opposition to motion for entry of summary judgment; evaluate arguments for reply brief and began outline of same; email to GMG re pulling proposed orders submitted with pending motions; review proposed orders pulled and circulated by GMG; continued review and analysis of Apple's opposition to motion for approval of class notice and claim form; prepare for and participate in strategy calls with KSR and co-counsel re both reply briefs due this week and discuss strategy matters related thereto, as well as record citation work to be done by KSR; email to GMG re creation of hearing binder	2.40
	KSR	Prepare for and conference call with Gallaway, KAK, Shalov re replies on MSJ and notice plan. Emails re further call to discuss. Second, continued conference call with Gallaway, KAK, Shalov re replies on MSJ and notice plan. Research for reply on motion for MSJ.	3.10

			<u>Hours</u>
2/9/2021	GMG	Review protective order, check files for acknowledgment form and email KAK re same	0.40
	KAK	Continued analysis of arguments for reply brief on motion for entry of order granting judgment and work on outline of points for reply; email to GMG re locating protective order and acknowledgment form signed by Epiq in 2015, and to confirm logistics and expected components of filing Thursday; review protective order pulled by GMG; forward same to KSR and co-counsel for use in preparing reply papers; began drafting reply brief in support of motion for entry of judgment; evaluate excerpts of appellate briefs needed for request for judicial notice and prepare preliminary list thereof; review email from KSR with preliminary list of record citations for reply brief	4.90
	KSR	Review relevant legal research and draft and circulate email with cites and text for reply on motion to approve notice plan. Per discussion on conference call, review evidence cited by Apple in opp to MSJ re Check time and review all cited declarations and depositions to refute this evidence. Further analyze prior research for targeted authorities re claim forms and email relevant authorities to Gallaway for reply on motion re notice plan. Emails with KAK and GMG re Epiq signature on protective order. Email to KAK with cites to Apple's opp to MSJ and text from declarations which tend to contradict Apple's argument or support other points in reply brief. Further analysis of Apple employee declarations from string cites in Apple's opp to MSJ. Further email to KAK summarizing relevant testimony for reply.	7.30
2/10/2021	GMG	Review draft brief; check and convert record cites and email KAK re same; prepare draft RJN and exhibits and email KAK re same	2.90
	KAK	Review further email from KSR circulating more record cites and parentheticals for reply brief in support of motion for entry of summary judgment and other relief; review cites gathered by KSR; reply to KSR re same and additional work needed, including obtaining list of cites compiled by co-counsel; continued evaluation of briefs needed for purposes of request for judicial notice; draft email to GMG with instructions to prepare draft of request for judicial notice and with list of brief excerpts to be attached thereto; follow-up email to KSR re checking with co-counsel re list of cites for brief; review correspondence between KSR and co-counsel Gallaway re same; review cites provided by Gallaway; email to KSR re additional work needed for reply; discussion with GMG re materials needed for hearing binder; continued work drafting reply brief, including legal research; email to GMG re assisting to convert ER cites to Dkt. cites for reply brief; review and reply to KSR with list of cites and parentheticals to be prepared for insertion into reply brief; correspondence with KSR re strongest point to make in section of reply brief on inadmissible Hall report; finalize draft reply brief with placeholders and circulate to KSR and co-counsel with detailed transmittal email; review email from co-counsel Gallaway circulating new draft of reply in support of motion for approval of notice and claim form; review and evaluate draft reply; draft detailed email to co-counsel with comments on draft brief; review draft RJN and supporting declaration prepared by GMG; draft revisions and circulate back to GMG with further instructions on changes needed; evaluate documents prepared as exhibits by GMG and assess page ranges to be included in RJN; reassess whether any RJN is needed; review RJN filed by defendant and add cites thereto to draft reply brief on motion for entry of summary judgment; email to GMG re conclusion that no RJN is needed; continued work revising and polishing draft reply brief; further emails to GMG with citations to be converted to Dkt. cites; review comments of KSR on draft brief and incorporate same; finalize revised draft and re-circulate to KSR and co-counsel	8.60
	KSR	Emails with KAK re evidence to cite in reply brief re motion for order on liability. Further email to KAK re strategy for discussion of Check times estimated by plaintiffs' cited declarants. Email to Shalov and Gallaway re string cite with Apple employee declarations for reply brief on notice plan. Email from Gallaway with cites to declarations in notice plan reply brief; review. Emails with KAK re strategy for citing declarations in reply brief on motion for order on liability. Further research and review re Apple's cites to employee declarations in opp to plaintiff's motion for order on	6.80

liability, re check time. Continue to draft table with counter cites to cited declarations. Emails with KAK re citing to plaintiffs' presentation of employee declarations re Check time, and explanation of longer estimates on launch days and holidays. Email from KAK requesting summary of worst flaws in Hall Report Apple relies on in opp to MSJ. Review prior motion to strike and email to KAK re report focus on irrelevant video of store exists which doesn't capture the sales floor Checks. Email from KAK requesting cites to plaintiffs' declarations; research and response with cites and request for GMG to convert ER cites to district court docket cites for reply on MSJ. Review/analyze KAK's draft of reply brief on motion for MSJ and draft/circulate redline edits/comments. Email from Shalov with draft of reply re motion to approve notice plan; quick review. Review email with KAK edits to notice plan reply.

2/11/2021	GMG Locate/convert more record cites and email KAK re same; review brief, check cites and quotes, prepare final PDF and email KAK re same; arrange for filing and service via ECF and review confirmation	1.70
KAK	Review current draft of reply brief in support of motion for entry of order granting summary judgment and other relief; draft further revisions to strengthen and streamline brief; review comments of co-counsel Shalov on draft brief and incorporate same; email correspondence with KSR re additional group of citations for possible added section on Apple's evidence that some class members supposedly never went through checks; draft this additional section for reply brief; circulate new draft to KSR and co-counsel with placeholder with remaining cites; review emails from KSR with various additional record citations and parentheticals for reply brief; incorporate same into reply brief; review and incorporate additional Dkt. cites pulled by GMG; final proofread; correspondence with GMG re cite check; review final PDF of brief prepared by GMG and approve filing of same; review enotification confirming filing of reply; review enotification confirming filing by co-counsel of reply in support of motion for approval of notice and claim form	5.20
KSR	Continue to review/analyze Apple's cited class member and management declarations re Checks for excerpts and cites to include in reply brief on motion for order on liability; draft compilations of excerpts to refute cherry-picked excerpts in Apple's opposition brief. Email from KAK with revised version of reply on MSJ; review and draft further edits including additional excerpts and cites to declarations; circulate. Email response from Gallaway re data point for class member hourly rate and review workbook re class member damages. Review/analyze further drafts of reply on MSJ and draft further redlines and declarations excerpts and cites re points in brief. Emails with KAK re strategy/comments re reply brief. Email from Shalov re Apple's opp to term "liability"; KAK's response. Emails with KAK and GMG re cites in the record showing Checks during class period in all Apple stores. Emails with KAK re cites to record in reply on MSJ and correct/edit cites. Review/analyze revised reply on MSJ; circulate comments. Research for and email KAK with additional cites to Apple's employee declarations for reply brief.	5.20
2/18/2021	KAK Review voice mail from defense counsel Dunne requesting that we stipulate to allow defendant to file a notice of errata as to their opposition to plaintiffs' motion for entry of order granting summary judgment on liability; review email from Dunne re same; review and evaluate draft stipulation circulated by Dunne; correspondence with KSR and co-counsel re response; check pleading file to confirm whether Apple previously filed an errata to any brief, which they did; draft email to Dunne advising her to simply file her notice of errata; review email from Dunne citing rule that she thinks precludes an errata without leave of court; evaluate rule; review email from KSR re same and proposed response; draft email to Dunne stating that we disagree with her interpretation of the rule and she should simply file her errata, and stating that we do not oppose any motion she wishes to file seeking leave to submit an errata	0.40
KSR	Email from Julie Dunne with request for plaintiffs' agreement for Apple to file errata to correct case cite in opp to MSJ; review attached draft stipulation. Email from KAK re further telephone request from Dunne. Email to team with comments re Apple's	2.30

request; further emails with KAK, Shalov, Gallaway re stip request. Emails with KAK and Shalov re errata rules. KAK response to Dunne; Dunne reply and cites to local rules; review. KAK further response to Dunne; Dunne reply. Review/analyze Apple's objections to evidence in plaintiffs' reply re MSJ and re notice plan. Evaluate response.

2/19/2021	GMG	Review oppositions and errata filed by Dunne and circulate to KAK and KSR	0.20
	KAK	Review enotifications re defendant's filings yesterday of objections to plaintiffs' reply briefs in support of motion for entry of order granting summary judgment on liability and motion for approval of proposed notice and claim procedure; review and evaluate objections and began assessing response to be made thereto either in writing or at hearing; review and reply to email from co-counsel Shalov re whether rules permit any response to these objections; review email from KSR re same; review further email from defense counsel Dunne re their position that leave of court is necessary in order to file an errata; reply to same stating we do not oppose such a request; review response from Dunne re same; review enotification re filing of defendant's administrative motion for leave to file notice of errata; review this motion; review enotification re court's order granting this motion	0.50
	KSR	Email from Shalov re whether response permitted to Apple's evidentiary objections re replies on MSJ and notice plan. Respond re rules and KAK response. KAK response to Apple re errata stip request; Dunne response. Review Apple's filed errata. Review court's order on errata.	0.40
2/22/2021	KAK	Review enotification re filing of notice of errata by defendant; evaluate tasks necessary to prepare for this week's hearing on motion for entry of order granting summary judgment on liability and for approval of proposed notice and claim procedure; email to co-counsel and KSR re scheduling time for strategy call to discuss hearing preparation and issue of whether rules permit any response to Apple's objections filed last week; review reply from co-counsel Shalov re same; review and respond to email from KSR re same; review enotification from court and email from court clerk re continuance of hearing date; correspondence with co-counsel confirming availability on new hearing date and rescheduling prep call; review email from co-counsel Shalov to clerk confirming that plaintiffs' counsel are available on new hearing date	0.50
	KSR	Review Apple's notice of errata. Email from KAK re Apple's objections to evidence on motions re liability and notice plan. Research and response to KAK re local rules. Emails with team to coordinate call to prepare for hearing on motions re order on liability and notice plan. Review/analyze court's order continuing hearing date on motions re liability ruling and notice plan; calendar. Further email from Alsup's courtroom clerk re continued hearing. Emails with KAK re hearing date and moving prep call. Email from Julie Dunne re new hearing date. Email from Shalov re responding to clerk on new hearing date. Further email from clerk re hearing date.	0.80
2/25/2021	KAK	Review and evaluate email from defense counsel Dunne requesting to confer regarding citations in plaintiffs' reply brief in support of motion for entry of summary judgment on liability; review voice mail message from Dunne re same; reply to Dunne asking her to specify the issues she wishes to raise; email to KSR re assisting with response if necessary; review and reply to further email from Dunne and reiterate request that she specify her issues; review and reply to email from co-counsel Shalov re responding to Dunne and scheduling call to discuss if necessary; review email from Dunne re one class member declaration she claims was incorrectly cited; evaluate this class member's testimony; email to KSR and Shalov re same; draft reply to Dunne explaining to her why the declaration was correctly cited and asking whether she wishes to raise any other issues; review further email from Dunne stating that certain declarations cited in our reply were supposedly not cited in Apple's opposition and demanding that we file an errata; evaluate most appropriate response thereto; email to KSR re providing assistance in reviewing these assertions before responding	1.70

to Dunne; review and evaluate email from KSR summarizing her review of these declarations; reply to KSR re same and revisions needed to prepare this information for a response email to Dunne; review notifications re filing today of new California Supreme Court opinion, *Donohue v. AMN Services*, which may be relevant to de minimis argument and presumptions resulting from inaccurate recordkeeping by employers; pull opinion; began review and evaluation of opinion

2/25/2021 KSR	<p>Emails with KAK re Dunne's assertions of inaccuracies in plaintiffs' cites to class member decs in reply brief on MSJ. Review notes of class member decs summarized for reply brief and annotate and forward to KAK for response to Dunne. Further emails with KAK re Apple objections to evidence. Response to KAK/Shalov re these should have been included in Apple's filed evidentiary objections and the rules don't permit Apple to file a sur-reply, plus no good cause. Email from KAK re further email from Dunne citing further declarations; research and draft response with cites to each for KAK's reply to Dunne.</p> <p>Email from Julie Dunne re cites to Apple employee declarations in plaintiffs' reply brief iso motion for order on liability. Research re declarants cited in Dunne's email. Draft summary of testimony questioned by Dunne and forward to KAK. Further email to KAK re Apple should have included objections in their written, filed objections. Further emails with Shalov and KAK re objections. KAK response to Dunne. KAK further response to Dunne requesting all cites Apple contends are erroneous in some way. Shalov email re Dunne's request for errata on reply. Dunne response with cite to class member dec; summarize relevant excerpts and forward to KAK. Further email from Shalov re Apple pretext. KAK response to Dunne re class member cite. Email from Dunne with further cites from reply to class member declarations and demand for errata or stip to permit Apple to file sur-reply. Research and provide relevant excerpts to KAK for response. Further emails with KAK re cites and response to Dunne re this evidence. Further email from Shalov rejecting Apple's request for sur-reply</p>	4.70
2/26/2021 KAK	<p>Review further email from defense counsel Dunne raising additional purported issues with our reply brief in support of motion for entry of order granting summary judgment on liability, naming more declarations to be checked, demanding that we either file an errata or stipulate to permit a sur-reply brief, and appearing to demand an immediate substantive response; review email from KSR with summary of declarations Dunne incorrectly claims were not cited in Apple's opposition; draft detailed email to Dunne stating that she has not provided adequate time to respond to her issues and if she wishes an immediate response, the answer is we will not file an errata or stipulate to permit a sur-reply, advising her that the declarations she claims were not cited in Apple's opposition were, in fact, cited (and providing docket citations establishing this), and advising her that she should have included these points in her objections filed last week and her issues are therefore untimely; review email from co-counsel Shalov re this response; review further email from Dunne replying to my message and claiming that her issues are not "objections" to our brief or evidence; correspondence with co-counsel re whether any further response is warranted; review notification re filing by Apple of administrative motion for leave to file a sur-reply brief; began review of this motion and analysis of points for opposition; review and reply to email from Shalov re same, including possible sanctions request; email to KSR re checking deadline for opposition and assisting in review of declarations cited by Dunne for purposes of opposition; review email from KSR re deadline for opposition next week</p>	1.10
KSR	<p>Further email from Dunne requesting stip to file sur-reply on plaintiffs' MSJ, and citing further class member declarations with supposed incorrect cites. KAK email response to Dunne. Further response from Dunne. Review/analyze Apple's administrative motion to file a sur-reply. Email from Shalov suggesting move for sanctions; KAK response. Email request from KAK re rules applicable to administrative motions and time to respond, length of brief, etc. Research and forward to KAK. Email to Shalov and KAK re belief that sanctions request would</p>	2.70

		<u>Hours</u>
	require its own noticed motion and vote not to file. Further email to team re suggested response to Apple's sur-reply.	
2/27/2021	KSR Shalov response to email re sanctions request requiring noticed motion and whether to request. Further review evidence in reply brief challenged by Apple and draft bullet points for hearing on MSJ re irrelevance of this evidence given Ninth Circuit's directions to issue order on liability, etc. Emails with team re call to prepare for hearing on MSJ and motion to approve notice plan.	0.60
3/1/2021	GMG Prepare selected Apple declarations and email KAK and KSR re same	0.30
	KAK Review and reply to correspondence from co-counsel to confirm time for strategy call today; continued review and analysis of defendant's administrative motion for leave to file sur-reply brief in opposition to plaintiffs' motion for entry of summary judgment on liability; evaluate points to be made in opposition and in supporting declaration; review applicable N.D. Cal. Civil Local Rules re administrative motions and sur-reply briefs; email to KSR re preparation of draft proposed order required by rules; prepare for and participate in conference call with co-counsel and KSR in preparation for this week's hearing on motion for entry of summary judgment on liability and approval of proposed notice and claim forms; discussed numerous matters including coverage of arguments and points to be made orally during hearing, as well as points in opposition to pending administrative motion; further call with KSR to discuss points for opposition to administrative motion and assistance with review of challenged declarations cited by defendant; legal research on sur-replies and standards applicable thereto; draft opposition to motion for leave to file sur-reply; review emails from KSR with additional legal research and summary of points regarding declarations and incorporate same into draft opposition; draft detailed declaration in support of opposition with cites to email correspondence with defense counsel Dunne; circulate drafts to co-counsel and KSR for review and comment, along with detailed transmittal email; email to GMG re finalizing of these opposition papers, due tomorrow	7.10
	KSR Email response from Shalov to my email re conference call to prep for hearing on motion for summary judgment. Conference call with Shalov, KAK, Gallaway to prepare for hearing on MSJ, motion to approve notice plan. Emails with KAK re strategy to respond to Apple's administrative motion to file sur-reply. Research re declarations cited by Dunne in emails re admin motion and motion itself, for opposition. Draft summaries of Apple's and plaintiffs' cites to relevant declarations with arguments and relevant text, and summary of argument on each. Research rules and authorities for opp brief. Review/analyze KAK's draft of opp to admin motion and draft/circulate redline. Email request from KAK to draft proposed order iso admin motion; respond. Research for and draft proposed order and circulate. Telephone call with KAK re arguments for opp to admin motion and prep for hearing on MSJ. Further strategy emails with KAK re cites to class members declarations of which Apple complains. Email request to GMG to prepare pdfs of relevant decs for hearing on MSJ re Apple's admin motion for sur-reply. Research re rules on sur-replies in this district and court and forward summary to KAK. Legal research re sur-replies generally disfavored and forward authorities to KAK. Review/analyze and draft redline edits to KAK's draft of opp to sur-reply on MSJ; circulate redline with comments re strategy on cites. Emails with KAK and GMG re logistics of filing opp to Apple's admin motion re sur-reply.	8.80
3/2/2021	GMG Proofread opposition to administrative motion, check cites and quotes, finalize papers and prepare PDFs and email KAK re same; revise drafts per KAK, prepare new PDFs, serve and file via ECF and email proposed order to judge	1.40
	KAK Review emails from co-counsel and KSR with comments on draft opposition to administrative motion, due today; reply to co-counsel Shalov re same; review redline comments of KSR; incorporate same and draft additional revisions to opposition; draft further revisions to supporting declaration; re-circulate revised drafts to KSR and co-counsel; review draft proposed order prepared by KSR; email to KSR re changes	4.70

needed; review revised draft proposed order; further email to KSR re final changes needed; email to GMG re cite check and finalizing opposition, declaration and proposed order for filing; review final PDFs prepared by GMG; email to GMG re changes needed to opposition and with instructions to finalize and file all papers; review enotification confirming filing of opposition and submission of proposed order; review final papers as filed; continued preparation for tomorrow's hearing on motion for entry of order granting summary judgment on liability and approval of notice and claim procedure, including re-read of briefs, outline of points for summary judgment motion, outline of arguments on class member declarations that defense counsel (incorrectly) claimed were improperly cited, and organization of hard copy materials needed during hearing; review and analysis of new California Supreme Court opinion, Donohue v. AMN Services and assess potential impact

3/2/2021	KSR	Email from KAK re edits to proposed order iso opp to Apple's admin motion for sur-reply re MSJ. Revise opp and proposed order and circulate new drafts. Further revisions to proposed order and circulate. Review final versions of opp and KAK decl re admin motion and okay for GMG to file with one edit.	1.70
3/3/2021	KAK	Continued preparation for today's hearing on motion for entry of order granting summary judgment on liability and approval of notice and claim procedure; appear at telephonic hearing and present argument; post-hearing telephone conference with co-counsel Shalov and Gallaway and KSR; evaluate next steps, including possible outreach to class members to be done independently of court-ordered notice process; review and reply to email from attorney Dion-Kindem re hearing	2.80
	KSR	Participate in hearing on motions for partial summary judgment on liability, and approval of notice plan. Email to team re court's proposed formula for recovery doesn't address penalties due each class member. Follow up call with KAK, Shalov, Gallaway. Email to McGeever at Epiq re class list. Review Apple data produced for mediation. Email to team re pushing Apple to produce class damages data as formal production and the fact that that data includes stores, dates and number of shifts, data that plaintiffs will need to assist class members with claim forms and that Apple may try to use to challenge claim forms; reasons to push Apple and court for the data.	3.70
3/4/2021	KAK	Draft email to GMG re events at yesterday's hearing and deadline set for next week; review and reply to email from co-counsel Gallaway with press coverage of hearing; continued analysis of court's comments on de minimis defense and analysis of possible motion for summary judgment as to "de minimis" defense; legal research re same	1.30
	KSR	Email from Lauren McGeever re data request. Email to team re follow up for class data used to calculate damages for mediation; will need to assist class with claim forms and for trial, etc. Email from KAK re end of Check policy docs; response re request for formal production of class data. Email from Shalov with draft of notice to class, claim form and proposed order.	0.30
3/5/2021	KAK	Review email from co-counsel Shalov circulating draft proposed order, notice and claim form for review; preliminary review of same	0.10
3/7/2021	KAK	Review enotification from court reporter re transcript is ready; email to co-counsel requesting copy to facilitate review of draft proposed order, notice and claim form	0.10
	KSR	Review/analyze transcript of 3/3 hearing for notices to class.	0.30
3/8/2021	KAK	Continued review and analysis of draft proposed order, notice and claim form prepared by co-counsel; review and evaluate hearing transcript, received today; prepare redlines with comments and proposed edits; circulate same to co-counsel; correspondence with co-counsel and KSR re additional matters to be addressed in draft notices and accompanying filing; review email from co-counsel circulating new drafts of proposed order, claim form, and long-form notice; review same; email to	2.40

		<u>Hours</u>
	co-counsel re changes needed to proposed order; review and reply to emails from KSR and co-counsel re issue of class members' right to intervene	
3/8/2021	KAK FEES - Legal research re possible motion for interim award of attorneys' fees and costs	1.80
	KSR Email from Paul Beyersdorf re transcript of 3/3 hearing. Review/analyze court's minute order re 3/3 hearing re contents of notices to the class, claim form, proposed order, timeline, etc. Email from KAK re draft of notices/claim form. Emails from KAK and Shalov with redlines to draft notices, claim form, order, etc. Emails with team re further edits. Further email to team re adding text to indicate that notice comes from district court re Alsup stated concerns, on envelope, top of notice and subject line of emails. Further emails with team re this text. Email from Shalov re court comments on right to intervene; review transcript and respond re notice requirements. Further emails with KAK re court's intervention comments and possible confusion over whether new class members were being added. Further emails with team re revisions to draft notices, claim form, etc. Email from Giaimo with revised drafts of notices, claim form, reminder notice, etc. Further comments from KAK re revised notices, etc. Email from Giaimo circulating draft notices, claim form, etc. to Apple.	1.10
3/10/2021	KAK Review, evaluate and reply to email from co-counsel Shalov re making further offer to defense counsel to continue settlement discussions; review email from co-counsel Gallaway re same; reply to further email from Shalov re same; review email from defense counsel Riley circulating detailed list of comments and proposed changes to draft proposed order, notices and claim form; review and reply to email from Gallaway re defendants' proposal to use a different notice administrator; preliminary evaluation of matters raised by Riley	0.30
	KSR Email from Matt Riley requesting that plaintiffs use Apple's forms instead of plaintiffs' forms for submission to the court on notices to class, claim form, etc., and attaching Apple's drafts. Review/analyze Apple's proposed forms and comments from Riley re Angeion as proposed claims administrator, etc. Email from KAK re Angeion selection, our firm's use of Angeion, and probable competing filings with different versions of notices, etc. Further emails with team re Apple's drafts. Email from Shalov re call to discuss Apple's proposals re notices, etc.; respond with availability. Email from Shalov re contacting Apple to resume mediation; response from KAK re timing and proposed mediator; Shalov response; KAK reply.	1.30
3/11/2021	KAK Continued review and analysis of points raised by defense counsel Riley re proposed notice, claim form and order; review and reply to email from co-counsel Giaimo circulating revised versions of each document; review and evaluate revised versions; create redlines with comments on each document, including Apple's proposed response to class member inquiries; prepare memorandum with responses to Riley's comments for purposes of "meet and confer" call later today; review email from Riley circulating new proposed order on plaintiffs' pending motion for entry of order granting summary judgment; review Riley's proposed order; correspondence with co-counsel re response; draft response to Riley reminding him that proposed order was already submitted; review email from Shalov summarizing discussion with defense counsel Dunne and inability to agree on several substantive issues regarding the notice and claims procedure and need for separate filings re same; review voice mail message from mediator Gandhi; email to co-counsel and KSR re same and response thereto; review, evaluate and reply to email from defense counsel Dunne suggesting that the parties submit yet another proposed order granting plaintiffs' summary judgment motion; follow-up email to co-counsel Shalov re same	2.20
	KSR Email from Shalov re call to discuss Apple's proposed notice, claim form, etc.; respond. Email from Giaimo re revising versions of notices, claim form, etc., and re proposed call; respond. Emails with Giaimo re Apple's versions and comparative redlines. Review/analyze and draft substantial redlines to class notice, postcard reminder, proposed order re notice plan, etc. Review/analyze redline edits from KAK	3.30

Hours

and draft further revised versions; circulate redline drafts with comments. Emails with Shalov and KAK re contacts from Gandhi. Further emails with Shalov and KAK re proposed order on motion re liability order. Email from Matthew Riley with Apple's current versions of proposed notices, claim form, proposed order, etc. and proposal for call to discuss. Further email from Riley with proposed order on plaintiff's MSJ after hearing. Email response from KAK re plaintiffs already submitted proposed order to court; Shalov response no order yet from the court. Further email from Shalov re judge's direction to meet and confer and call suggestion. Review/analyze Apple's proposed order; further email from KAK re issues with Apple's proposed order including omission of "liability." Further emails with KAK and Shalov re KAK will respond to Riley.

3/12/2021	KAK	Review email from co-counsel Shalov re responding to voice mail from mediator Gandhi; draft email to Gandhi in response to his voice message; review his reply; review and evaluate draft of letter to Judge Alsup re proposed claims and notice procedures, prepared by co-counsel; review comments of Shalov and KSR re same; prepare redline with additional edit and circulate; correspondence re converting draft letter to pleading format and final changes needed before filing today; review email from defense counsel Dunne summarizing yesterday's "meet and confer" call; review enotification confirming successful filing today; review enotification re filing of Apple's statement today	0.80
	KSR	Email from Giaimo with letter to court re motion to approve notice plan as ordered in 3/3/21 minute order; review/analyze. Research for and email to team re motion format and standing order, rules. Further emails re format. Circulate court's minute order to which notice plan should be response. Emails with Giaimo re call to discuss; telephone call with Giaimo to revise submission in form of response to minute order. Review/analyze revised response to minute order from Giaimo and draft redline edits/additions; circulate. Emails with team re adding Apple's punch data to proposed order on notice plan, and distinction between number of shifts on claim forms and data to calculate overtime. Further email to team re difference between number of shifts and punch data to calculate overtime claims. Review data requests with Apple re need for punch data and further emails with team re addition to proposed order. Email Apple production Bates to Giaimo and Gallaway for data review. Draft edits to proposed order re punch data and further emails with team with revisions. Review/analyze Apple's filed supplemental proposed order re summary judgment with attachments. Review/analyze final plaintiffs' response to court's order with proposed order and other attachments.	3.90
3/13/2021	KSR	Email from Julie Dunne regarding plaintiffs' response to court's minute order and request for plaintiffs to agree that Apple may file a response. Email from Shalov re how to respond to Dunne's request. Email from Gallaway re court's remarks re draft proposed order in hearing transcript; review/analyze. Email to team re usual procedure for competing filings where parties disagree and can't file uniform document per the court's order. Review email meet and confer correspondence and forward to team email where Dunne states that parties should file separate documents, with analysis.	1.20
3/14/2021	KAK	Review and reply to emails from co-counsel Shalov re defense counsel Dunne's request that we agree they may file a response to our statement filed last Friday regarding the notice plan	0.10
	KSR	Email from KAK re Dunne's request for plaintiffs to agree that Apple may file response to plaintiffs' response to court's minute order re class notice and claim form, etc. Further email from Shalov on response.	0.10

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			<u>Hours</u>
3/15/2021	KAK	Review further correspondence between co-counsel Shalov and defense counsel Dunne re Dunne's request that we agree they may file a response to our statement filed last Friday regarding the notice plan; review enotification re filing of administrative motion by defendants	0.10
	KSR	Email from Shalov with response to Apple's request to file further pleading re plaintiffs' response to court's minute order re class notice/claims procedure, etc.: no position. Email from Dunne re Apple will file administrative motion; Shalov response re no position. Review/analyze Apple's administrative motion to file response to plaintiffs' response to minute order re class notice/claims form, etc.	0.20
3/18/2021	KAK	Review enotification re order entered on defendant's administrative motion to file a further brief on class notice and claim form dispute; email to KSR re same	0.10
3/19/2021	KSR	Email from KAK re clerk's order. Review/analyze Apple's response to plaintiffs' 3/12/21 filing re class notice and claims form.	0.60
3/30/2021	KAK	Review and evaluate email from defense counsel Dunne requesting phone discussion; review email from co-counsel Shalov re same; draft reply to Dunne re same; review further response from Dunne proposing mediation with Jeff Ross; correspondence with co-counsel re same; review response from Shalov to Dunne scheduling time to discuss; review and reply to email from Shalov confirming preparatory call tomorrow prior to call with Dunne	0.20
	KSR	KAK response to Dunne's request to discuss the case (discuss settlement?). Emails with team and Apple re call logistics. Emails with team and Apple counsel re potential mediators and dates	0.20
3/31/2021	KAK	Prepare for telephone calls to discuss further mediation, including review of notes from last mediation session; telephone discussion with co-counsel Shalov to prepare for conversation with defense counsel Dunne; telephone conference with Shalov and Dunne; email to mediator re availability; email to co-counsel Shalov and Gallway and KSR summarizing matters discussed with Dunne; research re proposed mediator; further email to co-counsel and KSR re information on this proposed mediator; review and reply to further email re availability	1.20
	KSR	Email from KAK summarizing call with Dunne. Emails with team and Apple counsel re agreement to potential mediators and dates. Review material re mediators proposed by Apple. Further emails with team and Apple counsel re agreement to potential mediators and dates.	0.40
4/1/2021	KAK	Further emails with co-counsel re possible mediators and dates; follow-up email re available mediation dates; review response from mediator's assistant with additional dates, evaluate availability, and correspondence with co-counsel re same; further email to mediator's assistant re other available dates	0.20
	KSR	Further emails with team re potential mediators and available dates. Email from Shalov re timing of mediation wrt court's order on class notice.	0.10
4/2/2021	KAK	Review and reply to further email from alternate mediator's assistant re available dates in May; correspondence with co-counsel re same; review email from co-counsel to defense counsel Dunne proposing dates with mediator	0.10
	KSR	Further emails with team re proposed mediators and dates. Emails regarding Apple's proposal that parties request a stay of case schedule from Judge Alsup. Further emails with team re plaintiffs' conditions for pursuing further mediation. Emails with Dunne and Shalov re mediation dates.	0.60

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			<u>Hours</u>
4/5/2021	KAK	Evaluate current status and fact that defense counsel has not responded to correspondence about mediator's availability; draft email to co-counsel proposing follow-up message to defense counsel Dunne re booking now with mediator or dates will be gone; review reply from co-counsel Shalov re same; draft email to Dunne re same	0.10
4/6/2021	KAK	Review and reply to email from defense counsel Dunne declining to mediate with proposed mediator; email to mediator's assistant re same	0.10
	KSR	Email from KAK to Dunne re Apple's refusal to mediate with proposed mediator; Dunne response. Emails with KAK and Shalov re Apple's representation it will send list of mediators, and impact on forthcoming order from court to disseminate class notice.	0.10
4/7/2021	KAK	Review email from defense counsel Dunne re mediators; email to co-counsel and KSR re same; review and reply to email from co-counsel Shalov re other possible mediators; research re other potential mediators; prepare list of same; draft further email to co-counsel and KSR with list of eight more candidates; review and reply to email from KSR re checking availability of mediators on these lists	1.30
	KSR	Email from KAK with list of potential mediators, including responses to Apple's suggestions. Further email from KAK with suggestions. Emails with team re dividing up contacts to prospective mediators for availability. Emails with KAK and Shalov re research for additional, prospective mediators to propose to Apple. Begin outreach re available mediators. Email to KAK re GMG to check availability of others on the list.	0.70
4/8/2021	GMG	Contact proposed mediators to check availability; emails with KAK re same	0.70
	KAK	Review and reply to email from co-counsel Shalov re scheduling call to discuss potential mediators; prepare for and participate in call with Shalov re same; draft email confirming which office will contact which mediator to obtain available dates; review email from Shalov to defense counsel Dunne confirming terms on which plaintiffs will participate in further mediation; draft detailed email to potential mediator re availability; correspondence with GMG confirming he will make contact with mediators assigned to our office; review numerous emails from GMG to potential mediators; review email from clerk requesting Word versions of exhibits to proposed order; correspondence with co-counsel re import of this request; review email from co-counsel's office to clerk circulating requested Word versions	0.70
4/9/2021	GMG	Callback from proposed mediators re availability; email KAK re same	0.20
	KAK	Further follow-up with potential mediators re availability in April or May; review email from proposed mediator regarding availability in April; review further emails re available dates obtained from mediators; review calendar to confirm workable proposed dates; correspondence with co-counsel confirming dates received from potential mediators so far and proposing same to defense counsel; draft email to defense counsel Dunne proposing available dates with two proposed mediators	0.30
	KSR	Further emails with team/mediators re potential mediators' availability. KAK email to Dunne with mediators' availability. Emails with KAK and GMG re further mediators contacted.	0.30
4/12/2021	GMG	Review email from mediator re available dates and forward to KSR	0.10
	KSR	Email from GMG re proposed mediator's availability on April 29 for mediation; response; email to Shalov re this availability; Shalov response; reply.	0.20
4/14/2021	GMG	Review order re summary judgment motions; calculate and calendar deadlines; prepare chart of deadlines and circulate to co-counsel	0.70

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			<u>Hours</u>
4/14/2021	KSR	Review/analyze court's order on MSJ; email from GMG with chart of deadlines in order or triggered by order; review/calendar.	0.30
4/15/2021	KAK	Review enotification re order regarding summary judgment motions and class notice; review and evaluate order; review chart of deadlines triggered by order, prepared by GMG, and assess impact on case going forward; review correspondence from co-counsel circulating draft revised notice pursuant to court's instructions; emails to KSR and co-counsel Shalov re status of attempts to schedule mediation and no response from defense counsel; draft follow-up to proposed mediator to advise that defense counsel would not consent to schedule a mediation; review and evaluate email from defense counsel proposing to mediate with Judge Infante subject to other terms; review notes regarding offers made at previous mediation sessions; correspondence with co-counsel re same; telephone discussion with co-counsel and KSR re same and terms under which we will agree to mediate with Judge Infante	1.50
	KSR	Emails with KAK re Apple's response to mediation proposals. Emails with Dunne and Shalov re dates and parameters for mediation. Emails with team to arrange conference call to discuss. Email from Giaimo with draft long form notice and proposed claim form. Review/analyze. Emails with Shalov and KAK re forms track Alsup's order. Email from Shalov in response to Dunne email explaining starting figure for mediation. Further emails from KAK re agreed rules for mediation. Conference call with Shalov, KAK and Gallaway re Julie Dunne's renewed interest in mediation and proposed mediators and terms of mediation. Email from Giaimo to Dunne with revised drafts of long form notice and claim form per Alsup order. Dunne email re redlines of notice and claim form. Shalov email to Dunne re demand made in prior mediation and starting point for renewed mediation session.	2.10
4/16/2021	KAK	Review draft email from co-counsel Shalov to defense counsel Dunne re terms on which we will agree to further mediation session; email to Shalov approving same; review email from Shalov to Dunne re same; review email from Dunne re amended versions of notice circulated yesterday by co-counsel	0.10
	KSR	Giaimo response to Dunne request for redlines of edited notice and claim form; review. Email from Shalov with proposed response to Apple re parties' starting positions for renewed mediation. KAK response. Shalov email to Dunne re position for mediation. Email from Dunne with redline to Giaimo revised proposed notice.	0.40
4/19/2021	KSR	Giaimo email to Dunne with revised notice form, response to intervention issue, and request for Angeion contact. Shalov email to Dunne re eta for Apple's production of employee contact info.	0.20
4/20/2021	KSR	Emails with Shalov and Julie Dunne re schedule for notice to the class and parameters for mediation with Judge Infante. Emails from Shalov re mediation with Judge Infante on May 6; calendar.	0.30
4/21/2021	KAK	Review email from defense counsel Dunne in response to latest correspondence re mediation; review, evaluate and reply to emails from co-counsel Shalov re same	0.20
	KSR	Email from Shalov re proposed response to Dunne re mediation based on Apple's failure to agree to plaintiffs' demands; review Dunne email. Email response to Shalov re proposed response to Dunne re ground rules for Infante mediation. Email from Shalov with revised proposed response to Dunne; Gallaway response. Shalov email to Dunne. Email from Shalov summarizing call with Dunne re Infante mediation and Apple's representations re ground rules. Further email from Shalov re Apple positions. Email from Gallaway re further provisions. Email response from KAK; Shalov response.	0.40
4/22/2021	KAK	Review further correspondence between co-counsel Shalov and defense counsel confirming mediation with Judge Infante; review emails from Judge Infante's assistant, including fee schedule and contract; review and reply to email from	0.20

co-counsel Shalov re preparing first draft of mediation statement; review correspondence between Shalov and attorney Dion-Kindem re further scheduled mediation date; email to GMG re calendaring mediation dates; review email from co-counsel Gallaway to clients re upcoming further mediation session; review clients' responses

4/22/2021	KSR	Email from Shalov to Dunne confirming Infante mediation; Dunne response. Matthew Riley email to JAMS confirming Infante mediation. JAMS response re time; Riley response. Shalov email to JAMS re mediation briefs. Review Docusign emails from JAMS for mediation. Email from JAMS Sandra Chan with due date and format of mediation briefs to Infante; emails with Shalov and KAK re McLaughlin will prepare first draft of brief. Shalov email to Blanchard and Dion-Kindem re mediation. Shalov request for Gallaway to email clients. Dion-Kindem response. Gallaway email to named plaintiffs re mediation; responses.	0.40
4/26/2021	KAK	Discussion with KSR and GMG re upcoming deadlines, as well as need to confirm whether and when defendant will be producing store location and employment data, based on ambiguity in court's order; review email from KSR to co-counsel re same; further email to co-counsel re same; review and evaluate further press coverage on case	0.20
	KSR	Discussion with KAK re Apple data to be produced for class notice and impact on mediation. KAK request to contact Shalov re production of store locations and dates of work. Email to Shalov and Gallaway re contacting Dunne re court's order and Apple's data production for class notices, which court referenced in one part of order but not production list. Email to team re most of data requested from Apple produced previously for mediation, so Apple only needs to withdraw confidential designation. Email from JAMS re info needed for mediation; provide to Gallaway for single response. Further email with KAK re Apple's data production for class notices per court's order.	0.60
4/27/2021	KAK	Review email from mediator's office requesting cell phone numbers for upcoming mediation; email to co-counsel re same; review email from co-counsel circulating initial draft of mediation brief; email to KSR re reviewing same	0.10
	KSR	Review Giaimo's draft mediation statement and draft edits; circulate redline. Email from Gallaway re cell number for response to JAMS; respond. Gallaway email response to JAMS. Email from Giaimo with draft of mediation statement. Email request from KAK to review and draft edits. Draft inserts and edits to draft mediation brief; finalize new draft and circulate. Email from Gallaway with Law360 article re settlement in Nike bag check case, for use in mediation statement and mediation.	5.40
4/28/2021	KAK	Review and evaluate draft mediation statement; review redline comments of KSR; prepare additional comments in redline; circulate to co-counsel and KSR with detailed transmittal email summarizing main revisions needed, including addition of new sections; review and reply to email from co-counsel Shalov re proposed revisions; email to KSR re same	1.70
	KSR	Emails with team re further comments to draft mediation statement. Emails with KAK re details of prior mediation sessions for statement. Further email from Giaimo re mediation statement. Email from KAK with redline and further email comments to mediation statement. Emails with KAK and Shalov re adding details of prior mediation sessions to mediation statement.	0.80
4/29/2021	GMG	Prepare exhibits and index for mediation statement and email KAK re same; proofread mediation statement, check cites and quotes and email KAK re same; prepare final PDF with exhibits and circulate to mediator and co-counsel	3.10

		<u>Hours</u>
4/29/2021	KAK	5.90
	Review and reply to email from co-counsel circulating revised mediation brief; review revised mediation brief; extensive further work drafting revisions to mediation brief, including new section summarizing events at last mediation sessions, updating section on "de minimis" defense, and further shortening and streamlining of brief and arguments therein; evaluate exhibits to be attached to mediation brief; email to and telephone discussion with GMG re same and re effectuating overnight delivery to mediator; correspondence with co-counsel re revised draft to be circulated and our office will handle finalization and delivery; correspondence with co-counsel re estimated claims rates and damages calculations; draft revisions to mediation brief adding details about damages calculation methodology; review follow-up email from mediator's office with instructions for delivering mediation brief today; forward same to GMG with instructions; review and approve exhibits prepared by GMG; review index to exhibits prepared by GMG; email to GMG re changes needed; review and approve revised index; finalize mediation brief and circulate same to co-counsel for review, along with detailed transmittal email re revisions made; review emails from co-counsel approving revised draft; review redline comments of KSR and incorporate same; circulate to GMG for finalization and delivery; review and approve final mediation brief with exhibits attached; email to co-counsel re status; review email from GMG to JAMS circulating brief; further correspondence with GMG re logistics for overnight delivery to mediator	
	KSR	3.60
	Emails with KAK re mediation statement. Email from KAK with revised draft; review/analyze and draft redline edits and comments; circulate. Emails re logistics for submission to JAMS. Email from Giaimo with revised draft of mediation statement; review. Email from KAK re further revisions. Email from KAK re attaching appellate opinions as exhibit to statement. Emails with team re calculation of Apple's stated exposure. Emails with team re filing logistics. Email from JAMS re logistics for submitting mediation statements. Emails with KAK to facilitate final draft of mediation statement. Email from KAK with revised mediation statement; review. Further email from KAK re inserts to brief and logistics to submit to JAMS. Review and draft further redline; circulate to KAK and GMG. Further emails with KAK re edits to mediation brief. Email from Giaimo re submission to JAMS. Email from GMG re submission to JAMS. Response from JAMS re hard copy to go to Judge Infante.	
4/30/2021	KSR	0.20
	Emails with team re further comments to draft mediation statement. Emails with KAK re details of prior mediation sessions for statement. Further email from Giaimo re mediation statement. Email from KAK with redline and further email comments to mediation statement. Emails with KAK and Shalov re adding details of prior mediation sessions to mediation statement.	
5/3/2021	KAK	0.10
	Continued preparation for this week's mediation, including evaluation of points to be made in initial session with mediator Infante; review email from GMG confirming hard copy of mediation statement was timely delivered to Infante	
5/4/2021	KSR	0.50
	Follow up email to GMG re JAMS confidentiality agreement. Emails with KAK re no DocuSign from JAMS and submit hard copy attachment electronically signed by us both. Email from GMG with completed hard-copy form; review and approve. Email from Mathew Riley with Apple's proposed stip and order re class notice and claim form; review.	
5/5/2021	KAK	0.70
	Review emails from JAMS and GMG re confidentiality agreement to be signed for upcoming mediation; review signed version prepared by GMG; review email from Docusign re same; review email from GMG to JAMS circulating signed confidentiality agreement; preparation for tomorrow's mediation, including re-read of mediation brief and evaluation of points to be made to mediator at outset of mediation	
	KSR	0.40
	Emails with KAK and GMG re no DocuSign from JAMS but instruct GMG to send in signed attachment. Follow-up email to GMG to confirm sent. Further email from KAK confirming to send confidentiality agreement to JAMS, vs. DocuSign; GMG email to JAMS. Email from Shalov to Matt Riley re Apple's draft class notice and claim form	

		<u>Hours</u>
	and whether court further approval required. Response from Dunne and request for Shalov to file stip: Shalov reply re which version of notice will be filed; Dunne response re version with notice including option to intervene;	
5/6/2021	KAK Final preparation for mediation with Judge Infante today; participate in full-day mediation with KSR and co-counsel Shalov and Gallaway; breakout conferences with KSR and co-counsel re mediation strategy; legal research re new arguments raised by defendant; further conferences with mediator, KSR and co-counsel; further sessions with co-counsel, KSR and mediator; joint session in which mediator made mediator's proposal; post-proposal discussion with co-counsel; review email from co-counsel Gallaway to clients re mediator's proposal	9.80
	KSR Participate in mediation with Judge Infante; legal research for issues arising in mediation; circulate emails with summaries. Email response from Dunne re version of notice that will be filed if no order from Alsup. Further emails with team re research on legal issues raised in mediation. Gallaway email to class reps re approvals for settlement in principle; responses.	5.90
5/7/2021	KAK Review clients' email responses regarding mediator's proposal; review email correspondence between co-counsel Shalov and attorney Dion-Kindem re mediator's proposal; review, evaluate and respond to further inquiries from Dion-Kindem re terms of proposed settlement; make note of further follow-up needed on Monday prior to deadline to accept or reject mediator's proposal	0.30
	KSR Emails with Shalov and Julie Dunne re version of notice to class to be filed if case not resolved.	0.20
5/10/2021	KAK Check email correspondence to confirm receipt of approval of mediator's proposal from all clients; email to co-counsel Gallaway to confirm response from one of the clients; review email from client approving settlement, forwarded by Gallaway; email to co-counsel Shalov re following up with defense counsel Dunne re term, and to Gallaway and KSR summarizing correspondence last Friday with attorney Dion-Kindem	0.20
	KSR Legal research and forward to KAK and Shalov relevant case re class settlement terms. Email from KAK re status of resolution. Emails with team re class rep approval of settlement. Email from KAK re communications with Dion-Kindem re settlement and Taylor Kalin agreement; and further negotiations with Apple re terms; Shalov response re terms. Email from Shalov re communicating acceptance of settlement to Judge Infante.	1.70
5/11/2021	KAK Follow-up email to attorney Dion-Kindem re his client's position on mediator's proposal; review further response from Dion-Kindem re settlement terms and forward to co-counsel for reply; review email from Dion-Kindem stating his client agrees to mediator's proposal; review and reply to email from co-counsel Shalov re advising mediator that our clients accept mediator's proposal; review email from Shalov to mediator re same; review email from mediator's office requesting call and confirm that KSR and co-counsel will cover same; review email from mediator's office requesting joint call with all counsel; review and evaluate emails from KSR summarizing matters discussed during calls with mediators; reply re same	0.30
	KSR Emails with team regarding inquiries from Dion-Kindem re terms and whether Taylor Kalin will agree with the settlement. Emails re notifying JAMS of plaintiffs' acceptance of mediator's proposal. Emails re conference call with Infante and Kalin's agreement to settlement. Participate in conference call with Judge Infante re Apple's conditions on settlement. Email to KAK summarizing call. Emails with Judge Infante's assistant to set up joint call with Apple's counsel to discuss settlement terms. Conference call with Judge Infante, Shalov, Gallaway, Julie Dunne re settlement in principle and terms. Summarize settlement in principle and circulate email to team. Further email	2.90

		<u>Hours</u>
	to team re matter raised by Apple during discussion. Circulate research re this issue. KAK email responses re terms discussed pursuant to settlement in principle.	
5/12/2021	KAK Follow-up email to KSR re where things were left after calls with mediator yesterday and whether defense counsel will circulate draft notice of settlement and draft MOU; review reply from KSR re same; evaluate points to be included in MOU; review and reply to email from GMG re status of settlement; review email from defense counsel Dunne circulating draft notice of settlement and preliminary review of same	0.20
	KSR Email from KAK re whether Dunne is drafting both MOU and notice to the court re the settlement in principle; respond. Email from Matt Riley with proposed joint notice of settlement and stipulation to stay action; review/analyze.	0.50
5/13/2021	KAK Further review and evaluation of draft notice of settlement prepared by defense counsel; prepare redline with revisions needed; circulate same to KSR and co-counsel with transmittal email re reasons for changes made; review and reply to email from co-counsel Shalov re one of defendants' proposed provisions; locate and circulate proposed compromise language; review revised notice of settlement received from Dunne; prepare redline with additional changes needed and circulate; review email from Shalov to Dunne authorizing filing; forward redline with additional changes to Dunne; review email from Dunne confirming she will incorporate same and file; review enotification re filing	0.60
	KSR Email from Shalov with plaintiffs' comments on Apple's joint notice to the court re settlement. Email from Dunne with revised joint notice to the court re settlement; review; Shalov email re approval to file. Email from KAK with edits to joint notice; Dunne response. Review ECF notice.	0.50
5/14/2021	KAK Review email from defense counsel Dunne circulating draft MOU; evaluation of one particular proposed term; email to KSR and co-counsel re problem with this proposed term; review correspondence between clients and co-counsel Gallaway re status of mediator's proposal and agreement in principle reached on main settlement terms	0.20
	KSR Review/analyze Apple's draft MOU re settlement. Email from KAK with comments; review. Draft further comment to MOU and circulate. Emails with plaintiff Frlekin, other class reps and Gallaway re status of settlement.	1.10
5/17/2021	KSR Email from Shalov re telling Apple to work on long-form settlement agreement and skip finalizing an MOU. Email from KAK re comments to MOU and responding re long-form agreement. Email from KAK requesting that I draft long-form settlement agreement; respond. Email to Shalov re I will draft; Shalov email to Dunne re plaintiffs will do first draft. Begin drafting long-form agreement. Review/analyze KAK's redline to MOU and email comments. Email from Gallaway re PAGA allocation terms; further email from Gallaway re PAGA term and pay periods calculation.	2.80
	KAK Review and evaluate detailed email from KSR re problems with draft MOU circulated by defense counsel; close review of draft MOU; prepare redline with detailed comments and edits; review and reply to email from co-counsel Shalov proposing that parties skip attempting to form an MOU and move on to the long-form settlement papers; finalize redline comments on draft MOU; circulate same to co-counsel and KSR with detailed transmittal email; review email from co-counsel Gallaway with comments on proposed provisions on allocation of PAGA and non-PAGA portions of settlement; correspondence with KSR re project of drafting long-form settlement agreement; review and reply to email from KSR to co-counsel Shalov re same	0.70
5/18/2021	GMG Review scheduling order, calendar dates, prepare summary chart and email KAK and KSR re same	0.70

		<u>Hours</u>
5/18/2021	KSR	1.80
	Continue research for long-form agreement, including settlement agreements from other case settlements with Apple. Continue drafting long-form agreement. Email from Julie Dunne re Apple would prefer to draft. Email from Shalov re clean version of redlined MOU to send to Apple. KAK response. Review court's order granting stip for continuance of case deadlines; calendar. Emails with KAK and Shalov re revised, redlined MOU. Email from GMG with chart of revised case deadlines per court order; calendar.	
	KAK	0.30
	Review further correspondence between defense counsel Dunne and co-counsel Shalov stating that Apple wants to prepare an MOU prior to the long-form settlement agreement; review and reply to email from co-counsel Shalov re preparing redline of draft MOU to be circulated to Dunne; further correspondence with Shalov re changes needed before draft is circulated; review notification re order approving parties' stipulation to extend dates; review order; court extended dates by 56 days; email to GMG re preparing updated chart of deadlines	
5/19/2021	KSR	1.80
	Email from KAK re MOU changes. Continued work drafting long form agreement. Email from Julie Dunne re comments to draft MOU. Further email from Julie Dunne re Apple prefers to draft long form settlement agreement.	
	KAK	1.60
	Review and reply to email from co-counsel Shalov re scheduling call to discuss draft MOU; close review of current redline draft of MOU and previous comments circulated by KSR and co-counsel Gallaway, including Gallaway's redline; prepare revisions to redline draft, including incorporating comments of KSR and Gallaway; telephone conference with Shalov re changes to MOU; final revisions based on discussion with Shalov; prepare clean and redline versions and circulate to Shalov. Review and evaluate chart of updated deadlines prepared by GMG; forward same to KSR and co-counsel along with signed order extending deadlines by 56 days.	
5/20/2021	KSR	0.20
	Email from KAK regarding Alsup's shortened schedule from time requested in stip and deadlines in GMG's chart.	
5/26/2021	KAK	0.10
	Review email from defense counsel Dunne requesting call to discuss memorandum of understanding; review and reply to email from co-counsel Shalov re same; review email from Shalov to Dunne confirming time and requesting a written agenda of items to be addressed related to the MOU	
	KSR	0.10
	Email from Julie Dunne re call to discuss plaintiffs' response re draft MOU; Shalov response. Email response KAK to Dunne re send updated, redlined MOU for call. Shalov email to Dunne re send updated version of proposed MOU.	
5/27/2021	KAK	2.20
	Prepare for and participate in conference call with defense counsel Dunne and Riley and co-counsel Shalov re current draft of MOU; post-call discussion with Shalov re next steps; email to KSR re matters discussed during calls with Judge Infante; email to GMG re pulling current costs figures for purposes of providing estimated litigation costs total to defense counsel; review email from GMG re same and forward figure to Shalov; review past correspondence with defense counsel Dunne re issue raised during conference calls; locate relevant emails and circulate to Shalov; review response from Shalov; draft email to Dunne circulating this correspondence; review email from KSR re discussion re provision affecting named plaintiffs; further email discussion with Shalov re same; review correspondence between co-counsel and clients re same; correspondence with attorneys Dion-Kindem and Blanchard re same	
	KSR	2.80
	Email from KAK with issues raised during call with Judge Infante. Review notes from discussion with Judge Infante and circulate email with responses. Conduct fact research for appropriate cy pres recipients. Circulate summary. Email response from KAK with additional proposed cy pres recipients. Research these organizations and respond to KAK with further suggestions. Email from KAK with request to draft a chart including all proposed recipients, descriptions, and how aligns with class interests. Further email from KAK re issues raised in MOU negotiations. Review notes from	

		<u>Hours</u>
	mediation and research PAGA issues. Further email from KAK re PAGA issues. Gallaway email to class reps re terms under discussion. Class rep responses/questions; Gallaway's response. Further emails with KAK and further research re cy pres recipients to propose. Draft chart with all proposed cy pres recipients and circulate.	
5/28/2021	KAK Review and evaluate email from co-counsel Shalov re issue of PAGA allocation calculations; draft emails to Shalov; emails to KSR re this issue; evaluate next steps in order to finalize MOU; email to KSR re preparing chart with information on proposed cy pres recipients; review draft chart prepared by KSR; email to KSR re changes needed	0.60
	KSR Further emails with KAK re cy pres chart and correct entitles named.	0.40
6/1/2021	KSR Emails with KAK re cy pres recipients; KAK request to send list of proposed recipients to Shalov/Gallaway. Finalize chart of proposed cy pres recipients and relevant information and circulate.	1.40
	KAK Review and reply to email from co-counsel Shalov re time for further call with defense counsel Dunne; review revised chart of cy pres recipients prepared by KSR; correspondence with KSR re circulating same; further correspondence with attorneys Dion-Kindem and Blanchard regarding settlement term	0.20
6/2/2021	KSR Email from Dunne re issues for MOU; review. Email from KAK with comments on issues raised by Dunne.	0.10
	KAK Review and evaluate email from defense counsel Dunne with list of matters discussed during call; draft detailed email to KSR and co-counsel Shalov re errors in Dunne's emails, matters to be corrected and next steps	0.20
6/3/2021	KSR Shalov's response on points addressed by KAK re issues raised by Apple on MOU. Email from Shalov approving revised settlement term and KAK request to forward to Dunne; reply. Email to Julie with revised term.	0.50
	KAK Review response from co-counsel Shalov re response to list of MOU issues circulated by defense counsel Dunne; evaluate same and reply to Shalov; review email from KSR to defense counsel; draft further follow-up email to attorney Blanchard; review and reply to response from Blanchard	0.20
6/4/2021	KSR Email from KAK requesting review of class administration bids, status of MOU, and request to start draft of preliminary approval motion; respond. Email to KAK re drafting preliminary approval motion. Email from KAK forwarding estimate for class administration and requesting analysis to ensure it covers all administration tasks. Further email from KAK re issues discussed by Julie Dunne; and status of bid from Angeion. Email from KAK to Matt Riley requesting Angeion bid for class administration. Email from KAK circulating updated chart of case deadlines triggered from judgment, including dates from final approval order. Email from Matt Riley with Angeion bid.	1.70
	KAK Review email from co-counsel Shalov circulating updated bid from Epiq; email to KSR re checking same; reply to Shalov re same and whether defense counsel forwarded bid from Angeion; review reply from Shalov re same; draft follow-up email to defense counsel Riley requesting that bid be circulated; review reply from Riley re same; review and evaluate email from attorney Blanchard re terms; draft detailed response to Blanchard re same; further email to KSR re following up on bids and starting work on preliminary approval motion	0.40

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			<u>Hours</u>
6/7/2021	KAK	Review email from defense counsel requesting a telephone conference tomorrow to discuss current draft of MOU; email to co-counsel Shalov re availability; review further correspondence confirming call time	0.10
	KSR	Email from Shalov to Dunne re call to discuss status of MOU and outstanding issues. Matt Riley responding email to Shalov re call to discuss MOU; Shalov response and coordination with KAK.	0.10
6/8/2021	KAK	Review correspondence confirming today's call to discuss the MOU with defense counsel; evaluate list of issues to be addressed during the call; email to co-counsel and KSR regarding checking administrator bids; review transcript and check court's comments on opt-out opportunity; follow-up email to attorney Blanchard; review and reply to Blanchard's response; evaluate and draft further follow-up email to co-counsel in preparation for the call; participate in lengthy call with co-counsel Shalov and Gallaway and defense counsel and reviewed numerous issues in current draft MOU; draft list of issues on which parties are at impasse and circulate same to KSR and co-counsel	1.40
	KSR	Review/analyze Epiq and Angeion class administration bids and draft summary of analysis. Circulate. Email from Shalov re call with Matt Riley to discuss MOU; Riley response and call schedule. Further email from KAK and Shalov re MOU issues. Email from Gallaway re discussion with Epiq on class administration bids. Further email from Gallaway re same. Email from KAK re bids. Gallaway response re bid comparison. Email from KAK re rule 23 analysis re Apple issue on MOU. Gallaway email to Matt Riley with SSI/Epiq administration bid. Email from KAK re 3 issues left for discussion with Judge Infante re settlement. Email from Matt Riley re Apple's proposed cy pres recipient. Shalov response re contacting Infante.	2.80
6/9/2021	KAK	Review email from co-counsel Shalov requesting time for call with Judge Infante; reply to Shalov re same and estimated length of call, given scope of issues to be addressed; review email from defense counsel Riley with link to information on proposed cy pres recipient; review email from Shalov re same	0.10
6/10/2021	KAK	Review correspondence between co-counsel Shalov and mediator Infante's office re time for telephone conference with mediator; check schedule and emails to Shalov re availability; review email from Shalov to defense counsel re proposed times for mediator call	0.10
6/11/2021	KAK	Review and reply to email from KSR regarding recently passed bill on settlement agreement signatures; review email from KSR with additional information on bill and potential impact on case; evaluate text of bill	0.20
	KSR	Legal research to locate statute re attorney signature on settlement agreement and analyze; further emails with KAK summarizing statute and impact on Frlekin settlement. Further emails with KAK re CCP 664.6. Further research for brief and further emails with KAK re analysis and case cites.	1.20
6/15/2021	KAK	Evaluate work to be done in preparation for call with mediator Infante; review notes of past calls with defense counsel and make list of issues at which we are at impasse; email to KSR re discussions during post-mediation call regarding Apple's positions; review and evaluate correspondence from KSR re same; email to co-counsel Shalov re need to locate additional email correspondence supporting our position; review and reply to Shalov's response; further email to Shalov scheduling time for prep. call	0.40
	KSR	Further emails with KAK re Apple's language in proposed MOU; review mediation notes and further email discussion with KAK. Emails with KAK re Apple's conditions for settlement agreement. Review notes of call with Judge Infante and summarize discussion of these issues for KAK. Review and forward to KAK earlier notes re	1.40

		<u>Hours</u>
	mediation issues and send further email analysis to KAK. Further emails with KAK re language of MOU. Email from Matthew Riley re call to discuss MOU terms.	
6/16/2021	KAK Review email correspondence between defense counsel and co-counsel re issue relevant to current discussions; evaluate need for supplemental mediation brief or memorandum to Judge Infante setting forth our positions on disputed issues; draft detailed memorandum to Judge Infante setting forth three issues in MOU on which impasse has been reached, in anticipation of tomorrow's call; circulate same to co-counsel Shalov; prepare for and participate in preparatory call with Shalov; telephone discussion with Shalov; finalize memorandum to Judge Infante and circulate same to his assistant in anticipation of tomorrow's call	2.40
	KSR Emails with Riley and Gallaway and emails from Dunne re issues under discussion for MOU. Review/analyze. Email from Shalov re issue raised by Riley.	1.00
6/17/2021	KAK Review correspondence from mediator's office requesting that we reschedule today's call to provide more preparation time for Judge Infante to review the parties' memoranda; email to co-counsel Shalov re availability for rescheduled call; review email from Shalov to mediator's office confirming our availability; review and evaluate proposed provision circulated by defense counsel; review and reply to email from Shalov re same	0.20
	KSR Email from Gallaway responding to Riley's request. Further emails with team re same. Email from JAMS re further conference call with Judge Infante; calendar. Emails with Riley and Shalov re another term in MOU. KAK response to Shalov concern re this term.	0.20
6/18/2021	KAK Review email from mediator's office confirming time for rescheduled call on Monday; reparation for Monday's call with mediator to resolve final issues; review and reply to email from KSR re participation in this call	0.20
	KSR Emails with KAK re participating in call with Judge Infante re settlement terms. Preparation for call.	0.40
6/21/2021	KAK Prepare for and participate in telephone conference with mediator Infante, co-counsel Shalov, KSR and defense counsel; email to Shalov and KSR re proposed cy pres recipient; review and reply to email from KSR re same; review further email from KSR summarizing remaining issues discussed with Judge Infante and possibly scheduling a further call; evaluate next steps and positions to be taken on remaining issues of dispute	1.70
	KSR Mediation call with Judge Infante and Apple counsel re outstanding issues with settlement. Emails re follow up call Wednesday. Emails with KAK re cy pres recipient. Email from KAK re other issues discussed; review notes, draft summary and send to KAK. Emails with Shalov re call to discuss further terms. Email from Shalov re negotiations. Further emails with KAK and Shalov re follow up call with Infante.	2.90
6/22/2021	KAK Telephone conference with co-counsel Shalov re matters to be addressed during tomorrow's further conference with mediator Infante; review and evaluate email from defense counsel Dunne regarding matters related to MOU; review response from KSR re same; email to Shalov re issue raised by Dunne	0.30
	KSR Email to KAK re Shalov proposal re settlement. Emails with KAK and Shalov to set up conference call to discuss further negotiations with Infante re settlement. Email from Julie Dunne re terms discussed with Infante, review/analyze. Email from KAK with attached memo to Infante re settlement negotiations. Review/analyze. Email from Shalov re further call scheduled with Infante. Email to Shalov and KAK commenting on points raised by Dunne. Shalov email to JAMS re further call with	1.90

		<u>Hours</u>
	Infante re settlement terms. Emails from Sandra Chan to schedule further call time with Infante; calendar.	
6/23/2021	KAK Prepare for and participate in further telephone conference with mediator Infante re terms of MOU, including discussions with mediator only, discussions with co-counsel and KSR, and discussions with mediator, co-counsel and defense counsel; draft language for use in further negotiations with defense counsel; review email correspondence between co-counsel and defense counsel re revised administration bid	1.60
	KSR Further mediation call with Judge Infante re several provisions of settlement. Follow-up emails with KAK re Apple's settlement terms and conference.	1.30
6/24/2021	KAK Evaluate projected dates for completion of MOU, long-form settlement agreement, and preliminary approval motion; draft email to KSR asking her to create a projected schedule through final approval for use in negotiations with defense counsel; review email from co-counsel Gallaway to defense counsel Dunne re-circulating revised bid from proposed administrator	0.20
	KSR Emails with KAK re matters discussed on Infante call, and KAK request to draft a schedule for settlement motions.	0.40
6/25/2021	KSR Legal research for and draft proposed schedule for settlement approval and administration. Email to KAK re results of research.	2.80
6/27/2021	KSR Research Northern District Guidelines for class action settlements. Email to KAK re drafting motion for preliminary approval of settlement and Northern District Guidelines.	0.50
6/28/2021	KAK Review and evaluate email from co-counsel Shalov re new U.S. Supreme Court decision on standing; reply to Shalov re same; preliminary review of opinion; review email from KSR circulating draft case schedule based on projected preliminary approval motion filing date; review draft schedule; email to KSR requesting that dates set in latest order by Judge Alsup be added	0.30
	KSR Email from KAK re Supreme Court opinion re individual injury. Further emails with Shalov and KAK re opinion; review/analyze. Email from KAK re schedule for settlement filings; respond to KAK re plaintiffs should request further stay.	0.40
6/29/2021	KSR Emails with Matt Riley and Shalov re revised draft MOU. Review/analyze. Shalov request for redline of MOU; Riley response. Draft revisions to proposed schedule for settlement approval and administration per KAK's request. Review/analyze court's scheduling orders and calculate dates. Finalize schedule and circulate.	1.10
6/30/2021	KAK Review revised schedule of deadlines prepared by KSR to include deadlines set by court's latest order; review email from defense counsel circulating new MOU and new settlement administrator bids; closely review and evaluate proposed changes in latest MOU; run redlines comparing this MOU to previously circulated versions, including plaintiffs' previous version; prepare new redline with further changes and comments directed to defense counsel; draft memo with additional comments for KSR and co-counsel; circulate same to KSR and co-counsel along with schedule of deadlines prepared by KSR and detailed transmittal message re next steps	1.60
	KSR Email from KAK with analysis of Apple's redline of MOU. Email from KAK with further redline of Apple's most current version of MOU. Review/analyze.	0.40
7/1/2021	KAK Discussion with KSR re issues related to draft MOU; check redline of MOU circulated to co-counsel yesterday; review and respond to email from attorney Dion-Kindem re status of MOU	0.30

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			<u>Hours</u>
7/2/2021	KAK	Further analysis and legal research re issues raised by defendant's in latest MOU negotiations; continued review and evaluation of new US Supreme Court decision on standing and assess possible impact on case	0.80
7/5/2021	KSR	Email from KAK with analysis of Apple's redline of MOU. Email from KAK with further redline of Apple's most current version of MOU. Review/analyze.	1.10
7/6/2021	KSR	Email from KAK re research requested for MOU;. Respond to KAK. Email from KAK requesting Apple to stip to extend court deadlines. Dunne response. Further email from KAK re redlines to draft MOU.	0.30
	KAK	Evaluate status of MOU; draft follow-up email to co-counsel and KSR re redline of MOU circulated last week and next steps; review and evaluate memo from KSR on requested research issue; telephone discussion with co-counsel Shalov re remaining issues re MOU and next steps; email to KSR re same; draft final changes to MOU based on discussion with Shalov; finalize and circulate to defense counsel; review reply from defense counsel Dunne re same	0.70
7/7/2021	KAK	Review and evaluate correspondence from co-counsel re latest administrator bids; reply to co-counsel Shalov re same and status of request to defense counsel to stipulate to postpone current case deadlines; review reply from Shalov re same	0.10
7/12/2021	KAK	Assess current status since last redline was circulated; draft email to defense counsel Dunne re status of latest draft of MOU; review and reply to her response	0.10
7/15/2021	KAK	Evaluate status; email to co-counsel Shalov re status of stipulation to continue deadlines, review of latest administration bid from Angeion	0.10
7/16/2021	KAK	Draft further follow-up email to co-counsel Shalov re status of analysis of latest bid from Angeion and responding further to defense counsel Dunne	0.10
7/19/2021	KSR	Email from Dunne with sign MOU and comments re where Apple insists on confidentiality, etc.	0.20
7/20/2021	KSR	Shalov request to Dunne for entire MOU with Apple's revisions.	0.20
7/21/2021	KSR	Shalov email to Dunne re plaintiffs can't sign MOU without entire agreement to review. Dunne response. Email from Matt Riley with full MOU. Email from Shalov re prepared to sign MOU. Review.	0.60
7/23/2021	KAK	Review and evaluate email correspondence from defense counsel Dunne circulating revised MOU; evaluate revised MOU and explanations for changes provided by Dunne; review emails from co-counsel Shalov re same; draft email to Shalov re same	0.60
7/24/2021	KSR	Shalov email to Dunne re MOU signatures.	0.20
7/27/2021	KAK	Review and evaluate email from co-counsel Shalov re revision made by defense counsel to MOU; assess next steps and moving forward with MOU; email to Shalov re same	0.10
7/29/2021	KAK	Review communication from co-counsel Shalov re call from defense counsel Dunne; telephone discussion with Shalov re same and information and positions stated by Dunne; review email from Shalov circulating final MOU; sign MOU and return to Shalov; discussion with Shalov re email received from attorney Dion-Kindem; draft email to Dion-Kindem and circulate to Shalov; locate mediation confidentiality agreement; circulate to Shalov along with revised draft email; review email from Shalov approving same; finalize and send to Dion-Kindem and attorney Blanchard; correspondence with Shalov re stipulation to further extend deadlines	0.70

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			<u>Hours</u>
7/29/2021	KSR	Email from Riley with fully-executed MOU.	0.20
7/30/2021	KAK	Review enotification re filing of stipulation to further extend deadlines; review and evaluate email from attorney Dion-Kindem re same; draft reply to Dion-Kindem; review voice mail message from co-counsel Shalov	0.10
	KSR	Review filed stipulation re case deadlines.	0.20
8/3/2021	KAK	Review signed mediation confidentiality agreement and transmittal email from attorney Dion-Kindem; review email from Shalov to Dion-Kindem and Blanchard circulating signed MOU; review email from defense counsel re contacting court about stipulation to extend schedule; correspondence with KSR re covering same; email to KSR re next steps including preparation of long-form settlement agreement; review emails from KSR to Shalov re contacting court and whether defense counsel agreed to prepare first draft of long-form agreement	0.40
	KSR	Email from Matt Riley re status of court review of parties' stip to extend deadline for class notice in light of pending settlement and request for call to discuss. Emails with Apple counsel and co-counsel re availability for and arrangements for joint call. Research Judge Alsup's standing orders re Apple's proposal to call clerk re stip. Email to Shalov re proposal and forward standing order, with suggestion to file joint written request. Email from KAK re status of long-form settlement agreement. Further email to Shalov re status of long-form settlement agreement. Email to Matt Riley with contact info for joint call re stip. Review/analyze court order re stip to continue case deadlines in light of pending settlement. Email to Matt Riley re order; response from Riley canceling joint call.	1.70
8/5/2021	KSR	Email to Matt Riley for status of draft long-form settlement agreement.	0.20
8/11/2021	GMG	Review order extending deadlines and other scheduling orders, prepare revised chart of settlement deadlines and email KAK and KSR re same	0.90
	KAK	Review enotification re order on stipulation to extend deadlines; review email from co-counsel Shalov to defense counsel re status of draft long-form agreement; assess status and next steps; email to KSR re revised deadlines set by court	0.10
	KSR	Email from KAK with request to review court's order extending all deadlines; reply and recalculate class notice and all related dates. Review/analyze notice and calculate revised deadlines; review and revise deadlines chart prepared by GMG. Circulate with request to GMG to double-check dates. Review Northern District guidelines for preliminary approval motion and begin outline of motion. Calendar revised settlement approval and administration dates.	3.20
8/12/2021	KAK	Review new chart of deadlines prepared by KSR and GMG reflecting dates ordered by Judge Alsup; review Alsup's order; discussion with KSR re next steps	0.30
	KSR	Telephone call with KAK to discuss court's extension to finalize settlement and new deadlines and draft of preliminary approval motion. Research for preliminary approval motion; begin draft.	1.70
8/13/2021	KSR	Email to Matt Riley for status of draft long-form settlement agreement; continued work on preliminary approval research.	0.40
8/17/2021	KSR	Email from Shalov with redlined edits to Apple's draft long-form settlement agreement; review.	0.40

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			<u>Hours</u>
8/18/2021	KAK	Review emails from defense counsel circulating latest version of long-form settlement agreement draft exhibits to settlement agreement and from co-counsel Shalov circulating his comments on long-form agreement and proposed class notice; email to KSR re reviewing same	0.10
	KSR	Email from KAK requesting review and respond to Shalov's redline to Apple's draft settlement agreement; respond.	0.20
8/19/2021	KSR	Email from Shalov re draft settlement agreement; respond. Review Shalov's redline and research for and draft edits to Apple's draft settlement agreement. Further emails with Shalov and KAK re edits to settlement agreement.	3.10
8/20/2021	KAK	Review email from co-counsel Shalov re status of our review of settlement papers; review and evaluate redline versions of draft settlement agreement prepared by co-counsel Shalov and KSR; prepare redline with additional proposed revisions; draft detailed email to Shalov and KSR re concerns with certain provisions and proposed changes, and circulating redline	1.40
	KSR	Email from KAK re edits to settlement agreement. Review/analyze comments and edits to draft settlement agreement from KAK.	0.30
8/23/2021	KAK	Review email from co-counsel Shalov approving revisions to long-form settlement agreement circulated last Friday; correspondence re next steps, including preparation of a redline reflecting all changes	0.10
	KSR	Email from Shalov requesting new redline with collective edits to Apple's draft settlement agreement. Emails with KAK and Giaimo re draft settlement agreement. Request to Giaimo to run compare redline with all edits, incorporate KAK's comments and circulate new draft for my review. Further emails with Giaimo regarding logistics of collective edits. Locate and forward prior edited versions and comments to incorporate to Giaimo. Research for and further work drafting motion for preliminary approval of settlement. Emails with Giaimo re settlement agreement.	2.20
8/24/2021	KAK	Review, evaluate and reply to email from co-counsel Shalov re circulating settlement agreement; review email from co-counsel Giaimo circulating latest redline; preliminary review of same and reply to Giaimo re additional changes needed; further correspondence with Giaimo re same; further correspondence with KSR re same	0.40
	KSR	Emails with team re revisions to draft settlement agreement including revised draft from Giaimo. Research for and draft further edits to settlement agreement. Circulate revised draft. Further emails with KAK re Apple's provisions in draft agreement. Review/analyze Giaimo's email with differences between MOU and Apple's draft agreement. Further emails re differences. Further emails with KAK re various provisions in agreement. Email from KAK requesting comparison of particular language in settlement agreement and MOU. Forward MOU to Giaimo. Review/analyze email comments from Giaimo comparing settlement agreement to MOU. Email from Shalov with further edits to draft settlement agreement. Research for and respond to Shalov's edits and comments. Emails with KAK re another draft provision. Review notes from mediation and later discussions with Apple's counsel re this provision and further emails with KAK re Apple's draft agreement. Email from Shalov re status. Email from KAK re further edits and draft revisions accordingly.	2.70
8/25/2021	KAK	Further correspondence with KSR re revisions to settlement agreement and redline to be prepared for circulating to defense counsel Dunne	0.10
	KSR	Emails with KAK and Giaimo re logistics and substantive edits to finalize all edits to Apple's draft settlement agreement. Further emails with KAK re certain draft terms. Email to KAK re added provision. Further emails with Giaimo re final language in agreement and circulating to Apple.	1.40

			<u>Hours</u>
8/26/2021	KAK	Correspondence with co-counsel re same and next steps to finalize document and circulate to defense counsel; review email from KSR circulating latest edits in redline; close review of settlement agreement and correspondence with KSR re further changes needed; further email to co-counsel re issues related to Angeion's bid; review and evaluate email from co-counsel Giaimo re discrepancies between MOU and long-form settlement agreement; email to KSR and co-counsel re additional changes needed; review new revised redline prepared by KSR; email to KSR re final changes	1.30
	KSR	Review consolidated redline of settlement agreement; draft further edits. Circulate with comments. Emails from KAK with further edits and comments. Research for and draft further revisions, incorporate KAK's comments, and circulate. Email from Shalov to get draft to Apple today. Make final revisions to draft agreement per emails from KAK and circulate.	4.10
8/27/2021	KAK	Review final correspondence re redline version of settlement agreement; review email from co-counsel circulating redline to defense counsel; evaluate next steps, including review of draft exhibits to settlement agreement; email to KSR re same	0.10
	KSR	Email from KAK requesting that I review the exhibits to the draft settlement agreement from Apple; respond. Review/analyze and draft edits to Apple's draft settlement notices to the class. Circulate. Further email to team re edits to settlement notices to the class. Email from Giaimo with clean and redlined drafts of settlement agreement; review. Giaimo email to Apple with revisions to agreement and Matt Riley acknowledgment.	2.70
8/29/2021	KSR	Review and draft edits to Apple's draft preliminary approval order.	1.10
8/30/2021	KAK	Evaluate need for reminder notices to be sent to class members who did not cash their checks; assess addition of this provision to draft settlement agreement; assess other outstanding issues and questions related to settlement agreement and exhibits; draft detailed email to KSR and co-counsel re same	0.20
	KSR	Email from KAK re review of remaining exhibits to settlement agreement; reply. Further review/analysis, research for and draft substantial, wholesale revisions to Apple's proposed preliminary approval order. Circulate with comments. Email from Giaimo responding to KAK's question re scope of Angeion bid and covering cost of re-mailing and re-issuing class checks. KAK reply. Further email to team regarding defects in Apple's proposed order.	3.40
8/31/2021	KAK	Review and evaluate email from KSR re extensive changes needed to one of Apple's draft exhibits; reply to KSR and co-counsel re circulating a clean copy rather than a redline; review email from co-counsel from Giaimo circulating Angeion's latest administration bid	0.10
9/1/2021	KAK	Review and reply to email from co-counsel Shalov requesting conference call re status; prepare for and participate in conference call; draft email to Angeion requesting estimate to mail reminder notices to class members who did not cash their checks; review preliminary response from Angeion re same	0.60
	KSR	Emails to set conference call to discuss status of settlement agreement and exhibits. Conference call to discuss edits to Apple's exhibits to settlement agreement and motion for preliminary approval. KAK re-mail to Angeion re administration bid.	0.90
9/2/2021	KAK	Review email from Angeion and estimate of cost to issue reminder notices to class members who do not cash their checks; forward same to co-counsel and KSR; review email from co-counsel circulating current drafts of exhibits to long-form settlement agreement; close review and analysis of draft exhibits; prepare redlines with proposed changes and comments; circulate same to KSR and co-counsel with detailed transmittal messages re changes made; correspondence with co-counsel re	2.30

		<u>Hours</u>
	review of Exhibit F; further email to Angeion re scope of its bid; review reply from Angeion	
9/2/2021	KAK Analysis of portions of proposed class notices reflecting amount to be sought in attorneys' fees; evaluate this issue and email to KSR re legal research needed (FEES)	0.20
	KSR Email from Giaimo with redlined edits to draft preliminary approval order, final approval order and judgment, which are exhibits to settlement agreement. Review/analyze redlined text. Email from Angeion Group re cost for check-cashing reminder notice to class; response from KAK re need to modify the administration costs accordingly in settlement agreement and exhibits. Email from KAK re whether Angeion bid includes phone support. Email from KAK with redlines to draft class notices and comments; review. Email from Giaimo with Apple's draft Ex. E to settlement agreement, Angeion service agreement; quick review. Email from KAK re analysis and edits to this agreement. Email from Angeion re phone support included in original bid. Email from KAK with additional edit to exhibits to SA.	1.40
	KSR FEES - Email from KAK requesting research for fee motion and forecasting amount we will seek in motion for preliminary approval. Respond and begin research.	0.40
9/3/2021	KAK Evaluate status of finalizing exhibits to settlement agreement; follow-up email to KSR re next steps and certain issues raised in my redlines; further correspondence with KSR re same; emails to co-counsel Shalov and Giaimo re status and finalizing redlines to circulate to defense counsel	0.90
	KSR Email from KAK with questions regarding exhibits to settlement agreement; review exhibits and notes and respond. KAK reply. Email to Giaimo to make further edits to exhibits to settlement agreement. Further emails with KAK re edits to exhibits to SA. Email response to KAK re review of Information Security and Services Agreement exhibit to SA.	0.50
	KSR FEES - Emails with KAK re motion for attorneys' fees and forward authorities. Research further Alsup opinions regarding fee percentage likely to be awarded to class counsel, and factors court will consider for fees above Ninth Circuit benchmark. Further email to KAK re analysis of Alsup opinions and strategy for fee motion. Further research re additional Ninth Circuit authority re benchmark and factors for fees.	1.40
9/6/2021	KAK Further follow-up with co-counsel Shalov and KSR regarding finalizing redline exhibits and circulating same to defense counsel ASAP this week	0.10
	KSR Emails with KAK re coordinating with Giaimo and Shalov on completing exhibits to SA. Further work on status of exhibits.	0.40
9/7/2021	KAK Review, evaluate and reply to communication from KSR re email received from defense counsel Dunne requesting time for call to discuss long-form settlement agreement and proposed revisions thereto	0.10
	KSR Email from Giaimo circulating redline versions of exhibits to settlement agreement. Email from Julie Dunne to schedule a call to discuss proposed revisions to long-form settlement agreement. Further emails with team to coordinate call.	0.60
9/10/2021	KAK Review email from co-counsel Giaimo circulating to defense counsel redlines and revisions to exhibits to settlement agreement; review correspondence between co-counsel and defense counsel scheduling call to discuss current draft of long-form settlement agreement and proposed revisions thereto; prepare for and participate in call with KSR, co-counsel Shalov and defense counsel re settlement agreement; locate and revise language for reminder post card; circulate same to KSR and	1.70

		<u>Hours</u>
	co-counsel; post-call correspondence with KSR and co-counsel re matters discussed and next steps	
9/10/2021	KSR Participate in call with Apple's counsel to negotiate long-form settlement agreement. Emails with KAK re class. Email from KAK re text for reminder postcard to class members with uncashed checks. Review/analyze; forward to Shalov. Further emails with KAK re resolution of class list produced by Apple. Email from Matt Riley with documents referred to in Apple's draft of section of SA releasing class claims.	1.50
9/13/2021	KAK Review email from defense counsel Riley circulating documents referred to in their proposed definition of "class claims," including LWDA letters; evaluate next steps to be completed in finalizing long-form settlement agreement; draft detailed email to KSR and co-counsel re analysis needed; email to KSR and co-counsel re additional argument to be made in negotiations with defense counsel; review responses from KSR re same	0.40
	KSR Email from KAK regarding class list issues. Research for and email to KAK re same. Email from Shalov approving text for postcard reminder to class members with uncashed checks. Forward to Julie Dunne for inclusion in settlement agreement and exhibits. Email response to KAK re additional negotiation points and research related to release of claims section of draft settlement agreement; draft analysis and circulate to Shalov, Giaimo, KAK.	3.90
9/14/2021	KAK Evaluate next steps and points to be made to defense counsel Dunne re draft settlement agreement; review, evaluate and reply to email from KSR re research on language re "class claims"; prepare lengthy draft email to Dunne re this issue and other remaining points of negotiation; circulate same to co-counsel and KSR for review and comment; correspondence with co-counsel and KSR re same; review email from KSR approving draft email to Dunne; follow-up email to co-counsel Shalov re same	1.30
	KSR Email from KAK with draft email to defense counsel re settlement issues. Review/analyze/respond to KAK. Email from KAK requesting additional research.	0.80
9/15/2021	KAK Review email from co-counsel Shalov approving draft email to defense counsel Dunne and Riley re several provisions in the long-form settlement agreement; prepare final revisions, finalize and circulate to Dunne and Riley; review preliminary response from Dunne stating she simply forwarded the message to her client rather than evaluating any aspect of it; review emails from GMG and co-counsel Gallaway; review further email from Gallaway re same	0.30
	KSR Email from Shalov responding to draft language for SA; KAK response and email to Dunne. Response from Dunne re sent language to Apple for review. Email from GMG re KAK's request for list of original opt-outs. Email from Gallaway re same.	0.20
9/16/2021	KSR Email from Matt Riley with stip to continue case deadlines. Evaluate.	0.10
9/17/2021	KAK Review email and evaluate proposed stipulation to extend deadlines, circulated by defense counsel Riley; review email from co-counsel Shalov approving same; review notification confirming filing of same; review correspondence regarding opt-outs following previous class notice and responses from co-counsel Gallaway and KSR re same	0.10
	KSR Emails with team re number of original opt-outs Email from Shalov with ok to file stip to stay case deadlines, Riley response. Review filed stip and proposed order.	0.10
9/20/2021	KAK Review notification and order extending deadlines for 35 days; assess impact on case timing; email to GMG re preparing updated chart of deadlines	0.10

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			<u>Hours</u>
9/20/2021	KSR	Review/analyze court's order staying case deadlines. Email from KAK re 35-day extension of deadlines.	0.10
9/21/2021	GMG	Review order rescheduling, update calendar, revise and circulate settlement approval schedule chart; confer with KAK	0.70
	KAK	Follow-up email to GMG re need to prepare updated chart of deadlines based on Judge Alsup's order; telephone discussion with GMG re same; evaluate status of long-form settlement and exhibits; email to co-counsel and KSR re need to review draft Exhibit F prepared by defense counsel	0.30
	KSR	Email from KAK regarding recalculating deadlines after court order on stip; GMG response calendar updated. Email from KAK requesting review of Apple's Exhibit F to Settlement Agreement. Email from GMG with chart showing revised case deadlines; evaluate impact on anticipated schedule.	0.30
9/22/2021	KAK	Review and evaluate updated calendar of deadlines prepared by GMG; circulate same to KSR and co-counsel; review and evaluate detailed email from defense counsel Riley with comments on long-form settlement agreement and circulating redline with latest proposed changes to agreement; evaluate next steps in negotiation	0.30
	KSR	Email from KAK re November 1 deadline to disseminate notice to the class; further email from KAK re Nov. 1 deadline. Email from Matt Riley with proposed revisions to settlement agreement. Review/analyze.	0.80
9/23/2021	KAK	Review and evaluate email from co-counsel Giaimo circulating comments on proposed Exhibit F to long-form settlement agreement; review, evaluate and reply to email from co-counsel Shalov re scheduling call to discuss next steps following receipt of further comments from defense counsel on long-form settlement agreement; review email from Shalov to defense counsel confirming receipt of comments on settlement agreement	0.10
	KSR	Shalov email to Riley re we will discuss Apple's proposed revisions to SA and get back. Email from Shalov to set up call to discuss Apple's recent comments to settlement agreement; respond with availability. Email from Giaimo with proposed revisions to Ex. F to Settlement Agreement.	0.60
9/24/2021	KSR	Further emails to set up call to discuss Apple's revisions to settlement agreement.	0.20
9/27/2021	KAK	Preparation for today's strategy call with KSR and co-counsel, including review of latest points received from defense counsel on long-form settlement agreement; participate in lengthy strategy call with KSR and co-counsel regarding additional changes to defendant's redline; review email from co-counsel Shalov to defense counsel requesting time to discuss additional revisions	1.40
	KSR	Call with KAK, Shalov, Giaimo to discuss Apple's proposed edits to long-form settlement agreement. Shalov email to Dunne and Riley re whether they have time to discuss their edits to SA. Email response from Riley to set up call.	0.40
9/29/2021	KAK	Review new published opinion regarding scope of releases in class action settlements; circulate same to KSR and co-counsel; review and reply to response from co-counsel Shalov re same and another new issue raised in negotiations; review relevant stipulation and forward to Shalov; prepare redline showing changes made by defense counsel to our redline and confirm whether any were ignored; review and reply to email from Shalov re his conversation with defense counsel today re final changes to long-form settlement agreement	0.40

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			<u>Hours</u>
9/30/2021	KSR	Email from KAK re Amaro opinion on release language. Review/analyze. Email from Shalov re remaining settlement agreement terms; KAK response re stip and order. Further emails re these issues. Email report from Shalov re Dunne will go back to Apple on remaining issues. Further emails with KAK and Shalov re same.	0.90
	KSR	FEES - Email from Shalov re attorney's fees issues. Email response to Shalov re same.	0.30
10/1/2021	KAK	FEES - review order on fee motion circulated by co-counsel Shalov; review and reply to emails from Shalov and KSR re same	0.30
	KSR	FEES - Emails with KAK and Shalov regarding fees to request in fee motion, to discuss in motion for preliminary approval.	0.30
10/5/2021	KSR	Email from Shalov with draft of joint declaration iso preliminary approval. Review/analyze.	0.40
10/6/2021	KSR	Email from Shalov regarding past distributions requirement for declaration iso motion for preliminary approval of settlement. Review/analyze Northern District guidelines re past distributions requirement. Response to Shalov re will provide text and required chart re past distributions	0.60
10/7/2021	KAK	Review email from co-counsel Shalov circulating draft joint declaration in support of preliminary approval motion; closely review draft declaration; prepare redline with detailed edits and comments; draft email to co-counsel Shalov, Gallaway, and Giaimo and KSR circulating same and with further comments, including comments on portions of declaration to be included in brief and additional evidentiary support needed for certain assertions in draft declaration; further correspondence with KSR re insert needed for declaration; review correspondence between KSR and co-counsel Shalov re Judge Alsup's rule re information on past settlements negotiated by class counsel; review email from defense counsel Riley circulating further redline changes to long-form settlement agreement; review and evaluate redline; draft detailed email to co-counsel and KSR re remaining problems with draft and some of Apple's proposed edits that go beyond what we previously proposed	1.90
	KSR	Emails with KAK re additional information needed for draft declaration iso preliminary approval and past distributions insert. Research for and Draft Past Distributions chart showing details of firm's class settlements per Northern District guidelines iso motion for preliminary approval of settlement. Forward to KAK with comments. Email from KAK with redline edits to declaration iso preliminary approval motion. Review. Email from Matt Riley with redline revisions to settlement agreement.; review. Email from KAK with comments re Apple's proposed changes to SA; research for chart of settled cases.	4.50
10/8/2021	GMG	Email KSR re Safeway final approval date; prepare revised table for approval motion and email KSR re same	0.20
	KAK	Review, evaluate and reply to email from co-counsel Shalov re comments on draft declaration in support of preliminary approval and confirm revisions needed; review and evaluate draft chart re prior settlements required by Alsup and prepared by KSR; email to KSR re same	0.30
	KSR	Draft insert for joint declaration iso motion for preliminary approval of settlement, with prior distribution paragraphs. Email from Shalov to set up call to discuss Apple's proposed revisions to settlement agreement. Email from GMG with requested date to include in past distributions chart for declaration iso preliminary approval and completed chart. Emails with KAK and Shalov regarding revisions to declaration draft. Email from KAK re past distributions chart and filing in similar action before	2.20

		<u>Hours</u>
	Alsup; respond. Emails with KAK and Shalov to set up call to discuss declaration and revisions to settlement agreement.	
10/9/2021	KSR Research for and continue to draft KAK insert for joint declaration iso motion for preliminary approval of settlement, draft revisions to chart showing past distributions per Northern California guidance for class settlements. Finalize and circulate chart and partial draft of declaration.	2.80
10/11/2021	KSR Email from Gallaway requesting shift data produced by Apple in connection with mediation. Review files to locate data and email to Gallaway. Emails coordinating time for conference call to discuss declaration iso prelim approval and Apple's changes to settlement agreement. Email from Gallaway resolving data request.	0.50
10/12/2021	GMG Arrange for transfer of 2020 Apple mediation data to co-counsel Gallaway	0.20
	KAK Prepare for and participate in co-counsel conference call with KSR and co-counsel Shalov, Giaimo and Gallaway; discuss defense counsel's latest edits to long-form settlement agreement, draft joint declaration in support of preliminary approval motion, and next steps; prepare redline with changes to long-form settlement agreement; circulate same to KSR and co-counsel; telephone discussion with KSR re analysis needed of latest changes	3.20
	KSR Email from Paul Beyersdorf re class shift data requested by Gallaway; respond. Email request to GMG to send data file to Paul and Gallaway. Review Northern District Guidelines for class settlements in prep for call. Call with Giaimo, Shalov, and KAK re preparation of motion for preliminary approval, and finalizing settlement agreement with Apple. Forward to KAK. Call with KAK to discuss revised language in the settlement agreement and analysis needed. Email from KAK re exchange of lodestar figures. Email from KAK with revised paragraphs for settlement agreement; review.	1.90
10/13/2021	KAK Review email from co-counsel Shalov re discussion with defense counsel Dunne re last remaining items for long-form settlement agreement; telephone discussion with Shalov re same; email KSR re same	0.20
	KSR Email from KAK request further work to analyze Apple's latest revisions to settlement agreement. Respond. Continue analysis.	0.40
10/14/2021	KAK Review, evaluate and reply to further email from co-counsel Shalov re remaining issues with long-form settlement agreement; discussion with KSR re status of analysis project; email to co-counsel Shalov and Giaimo re ETA for draft preliminary approval motion brief, status of exhibits and other scheduling-related matters; telephone call from Shalov re same and final changes to long-form settlement agreement; email to KSR re matters discussed with Shalov and need to complete analysis ASAP	0.30
	KSR Discussion with KAK and GMG re documents needed to support motion for prelim approval, deadline for motion, etc. KAK email to Shalov and Giaimo re eta for draft brief iso motion for prelim approval. Continue analysis to assess proposed settlement agreement language. Continue drafting memo re same. Email from Giaimo with draft of motion iso prelim approval; review/analyze. Email from KAK regarding status of exhibits to settlement agreement.	4.10
10/15/2021	KAK Review and evaluate detailed memo from KSR regarding draft long-form settlement agreement; review materials referenced in memo; draft detailed reply email, including revised language for long-form settlement agreement; follow-up email with further revised language; email to KSR re same	0.90

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			<u>Hours</u>
10/15/2021	KSR	Finalize analysis of documents cited by Apple related to settlement agreement language; draft summary of results of this analysis and circulate. Further emails with KAK regarding this project and impact on positions re agreement language; further email from KAK regarding revised redline of settlement agreement to Apple. Forward additional relevant document to KAK for review. Email from KAK with revised language for SA; review.	3.20
10/18/2021	GMG	Review rules and Alsup calendar and email KAK re possible hearing dates for preliminary approval motion	0.40
	KAK	Review email from KSR circulating more relevant underlying materials; review and evaluate email from co-counsel Shalov re revised carve-out language circulated last week; draft further revisions to carve-out language and reply to Shalov to circulate same; review further email from Shalov re same; correspondence with KSR re same; review email from defense counsel Dunne with new redline of long-form settlement agreement; evaluate same; email to KSR and Shalov re remaining revisions needed; draft redline with further revisions; circulate to KSR and Shalov; review draft preliminary approval brief prepared by co-counsel Giaimo and began drafting redline changes thereto; email to KSR re questions raised by draft brief; email to GMG re projected hearing date for preliminary approval motion	3.40
	KSR	Emails with KAK and Shalov regarding negotiation with Apple re remaining language. Email from KAK re arguments for preliminary approval motion; evaluate and respond. Email from Dunne with latest draft of settlement agreement. Review edits. Email from KAK with comments to Apple's edits/additions to settlement agreement. Email from KAK with redline to settlement agreement and discussion of date to file motion for prelim approval.	1.10
	KAK	FEES - Email to GMG and KSR re status of updating hours figures for preliminary approval motion and research needed re fees	0.10
	KSR	FEES - Email from KAK re string cite to support fee request in preliminary approval motion.	0.10
10/19/2021	GMG	FEES - Emails with KAK re time reports; prepare lodestar report through September 2021 and email KAK and KSR re same	0.90
	KAK	Review and evaluate response from co-counsel Shalov re proposed further changes to long-form settlement agreement; review and evaluate email from GMG re available hearing dates; assess impact on projected motion filing deadline; prepare detailed email to Shalov re same and negotiating further extension request with defense counsel; review replies from KSR re issues raised in draft preliminary approval motion; prepare new redline; draft detailed email to KSR and co-counsel Shalov and Giaimi regarding each remaining issue and reasons for including and omitting edits proposed yesterday; review reply from Shalov and email to Shalov to defense counsel Dunne re remaining issues; continued work on redline edits to draft preliminary approval motion	4.10
	KSR	Further emails with team re Apple's proposed language for settlement agreement. Email from KAK with new redline to settlement agreement and comments. Email response from Shalov re changes to SA to propose to Apple. Shalov email to Apple responding to Apple's newest draft of SA.	0.20
	KAK	FEES - Prepare spreadsheet for purposes of calculating projected multiplier; email to KSR re same; email to GMG re checking hours and lodestar figures reported by other firms; review email from GMG with firm's updated estimated hours and lodestar through 9/30/21; add to spreadsheet; circulate updated estimated figures to Shalov; draft section of preliminary approval motion addressing fees	1.60

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			<u>Hours</u>
10/19/2021	KSR	FEES - Email from KAK re estimated lodestar and multiplier. Response re helpful for research re authority for fee motion. Email from GMG with calculated lodestar to set forth estimated multiplier for motion for prelim approval.	0.20
10/20/2021	KAK	Continued extensive work drafting comments and proposed revisions to draft preliminary approval brief; correspondence with KSR re damages issues addressed in draft brief; evaluate need for formal motion for certification of expanded settlement class to embrace new class members; close review of revised draft of joint declaration in support of preliminary approval; prepare detailed redline with comments and proposed revisions; review insert drafted by KSR regarding past settlements and incorporate same into declaration; finalize redlines of preliminary approval brief and declaration; circulate same to KSR and co-counsel	3.70
	KSR	Further email and call from KAK re liquidated damages and good faith references in brief re prelim approval; response. Research liquidated damages issue, including review of damages memo prepared for mediation and case authorities. Response to KAK re source of these references in brief. Further email from KAK re whether good faith defense applies to other claims. Response re 203 waiting time penalties. Email from KAK re draft insert for declaration iso prelim approval re past distributions. Email from KAK with redline comments on brief and dec in support. Email from Matt Riley agreeing to extension of case deadlines and request to Alsup to order. Emails with KAK and Shalov regarding need for court to certify settlement class or at least order expansion of certified class pursuant to settlement.	1.90
	KAK	FEES - Correspondence with KSR re status of fee award research; continued work drafting fee-related section of preliminary approval motion	1.10
	KSR	FEES - Emails with KAK re prior research and request to continue for Alsup and Ninth Circuit authority supporting one-third of fund request for fees and setting forth factors. Research for further supporting authorities. Email to KAK re focus on low multiplier requested for fee request, based on relevant authorities including from Alsup orders.	1.30
10/21/2021	KSR	Emails with Matt Riley and Shalov re stip to extend case deadlines 14 days.	0.10
	KSR	FEES - Continue research for reference to fee plaintiffs will request in motion for prelim approval.	1.80
10/22/2021	KSR	Email from Giaimo requesting call to discuss edits to motion for prelim approval and dec in support. Review filed stip and proposed order to extend case deadlines. Emails to coordinate call.	0.60
10/25/2021	KSR	Emails confirming call to discuss edits to brief on prelim approval and draft declaration. Email from Matt Riley with Apple's latest round of revisions to settlement agreement and exhibits; review for discussion on call re motion for prelim approval.	1.40
10/26/2021	GMG	FEES - Calculate total lodestar and expenses through 10/15/21 and email KAK re same; legal research re other fee motions and email KAK re same	0.90
	KSR	Call with KAK, Shalov, Giaimo to discuss latest draft of motion for preliminary approval and declaration, and Apple's latest edits to SA and exhibits. Email to KAK re edit to motion for prelim approval and agreement that it must ask Alsup to order inclusion of new class members. Email from Matt Riley re estimated administration bid from Angeion; emails with KAK re new bid. Email from Riley with revisions to SA and exhibits pursuant to revised Angeion bid. Email from Giaimo with revised versions of brief iso prelim approval and supporting dec.	1.70
	KAK	Review correspondence confirming time for today's strategy call; review email from defense counsel circulating new version of long-form settlement agreement; evaluate same; review email from co-counsel Shalov re same; follow-up email to Shalov re updated hours and lodestars needed to calculate multiplier for preliminary approval	5.70

motion; review email from defense counsel circulating new bid received from Angeion; email to co-counsel and KSR re fact that we had already obtained updated bid and this work was unnecessary; re-read comments on damages calculations in preparation for strategy call; other preparation for strategy call, including list of issues to be discussed during strategy call; participate in strategy call with KSR and co-counsel and discussed numerous issues related to long-form settlement agreement and exhibits, current draft of preliminary approval motion, and next steps; draft email circulating current draft long-form agreement to attorneys Blanchard and Dion-Kindem; review and reply to response from Dion-Kindem re same

10/26/2021	KAK	FEES - Emails to KSR and GMG re additional research and figures needed for fee section of motion	0.20
	KSR	FEES - Email from KAK re fee research. Email from KAK re estimated lodestar and eta for those figures. Further email from KAK re fee research to support % of fund request. Email from GMG with updated lodestar figures. Further research iso of fee request.	0.40
10/27/2021	GMG	FEES - Legal research re other fee motions and email KAK re same	0.20
	KSR	Email from Giaimo with revisions to motion for prelim approval and supporting dec; quick review. Email from KAK re working on edits and requesting eta re revisions to exhibits. Email from KAK requesting number of new class members; Gallaway response.	0.60
	KAK	Review correspondence confirming time for today's strategy call; review email from defense counsel circulating new version of long-form settlement agreement; evaluate same; review email from co-counsel Shalov re same; review email from defense counsel circulating new bid received from Angeion; email to co-counsel and KSR re fact that we had already obtained updated bid and this work was unnecessary; re-read comments on damages calculations in preparation for strategy call; other preparation for strategy call, including list of issues to be discussed during strategy call; participate in strategy call with KSR and co-counsel and discussed numerous issues related to long-form settlement agreement and exhibits, current draft of preliminary approval motion, and next steps; draft email circulating current draft long-form agreement to attorneys Blanchard and Dion-Kindem; review and reply to response from Dion-Kindem re same	4.50
	KAK	FEES - Follow-up email to Shalov re updated hours and lodestars needed to calculate multiplier for preliminary approval motion	0.10
10/28/2021	GMG	FEES - Email KAK re time reports and updated lodestar; legal research re other fee motions and email KAK re same; email KAK re class rep depositions and attorneys on Kalin docket	0.60
	KSR	Email from KAK requesting research for insert to brief iso prelim approval of settlement. Email to KAK re schedule for review of current drafts of prelim approval motion and exhibits. Email from Giaimo with Apple's noteworthy changes to settlement exhibits; review/analyze. Email to KAK re authority requesting federal court to apply California law for fee motions based on California claims and forward authorities. Emails with team quantifying opt-outs. Email from KAK after review of Apple's edits to settlement exhibits; and request for call to discuss among co-leads. Shalov suggestion for call with Apple to address current versions. Email from Giaimo with updated damage analysis; review. Email from KAK re calculation of penalties using average number of shifts. Email from Shalov to Apple's counsel scheduling call to current versions of settlement exhibits. Email question from KAK re whether unpaid wages calculated at time and a half rates. Related email from KAK re liquidated damages figures. Email from Matt Riley re call to discuss exhibits and	1.20

		<u>Hours</u>
	checking with clerk re order on stip to extend case deadlines. Email from KAK with redlines to current versions of motion for prelim approval and dec.	
10/28/2021	KAK Review and reply to email from GMG confirming class representatives' depositions; review and reply to email from co-counsel Gallaway confirming exact numbers of existing and proposed new class members; evaluate information and incorporate it into redline comments on preliminary approval motion brief; continued extensive work on comments and revisions to preliminary approval motion brief, with focus on damages calculations; evaluate damages spreadsheet prepared by co-counsel; telephone discussion with KSR re calculation of liquidated damages remedy; draft various emails to co-counsel re several issues related to damages calculations and additional calculations needed; prepare redline with comments and proposed revisions to supporting declaration; finalize redline versions of brief and declaration and circulate to KSR and co-counsel; review email from attorney Dion-Kindem circulating redline comments on settlement agreement; review email from co-counsel Shalov with preliminary thoughts on these comments; review and evaluate redline; draft detailed email to Shalov with thoughts on same; telephone discussion with Shalov re same and following up with clerk re status of stipulation to extend case deadlines; email to GMG re checking docket	7.10
	KSR FEES - Further research for support for fee request; forward authorities to KAK with comments.	0.90
	KAK FEES - Review updated lodestar figures prepared by GMG and incorporate into declaration; final edits to fee section of preliminary approval motion	0.60
10/29/2021	GMG FEES - Legal research re other fee motions and email KAK re same	0.20
	KSR Emails with Giaimo and Matt Riley to contact court re stip and proposed order to extend case deadlines. Emails from Gallaway addressing KAK's questions re rates used to calculate damages. Compare to damages memo. Email from Giaimo with revised drafts of brief iso prelim approval and dec. Email from Giaimo re attempts to contact clerk re stip and order. Email from KAK re will work on shortening the brief. Email from Giaimo to clerk re stip and order to extend case deadlines. Emails from KAK re adding tabs to damages charts, etc. Review order from Alsup to extend case deadlines; calendar.	0.90
	KAK Review email from GMG re review of docket; forward same to co-counsel Shalov; reply to GMG re further checking needed; further evaluation of comments of attorney Dion-Kindem on settlement agreement; prepare redline with proposed further revisions based on these comments; circulate to co-counsel Shalov; review and reply to email from Shalov re further changes thereto and circulating same to defense counsel; review email from Shalov to defense counsel circulating revised redline; review email from co-counsel Gallaway and updated damages chart; further evaluation of damages issues addressed by Gallaway; review and reply to email from co-counsel Giaimo circulating new drafts of preliminary approval brief and supporting declaration; review email from Giaimo re efforts to contact clerk regarding status of stipulation extending case deadlines; evaluate priority of tasks related to finalizing settlement agreement and preliminary approval motion; review email from GMG re counsel of record appearing on updated dockets; forward same to Shalov; careful analysis of updated damages chart provided by Gallaway; run additional estimated figures; draft detailed email to Gallaway et al. regarding changes needed to the calculations and new tabs needed for estimates using average shifts figure	2.40
11/1/2021	KAK Further close review of email from co-counsel Giaimo with summary of latest changes to exhibits to settlement agreement; close review of each exhibit; prepare redlines with edits to Exhibits A, D, E, F, and G; circulate same to co-counsel Shalov, Giaimo, Gallaway and KSR; telephone discussion with Shalov re finalizing and circulating exhibits to defense counsel; review current draft settlement agreement and prepare list of projected deadlines if preliminary approval is granted on hearing date, including	5.20

class notice deadline and motion deadlines; circulate same to Shalov; correspondence with KSR re revisions to Exhibit C (preliminary approval order); draft revisions to Exhibit C in redline; review proposed changes of KSR to this exhibit and incorporate same into redline; finalize and circulate to KSR and co-counsel; review email from KSR re same; draft email to defense counsel circulating redlines of all exhibits and explaining that edits to Exhibit B should be the same as those to Exhibit A; finalize and send; review and reply to email from co-counsel Gallaway circulating revised damages chart with additional calculations

11/1/2021	KSR	<p>Emails with KAK re review of Apple's revised draft of preliminary approval order. Review and draft redline edits to Apple's draft order and circulate. Email to coordinate call to discuss status of settlement agreement and draft of motion for preliminary approval. Further emails with KAK re draft order. Review/analyze further edits from KAK to draft order and emails to circulate. Email from KAK with redlined edits to Exhibit G-Angeion Security Agreement-to Settlement Agreement; review. Further emails from KAK with redlined edits to Exhibits A and F to Settlement Agreement; review. Further emails with Shalov and KAK re exhibits. Emails with KAK and Giaimo regarding damages analysis for motion for preliminary approval, and questions re data and calculations of damages. Further emails from KAK with edits to Exhibits D & E; quick review. Further emails with KAK re Apple's substantive edits to original draft order granting preliminary approval. KAK email to Apple circulating current drafts of exhibits to motion for preliminary approval of settlement.</p>	2.30
	KAK	<p>FEES - Telephone discussion with Shalov re finalizing and circulating exhibits to defense counsel and re collecting updated lodestar information from other co-counsel firms for purposes of fee motion; review correspondence between Shalov and other firms requesting updated and vetted time and expense reports</p>	0.20
11/2/2021	KAK	<p>Evaluate status and work necessary to complete draft of preliminary approval motion and brief suitable for circulating to defense counsel by tomorrow; email to co-counsel Shalov re status and next steps, including reaching out to clients to advise that we expect long-form agreement to be ready for signature soon; review email from co-counsel Gallaway to clients re status; continued work on preliminary approval motion, with extensive revisions to incorporate updated damages calculations and to shorten brief to meet page limit; double-check rules re length of brief; correspondence with co-counsel Gallaway re value of estimated employer-side payroll taxes to be paid by Apple; email to defense counsel re same; review and evaluate updated damages spreadsheet prepared by Gallaway; email to Gallaway with additional questions re same; further correspondence with Gallaway re same; prepare for and participate in lengthy conference call with co-counsel and defense counsel re proposed changes to exhibits to long-form settlement agreement; email to KSR re assistance needed with finalizing brief and supporting joint declaration; review and respond to reply from KSR re same; finalize clean and redline versions of brief and circulate to KSR and co-counsel; review current draft of joint declaration in support of preliminary approval; prepare redline with additional edits and comments on same; review and revise chart prepared by KSR with data on recent settlements; finalize chart; finalize redline comments on declaration; circulate both to KSR and co-counsel</p>	9.20
	KSR	<p>Emails with KAK re past distributions chart required by Northern District Guidelines for Class Settlements and forward completed chart to KAK with comments. Further emails with KAK re need for cite checks of brief in support of motion for preliminary approval. Conference call with team to discuss strategy re motion for preliminary approval of settlement and exhibits. Proofread preliminary approval motion and joint declaration. Further emails with KAK and Brett Gallaway re discussion of class damages in motion for preliminary approval. Further emails re employer side payroll taxes addressed in agreement. Gallaway email to class reps and Frlekin re status of settlement agreement; their responses. Further emails re requesting Apple to supply projected tax figures. Emails re calculation of net distribution amount in preliminary</p>	1.80

		<u>Hours</u>
	approval motion. Further emails re updated damages spreadsheet to support motion. Further emails re pay rate for calculations.	
11/2/2021	KSR FEES - Call with KAK, Shalov to discuss fee issues.	0.20
	KAK FEES - Conference call with KSR and co-counsel re fee issues	0.20
11/3/2021	KAK Review email from co-counsel Gallaway circulating revised damages chart; evaluate revised damages chart; prepare list of comments and proposed changes; draft further revisions to brief incorporating damages figures; finalize and circulate to KSR and co-counsel; review email from co-counsel Giaimo circulating revised declaration; draft revisions to same to incorporate damages figures; finalize and circulate to co-counsel; draft email to co-counsel Gallaway regarding proposed changes to damages chart; evaluate remaining tasks to circulate brief and declaration to Apple; draft email to co-counsel and KSR re list of remaining tasks; review to email from co-counsel Giaimo circulating latest draft declaration; review draft and reply to Giaimo re final changes needed; review revised and updated damages chart prepared by co-counsel Gallaway; email to Gallaway et al. approving same; review email from Giaimo circulating latest revised drafts of brief and declaration; correspondence with KSR re status of proofread and checking cites to settlement agreement; review email from KSR to Shalov and Giaimo with final changes needed; email to Giaimo asking him to incorporate these changes, finalize and circulate documents to defense counsel; review email from Giaimo to defense counsel circulating same	3.00
	KSR Further review/analyze drafts of motion for preliminary approval of settlement and joint declaration in support. Draft and circulate edits. Emails with KAK re further cite-checking of revised drafts circulated by Giaimo. Review/analyze and circulate further edits with cite corrections including to settlement agreement. Emails regarding additional edits to be made after circulated to Apple. Giaimo email circulating current drafts to Apple. Further emails with KAK re edits to motion and joint declaration re prelim approval. Email with KAK re revised and shortened brief. Email from KAK with revised version of brief with past distributions chart; review. Email from Matt Riley with calendar invite re call with Apple counsel to discuss status of settlement agreement and exhibits. Emails with KAK and Brett re damages analysis in motion for prelim approval. Email from Shalov with revised version of joint declaration; quick review; response from KAK with further revisions to brief re calculation of class damages; Giaimo response. Further emails from KAK with proposed edits to damages charts iso motion for prelim approval. Further email from KAK with list of remaining tasks for motion and to whom assigned; review. Email from Giaimo with finalized draft of joint declaration to circulate to Apple. Email from KAK with final edits. Further email from Giaimo with final versions of brief and joint dec to circulate to Apple, per provision in settlement agreement. Email from Brett with final damages analysis. Review/analyze final drafts of brief and joint declaration and forward edits to Giaimo. Email from Giaimo with clean copy incorporating edits. Further emails with Giaimo re forward to Apple. Giaimo email circulating to Apple.	3.80
	KAK FEES - Review and reply to email from co-counsel Shalov regarding hours and lodestar figures for purposes of declaration in support of preliminary approval	0.10
11/4/2021	KAK Evaluate next steps after draft preliminary approval motion and declaration were circulated to defense counsel in anticipation of filing motion to next week; discussion with KSR re same; draft email to co-counsel Giaimo requesting Word versions of final documents circulated to defense counsel; review and reply to email from defense counsel Dunne requesting change in start time for today's call to discuss settlement agreement and exhibits, including plaintiffs' latest changes thereto, circulated last week; review email from defense counsel Riley circulating redlines of settlement agreement and exhibits with Apple's responses to plaintiffs' latest proposed changes from last week; participate in call with co-counsel and defense counsel and discussed latest sets of changes to each document; email to KSR re matters discussed during call; evaluate latest settlement administration bid from Angeion in view of issues	1.80

		<u>Hours</u>
	raised during call re Angeion contract exhibit to settlement agreement; draft email to co-counsel and KSR re same and remaining issues to be discussed with defense counsel	
11/4/2021	KAK FEES. Research re evidence in support of fee motion, including orders by Judge Alsup citing such evidence; circulate example declarations to co-counsel Shalov re same; correspondence with Shalov re same	1.30
	KSR Emails re further call with Apple to discuss final settlement agreement provisions. Email from Matt Riley with latest versions of settlement agreement and exhibits from Apple, to address on conference call. Review same. Emails with KAK with status after call with Apple and next steps. Email from KAK reiterating language in Angeion bid re pre-payment of notice costs and need to resolve.	0.60
11/5/2021	KAK Draft follow-up email to defense counsel Riley re status of settlement agreement and exhibits with remaining changes he was supposed to prepare; review and reply to his response re status; review email from Riley circulating revised documents; prepare redlines to confirm changes made since last versions; review and evaluate proposed changes to Exhibit B; prepare redline with further changes to comport with yesterday's discussion; circulate same to co-counsel with detailed transmittal email re preparing version of agreement and exhibits to circulate to clients and other signatories; review and reply to email from co-counsel Shalov re same and circulating Exhibit B to defense counsel; draft email to defense counsel circulating redline changes to Exhibit B	1.30
	KSR Emails with Julie Dunne, KAK, Giaimo and Shalov re finalizing settlement agreement and exhibits, including my analysis of proposed further edits. Email from KAK to Riley re eta for Apple's changes to settlement agreement docs; Riley response to Dunne to circulate following completion of call with Apple. Email from KAK re remaining issue with Angeion. Evaluate same and reply. Email from Julie Dunne with revised version of settlement agreement and exhibits, and comments to prelim approval motion and declaration. Email from Shalov re circulating for signatures. Emails from KAK re edits to Ex. B. Evaluate and reply. Email from Shalov with further edit to draft prelim approval order.	0.90
11/6/2021	KAK Review and reply to correspondence from co-counsel Shalov and Giaimo re finalizing settlement agreement with exhibits to be circulated to all signatories; telephone discussion with co-counsel Shalov re same and matters discussed with defense counsel related to finalizing agreement and exhibits, including final changes to Exhibit B circulated yesterday	0.30
11/7/2021	KSR Review emails re sending revised settlement agreement and exhibits to Apple and other counsel for plaintiffs. Coordinate/emails with Shalov re call requested by Julie Dunne to discuss provisions of settlement agreement.	0.40
11/8/2021	KSR Telephone call with KAK, Shalov and defense counsel re finalizing provisions of settlement agreement and preliminary approval order. Email from Matt Riley with revisions to draft preliminary approval order. Review. Further email from Riley re data sets for damages calculations. Email from KAK re forwarding final agreement to plaintiffs to sign. Shalov email to Dunne re current version of settlement agreement and exhibits is acceptable to plaintiffs and he will circulate to them to sign; email forwarded to Brett to circulate to plaintiffs. Shalov email to other plaintiffs' counsel to sign agreement. Emails from plaintiffs regarding settlement.	1.20
	KAK Email to co-counsel Shalov re status of finalizing exhibits; telephone discussion with Shalov re same and preparation for scheduled call with defense counsel; prepare for and participate in call with defense counsel as well as co-counsel Shalov and KSR regarding remaining issues related to settlement agreement and exhibits, including exhibit pertaining to Angeion; review email from defense counsel Dunne circulating	1.60

		<u>Hours</u>
	PDF comprising complete settlement agreement and exhibits; check same to ensure changes discussed during telephone conference were made; telephone discussion with co-counsel Shalov re same and need for him to double-check final version; review email from Shalov to Dunne stating that PDF version circulated is acceptable to plaintiffs; review correspondence between co-counsel Gallaway and clients circulating agreement and asking them to review and contact him with any questions; review emails from clients and email from Gallaway re signatures	
11/9/2021	GMG Proofread preliminary approval motion, check cites and quotes and email KAK re same	3.80
	KSR Review revised draft of preliminary approval motion and check cites to Settlement Agreement; circulate redline with corrected cites. Email from KAK re revisions to damages figures; Giaimo response. Shalov email to Apple's counsel re declarant supporting the settlement to the court. Email from Giaimo with current draft of motion for prelim approval and joint declaration. KAK request for redlines for further review. Dunne response re Riley declarant for Apple for settlement. Further email from Giaimo with final versions of motion and declaration except for revisions to damages calculations. Email from Julie Dunne will further revisions to preliminary approval order. Email from KAK with edits to brief. Email from KAK with redlines to joint declaration. Email from KAK requesting GMG to conduct further cite checks, and that I re-check cites to settlement agreement. Email from Brett explaining calculation of wage statement penalties; KAK request to supply explanation to Matt Riley.	2.20
	KAK Review and evaluate email from defense counsel Riley proposing an agreement that the preliminary approval motion be filed by November 12; email to co-counsel and KSR re impact on hearing date and confirming allocation of work necessary to finalize preliminary approval motion and supporting declaration; review email from co-counsel Shalov to Riley re status of declaration from Apple supporting preliminary approval and response from Riley; review email from co-counsel Giaimo circulating revised drafts of preliminary approval motion and supporting declaration based on comments of Apple; email to Giaimo requesting redline versions; review redline versions of brief and declaration; forward same to GMG for cite-check; email to Giaimo and co-counsel with comments on brief; prepare redline with comments on declaration; circulate same to Giaimo, Shalov, KSR et al. along with detailed transmittal email re changes in damages and other figures; correspondence with co-counsel Gallaway re defense counsel's comments on damages calculations provided in draft declaration and response thereto; review email from Gallaway to defense counsel re these damages issues; review email from defense counsel Dunne with proposed revisions to preliminary approval order; telephone discussion with Shalov re same as well as other changes needed to settlement agreement; prepare list of remaining tasks in order to complete preliminary approval motion	1.40
	KAK FEES - Review correspondence from attorney Dion-Kindem re fee provisions; discussion with co-counsel Shalov re same; review email from Shalov to Dion-Kindem et al. re same; review emails from Dion-Kindem and Blanchard circulating updated lodestar reports	0.20
11/10/2021	GMG Proofread declaration for preliminary approval motion, check cites and quotes and email KAK and co-counsel re same	0.70
	KSR Email from Gallaway with final damages spreadsheet; review and evaluate same. Email from Dunne requesting further changes to motion for preliminary approval of settlement. Email from KAK with corrections/comments on damages calculations in brief. Email from Dunne with proposed stip to extend case deadlines. Email from KAK with comments on Riley declaration iso motion for prelim approval. Email from KAK for date when Frlekin's name withdrawn from consideration as class rep; further email from KAK re found that date. Email from KAK re received all signatures on settlement agreement. Emails with KAK and Giaimo re finalizing motion and declaration. Emails re compilation of settlement agreement with all signature pages.	2.90

		<u>Hours</u>
	Email from KAK requesting double-check of corrected cites to settlement agreement; close review and check all cites, prepare redline and forward to Giaimo. Emails with KAK re review complete. Email from KAK with new clean and redline versions of joint declaration.	
11/10/2021	KSR FEES - Email from Shalov with aggregate figures all plaintiffs' firms as listed in joint declaration iso motion for prelim approval. Email from Shalov re multiplier.	0.30
	KAK Analysis of remaining tasks related to finalizing settlement agreement, preliminary approval motion, and supporting declaration; update list of tasks; review email from GMG circulating results of cite check of draft brief; review cite check results; forward same to co-counsel Giaimo for inclusion in brief; telephone discussion with co-counsel Shalov re further stipulation to extend deadlines, review of portions of settlement agreement and changes needed, and decision to make no further changes to preliminary approval order; review final signed agreement with Angeion, circulated by defense counsel; email to Shalov re same; review and evaluate email from defense counsel Dunne requesting further revisions to approval papers and email from Shalov re same; review updated damages chart prepared and circulated by co-counsel Gallaway; correspondence with co-counsel re review of same and re-calculation of figures and percentages in brief; double-check all figures and percentages in brief that may be impacted by revised net settlement amount; draft detailed memorandum to co-counsel re same; draft revisions to updated damages chart; finalize and circulate memo and edited damages chart to co-counsel; discussion with GMG re completing cite check of draft declaration; review email from GMG to co-counsel confirming cite check completed and no changes; review email from Shalov to defense counsel Dunne circulating proposed revisions to settlement agreement received from attorney Ginsberg; review and evaluate email from Dunne re same; review and evaluate email from Dunne circulating draft stipulation extending deadlines; correspondence with Shalov re same and scheduling call with Dunne; correspondence with Dunne to confirm time for call to discuss stipulation and status of remaining tasks necessary to finalize settlement agreement, approval motion and supporting papers	2.30
	KAK FEES - Review correspondence between co-counsel Shalov and Blanchard re projected Iodestar figures and fee motion; telephone discussion with Shalov re same	0.60
11/11/2021	GMG Prepare PDF of settlement agreement with all signatures and circulate to co-counsel; emails with KAK and Giaimo re proposed order	1.20
	KSR Review new drafts of joint declaration and motion for preliminary approval and further correct cites to settlement agreement. Send to Giaimo with request to correct in final versions to be filed. Email from KAK re we received all signatures for settlement agreement. Emails with KAK re cite corrections. Review final draft of motion for prelim approval and draft redline; circulate to Giaimo with comments and further edits/corrections. Email from Giaimo re damages figures in brief and accuracy vs. Apple's figure which was not broken out by average shifts per class member. Further review of joint declaration and draft redline with additional cite corrections; send to Giaimo	3.30
	KAK Further review and evaluation of draft stipulation circulated by defense counsel Dunne; prepare list of tasks still to be completed in order to finalize settlement agreement and preliminary approval motion; evaluate matters to discuss during call with defense counsel Dunne and Riley; draft email to co-counsel Shalov with list of agenda items for call and draft email to Dunne and Riley re same; discussion with Shalov re same and re in preparation for call with Dunne and Riley; finalize email with agenda items and send to Dunne and Riley; participate in call with Shalov, Dunne and Riley re remaining issues to be addressed in order to finalize settlement, including stipulation to be filed suspending case deadlines pending resolution of preliminary approval motion; evaluate impact of Apple's position that it rejects all changes proposed to version of agreement circulated on 11/8/21; post-call discussion with	8.90

Shalov re same; review correspondence from Shalov to other co-counsel firms re Apple's position and resulting need for all signatures today; review and evaluate declaration of defense counsel Riley in support of preliminary approval motion and email to co-counsel Giaimo re incorporating citations into draft brief and declaration and making substantive revisions to comport with declaration, and circulating new drafts of brief and declaration for review; review emails from other co-counsel firms circulating signatures; review signatures and reply re provision in agreement requiring ink signatures, not electronic signatures; review revised ink signatures received from other firms and signature of plaintiff Kalin; review and execute final agreement and circulate my signature page to co-counsel and GMG; email to GMG re preparation of final version of settlement agreement with all signature pages except Apple's and forward emails circulating signatures; review final version with all signatures by all plaintiffs and plaintiffs' counsel, prepared by GMG; email with Shalov re circulating same to defense counsel; draft email to defense counsel circulating signed agreement and requesting Apple's signature; review and evaluate email from Dunne stating that Apple won't be signing the agreement today after all and circulating draft of generalized stipulation extending deadlines; correspondence with Shalov re same; email to Dunne stating that this is not acceptable and demanding Apple's signature; review email from Shalov to Dunne re problems with her position and demanding signature page from Apple; review further email from Dunne stating she will circulate Apple's signature page only if plaintiffs agree to further conditions never discussed before; correspondence with Shalov re response to same; email to Dunne stating we will consider her further conditions after we have a signed agreement; review email from Shalov to Dunne regarding her position and filing stipulation circulated yesterday, with revisions, extending deadlines pending settlement approval; review email from Dunne circulating Apple's signature page; forward same to GMG; evaluate tasks remaining to complete and file preliminary approval motion by tomorrow; review latest revised drafts of motion and joint declaration, circulated by co-counsel Giaimo; draft detailed revisions to motion and declaration, including additional revisions to incorporate facts from Riley declaration, to address issue of average hourly rate, and to strengthen summary of projected settlement value compared to projected average recovery if case went to trial; correspondence with KSR re checking cites to settlement agreement in brief and declaration; circulate revised drafts of motion and declaration in clean and redline forms to co-counsel, along with detailed transmittal emails re next steps to be completed in order to finalize motion and declaration for filing tomorrow; circulate Exhibits 2 and 4 to declaration; email to co-counsel with instructions on finalizing Exhibit 1 to declaration (namely, signed settlement agreement), including adding Apple's signature page and three signature pages to Angeion contract exhibit; email to Riley re issue raised by him regarding calculation of average hourly rate stated in declaration and draft motion circulated last week, circulating revised language in declaration on this issue, and asking him to state whether he has a problem with it

11/11/2021 KAK	FEES - Evaluate and discussion with Shalov re attorneys' fees motion	0.20
11/12/2021 GMG	Finalize joint declaration with exhibits, proposed order and preliminary approval motion; emails with co-counsel, KAK and KSR and further work re changes to exhibits and other materials in filing, LWDA filing logistics, formatting issues; confer with KAK and KSR re same; file/serve all via ECF; email proposed order to judge	7.20
KSR	Emails with Giaimo with revised and clean versions of brief and joint declaration for filing. Emails and telephone call with Giaimo and Shalov regarding assistant out so need for our firm to complete and file all documents. Emails with Giaimo re Apple's Word version of preliminary approval order. Review local rules and forward attestation clause with rules to Shalov and Giaimo for filing joint declaration. Conduct last cite checks on final versions of brief and declaration and forward edits to GMG. Email to co-counsel re need for letter and settlement agreement to be served on LWDA today. Confirm filing dates of both actions were before online filing procedures of LWDA. Research for and telephone call to LWDA to inquire about procedures since complaints in this action pre-date online procedures. Forward LWDA address	7.50

to GMG. Draft letter to LWDA as instructed and forward to Giaimo to serve while our firm finalizes motion and all documents to be filed and prepares for filing. Further edits from KAK to joint declaration based on feedback from Matt Riley. Email to Giaimo to forward final brief for filing. At KAK's request, compare two versions of draft prelim approval order to ensure they are the same. Email from GMG with declaration and exhibits in form to file; review. Email request from GMG re preliminary approval order; respond re draft order is exhibit to settlement agreement and also stand-alone submission. Emails among co-counsel requesting Giaimo to send letter to LWSDA with exhibits when he receives my draft letter. Finalize draft letter and forward to Giaimo. Email from KAK re Apple requesting edit to joint declaration. Forward Kalin and Frlekin LWDA letters to Giaimo for exhibits. KAK email re supplemental declaration re letter and settlement agreement plus motion sent to LWDA. Emails with Giaimo re okay to mail the LWDA letter via first class mail. Email from Julie Dunne re protocol for inquiries from class member to Apple re settlement. Review email to chambers with prelim approval order draft. Giaimo email to LWDA. Quick review filed motion for prelim approval of settlement with all exhibits and docs filed therewith.

11/12/2021 KAK	<p>Review email from KSR to co-counsel Giaimo circulating redline comments on preliminary approval brief and declaration with cite corrections to the settlement agreement; review correspondence from Giaimo regarding filing logistics and asking our office to take on all tasks associated with finalizing and completing the filing; review replies from KSR re same; evaluate status and email to Giaimo re filing logistics and allocation of tasks; review and reply to email from defense counsel Riley regarding revised language on average hourly rate issue and confirming his office will file stipulation agreed to yesterday after preliminary approval motion is filed this afternoon; email to Giaimo re further edit needed to declaration based on comments of Riley; review and reply to email from Giaimo requesting Word version of preliminary approval order which had been circulated by defense counsel earlier in the week; review and reply to email from co-counsel Shalov re filing logistics; correspondence with KSR and GMG re taking responsibility for filing today; review new revised draft of joint declaration circulated by Giaimo and incorporating citation edits from KSR and revision based on comment of Riley; email to KSR re double-checking draft; email to GMG re compiling exhibits and attestation page; review revised draft declaration and draft additional revisions thereto; circulate paragraph with substantive revision to Shalov for his approval; review email from Shalov approving same; review exhibits compiled by GMG; correspondence with GMG re same; telephone discussion with GMG re same and filing logistics, including submission of proposed order to chambers email; review final PDF declaration with all exhibits; email to GMG approving same; circulate final declaration to defense counsel Dunne and Riley with request to review Exhibit 1 to confirm its correctness; review and reply to response from Dunne requesting edit to declaration re past California bag check settlements; email to GMG re making this edit; review revised final declaration and reply to GMG confirming this is the final version for filing, no further changes, after attestation page is fixed; correspondence with GMG and KSR with list of components of filing; further correspondence re need to file proposed order as standalone third component of filing, in addition to chambers copy to be sent by email; review and evaluate email from KSR re LWDA notice and confirming pursuant to the statute the notice is due today; further correspondence regarding same and requesting assistance from Giaimo; review and reply to email from Shalov re telephone discussion with Dunne re proposal that class member inquiries directed to Apple should be referred to Angeion instead of to counsel, draft list of talking points for Angeion circulated by Dunne, and response thereto; review email from Shalov to Dunne re same; review email from Dunne re Angeion re same; email to co-counsel re LWDA notice due today and allocation of tasks necessary to complete same; email to KSR and GMG re status of brief and whether cite corrections were incorporated; review final version of brief with tables; draft final revisions to brief; approve final version of brief; telephone discussions with GMG re filing logistics; review notifications confirming successful filing of brief, declaration and proposed order; review email from GMG to chambers circulating proposed order; further</p>	3.20
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		<u>Hours</u>
	correspondence with Giaimo re completing LWDA notice today; correspondence with KSR re supervising this project; review email from Giaimo to LWDA providing notice of settlement	
11/13/2021	KAK Review correspondence from defense counsel Riley re filing stipulation to extend deadlines; review enotification confirming filing of stipulation; email to Riley requesting confirmation that his office will proceed with CAFA notice; evaluate next steps in view of filing of preliminary approval motion yesterday; prepare to-do list; search for and review preliminary press coverage regarding settlement; draft detailed email to clients regarding filing of preliminary approval motion; email to co-counsel Giaimo re need to prepare and file supplemental declaration regarding compliance with LWDA notice requirements	0.30
11/15/2021	GMG Review settlement agreement and prepare chart of upcoming dates re settlement approval, email KAK and KSR re same and circulate to co-counsel	0.80
	KSR Email from Giaimo re correspondence from LWDA re completing information re settlement on LWDA website and uploading documents. Telephone call with Giaimo to review call with LWDA from Friday vs. email request from LWDA for online submission today. Review/analyze settlement agreement and confirm/calculate amounts to go in LWDA online fields. Email to KAK to confirm submission; response. Email to Giaimo confirming LWDA submission and requesting add these details to supplemental declaration. Emails with team regarding contacts from reporters and protocol of no contact given provisions of settlement agreement. Research re US Code section 1746 and requirement re declaration under penalty of perjury. Email to KAK re text of joint declaration iso prelim approval motion. Email from Matt Riley re whether settlement agreement submitted to LWDA; respond. Review Giaimo's final supplemental dec re notice to LWDA and instruct to file with exhibits.	1.80
	KAK Review enotification and order approving stay of deadlines and hearing on 34-days' notice; review email from class member and correspondence with co-counsel Shalov and Gallaway re responding thereto; review replies from clients; review and reply to email from co-counsel Giaimo re declaration confirming LWDA notice; email to KSR re reviewing same; review email from defense counsel Riley confirming he will be complying with CAFA notice requirements; draft email to GMG with instructions to create chart of projected deadlines given preliminary approval motion hearing date; locate list of dates previously calculated and forward to GMG for purposes of creating projected deadlines chart; evaluate next steps necessary to meet next upcoming deadlines; review projected deadlines chart prepared by GMG; email to GMG re circulating same	0.90
11/16/2021	KSR Review final of Giaimo's supplemental declaration iso prelim approval with exhibits and okay to file.	0.30
	KAK Review email from GMG circulating chart of projected deadlines to KSR and co-counsel; review email from defense counsel Riley re submission of settlement to LWDA; review reply from KSR re same; review email from co-counsel Giaimo circulating revised draft of declaration re submission to LWDA; email to KSR re same; review email from KSR to Giaimo approving filing of declaration; review enotification re filing of declaration	0.10
11/18/2021	KSR Voicemail from class member re case status; forward to GMG to forward to Angeion after court approves them as settlement administrator.	0.20
11/22/2021	GMG Prepare and file Riley declaration re preliminary approval motion and confer with KSR re same	0.40
	KAK Review email message from court clerk re issue of declaration of Apple's counsel Riley in support of preliminary approval motion; evaluate same; review and reply to email from co-counsel Giaimo re same; discussion with GMG and KSR re same;	0.20

		<u>Hours</u>
	locate and forward email from Riley attaching signed declaration to GMG for finalizing and filing with instructions to add attestation of filer page; email to KSR re supervising this filing; review enotification confirming filing of declaration	
11/22/2021	KSR Email from court re Riley declaration iso preliminary approval motion. Email from Giaimo re dec. Check filing and email trail for declaration and emails with KAK to resolve. Emails with GMG re filing of Riley declaration and necessary attestation. KAK email to clerk in response to inquiry. Email from KAK re contacting Julie Dunne re joint response per court's order.	0.40
11/23/2021	GMG Review and circulate Alsup request for clarification	0.20
	KAK Review enotification and court's order requesting clarification; evaluate next steps; email to co-counsel re scheduling time to discuss further filing required by court order	0.10
	KSR Review/analyze court order re preliminary approval and to file joint response. Emails re call to address strategy and preparation of response. Review/analyze filed request for clarification of court's order. Further emails to set up call to discuss response.	0.40
11/24/2021	GMG Review and circulate CAFA notice filed by Riley	0.20
	KAK Continued review and analysis of court's order requesting clarification; review and reply to co-counsel and KSR re scheduling call to discuss; draft detailed further email to co-counsel re matters to discuss and next steps, including issues to be covered in a supplemental declaration of Riley; prepare for and participate in call with KSR and co-counsel re same; emails to defense counsel requesting time for call; prepare for and participate in call with defense counsel and co-counsel Shalov and discussed answers to court's questions and format of joint component of response; evaluate content of and draft joint declaration in response to court's questions; check docket and add relevant information and citations in response to court's questions; circulate draft joint declaration to Shalov for review; review email from Shalov; draft revisions based on Shalov's comments; finalize and circulate to defense counsel	3.70
	KSR Call with Shalov, KAK, Giaimo re class notices, etc. Emails with KAK, Shalov, Gallaway and Giaimo re strategy for call with Julie Dunne and joint response to the court. Review/analyze filed response. Email from Gallaway re same. KAK response with questions. Perform relevant calculations and circulate email. Email from KAK re prior declaration for class administrator. Gallaway response. Review.	1.10
11/30/2021	KAK Review email from defense counsel Riley re status of draft joint statement and supporting declarations due tomorrow; review email from Riley circulating draft joint statement, three new supporting declarations, and comments on our draft joint declaration; preliminary email to co-counsel Shalov re same; close review of these drafts; email to Riley requesting readable versions of two draft declarations; review same; prepare revised drafts of joint statement, joint declaration, and Dunne declaration; circulate to co-counsel Shalov; review reply from Shalov approving same; circulate same to Riley and Dunne; email to GMG re possible need to handle this filing, due tomorrow; review email from Riley circulating further revisions to joint statement; evaluate revisions; email to Riley approving same	2.80
12/1/2021	KSR Review filed joint response to court's request for clarification. Review filed KAK and Shalov dec iso court's request for clarification.	0.30
12/2/2021	KSR Evaluate case deadlines that follow order on preliminary approval of settlement.	0.20
12/9/2021	KSR Review/analyze clerk's notice setting 12/16 telephonic hearing with Judge Alsup; calendar.	0.10

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			<u>Hours</u>
12/13/2021	KAK	Correspondence with co-counsel Shalov to schedule strategy call to discuss preparation for this week's preliminary approval hearing; review and evaluate materials needed for hearing; evaluate court's minute order stating that hearing will be conducted telephonically and assess impact on preparation and conduct of hearing	0.10
12/14/2021	GMG	Prepare hearing binder for KAK	0.90
	KAK	Preparation for upcoming strategy call to discuss preliminary approval motion hearing; participate in strategy call with co-counsel Shalov and discuss list of topics and questions that may arise during hearing and best responses thereto; post-call analysis of additional issues that may arise; further telephone discussion with Shalov re same in preparation for hearing; review and reply to email from co-counsel Gallaway re proposed order submitted with preliminary approval motion; further evaluation of materials needed for hearing in hard copy and email to GMG re preparation of same	1.60
12/15/2021	GMG	Check Allsup calendar for 12/15 and email KAK re same	0.10
	KSR	Emails with Kim re prep for hearing on motion for preliminary approval of settlement. Email from Gallaway re prep for hearing.	0.40
	KAK	Continued extensive preparation for preliminary approval hearing; review email from co-counsel Shalov re additional issues that may come up at hearing; prepare for and participate in second preparatory call with co-counsel Shalov; discuss various questions that might come up during hearing and responses thereto; locate and forward to Shalov calendar of projected dates if preliminary approval is granted, prepared by GMG; research and analysis of numerous potential questions discussed with co-counsel Shalov; prepare chart summarizing class membership and numbers for use during hearing and forward same to Shalov; prepare chart with additional damages analyses and forward same to Shalov; review and reply to email from co-counsel Gallaway re damages calculation issues; check to confirm defense counsel's declaration establishes compliance with CAFA notice requirements; check statute cited in defense counsel's declaration; email to Shalov re same; email to GMG re checking court's calendar and number of other matters on calendar; review reply and forward same to Shalov	4.90
	KAK	FEES - Evaluate and prepare for issues that may come up during preliminary approval hearing related to attorneys' fees; email to co-counsel Shalov re potential issues to be prepared for at hearing	0.40
12/16/2021	KSR	Email report from KAK summarizing results of hearing on motion for prelim approval; respond. Email from reporter for Law360 re hearing; forward to KAK. Review/analyze court's order on motion for preliminary approval.	0.90
	KAK	Final preparation for preliminary approval hearing; review and evaluate emails from co-counsel Gallaway and Shalov in response to damages charts prepared for hearing; appear telephonically at hearing and present argument before Court; post-hearing telephone conference with co-counsel Shalov re events at hearing and next steps; email to KSR summarizing matters addressed at hearing, and next steps; telephone discussion with Shalov re his call with defense counsel Dunne; continued evaluation of next steps	1.70
	KAK	FEES - Evaluate events at today's preliminary approval motion re anticipated motion for award of attorneys' fees, costs and incentive awards; discussion with co-counsel Shalov re same and next steps; review correspondence from Shalov and analyze strategy considerations related to fee motion	0.80
12/17/2021	KAK	Continued evaluation of events at yesterday's preliminary approval hearing and next steps; further correspondence with co-counsel Shalov re same	0.20

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			<u>Hours</u>
12/20/2021	KSR	Review/analyze transcript of hearing on motion for prelim approval.	0.30
12/21/2021	GMG	Confer with KAK and KSR re 12/16 hearing and anticipated order setting further case deadlines	0.20
	KAK	Discussion with KSR re matters addressed at last week's hearing and procedure for handling future hearings; discussion with GMG re updating list of deadlines once preliminary approval order is received; evaluation of whether deadlines in settlement agreement would run from date of minute order or date of formal written order expected from judge	0.30
12/22/2021	KAK	Evaluate need to provide update to clients re status and events at preliminary approval hearing; email to co-counsel Gallaway re providing this update and ordering transcript; review reply from Gallaway and correspondence between Gallaway and clients regarding events at preliminary approval hearing	0.20
	KSR	Gallaway email to plaintiffs re hearing on motion for preliminary approval. Plaintiffs' responses.	0.10
12/27/2021	KAK	Review enotification re availability of transcript of preliminary approval hearing; review and reply to email from co-counsel Gallaway re obtaining copy of transcript; preliminary review of transcript	0.10
12/28/2021	KSR	Review/analyze court's order re preliminary approval of settlement. Review/analyze order setting fairness hearing; calendar. Review/analyze transcript of December 16 hearing and calendar redaction deadline. Email from reporter at the Daily Journal re preliminary approval of settlement; forward to KAK.	0.80
12/29/2021	GMG	Review preliminary approval order; prepare revised chart of deadlines and circulate to co-counsel	0.90
	KSR	Follow up emails with KAK re media inquiries. Email from KAK regarding provisions of order granting preliminary approval and issue re incentive awards and date for mailing notices to the class. Email from Steve Platt of Angeion Group re impact of court's order on mailing notices and immediate need for final notices, class data and website approval. Response from Gallaway to KAK's email re court's order granting preliminary approval of settlement and strategy re seeking incentive awards; KAK response. Emails with Platt re communications with counsel. Email from GMG with chart of current settlement administrative deadlines; review and assess impact on schedule.	0.60
	KAK	Review enotification re order granting preliminary approval; review and evaluate order granting preliminary approval; draft email to co-counsel and KSR re same and next steps; email to GMG with instructions to prepare updated calendar of case deadlines based on schedule set in preliminary approval order; review and reply to response from co-counsel Gallaway re order; review and evaluate email from settlement administrator Pratt regarding order and impact on planned schedule for class notice and requesting circulation of Word versions of notices and other information needed to complete class notice on timeframe contemplated by preliminary approval order; forward same to KSR and email to administrator re same; review reply from defense counsel Riley; review media inquiry re preliminary approval and forward same to co-counsel Shalov; review email from GMG circulating updated calendar of deadlines based on preliminary approval order; preliminary review of updated calendar	0.60
12/30/2021	KSR	Email from Steve Platt at Angeion Group re draft of exclusion form and calculations of subsets of class members, deadline for final notices and calculations to meet court's timeline in order; review/analyze draft of exclusion form. Email from Gallaway re method to calculate class member shares. Shalov response re how to estimate for notice to the class. Email from KAK re estimate. Email from Steve Platt with revised calculation of net settlement fund and payout per PAGA pay period and individual	2.30

shift. Email from KAK with request to check calculations in Platt email against motion for preliminary approval. Compare/analyze figures in Platt's email against motion for preliminary approval and exhibits, calculate all figures, and draft and circulate email response re calculations. KAK email to Platt and all counsel re same; also questions re 120 class members with no PAGA periods. Response from Julie Dunne re class members with no PAGA pay periods.

12/30/2021	KAK	Review further detailed email from settlement administrator Pratt regarding draft exclusion form required by court's preliminary approval order, calculation of net settlement amount to be distributed (for purposes of calculations needed for tailored notices), issue of certain class members with zero compensable shifts, and deadline to finalize notices in order to meet notice deadline set by court's order; evaluate these issues and preliminary review of draft exclusion form; correspondence with co-counsel and KSR re same; check net settlement amount calculation; email to administrator re correction needed to his calculation; review email from defense counsel Riley to administrator confirming transfer of employee list for class notice purposes; review reply from administrator confirming receipt of same and summarizing content and steps for updating employee addresses for class notice purposes	0.40
12/31/2021	KSR	Email from Steve Platt at Angeion Group with draft envelope for class notices per court's order and calculations of net fund and estimates for notices; review/analyze. Email from Gallaway to Platt with revised payout per PAGA period and per shift calculations. Further email from Gallaway re calculations; Platt response.	0.60
1/3/2022	GMG	Prepare revised chart of deadlines and email KAK re same	0.30
	KAK	Continued close review and analysis of preliminary approval order, new requirements imposed by court, and schedule imposed by court; review and evaluate updated chart of deadlines prepared by GMG; email to GMG re changes needed; further email to GMG re additional change needed; review reply from GMG circulating updated chart; review correspondence between settlement administrator, co-counsel and defense counsel re completion of tasks necessary to effectuate notice by January 11, 2022, as required by court's order; reply to defense regarding issue of persons who worked no shifts during class period; check notices and evaluate need for changes for this group needed to avoid stating that they will receive payments; review further response from defense counsel Dunne re providing notice to this group; email to co-counsel re same and need for tailored notices for this group; review replies from co-counsel Shalov and KSR re same; review email from administrator re exterior of envelope and email from Dunne re same; email to KSR re checking requirements and responding re this issue; review email from defense counsel Riley circulating redline versions of notices with changes to comport with court's order; evaluate same; prepare redlines with edits; circulate same to KSR and co-counsel with transmittal email re additional changes needed per court's order; email to defense counsel re question of whether both new and existing class members include persons who worked no shifts; review reply from Riley re same and evaluate need to therefore create tailored version of both notices; evaluate status of opt-out form required by court to be included with notice to new class members and draft circulated by administrator; email to co-counsel re review of same	2.10
	KSR	Email from Matthew Riley re Apple's explanation of 120 employees without shifts or PAGA pay periods. Response from KAK re necessary revisions to class notices re these \$0 class members. Email from Julie Dunne re notices to \$0 class members. Emails re revisions to opt-out form. Review/analyze revised form and further emails re edits. Email from Julie Dunne re text of notice envelope and compliance with court's preliminary approval order. Email from KAK with request to review/analyze preliminary approval order re notice envelope. Respond.	2.40

Review/analyze preliminary approval order and email to KAK re interpretation of text re counsel return address. Review/analyze class notices to pinpoint where revisions

required for \$0 class members. Email to McLaughlin re court's preliminary approval order re class notice envelope and strategy re revised class notices and envelope. Email from Matt Riley with revised class notices. Review/analyze. Emails with Matt Riley and Steve Platt at Angeion re correction to attorneys' fees amount and Net Settlement in notices. Email from KAK with corrections to revised class notices. Further email from KAK re make-up of 120 employees added with no shifts or PAGA pay periods. Response from Matt Riley. Email from KAK with revisions to Riley's redlined class notices and comments. Review/analyze. Email from KAK with redlined changes to Exh. B notice to new class members. Review/analyze for edits. Email from KAK re class notice envelope issue; respond. Email from KAK re draft of opt-out form; review edits from Jason Giaimo and Gallaway to opt-out form.

1/4/2022	GMG	Prepare PDF of draft stip with exhibit and email KSR re same	0.20
	KAK	Review and reply to further correspondence from co-counsel Giaimo re revisions to class notices; telephone discussion with co-counsel Shalov re matters discussed with Angeion and tasks necessary to meet notice deadline next week; review email from Giaimo and further revisions to class notices; draft additional revisions and circulate with request that he finalize and circulate to defense counsel; review current draft exclusion form and reply to co-counsel approving same; draft follow-up correspondence to KSR and co-counsel re issue of return address on envelope; various further emails re finalizing all components of class notices; further telephone discussion with Shalov; review email from defense counsel Riley circulating redline proposed changes to class notices; evaluate same; draft detailed email to Riley in response; review response from Riley with further proposed changes; evaluate same; email to Riley approving same with one further edit	1.50
	KSR	Email from Jason Giaimo re edits to class notice re July 5 objection deadline and timing of attorneys' fees motion, etc. Email from KAK re court's order allowing two potential objections and strategy re revised notices to \$0 class members and notice envelope; respond with strategy on all points; respond and agree to draft language for revised notice. Email from Shalov re filing papers before objection deadline and notices for \$0 employees. Emails with Gallaway and KAK re opt out form. Emails from KAK re reasoning to provide to Apple for adequacy of class notice envelope. Draft response to Dunne re class notice envelope.	3.60
		Email from Matt Riley re status of edits to class notices. Further emails with KAK, Shalov, Gallaway, Giaimo re response to Dunne's concerns re notice envelope. Email from Dunne with proposed revisions to opt-out card; review/analyze and respond to team. Email to Dunne re return address on notice envelope and substantial compliance with court's order and stated concerns. Further review and analysis of revised class notices and email to team re same. Further response from Dunne re court's order re notice envelope. Email from Shalov Shalov re same. Response to Shalov and team re expense and delay of forwarding returned notices sent to class counsel and whether to resolve with court by stip and order. Emails with Shalov re stip and order to resolve envelope issue. Email to Dunne re will prepare draft stip and order. Draft stip and order and circulate to team. Instructions to paralegal re exhibit to stip.	
		Email from Steve Platt at Angeion re time issues for complying with court's notice order. Email from KAK re decision with Shalov to resolve issue by adding McLaughlin firm name with Angeion return address to notice envelope. Emails with Giaimo re exhibits to class notices. Email from KAK with edits to notice exhibits; review. Email from KAK with further edits to Exhibit B to notices; review. Email from Giaimo with revised notices and exhibits and two versions of Exhibit A; review. Email from Giaimo to Matt Riley with plaintiffs' revised notices. Response from Matt Riley re revised notices. Email from Matt Riley with further revisions to class notices; review. Emails with Jason and Matt approving revisions and intent to send to Angeion. Riley email to Platt at Angeion with final opt out form. Platt response confirming opt out form goes only to 799 new class members. Emails with KAK and Matt Riley re issue re	

Hours

language in notices re new class members and Apple deletion of text re when changed check policy. Riley response with proposed revisions. KAK reply with further proposed revision; Riley email agreeing to this language. Shalov email to Dunne proposing resolution of notice envelope issue with Angeion address.

1/5/2022 KAK	Review email from defense counsel Dunne refusing to cooperate on return address on envelope to be used for class notice purposes; telephone discussion with co-counsel Shalov re response and next steps; correspondence with KSR and co-counsel re same and re finalizing stipulation regarding notice-related issues and additional changes needed; review and reply to email from KSR re same; review and reply to email from Dunne re content of stipulation; telephone discussion with KSR re content of stipulation to be provided to Dunne; email to Shalov re same; review further lengthy email from Dunne raising a list of last-minute issues she wants included in stipulation; review preliminary approval order in order to evaluate Dunne's positions; correspondence with co-counsel and KSR re response to Dunne's positions; review and reply to email from administrator re impact on timing of class notice and meeting current deadline; further review of preliminary approval order and draft more detailed email to KSR and co-counsel re Dunne's positions, which could have been raised weeks ago; further discussion with KSR re responding to Dunne; review email from Dunne circulating her own draft stipulation; preliminary review of same; correspondence to co-counsel Shalov re same, possible need to advise administrator to halt printing, and decision to proceed with class notice as ordered	2.10
KSR	Email from Shalov agreeing to final notices. Email from Steve Platt at Angeion requesting Frlekin and Kalin LWDA letters to link on website. Research for and forward letters to Platt. Email from Riley to Platt with four final notices to the class, review for final edits. Shalov email to Riley re status of notice envelope issue. Email from Platt with class members counts for the four notices; analyze. Fact research for and email to Shalov and KAK noting that pushing notice period back to resolve notice envelope issue would require moving the date for final approval and therefore changes to all class notices. Emails regarding draft stipulation re notice envelope issue; draft revisions to stip and order and circulate. Email from KAK to Julie Dunne re notice envelope issue would require order to Angeion to stop notice process. Email to Julie Dunne et al. with draft stip and order that court could possibly execute in time to meet notice deadline. Email from Julie Dunne with list of new issues proposed for resolution by the court regarding notice to the class. Review/analyze list.	4.40
	Emails from KAK re strategy on compliance with court's order and Dunne's proposed list. Respond to KAK re strategy. Emails with Kim re discussing response with Shalov; email to Shalov re strategy for response; response; reply. Draft and send email to Julie Dunne re no need to submit list of proposed issues to the court, and whether Apple will approve stip on notice envelope. Email from Dunne attaching revised draft stipulation adding long list of new additional issues purported to require court clarification, which would prevent notice to the class by the court's deadline. Email to team re strategy of response to Dunne. Response from KAK re strategy and notice deadline. Emails with Shalov and Steve Platt re Angeion on track to complete class notice. Email from Shalov re contacting Dunne. Further email from KAK re solution to notice envelope issue. Email Shalov to Dunne re resolution of notice envelope issue.	
1/6/2022 KAK	Telephone discussion with co-counsel Shalov re remaining issues re class notice to be addressed with defense counsel and discussion with Angeion re ability to meet current notice deadline; review correspondence from Angeion with mockup of return envelope; review and reply to email from Shalov re same	0.20
KSR	Email to team re class counsel should give authorization to Angeion to disseminate notice on January 11 as the court ordered. Email from Steve Platt at Angeion confirming return address for notice envelope; Shalov response. Shalov email authorizing Angeion to complete notice per the court's order. Email from Platt with	0.40

		<u>Hours</u>
	revised notice envelope for approval; review. Email from Dunne re final notices and method of service. Emails re posting of class notice. Further emails from Platt re logistics of class notice. Email from Dunne re Apple no objection to Angeion proceeding with class notice. Further email from Dunne re final notices.	
1/7/2022	KAK Telephone discussion with co-counsel Shalov re remaining issues re class notice to be addressed with defense counsel and discussion with Angeion re ability to meet current notice deadline; review correspondence from Angeion with mockup of return envelope; review and reply to email from Shalov re same	0.40
	KSR Emails with KAK and Steve Platt re settlement website mockup.	0.30
1/8/2022	KAK Review and evaluate email from defense counsel Riley to Angeion regarding requirements for class notice next week; detailed email to co-counsel Shalov re whether response is indicated vs. follow-up with Angeion to confirm notice requirements	0.20
	KSR Email from Steve Platt of Angeion re exhibits to notices for website. Email from Julie Dunne requesting final versions of class notices. Email from Steve Platt of Angeion attaching final notices.	0.60
	KSR FEES - Emails with GMG re time submissions to calculate lodestar estimate for motion for preliminary approval.	0.10
1/9/2022	KAK Review email from Angeion circulating final versions of class notices to be provided to class members this week pursuant to Court's preliminary approval order; email to GMG re preservation of final versions for future reference	0.10
	KSR Email from Steve Platt with test version of settlement website and question re whether opt out form may be completed electronically; review/analyze test version of website. Further emails with Gallaway and Julie Dunne re final notices to the class.	0.60
1/10/2022	GMG Email Lyons re changing phone message in anticipation of class member calls	0.10
	KAK Correspondence with co-counsel re review of settlement website mockup created by Angeion; review and reply to emails from co-counsel Gallaway re his review of website mockup and re his firm's posting of class notices to its website per Court's preliminary approval order; evaluate steps necessary to comply with this provision for our firm; additional review of website mockup and correspondence with Angeion regarding changes needed; review further emails from defense counsel to Angeion regarding notice due tomorrow and correspondence with co-counsel Shalov re same	0.30
	KSR Shalov email re electronic opt out form. Review/analyze transcript of 12/16 hearing re notice. Email from KAK re settlement website. Response from Gallaway and review McLaughlin website link to settlement website. Further emails with KAK and Gallaway re issues with settlement website.	0.70
1/11/2022	GMG Change outgoing phone message in anticipation of class member calls	0.20
	KAK Further correspondence with co-counsel Shalov re email from defense counsel regarding class notice; correspondence with Angeion regarding status of notice to be completed today and fact that website is now live; review live version of settlement website and email to Angeion re changes needed; double-check requirements stated in Court's preliminary approval order regarding posting class notices to class counsel websites; arrange for notices to be posted to firm websites; draft language for landing pages on which links to class notices will be provided; check final, as-posted website pages	1.90

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			<u>Hours</u>
1/11/2022	KSR	Email from Steve Platt confirming that email and print notices have been disseminated.	0.10
1/13/2022	KAK	FEES - Evaluate points for client declarations in support of motion for approval of proposed incentive awards; correspondence with KSR re same	0.10
	KSR	FEES - Emails with KAK re Apple's publishing details of client termination and relation to motion for incentive award. Legal research for motion for incentive awards.	2.40
1/14/2022	KAK	Review email from defense counsel and transcript of voice mail message received from a class member; evaluate same; email to KSR re reviewing same and following up with co-counsel; review email from KSR re same	0.10
	KSR	Email from Matt Riley re voicemail from class member. Email from KAK with request to review and evaluate whether response necessary. Listen to voicemail attachment and respond to KAK with transcript of message; email to Shalov re no need for anyone to reply. Email from class member and respond; forward to GMG with request to forward to settlement administrator. Review/analyze notice from clerk re Alsup senior status and altered hearing schedule.	1.20
1/15/2022	KAK	Review notification regarding Judge Alsup's senior status and change in usual civil hearing calendar; assess potential impact on final approval hearing date; correspondence with KSR re same; review and evaluate transcript of early hearing and review portions relevant to upcoming final approval hearing; make note of argument for final approval motion; review detailed email from Angeion re status and activity following issuance of notice, including proposed message to class members who dispute stated number of shifts worked	0.30
1/17/2022	GMG	Review message from class member and email KAK and KSR re same	0.10
	KSR	Email from GMG re contact from class member. Further emails with KAK and GMG re forward to contact at Angeion Group. Email report from Giaimo re notices returned.	0.40
1/18/2022	GMG	Compile messages from class members and forward to administrator	0.40
	KSR	Email to GMG re Angeion contact for class member inquiries. GMG email to Angeion with class member inquiries; Platt response.	0.30
	KSR	FEES - Legal research for motion for incentive awards.	1.40
1/19/2022	KAK	Review email from defense counsel Riley re report from Angeion regarding class member inquiries about the number of shifts worked, and comments on draft message to such class members prepared by Angeion; evaluate same and draft reply with additional proposed changes to draft message; further correspondence with Angeion re same	0.30
	KSR	Email from Steve Platt at Angeion re pay period disputes and information to request from class members to confirm; Matt Riley response limiting info requested. Email from KAK requesting edits re defendant's records of shifts/pay periods. Platt confirmation.	0.40
1/21/2022	KSR	Email from Jason re returned class notices.	0.20
1/22/2022	KSR	Email from Steve Platt at Angeion re class settlement administration; review summary.	0.30
1/24/2022	KSR	Review/analyze email from Julie Dunne re settlement administration update from Steve Platt at Angeion. Email from KAK to me and co-counsel re Angeion's communications with class members and request to review settlement agreement re same.	0.40

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		<u>Hours</u>	
1/24/2022	KAK	Review email from defense counsel Dunne re communication with class members; email to KSR and co-counsel re need to confirm SA provisions	0.10
1/25/2022	KSR	Email from Jason Giaimo re review of settlement agreement re whether Dunne's instructions to Angeion re communications with class members are consistent. Review/analyze response from Giaimo re terms of settlement agreement re communications with class re settlement.	0.40
1/26/2022	KAK	FEES - Evaluate tasks necessary to complete draft of motion(s) for attorneys' fees, costs, and incentive awards; review settlement agreement to confirm requirement to share draft with defense counsel at least one week in advance; evaluate impact on filing deadline; draft detailed email to KSR regarding tasks to be completed related to this project, including template for other firms' declarations in support of fee motion and template for clients' declarations in support of incentive awards; further correspondence with KSR re same, in particular work needed for incentive award motion and client declarations	0.80
	KAK	Review email from co-counsel Giaimo re provisions of settlement agreement addressing questions raised by email from defense counsel Dunne regarding class data; reply to Giaimo re same; review further response from Giaimo	0.10
	KSR	FEES - Email from KAK re division of labor on fee motion and separate motion for incentive awards. Further emails with KAK re strategy for motion for incentive awards and preparation of plaintiff declarations in support. Further emails with KAK re Alsup prior orders re incentive awards, and facts re plaintiffs pertinent to this motion. Email from KAK re strategy for fee motion. Research for incentive award motion.	1.50
	KSR	Email response from Jason Giaimo re terms of settlement agreement re communications with class members. KAK reply re Angeion rather than Apple should correspond with the class members, and request to respond with that to Dunne.	0.30
1/27/2022	KAK	FEES - Further correspondence with KSR regarding motion for fees, costs, and incentive awards; discussion with KSR and GMG re status and tasks to be done related to motion	0.20
	KSR	FEES - Telephone call with KAK and GMG and discuss strategy and logistics for fee and incentive award motions and requirement in settlement agreement to provide draft to Apple/timeline. Further emails with KAK re strategy for fee motion and comments from mediators.	0.40
	GMG	FEES - Confer with KAK and KSR re fee motion	0.30
1/28/2022	KAK	Follow-up correspondence to co-counsel re proposed response to Angeion and defense counsel regarding communications with persons who submit invalid opt-out requests; review and reply to email from co-counsel Giaimo re same; draft email to Angeion and defense counsel re same; review and reply to response from defense counsel Dunne re same; review and evaluate email from Angeion with draft correspondence to persons who submitted invalid exclusion requests; review draft correspondence and prepare redline with proposed revisions; circulate same to co-counsel for review and comment; further correspondence with co-counsel re same	0.50
	KSR	Email from Jason Giaimo with agreement that Angeion rather than Apple should communicate with class members re opt outs/claims; KAK response. KAK email to Angeion and Dunne re same; Dunne response. Email from Platt with draft Notice of Invalid Exclusion Request; review/analyze; edits from KAK; review.	0.40
1/29/2022	KSR	Email from Steve Platt with updated settlement administration report; review; Giaimo approval.	0.30

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			<u>Hours</u>
1/31/2022	KAK	Review correspondence from co-counsel approving edits to draft letter from Angeion to those who submitted invalid opt-out requests; finalize and circulate to Angeion and defense counsel	0.10
	KSR	Emails with Shalov and KAK and Steve Platt re edits to form response for invalid exclusion request.	0.30
2/1/2022	KAK	FEES - Review email from co-counsel Shalov re scheduling strategy call to discuss fee motion; draft detailed response to Shalov re same, including status of preparation of template declarations for clients in support of incentive awards and co-counsel law firms for fee motion; correspondence with KSR re status of template declarations	0.30
	KSR	Email from Steve Platt at Angeion re form notice for invalid opt out request; review and assess draft notice.	0.30
	KSR	FEES - Emails with KAK and Shalov re fee motion and call to discuss. Research for and draft template for counsel declarations in support of motion for attorneys' fees and costs.	2.30
2/2/2022	KAK	FEES - Review, evaluate and reply to email from co-counsel Shalov re assistance from his firm on client declarations and need for declarations tailored to each client's contribution	0.10
	KSR	FEES - Response from KAK re draft template for counsel iso motion for attorneys' fees and costs. Email to GMG re research re template for distribution to all co-counsel by class counsel. Review research on template from GMG; respond. Draft revised template for counsel declarations iso attorneys' fees and costs. Email from Shalov re Gallaway and Giaimo will work on plaintiff declarations iso incentive awards; KAK response.	1.80
2/3/2022	GMG	FEES - Search files re 2021 sample fee motion and email co-counsel re same; search files for 2012 template fee declaration and email KSR re same	0.40
	GMG	Review messages from class members and forward to Angeion for follow-up	0.20
	KAK	FEES - Review and evaluate draft template fee declaration prepared by KSR; began drafting redline with comments; draft detailed email to KSR re same and revisions needed; continued work on fee motion; draft list of anticipated components of motion; began drafting detailed outline of motion and supporting declaration	2.70
	KSR	FEES - Email from KAK re format of declarations iso fee motion. Emails with GMG re declaration template. Continue draft of revised template for class counsel to circulate to additional plaintiffs' firms to document their lodestar, rates, etc. in support of motion for attorney's fees and costs. Forward to KAK for review.	1.70
	KSR	Voicemail from class member; forward to GMG with request to direct to Angeion. GMG email to Steve Platt forwarding this voicemail; Platt response. Another voicemail from class member; forward to GMG	0.50
2/4/2022	GMG	Review messages from class members and forward to Angeion for follow-up	0.20
	GMG	FEES - Review expenses since inception, prepare chart of costs by category and email KAK and KSR re same	3.20
	KSR	FEES - Emails with Gallaway re latest Alsup fee order. Email from GMG with chart of costs by category for fee motion; review.	0.40
	KSR	Further voicemails from class members re settlement notices; forward to GMG; GMG emails forwarding to Steve Platt at Angeion; Steve confirms.	0.60

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			<u>Hours</u>
2/5/2022	KSR	Email from Steve Platt with settlement/notice administration report; review/analyze.	0.30
2/7/2022	KAK	Review and evaluate email from defense counsel Riley to Angeion with further edit to draft correspondence to non-class members who submitted opt-out requests; email to Angeion approving same; review reply from Shalov re same	0.10
	KSR	FEES - Further emails with Gallaway re latest Alsup fee order; review/analyze. Further research for motion for incentive awards. Email to GMG requesting he pull orders and pleadings from list of relevant Alsup fee/incentive award motions; and further request to research procedural posture of each case and supply information for chart I'm drafting. Further emails with GMG re orders/pleadings to pull.	3.10
2/8/2022	GMG	FEES - Legal research re incentive awards approved by Alsup, email KSR re same	2.80
	KSR	FEES - Emails with KAK and GMG re work for fees motion. Continue research for incentive award motion and template for plaintiffs' declarations. Email from GMG with information and attached orders and pleadings requested re Alsup incentive awards. Review/analyze all. Analyze orders and pleadings and draft chart illustrating Alsup incentive awards with basis for each award, procedural posture of each action, etc.	5.80
2/9/2022	GMG	FEES - Legal research re incentive awards approved by Alsup	1.30
	KSR	FEES - Continue working on research for motion for incentive awards. Review/analyze further orders and pleadings in Alsup actions requested from GMG. Continue drafting chart of Alsup awards. Begin draft of template for plaintiffs' declarations iso incentive awards.	3.30
2/10/2022	GMG	FEES - Legal research re incentive awards approved by Alsup, email KSR re same	1.80
	KSR	FEES - Further review/analyze orders and pleadings in Alsup actions requested from GMG. Continue drafting chart of Alsup awards. Continue drafting template for plaintiffs' declarations iso incentive awards.	3.20
2/11/2022	KSR	FEES - Emails with GMG with instructions to pull further orders and pleadings and information for chart re Alsup incentive awards. Continue drafting template for plaintiff's decs.	2.20
2/12/2022	KSR	FEES - Continue drafting template for plaintiffs' declarations iso motion for incentive awards.	1.20
	KSR	Email from Steve Platt with administration report; review/analyze.	0.30
2/14/2022	GMG	FEES - Legal research re incentive awards approved by Alsup, emails with KSR re same	2.10
	KAK	Review and evaluate email from settlement administrator with latest status report	0.10
	KSR	FEES - Further emails to GMG re orders/pleadings and information for chart re incentive awards, to be used as guidance for co-counsel to work with plaintiffs on declarations. Further email to GMG to add for each relevant case the amount of fund, class size, average class member recovery. Further email to GMG add information to chart. Further request to GMG to pull relevant pleadings re Alsup incentive awards. Finalize chart with Alsup incentive awards and draft edits to and finalize template for plaintiff declarations iso awards. Forward both to KAK with relevant Alsup orders.	4.70
2/15/2022	GMG	FEES - Legal research re incentive awards approved by Alsup, prepare chart and email KSR re same	1.60

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			<u>Hours</u>
2/15/2022	KSR	FEES - Email to GMG re information to add to chart re incentive awards. Email from GMG with requested edits/additions to chart. Draft further edits to chart Further research for motion for incentive awards.	2.30
2/16/2022	GMG	FEES - Legal research re incentive awards approved by Alsup, prepare revised chart and email KSR re same	1.80
	KSR	FEES - Research for and draft further edits to chart re incentive awards; email to GMG to research and add additional info re order in NFL action. Email from GMG with revised chart re incentive awards.	0.60
2/17/2022	KSR	FEES - Further research for motion for incentive awards.	2.30
2/18/2022	KAK	Review and evaluate email from settlement administrator with latest status report	0.40
	KSR	FEES - Further research re motion for incentive awards. Emails with KAK re Apple's offer to settle plaintiffs' individual claims. (\$35k costs waiver in Nov. or Dec. 2015 in exchange for agreement not to appeal).	2.20
2/21/2022	KSR	Review/analyze Platt's latest report re settlement administration.	0.30
	KSR	FEES - Further research for motion for incentive awards.	1.40
2/22/2022	KAK	FEES - Review and evaluate draft template declaration for clients in support of incentive awards; review chart of cases prepared by KSR regarding incentive award amounts approved by Judge Alsup and related declarations; email to KSR approving draft and instructions to coordinate with co-counsel on project of drafting and finalizing client declarations	0.60
	KAK	Review and evaluate email from settlement administrator and status report; email to KSR re project of evaluating these regular status reports	0.10
	KSR	FEES - Email from KAK re draft template for declarations of plaintiffs iso motion for incentive awards. Forward draft template along with chart showing Alsup orders on incentive awards in other actions and copies of most favorable orders to McLaughlin. Email to McLaughlin to forward declaration template iso incentive awards to Blanchard and Dion-Kindem for Kalin declaration. Follow up email to KAK with draft template for all firms' declarations iso motion for attorneys' fees.	1.90
	KSR	Email from KAK with request to review all incoming reports from case administrator-Angeion Group-re administration status. Email to KAK with concerns re eligibility and shift or pay period disputes and reailed or forwarded class notices. Email from Kim to handle issues with Angeion. Email to McLaughlin re issues with weekly report and whether to contact Angeion and Apple counsel to resolve. Review/analyze report from Matthew Riley re status of non-new class member opt out requests and eligibility and shift disputes.	1.40
2/23/2022	KSR	FEES - Email from Shalov re declarations iso motion for incentive awards to plaintiffs.	0.20
2/24/2022	KAK	FEES - Discussion with KSR re status and timeframe for completing draft fee motion and incentive award motion, and following up with co-counsel Shalov re clients' declarations; discussion with GMG re projects to be done associated with motions; review email from KSR to Shalov, Gallaway and Giaimo re clients' declarations	0.20
	KAK	Review and evaluate email from defense counsel Riley summarizing defendant's research on persons attempting to opt out or challenging workweeks stated in notice; discussion with KSR re evaluating and responding to same; review email from KSR re same; review and evaluate email from class member; draft detailed reply to class member with copy to co-counsel Shalov	0.30

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			<u>Hours</u>
2/24/2022	KSR	FEES - Discussion with KAK re drafting of motions for attorneys' fees and incentive awards; review settlement agreement re circulating drafts to Apple prior to filing, and further discussion re plaintiff shares of settlement. Email to Shalov, Gallaway, Giaimo requesting to be copied on all communications with plaintiffs and requesting calculation of pro rata shares of settlement exclusive of any incentive award per plaintiff. Email from Shalov re his firm will work with plaintiffs to complete decs iso incentive awards, and will forward materials to Kalin's counsel. Review emails pertinent to incentive awards re reputational cost. Notes to file re issues for motion.	1.70
2/26/2022	KSR	Email from Steve Platt with weekly report re settlement administration; review/analyze for any issues to address.	0.30
2/28/2022	GMG	FEES - Emails with KAK re costs by category; prepare revised chart and email KAK re same; review class member inquiry and forward to Angeion	0.20
	KSR	FEES - Emails with KAK re expense categories for fee motion. Emails with KAK and McLaughlin re status of plaintiffs' declarations iso motion for incentive awards, and forwarding materials to Kalin counsel. Gallaway response. KAK reply re copying us on communications with plaintiffs, and preparation of counsel decs iso fee motion, and request for calculation of plaintiffs' individual settlement shares. Email from Gallaway forwarding email to Kalin counsel re prep of Kalin dec iso incentive awards. Further email from Gallaway re status of plaintiff decs re incentive awards, settlement shares, and likely awards.	0.60
	KSR	Review voicemail from class member and forward to GMG to submit to Angeion. Platt response.	0.30
	KAK	FEES - Continued work on motion for award of attorneys' fees, including further evaluation of points to be covered in supporting law firm declarations; review and revise template declaration in support of fee motion, prepared by KSR; correspondence with GMG re cost categories to be included; revise and update list of cost categories; finalize template declaration and circulate same to co-counsel Shalov with detailed transmittal message; prepare draft of transmittal email to Kalin counsel and circulate to Shalov; draft email to co-counsel re status of project of working with clients on their declarations and whether template client declaration has been circulated to Kalin counsel; review and reply to email from co-counsel Gallaway re same	4.30
3/1/2022	KAK	FEES - Review, evaluate and reply to email from co-counsel Gallaway regarding status of client declarations in support of incentive awards and communications with Kalin counsel re same; further correspondence with Gallaway re same; review email from Gallaway to Kalin counsel circulating template for client declaration; reply to Gallaway re same; continued work drafting motion for fees and costs; review and reply to email from co-counsel Shalov re template declaration for Kalin counsel; finalize template and circulate to Kalin counsel with instructions to complete by March 11, 2022	4.20
	KSR	FEES - Email from KAK re request to McLaughlin for individual settlement shares for plaintiffs and decs iso incentive awards. Further emails with KAK and Gallaway re Kalin dec and communications with Blanchard and Dion-Kindem. Email from Gallaway re plaintiffs' class notices from Angeion for final approval and incentive award motions; Gallaway email request to Angeion.	0.50
3/2/2022	GMG	FEES - Legal research re Alsup fee orders and email KAK re same	0.20
	KAK	FEES - Continued work drafting fee motion, including legal research; review email from Kalin counsel acknowledging receipt of template fee declaration; prepare template declaration for attorney Ginsberg; circulate to co-counsel Shalov along with	3.80

Hours

			<u>Hours</u>
		draft transmittal message; review and reply to email from Shalov approving same; finalize and circulate to Ginsberg; email to GMG re research on fee orders	
3/3/2022	GMG	FEES - Review named plaintiff information from Angeion for incentive award motion and circulate	0.10
	KAK	FEES - Review and reply to email from co-counsel Shalov regarding status of draft of fee motion; review correspondence from settlement administrator regarding client data for incentive award motion	0.10
	KAK	Review and evaluate email from defense counsel Dunne re administration-related issues	0.10
	KSR	Email from Julie Dunne re checks issues in "preferred names" and other administrative issues.	0.20
	KSR	FEES - Email response from Steve Platt with plaintiff notices re settlement for final approval and incentive award motions. Request to forward to GMG for files; response.	0.50
3/5/2022	KSR	Review/analyze settlement administration report from Steve Platt/Angeion.	0.20
3/6/2022	KSR	FEES - Continue research for and drafting motion for incentive awards.	1.90
3/7/2022	KAK	FEES - Continued work drafting fee and costs motion, with focus on statement of facts section	1.80
	KSR	Review/analyze summary from Riley of Apple's investigation of class member opt-outs and eligibility/shift disputes.	0.20
	KSR	FEES - Continue drafting motion for incentive awards. Further research for motion; email to GMG to pull additional Alsup orders and corresponding pleadings for reference.	3.40
3/8/2022	GMG	FEES - Further legal research re Alsup incentive awards and email KSR re same	0.20
	KAK	FEES - Review and reply to email from co-counsel Shalov re template fee declaration; review and reply to correspondence between co-counsel Gallaway and attorney Blanchard re client declarations in support of service award; continued work drafting fee and costs motion	1.30
	KSR	FEES - Emails with Gallaway, Blanchard and KAK re Kalin dec iso motion for incentive awards. Continue research for and drafting motion for incentive awards.	3.20
3/9/2022	GMG	FEES - Further legal research re Alsup incentive awards and email KSR re same	0.10
	KAK	FEES - Continued work drafting motion for fees and costs, including legal research and focused drafting of statement of facts section; emails to GMG re exhibits to my supporting declaration with instructions to begin preparing same; correspondence with KSR re authorities in support of incentive award motion	4.30
	KSR	Email from Shalov to Matt Riley re Riley's summary of resolution of class member disputes re settlement administration. Further review Riley's summary and send email to Shalov requesting discussion with Riley re eligible class members and whether they were on Apple's class list; if not why not? Shalov response.	0.60
	KSR	FEES - Emails with KAK re authorities and strategy for motion for incentive awards and discussion with Peter Dion-Kindem re motion drafts. Further research for and draft motion for incentive awards. Emails with Gallaway re calculations of settlement payments to class members relevant to issues in motion for incentive awards.	2.90

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			<u>Hours</u>
3/10/2022	KAK	FEES - Continued work drafting motion for attorneys' fees and costs; review and evaluate email from Kalin counsel re same; correspondence with co-counsel Shalov re same; reply to Kalin counsel; correspondence with KSR re status of service award motion, supporting client declarations, and evaluation of client data provided by Angeion; review email from KSR to co-counsel Gallaway re status of client declarations	3.20
	KSR	Emails with Shalov and Matt Riley re issues with opt-outs and eligible existing class members. Emails with Matt Riley and Steve Platt re notices re opt out requests.	0.20
	KSR	FEES - Emails with KAK re status and information required for motions for fees and incentive awards. Research re data and class notices for named plaintiffs to discuss in motions. Emails with GMG re research for motion for incentive awards. Emails with KAK, Gallaway and Jason re status of supporting declarations of plaintiffs. Further emails with KAK and Gallaway re plaintiffs' shares of settlement. Emails with KAK re draft of fee motion. Further emails with Gallaway re average class member recovery. Emails with KAK and GMG re time cutoff for fees motion. Further research for incentives motion.	4.80
3/11/2022	KAK	FEES - continued work drafting motion for attorneys' fees and costs; review email from Kalin counsel circulating declaration of client Kalin; forward same to KSR and co-counsel for review; review response from co-counsel Shalov re draft Kalin declaration; review and reply to correspondence between KSR and co-counsel re estimated damages calculations for class members	1.30
	KAK	Review and evaluate most recent correspondence between Angeion, defense counsel Riley and co-counsel Shalov re class notice and administration issues including invalid exclusion requests and eligibility disputes; review recent decision by Judge Alsup on "good faith" defense to penalties claim in factually similar case; forward same to co-counsel Shalov, Gallaway and Giaimo for use if needed in final approval motion	0.20
	KSR	Email to Shalov re discussion with Matt Riley and question re potential eligible class members not on Apple's class list.	0.20
	KSR	FEES - Emails with KAK re calculation of class members shares. Further emails with Kim re authorities for motion for incentive awards. Review/analyze draft of Kalin decision incentive awards from Dion-Kindem, and emails with KAK and Shalov re edits/comments. Continue to draft incentive awards motion.	4.20
3/12/2022	KAK	FEES - Continued work drafting motion for fees and costs, with focus on argument sections, including further legal research	6.90
	KSR	Email from Steve Platt re weekly admin report; quick review.	0.20
	KSR	FEES - Research for and continue to draft motion for incentive awards.	4.10
3/13/2022	KAK	FEES - Continued work drafting motion for fees and costs, with focus on factual sections and introduction, as well as additional legal research for argument sections; email to KSR re favorable decisions on incentive awards found during research; email to co-counsel Shalov re status of motion	5.50
	KSR	FEES - Research for and draft motion for incentive awards. Emails with KAK re authorities and strategy for incentives motion.	5.60
3/14/2022	GMG	FEES - Legal research for fee motion and email KAK re same; fill in cites to Kalin docket and email KAK re same	0.80

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		<u>Hours</u>
3/14/2022	KAK FEES - Continued work drafting motion for fees and costs, with focus on factual sections; follow-up correspondence with Kalin counsel and attorney Ginsberg re their lodestar and cost information and status of their supporting declarations; emails to GMG re locating cites needed for brief; finalize brief and circulate to co-counsel Shalov and KSR for review; forward same to GMG for proofread and cite check; email to GMG re additional instructions for my supporting declaration and exhibits thereto	9.60
	KSR FEES - Research for and draft motion for incentive awards. Emails with KAK and Dion-Kindem re hourly rates and lodestar for fees motion. Email from KAK with draft of fees motion; quick review. Continue research for and drafting motion for incentive awards.	6.80

5552.20

EXHIBIT C

Case: 15-80131, 08/12/2015, ID: 9644916, DktEntry: 4, Page 1 of 27

No. 15-80131

**United States Court of Appeals
for the Ninth Circuit**

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER, on behalf of themselves
and all others similarly situated,

Plaintiffs-Respondents,

– v. –

APPLE INC.,

Defendant-Petitioner.

ON PETITION FOR PERMISSION TO APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA
HONORABLE WILLIAM ALSUP
NO. 3:13-CV-03451-WHA (LEAD)
NO. 3:13-CV-04727-WHA (CONSOLIDATED)

**ANSWER TO PETITION FOR PERMISSION
TO APPEAL PURSUANT TO RULE 23(f)**

KIMBERLY A. KRALOWEC
KATHLEEN S. ROGERS
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, California 94104
(415) 546-6800

LEE S. SHALOV
BRETT GALLAWAY
WADE WILKINSON
MCLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, New York 10016
(212) 448-1100

Attorneys for Plaintiffs-Respondents

(For Continuation of Appearances See Inside Cover)

Case: 15-80131, 08/12/2015, ID: 9644916, DktEntry: 4, Page 2 of 27

LOUIS GINSBERG
LAW FIRM OF LOUIS GINSBERG, P.C.
1613 Northern Boulevard
Roslyn, New York 11576
(516) 625-0105

LONNIE C. BLANCHARD III
THE BLANCHARD LAW GROUP, APC
3311 East Pico Boulevard
Los Angeles, California 90023
(213) 599-8255

PETER R. DION-KINDEM
THE DION-KINDEM LAW FIRM
21550 Oxnard Street, Suite 900
Woodland Hills, California 91367
(818) 883-4900

Additional Attorneys for Plaintiffs-Respondents

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John Kell, *The 10 Most Profitable Companies of the Fortune 500*,
FORTUNE, June 11, 2015 3

INTRODUCTION

Plaintiffs were hourly-paid employees of Apple Inc. who worked at one of Apple’s retail stores in California (“Apple Employees”). Like many Apple Employees, Plaintiffs spent uncompensated time having their personal bags and technology checked by managers and store leaders (the “Checks”). Employees went through these Checks not because they wanted to, but because Apple has a written policy that all employees “*must*” have their bags searched and their personal technology checked “every time” they leave a store (the “Check Policy”).

When Plaintiffs moved for class certification, Apple invoked all the tactics employers commonly use to oppose certification and avoid paying employees for all time compensable under California law. There are “variations” in how Checks are conducted, Apple declared. “Thousands” of “mini-trials” could be necessary to resolve disputed claims, Apple warned. And “some” employees — although Apple could only identify 10 out of over 12,000 over six years — did not go through Checks, Apple claimed.

The District Court considered these arguments, and after holding a lengthy hearing, reviewing multiple exhibits and transcripts, and requesting supplemental briefing, granted certification under Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”). Dkt. 297 (the “Order”).¹ In doing so, the District Court

¹ “Dkt.” references are to the docket in N.D. Cal. Case No. 3:13-cv-03451-WHA.

followed every protocol established by this Court and Rule 23 regarding the prerequisites for certification, providing notice to class members, and creating procedures for conducting the action. In particular, the District Court considered the Check Policy and other relevant factors militating for and against certification; identified the questions that were appropriate for class-wide resolution and rejected those that were not; made certain *Apple's* interests are protected to contest claims and assert defenses; and constructed a notice plan that assures all class members are aware of their rights and options going forward. The District Court, in short, did *exactly* what case law and statutory guidelines require.

Against this backdrop, Apple's protestations about "novel" rulings, "unprecedented" procedures and "manifest error" ring hollow. First, there is no authority supporting Apple's main assertion that district courts are required, *as a matter of law*, to reject class certification when limited questions of liability and damages remain after common questions are resolved. Instead, district courts are directed to "balance" common questions and individual ones; evaluate a uniform corporate policy in light of all "other relevant factors"; and ensure that "adjudication of common issues will help achieve judicial economy." This is precisely what the District Court did and found here.

Nor does the specter hypothesized by Apple of "thousands" of "mini-trials" mandate denial of certification. The District Court considered that argument; held

that a speculative possibility of this nature is not, of itself, a basis to reject certification under controlling authority; and even identified the procedures it would follow *if* and when such a “problem” arises. Order at 12-14. Moreover, the notion advanced by Apple, the most profitable corporation in the world², that it would be too complicated and burdensome to determine which employees went through Checks, for how long and how much they are owed, is simply not credible.

Nor did the District Court adopt an “unprecedented hybrid opt-in/opt-out procedure,” as Apple insists.³ What the District Court *did* was recognize that a “few” employees “may” have stronger claims than others (a reality in virtually all wage and hour class actions), and make certain the class notice advises these few employees of their right to opt-out or intervene in the action to assert their own claims. *Id.* at 10-11. Rule 23 expressly endorses this procedure to “protect class members and fairly conduct the action” *See* Rule 23(d)(1)(B)(iii) (notice may

² John Kell, *The 10 Most Profitable Companies of the Fortune 500*, FORTUNE, June 11, 2015, <http://fortune.com/2015/06/11/fortune-500-most-profitable-companies/> (last visited Aug. 12, 2015).

³ After Apple filed its Petition in this Court, the District Court issued an Order Modifying Joint Dissemination Plan (Dkt. 306, filed August 3, 2015), ordering the class notice reflect the following “consequences of intervention”: “If you choose to intervene and assert your own individual claim, you will remain a member of the class.” This Order makes clear that the District Court did not adopt an “unprecedented hybrid opt-in/opt-out procedure,” as Apple argues. Unless a Class Member opts out, he or she is in, regardless of whether the Class Member also seeks to intervene to also raise an individual claim.

advise class members of their “right to intervene and present claims, or to otherwise come into the action.”).

The District Court employed all the correct standards for certification, constructed a fair and functional plan for conducting the class action, and made no “error” in its Order, much less one that is “manifest.” This case does not involve novel or unsettled questions of class certification law, or any questions of broad importance, and the Order granting class certification does not serve as a “death knell” to Apple. Thus, there is no basis to support Apple’s Petition, which should in all respects be denied.

COUNTER-STATEMENT OF FACTS

1. The Check Policy is Mandatory.

Since at least 2007, all Apple Employees at all California Stores have been subject to a written policy requiring their bags and Apple products to be checked every time they exit a store.

Apple mandates strict compliance with the Check Policy. One document warns managers not to “circumvent or take shortcuts regarding policies and procedures”; to “[a]dhere to all store key policies”; and to “[c]onsistently conduct personal property checks.” *Id.* Ex. 36 [2668-69] (emphasis added). Memos and e-mails are routinely sent to Apple Employees stressing the need for consistency in

enforcing the Check Policy.⁴ Apple Employees are also sent “IMPORTANT” reminders that “we do need you to check out with a manager any time you leave the store!” *Id.* Ex. 49 [9681] (emphasis in original). And when asked whether “Apple has advised managers that the employee package and bag search policy is a discretionary policy,” Apple’s corporate representative conceded that “[w]e have *not* written that this is discretionary, *no.*” *Id.* Ex. 1 at 93 (emphasis added).

Apple even warns that “[f]ailure to comply with [the Check] policy may lead to disciplinary action, up to and including termination.” *Id.* Ex. 2 [2398]. Thus, Apple Employees who fail to comply with the Check Policy have been forced to attend “Warning Meeting[s]” (*Id.* Ex. 50 [44469]); been cited for “Behavior to be Corrected” (*Id.* Ex. 51 [50061]); and been subject to a “Coaching Tracker.” *Id.* Ex. 52 [12842]. One employee who complained about Checks was bluntly told: “you don’t get to pick and choose what policies to follow.” *Id.* Ex. 53 [27927].

2. Every California Store Conducts Checks.

There are 52 Apple retail stores in California. Apple admits that every one of these stores has conducted bag searches “for at least some part of the limitations

⁴ See Dkt. 280 Ex. 38 [11434] (“Employee bag checks *will be enforced.*” [emph. added]); *Id.* Ex. 39 [44633] (“Please make sure *everyone* is *always* doing a bag check before they leave the store. As well make sure the new hires know how important it [i]s to have the[ir] bags checked when leaving the store.” [emphasis added]); *Id.* Ex. 40 [4337] (“My hope is that we can let everyone know in some way, shape or form just to *be consistent* with bag checks.” [emphasis added]).

period.”⁵ Apple also admits that every California store has conducted technology checks “for at least some part of the limitations period.”⁶ *See also* Dkt. 280 Ex. 56.

Plaintiffs produced 27 declarations from Apple Employees who worked at 28 California stores. Of those declarations, every employee said Checks were conducted at every California store in which he or she worked. *See id.* Ex. 56. Likewise, Apple produced 20 declarations from store leaders and managers at 17 California stores. Of those declarations, 18 out of 20 admitted Checks were conducted during some period at their California stores. *Id.* Ex. 56.

Apple also produced a class list identifying over 12,000 Apple Employees who were subject to the Check Policy. Dkt. 280 ¶ 4. In the more than two years since this action was commenced, Apple could identify only ten individuals who state that they never went through a bag check during the Class Period⁷ — a mere 0.08% of all members of the Class.

3. Apple Employees Wait for Checks to be Conducted.

Most Apple Employees are not compensated for Checks — which are regularly conducted “off-the-clock”⁸ — because Apple does not consider the time

⁵ *See* Dkt. 280 Ex. 55 (Response to Interrogatory No. 9, Exhibit A).

⁶ *See Id.* Ex. 55 (Response to Interrogatory No. 9, Exhibit B).

⁷ *See Id.* Ex. 57 (Response to Interrogatory No. 12).

⁸ *See, e.g.*, Dkt. 280 Ex. 14 ¶ 5 (“The security checks always occurred off-the-clock.”); *Id.* Ex. 13 ¶ 9 (“I was always off the clock during these security checks and was never paid for any of this time.”); *Id.* Ex. 7 ¶ 5 (“These security checks...always occurred after I clocked out.”); *Id.* Ex. 25 ¶ 4 (“I was never

undergoing and waiting for Checks to be compensable “work.” Estimates of uncompensated wait times range from 10-15 minutes per day (Dkt. 280 Ex. 14 ¶ 8); 10 minutes per day (*Id.* Ex. 22 ¶ 7); and 10 minutes per day to as high as 20 minutes during product launches and holidays (*Id.* Ex. 6 ¶ 11). These waits are caused by a variety of factors, including searching for a store manager to conduct a Check; waiting for the manager to finish assisting a customer; waiting in line for a Check to be performed; the absence of a guard to conduct the check; and the actual performance of the Check.⁹

4. Apple Employees Complain to Apple Management about Checks.

Apple Employees regularly complain about the Check Policy to Apple’s senior executives. One employee wrote Chief Executive Officer Timothy Cook about the Checks, which treat employees as “criminals” and are “embarrassing,” “demeaning” and “disturbing.” Dkt. 280 Ex. 73 [5607-08]. Cook responded to his management team by asking: “[i]s this true?” *Id.* Another employee wrote Cook and other Apple executives: “After work, ... managers will ask security to check every employees bag. Is this legal to check employee’s bag?” *Id.* Ex. 74 [7153]

allowed to nor did I go through a security check and then clock out at either store I worked at.”)

⁹ See *id.* Ex. 14 ¶ 6 (“The security checks were time consuming because after I clocked out, I would have to search around the store for a manager [who was often busy helping customers or performing other tasks.]”); *Id.* Ex. 22 ¶ 7 (“The time spent looking for or waiting for a manger and then waiting in line for other employees to finish their security checks took up the bulk of the time.”)

[sic]. Still another employee complained that the Checks “violated her rights as an employee ... since she was off the clock” and that Apple was “taking time away from her personal time.” *Id.* Ex. 76 [27297]. One store manager even asked whether “we heard of or been mindful of this issue of conducting bag checks when employees are off the clock?” *Id.* Ex. 77 [3539].

STANDARD OF REVIEW

Apple’s Petition satisfies none of the requirements warranting interlocutory review under Rule 23(f), which is a “rare occurrence” that should be granted “sparingly.” *Chamberlan v. Ford Motor Co.*, 402 F.3d 952, 955, 959 (9th Cir. 2005). In *Chamberlan*, this Court outlined three categories of cases in which interlocutory review is warranted by this Court: (1) a “death-knell situation for either the plaintiff or defendant that is independent of the merits of the underlying claims, coupled with a class certification decision by the district court that is questionable”; (2) “the certification decision presents an unsettled and fundamental issue of law relating to class actions, important both to the specific litigation and generally, that is likely to evade end-of-the-case review”; or (3) “the district court’s decision is manifestly erroneous.” *Id.* at 959.

ARGUMENT

1. The Order is not a “Death Knell” for Apple.

While a potential recovery in this case may be “unpleasant to a behemoth”

company like Apple (*id.* at 960 (citation omitted)), “it is hardly terminal.” *Id.* “[T]he impact of the class certification alone does not support an appeal (*id.*)”; and the Order does not warrant appellate review under the first *Chamberlan* factor.

2. The Order is not “Likely to Evade End-of-the-Case Review.”

Even if the Order presented an “unsettled and fundamental issue of law relating to class actions both to the specific litigation and generally” (which it does not), it is not “likely to evade end-of-the-case review.” *Id.* at 959. Indeed, appellate courts have not hesitated to review a lower court’s ruling on class certification after summary judgment (*see, e.g., Sides v. Macon Cnty. Greyhound Park, Inc.*, 725 F.3d 1276, 1286 (11th Cir. 2013)), and after a trial verdict (*see, e.g., Bell v. Farmers Ins. Exchange*, 9 Cal.Rptr.3d 544, 565, 571 (Ct. App. 2004)). Apple neither argues nor demonstrates the contrary. The Order does not warrant appellate review under the second *Chamberlan* factor.

3. The Order is not “Manifestly Erroneous.”

For a decision to be “manifestly erroneous,” it must be “virtually certain to be reversed on appeal from the final judgment.” *Chamberlan*, 402 F.3d at 962. “It is difficult to show that a class certification order is manifestly erroneous unless the district court applies an incorrect Rule 23 standard or ignores a directly controlling case.” *Id.* Here, the Order was the antithesis of “manifestly erroneous.”

A. The Order.

The Order granting Plaintiffs' motion for class certification was issued after discovery closed. The record on the motion consisted of: 13 deposition transcripts; 33 employee declarations submitted on behalf of Plaintiffs; 57 declarations submitted on behalf of Apple; 64 documentary exhibits; and an "expert" report submitted on behalf of Apple. After a lengthy hearing, the Court issued two orders requesting supplemental briefing on issues relating to adequacy of representation, *res judicata* and notice. Dkt. 285, 290.

In rendering its decision, the District Court considered the issues common to the Class, including (1) Apple's uniform "written policy" that "imposes mandatory searches of employees' bags whenever they left the store" (*see* Order at 2), and (2) the fact that, "as a rule, employees received no compensation for the time involved in the searches." *Id.* at 4, 5. The District Court also considered the purportedly "individual" issues and "variations" Apple intoned throughout the litigation, including that some searches were conducted by managers and others by security guards, and that the "process in some stores changed throughout the claim period..." *Id.* at 4. In considering the entire record, the District Court concluded that "Apple is probably correct that some deviation from the written policy occurred, but the showing by Apple is not powerful enough to establish that the written policy was the exception rather than the rule." *Id.* at 5.

The District Court then turned to predominance under Rule 23(b)(3). It analyzed the legal framework underlying Plaintiffs' claims, which are principally governed by California Industrial Welfare Commission Wage Order No. 4. *Id.* at 8. As the District Court observed, employees are entitled to compensation under Wage Order No. 4 when "subject to the control of an employer," which "includes all the time the employee is suffered or permitted to work whether or not required to do so." *Id.* (citation omitted).

The District Court also recognized the conflicting views expressed by the parties about Wage Order No. 4 and its application to the Checks. Specifically, the Court considered whether employees are under Apple's "control" when they go through Checks and regardless of why they bring bags or Apple products to work (Plaintiffs' interpretation of Wage Order No. 4), and whether employees are under Apple's "control" only when "required" to bring bags or Apple products to work, such as for special needs or medical necessities (Apple's view). *Id.* at 9.

Considering Apple's argument, the District Court agreed that inquiring into the "reasons" employees brought bags or Apple products to work (*e.g.*, for special needs) could cause individual questions to predominate over common questions. *Id.* at 9, 10. Thus, at *Apple's* insistence, the District Court declined to certify that question for class treatment, and, instead, granted certification of the common question whether employees should be compensated for Checks when they bring

bags and Apple products to work for convenience. *Id.* at 10. “In this way,” the District Court observed, “particular and varying reasons — like medical necessity — would fall away.” *Id.* “After consideration,” the Court concluded, “this generic issue overarches the entire controversy.” *Id.*

The District Court went further, however, to protect the rights and interests of absent Class members *and* Apple. The District Court reasoned that it would be “unfair to Apple” to allow Class members to litigate one theory of liability in the class action and other theories of liability in separate lawsuits. *Id.* As a result, the District Court — recognizing that Class members who wish to litigate claims based on special needs (who will “likely be few anyway”) have a right to opt-out or intervene — directed that notice should clearly convey these options to Class members and “explain that special-needs issues will *not* be litigated except to the extent that individual class members move to intervene to present individual circumstances.” *Id.* (emphasis in original). In adopting this approach, the District Court acted in express compliance with Rule 23(d)(1)(B)(iii), which provides that “appropriate notice to some or all class members” may be given of their right “to intervene and present claims or defenses, or to otherwise come into the action.”

The District Court also addressed and *rejected* Apple’s argument that there can never be “predominance” in this case because employees must still show they went through Checks after common issues are resolved, which will potentially

require “mini-trials.” Applying this Court’s guidance in *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 514 (9th Cir. 2013), the District Court concluded that:

[i]f the class prevails and it is determined that the time is compensable, the issue of impact on individual class members will still need to be litigated one-by-one in the same manner that damages will be litigated. That could turn out to consume considerable time, *but Leyva holds we may, if not must, do so for damages issues, and in this case, the fact-of-injury issue is one and the same as the extent-of-damages issue.*

Order at 13 (emphasis added).

B. The Court Properly Applied Rule 23(b)(3).

These rulings complied in every respect with Rule 23(b)(3) and controlling authority. In this Circuit, “[t]he predominance analysis under Rule 23(b)(3) focuses on the relationship between the common and individual issues in the case, and tests whether the proposed class is sufficiently cohesive to warrant adjudication by representation.” *Abdullah v. U.S. Sec. Associates, Inc.*, 731 F.3d 952, 964 (9th Cir. 2013), *cert. denied*, 135 S. Ct. 53, 190 L. Ed. 2d 30 (2014) (citations and quotation marks omitted). Under Rule 23(b)(3), district courts must evaluate whether adjudication of common issues will promote judicial economy and efficiency, including whether “recovery on an individual basis would be dwarfed by the cost of litigating on an individual basis.” *Wolin v. Jaguar Land Rover N. Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010); *see also Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir. 1996) (“Implicit in the

satisfaction of the predominance test is the notion that the adjudication of common issues will help achieve judicial economy.”).

In conducting this analysis, the District Court did not rely on a uniform policy “to the near exclusion of other relevant factors touching on predominance.” *In re Wells Fargo Home Mortgage Overtime Pay Litig.*, 571 F.3d 953, 955 (9th Cir. 2009) (“*Wells Fargo*”). Even *Wells Fargo*, a case cited by Apple, recognized that “uniform corporate policies will often bear heavily on questions of predominance and superiority.” *Id.* at 958. “Indeed, courts have long found that comprehensive uniform policies detailing the job duties and responsibilities of employees carry *great weight* for certification purposes.” *Id.* (emphasis added).

In evaluating predominance in this case, the District Court followed these directives to the letter. Specifically, it identified a uniform corporate policy that applies to all Apple Employees, and concluded that whether Apple is liable to employees for complying with that policy “overarches the entire controversy.” Order at 10.¹⁰ Ample precedent supports such a finding. *See, e.g., Jimenez v. Allstate Insurance Co.*, 765 F.3d 1161, 1168 (2014) (upholding class certification of “liability issues based on the common questions of whether Allstate’s practices

¹⁰ The District Court also noted that Apple’s *de minimis* defense “looms as a common issue” and “will be litigated on a class-wide basis.” Order at 12. *See also Otsuka v. Polo Ralph Lauren Corp.*, 2010 WL 366653 at *6 (N.D. Cal., Jan. 25, 2010) (“[E]ven if defendants are correct that federal *de minimis* standards apply to plaintiffs’ California claims, application of those standards will still require resolution of a number of significant common questions...”).

or informal policies violated California labor law.”).

The District Court did not merely consider Apple’s policy “to the near exclusion of other relevant factors,” as Apple asserts. *Wells Fargo*, 571 F.3d at 955. Instead, the District Court carefully focused on the relationship between the common and individual issues; *accepted* Apple’s argument that under one interpretation of Wage Order No. 4, individual issues could predominate over common ones; and only granted certification of an “overarch[ing]” common question that, when answered yes or no, will apply to every single member of the Class; *i.e.*, whether Wage Order No. 4 requires Apple to compensate employees who go through Checks regardless of why they bring bags and technology to work. *See* Order at 8-12.¹¹ Following *Jiminez*, the District Court carefully “preserved both [Apple’s] due process right to present individualized defenses to damages claims and the plaintiffs’ ability to pursue class certification on liability issues based on the common question[.]” whether Apple must compensate employees who go through Checks under Wage Order No. 4. *See Jiminez*, 765 F.3d at 1168.

Apple’s objection to these findings is inconsistent with Ninth Circuit authority. *As a matter of law*, Apple maintains, predominance can *never* be

¹¹ Because this is a common question that applies to *every* member of the Class, it is one that is “apt to drive the resolution of the litigation” for purposes of Rule 23(a)(2). *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011). Unsurprisingly, therefore, Apple does not assert that the commonality requirement of Rule 23(a)(2) is not satisfied.

established if after resolution of common questions, “individualized mini-trials will still be required to establish both liability and damages for each and every class member.” *See* Petition at 4, 14, 15. Apple cites no case supporting such an absolutist rule and none exists. The predominance standards require a district court to “balance” common questions and individual ones; evaluate a uniform corporate policy in light of all “other relevant factors” that militate for and against certification; and assure itself that “adjudication of common issues will help achieve judicial economy” (*see supra* at 13). The standards do *not* require a blanket denial of class certification whenever issues of liability and damages remain after common issues are resolved.

Apple is wrong about this Court’s predominance rulings. *See* Petition at 13 (asserting that “[t]his Court has repeatedly recognized that granting class certification by focusing on a company’s abstract written policy, where such a policy would not eliminate the need to engage in individualized inquiries, constitutes legal error.”). To begin with, the cases Apple relies on in the Petition involved “federal or state exemption classifications,”¹² *not* “centralized work policies” that employees must follow. *See Wells Fargo*, 571 F.3d at 959 (“In contrast to centralized work policies, the blanket exemption policy does nothing to facilitate common proof on the otherwise individualized issues.”). “Such

¹² *See Abdullah*, 731 F.3d at 965.

centralized rules, to the extent they reflect the realities of the workplace, suggest a uniformity among employees that is susceptible to common proof.” *Id.* at 958-59.

The District Court’s analysis is akin to that upheld by this Court in *Abdullah* where, as here, the lower court relied upon ample evidence in the record, including employee declarations, the uniform company policy and testimony, and determined that common questions predominated. 731 F.3d at 965. This Court upheld the lower court’s ruling that even though the uniform policy was not implemented in every circumstance, predominance was satisfied because “in the vast majority of cases, [the] policy was implemented to require on-duty meal breaks be taken.” *Id.* at 965-66. This is *precisely* what the District Court concluded about Apple’s Check policy here. *See* Order at 5 (“Apple is probably correct that some deviation from the written policy occurred, but the showing by Apple is not powerful enough to establish that the written policy was the exception rather than the rule.”).

In the cases cited by Apple, this Court did *not* decree an inflexible prohibition against certification if “a policy would not eliminate the need to engage in individualized inquiries....” *See* Petition at 13. Rather, it rejected predominance findings because they were based almost entirely on an exemption policy “to the *exclusion* of other factors.” *Abdullah*, 731 F.3d at 965 (emphasis in original). Notably, Apple does not attempt such an accusation here. Indeed, at *Apple’s* urging, the District Court considered an array of factors beyond the Check

Policy, including: (i) the existence of individual inquiries that could render a trial unmanageable; (ii) certifying only the common questions that are susceptible of common proof; and (iii) establishing a mechanism for addressing those inquiries after common questions are resolved. *See generally* Order at 8-14. The District Court, in other words, did exactly what this Court instructed it to do.¹³

Unable to cite any controlling authority of this Court supporting its view of the law, Apple resorts to the familiar “thousands” of “separate mini-trials” scare tactic. *See* Petition at 11 (the District Court’s procedure “may necessitate potentially thousands of separate jury trials...”). Putting aside this tech giant’s lamentation about the “burden” it will endure if it must compensate employees who comply with its policies, this Court has rejected such hypothetical musings about the “potential” for “thousands of mini-trials.” *See United Steel, Paper & Forestry, Rubber, Mfg. Energy, Allied Indust. & Service Workers Int’l. Union, AFL-CIO, CLC v. ConocoPhillips Co.*, 593 F.3d 802, 809 (9th Cir. 2010) (“*United Steel*”) (rejecting speculation about “millions” of “mini-trials” as a “clear case of a problem [that] may later appear.”). And even if “mini-trials” are required and become a “problem” as the Court in *United Steel* made clear, “a district court

¹³ The notion advanced by Apple — that the District Court merely relied on “an alleged generic written policy in the abstract” (Petition at 14) — is also demonstrably incorrect. In multiple pages throughout the Order, the District Court evaluated Apple’s alleged “generic” policy *and* the manner and extent to which that policy was enforced at Apple’s California stores. *See* Order at 4-6.

retains the flexibility to address problems with a certified class as they arise, including the ability to decertify.” *Id.*¹⁴

C. The Court Properly Directed Notification to the Few Employees with Additional Claims of the Right to Intervene in Addition to Their Right to Opt-Out.

In addition to adhering to every predominance-related requirement established by this Court, the District Court was particularly mindful of the “few” Apple Employees who may have claims based on special needs. Order at 10. Under the District Court’s Order, such persons shall receive notice of their right to intervene in the action or opt out so that, should their claims be found viable and stronger, they may be litigated separately. *Id.* Rather than denying certification to an entire Class of employees, the District Court determined “not to let the few exceptions prevent litigation of the general rule.” *Id.* Far from being “novel” and “unprecedented” as Apple maintains (Petition at 17), the District Court’s holding is expressly sanctioned by the Rules and Ninth Circuit authority, and evinces a

¹⁴ There is no record evidence — and none is cited in the Petition — that the supposed “mini-trials” and “full scale adjudication[s]” imagined by Apple would be time-consuming or unmanageable. The District Court is not tackling a nationwide conspiracy, but merely determining how many times a week California employees go through Checks, for how long and how much the employee is owed (which would, in part, be based on Apple’s own internal records). These facts could easily be “proven *via* an old-fashioned claims process.” Order at 13. *See also Local Joint Executive Bd. of Culinary/Bartender Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1163 (9th Cir. 2001) (“the damages for individual class members will entail a straightforward calculation of which days and how many hours they would have worked, and how much they would have earned in tips...”).

determination to assure fairness to every interested party in this litigation.

The premise underlying Apple's argument is that a class may never consist of members with different or varying claims, even though they arise from a common course of conduct. The law is precisely the opposite.¹⁵

Moreover, contrary to Apple's assertion (Petition at 18), Rule 23(d)(1)(B)(iii) expressly authorizes the procedure that the District Court ordered. The Rule states that "to protect class members and fairly conduct the action," a court may require "giving appropriate notice to some or all class members of":

the members' opportunity to signify whether they consider the representation fair and adequate, *to intervene and present claims and defenses, or to otherwise come into the action.*

(Emphasis added.) An order entered pursuant to this Rule is not an "opt in" action, as Apple erroneously describes the District Court's ruling.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully submit that there was no "manifest error" in the District Court's Order, and that Apple's Petition for permission to appeal should in all respects be denied.

¹⁵ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998) ("Under the rule's permissive standards, representative claims are "typical" if they are reasonably co-extensive with those of absent class members; they need not be substantially identical."); *DeBoer v. Mellon Mortgage Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995) (finding commonality even though individuals with different contracts had different claims of differing strengths).

Dated: August 12, 2015

Respectfully submitted,

/s/ Kimberly A. Kralowec

Kimberly A. Kralowec

Kathleen S. Rogers

THE KRALLOWEC LAW GROUP

188 The Embarcadero, Suite 800

San Francisco, CA 94105

Tel: (415) 546-6800

Lee S. Shalov

Brett Gallaway

Wade Wilkinson

MCLAUGHLIN & STERN, LLP

260 Madison Avenue

New York, NY 10016

Tel: (212) 448-1100

*Attorneys for Plaintiffs and the
California Class*

EXHIBIT D

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 15-17382		Docketed: 12/03/2015	
Nature of Suit: 3710 Fair Labor Standards Act Amanda Frlekin, et al v. Apple Inc.		Termed: 09/02/2020	
Appeal From: U.S. District Court for Northern California, San Francisco			
Fee Status: Paid			
Case Type Information:			
1) civil			
2) private			
3) null			
Originating Court Information:			
District: 0971-3 : 3:13-cv-03451-WHA			
Court Reporter: Debra Pas, Official Court Reporter			
Court Reporter: Lydia Radovich Zinn, Official Court Reporter			
Trial Judge: William Haskell Alsup, Senior District Judge			
Date Filed: 07/25/2013			
Date Order/Judgment:	Date Order/Judgment EOD:	Date NOA Filed:	Date Rec'd COA:
11/07/2015	11/07/2015	12/03/2015	12/03/2015
District: 0971-3 : 3:13-cv-03775-WHA			
District: 0971-3 : 3:13-cv-04727-WHA			
Prior Cases:			
15-80131	Date Filed: 07/31/2015	Date Disposed: 10/20/2015	Disposition: Denied - Judge Order
Current Cases:			
None			

AMANDA FRLEKIN
Plaintiff - Appellant,

Brett Reed Gallaway
Direct: 212-448-1100
Email: bgallaway@mclaughlinstern.com
Fax: 212-448-0066
[**COR LD NTC Retained**]
McLAUGHLIN AND STERN
260 Madison Avenue
New York, NY 10016

Kimberly A. Kralowec, Attorney
Email: kkralowec@kraloweclaw.com
[**COR LD NTC Retained**]
Kralowec Law, P.C.
750 Battery Street
Suite 700
San Francisco, CA 94111

Kathleen Styles Rogers, Attorney
Direct: 415-546-6800
Email: krogers@kraloweclaw.com
Fax: 415-546-6801
[**COR LD NTC Retained**]
Kralowec Law, P.C.
750 Battery Street
Suite 700
San Francisco, CA 94111

Chad A. Saunders
Direct: 310-496-5818
[**COR LD NTC Retained**]
Crosner Legal
9440 Santa Monica Boulevard
Suite 301
Beverly Hills, CA 90210

12/03/2015	<input type="checkbox"/> 1 15 pg, 1.51 MB	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. SEND MQ: Yes. The schedule is set as follows: Mediation Questionnaire due on 12/10/2015. Transcript ordered by 01/04/2016. Transcript due 02/01/2016. Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher opening brief due 03/14/2016. Appellee Apple Inc. answering brief due 04/14/2016. Appellant's optional reply brief is due 14 days after service of the answering brief. [9779314] (RT) [Entered: 12/03/2015 04:56 PM]
12/10/2015	<input type="checkbox"/> 2 4 pg, 50.77 KB	Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher Mediation Questionnaire. Date of service: 12/10/2015. [9787923] [15-17382] (Kralowec, Kimberly) [Entered: 12/10/2015 02:24 PM]
12/11/2015	<input type="checkbox"/> 3	Added attorney Brett Reed Gallaway for plaintiff-appellants: Amanda Frlekin Debra Speicher Seth Dowling Taylor Kalin Aaron Gregoroff, in case 15-17382. [9789729] (RT) [Entered: 12/11/2015 03:20 PM]
01/04/2016	<input type="checkbox"/> 4 6 pg, 321.51 KB	MEDIATION CONFERENCE SCHEDULED - Assessment Conference, 01/20/2016, 1:00 p.m. PACIFIC Time. The briefing schedule previously set by the court remains in effect. See order for instructions and details. [9813294] (BLS) [Entered: 01/04/2016 11:32 AM]
01/21/2016	<input type="checkbox"/> 5	Added attorney Wade Christopher Wilkinson for plaintiff-appellants: Amanda Frlekin, Debra Speicher, Seth Dowling, Taylor Kalin, and Aaron Gregoroff, in case 15-17382. [9834559] (RT) [Entered: 01/21/2016 08:34 AM]
01/21/2016	<input type="checkbox"/> 6  2 pg, 60.11 KB	Filed order MEDIATION (PWS): A dial-in telephonic conference will be held on February 19, 2016, at 1:00 p.m. Pacific Time. Dial-in information is available to counsel of record as a separate document attached to the electronic filing notification of this order. If any counsel of record is not able to access the dial-in information, please notify the Mediation Program immediately at Catherine_Lirio@ca9.uscourts.gov. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further discussions prior to the next scheduled conference. [9835104] (Trierweiler, Nicole) [Entered: 01/21/2016 11:07 AM]
02/29/2016	<input type="checkbox"/> 7 1 pg, 32.14 KB	Filed order MEDIATION (PWS): The briefing schedule previously set by the court is amended as follows: appellants shall file an opening brief on or before April 28, 2016; appellee shall file an answering brief on or before May 31, 2016; appellants may file an optional reply brief within fourteen (14) days from the service date of the answering brief. [9882588] (HC) [Entered: 02/29/2016 01:33 PM]
03/01/2016	<input type="checkbox"/> 8 1 pg, 39.28 KB	Filed order MEDIATION (PWS): The dial-in telephonic conference originally scheduled for February 19, 2016, is rescheduled to March 22, 2016, at 10:00 a.m. Pacific Time. The dial-in information provided remains unchanged. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further discussions prior to the next scheduled conference. [9884727] (HC) [Entered: 03/01/2016 02:04 PM]
03/22/2016	<input type="checkbox"/> 9 1 pg, 180.9 KB	Filed Mediation order: This case is not selected for inclusion in the Mediation Program. Counsel are requested to contact the Circuit Mediator should circumstances develop that warrant further settlement discussions. [9910850] (MS) [Entered: 03/22/2016 01:40 PM]
04/05/2016	<input type="checkbox"/> 10 1 pg, 31.99 KB	Filed order MEDIATION (PWS): The briefing schedule previously set by the court is amended as follows: appellants shall file an opening brief on or before June 27, 2016; appellee shall file an answering brief on or before July 27, 2016; appellants may file an optional reply brief within fourteen (14) days from the service date of the answering brief. [9928074] (HC) [Entered: 04/05/2016 01:43 PM]
06/27/2016	<input type="checkbox"/> 11 676 pg, 21.9 MB	Submitted (ECF) excerpts of record. Submitted by Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. Date of service: 06/27/2016. [10030292] [15-17382] (Kralowec, Kimberly) [Entered: 06/27/2016 01:36 PM]
06/27/2016	<input type="checkbox"/> 12 73 pg, 168.57 KB	Submitted (ECF) Opening Brief for review. Submitted by Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. Date of service: 06/27/2016. [10030304] [15-17382] (Kralowec, Kimberly) [Entered: 06/27/2016 01:40 PM]
06/27/2016	<input type="checkbox"/> 13 41 pg, 1.81 MB	Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher Motion to take judicial notice of copies of official records maintained by the California Department of Industrial Relations at its San Francisco facility, and two records of this Court filed in Alcantar v. Hobart Service, No. 13-55400 (9th Cir. 2013). Date of service: 06/27/2016. [10030327] [15-17382] (Kralowec, Kimberly) [Entered: 06/27/2016 01:47 PM]
06/27/2016	<input type="checkbox"/> 14 2 pg, 187.73 KB	Filed clerk order: The opening brief [12] submitted by Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: blue. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the excerpts of record [11] submitted by Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10030426] (GV) [Entered: 06/27/2016 02:23 PM]

- 06/29/2016 15 Filed four paper copies of excerpts of record [11] in 4 volume(s) filed by Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. [10033466] (GV) [Entered: 06/29/2016 10:57 AM]
- 06/29/2016 16 Received 7 paper copies of Opening Brief [12] filed by Appellants. [10034652] (RG) [Entered: 06/30/2016 08:33 AM]
- 07/05/2016 17 COURT DELETED INCORRECT ENTRY. Refiled using correct filing type in correct entry [18]. Notice about deletion sent to case participants registered for electronic filing. Correct Entry: [18]. Original Text: Filed (ECF) California Employment Lawyers Association Motion to become amicus curiae. Date of service: 07/05/2016. [10038800] [15-17382] (Singer, Michael) [Entered: 07/05/2016 02:21 PM]
- 07/05/2016 18 Submitted (ECF) Amicus brief for review and filed Motion to become amicus curiae. Submitted by California Employment Lawyers Association. Date of service: 07/05/2016. [10041339]--[COURT ENTERED FILING to replace incorrect entry [17].] (LA) [Entered: 07/06/2016 06:11 PM]
31 pg, 739.81 KB
- 07/06/2016 19 Entered appearance of Amicus Curiae - Pending California Employment Lawyers Association. [10041341] (LA) [Entered: 07/06/2016 06:16 PM]
- 07/06/2016 20 Terminated Lonnie C. Blanchard III for Debra Speicher, Taylor Kalin, Aaron Gregoroff and Seth Dowling in 15-17382, Louis Ginsberg for Debra Speicher, Taylor Kalin, Aaron Gregoroff, Amanda Frlekin and Seth Dowling in 15-17382 for failure to register for Appellate CM/ECF. [10041344] (LA) [Entered: 07/06/2016 06:19 PM]
- 07/11/2016 21 Filed order MEDIATION (PWS): The briefing schedule previously set by the court is amended as follows: appellee shall file an answering brief on or before September 26, 2016; appellants may file an optional reply brief within fourteen (14) days from the service date of the answering brief. [10045527] (HC) [Entered: 07/11/2016 12:02 PM]
1 pg, 31.74 KB
- 07/13/2016 22 Filed (ECF) notice of appearance of Richard H. Rahm for Appellee Apple Inc.. Date of service: 07/13/2016. [10048686] [15-17382] (Rahm, Richard) [Entered: 07/13/2016 11:46 AM]
4 pg, 84.86 KB
- 07/13/2016 23 Added attorney Richard H. Rahm for Apple Inc.. [10048715] (RL) [Entered: 07/13/2016 11:57 AM]
- 07/20/2016 26 Filed clerk order (Deputy Clerk: LBS): Motion (ECF Filing) motion [18] to become amicus is referred to panel. (see attached PDF for complete order addressing Dkt No. 18) [10056073]--[COUR UPDATE: Removed incorrect (non-filed stamped) PDF of order. Correct filed stamped order remains. 07/20/2016 by RY] (LBS) [Entered: 07/20/2016 10:19 AM]
2 pg, 190.4 KB
- 07/21/2016 27 Received 7 paper copies of Amicus Brief [18] filed by CELA. [10059984] (RG) [Entered: 07/22/2016 01:34 PM]
- 09/26/2016 28 COURT DELETED INCORRECT ENTRY. Notice about deletion sent to case participants registered for electronic filing. Correct Entries: [29] and [30]. Original Text: Filed (ECF) Appellee Apple Inc. answer to 158d petition. Date of service: 09/26/2016. [10137914] [15-17382] (Rahm, Richard) [Entered: 09/26/2016 10:11 PM]
- 09/26/2016 29 Submitted (ECF) Answering Brief for review. Submitted by Appellee Apple Inc.. Date of service: 09/26/2016. [10139075] [15-17382]--[COURT UPDATE: Backdated entry to reflect correct filing date. 09/28/2016 by SLM] (Rahm, Richard) [Entered: 09/27/2016 01:35 PM]
71 pg, 316.03 KB
- 09/26/2016 30 Submitted (ECF) supplemental excerpts of record. Submitted by Appellee Apple Inc.. Date of service: 09/26/2016. [10139119] [15-17382]--[COURT UPDATE: Backdated entry to reflect correct filing date. 09/28/2016 by SLM] (Rahm, Richard) [Entered: 09/27/2016 01:46 PM]
72 pg, 1.28 MB
- 09/28/2016 31 Filed clerk order: The answering brief [29] submitted by Apple Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: red. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. The Court has reviewed the supplemental excerpts of record [30] submitted by Apple Inc.. Within 7 days of this order, filer is ordered to file 4 copies of the excerpts in paper format, with a white cover. The paper copies must be in the format described in 9th Circuit Rule 30-1.6. [10139939] (GV) [Entered: 09/28/2016 09:02 AM]
2 pg, 187.35 KB
- 09/29/2016 32 Received 7 paper copies of Answering Brief [29] filed by Apple Inc.. [10142398] (RG) [Entered: 09/29/2016 01:40 PM]
- 09/29/2016 33 Filed four paper copies of supplemental excerpts of record [30] in 1 volume(s) filed by Appellee Apple Inc.. [10143267] (GV) [Entered: 09/29/2016 05:46 PM]
- 10/04/2016 34 Filed order MEDIATION (PWS): The briefing schedule previously set by the court is amended as follows: appellants may file an optional reply brief on or before December 9, 2016. [10148346] (OC) [Entered: 10/04/2016 02:20 PM]
1 pg, 31.43 KB

- 11/23/2016 [35](#) Filed clerk order (Deputy Clerk: PWS): The briefing schedule previously set by the court is amended as follows: appellants may file an optional reply brief on or before December 23, 2016. [10209411] (Trierweiler, Nicole) [Entered: 11/23/2016 02:08 PM]
1 pg, 31.48 KB
- 12/23/2016 [36](#) Filed (ECF) Appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher Motion to take judicial notice of Certain California Office of Administrative Law records maintained by the California Department of Industrial Relations. Date of service: 12/23/2016. [10245509] [15-17382] (Kralowec, Kimberly) [Entered: 12/23/2016 11:54 AM]
39 pg, 1.31 MB
- 12/23/2016 [37](#) Submitted (ECF) Reply Brief for review. Submitted by Appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher. Date of service: 12/23/2016. [10245523] [15-17382] (Kralowec, Kimberly) [Entered: 12/23/2016 12:06 PM]
40 pg, 1.11 MB
- 12/27/2016 [38](#) Filed clerk order: The reply brief [\[37\]](#) submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 7 copies of the brief in paper format, accompanied by certification, attached to the end of each copy of the brief, that the brief is identical to the version submitted electronically. Cover color: gray. The paper copies shall be printed from the PDF version of the brief created from the word processing application, not from PACER or Appellate CM/ECF. [10246373] (SML) [Entered: 12/27/2016 09:07 AM]
2 pg, 185.9 KB
- 01/03/2017 39 Received 7 paper copies of Reply Brief [\[37\]](#) filed by Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. [10253429] (RG) [Entered: 01/04/2017 08:46 AM]
- 01/27/2017 40 This case is being considered for the May 2017 San Francisco oral argument calendar. The exact date of your oral argument has not been determined at this time.
The following is a link to the upcoming court sessions: http://cdn.ca9.uscourts.gov/datastore/uploads/calendar/sitdates_2017.pdf.
Please review these upcoming dates *immediately* to determine if you have any conflicts with them. If you do have conflicts, please inform the Court within 3 days of this notice by sending a letter to the Court using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** regarding availability for oral argument).
The Court discourages motions to continue after this 3-day period.
The clerk's office takes conflict dates into consideration in scheduling oral arguments but cannot guarantee that every request will be honored. Your case will be assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
Note that your case will be set for hearing in due course if it is not assigned to this calendar.
In addition, if parties would like to discuss settlement before argument is scheduled, they should jointly request a referral to the mediation unit. Such a referral will postpone the calendaring of oral argument. All such requests must be made within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: request for mediation). Once the case is calendared, it is unlikely that the court will postpone argument for settlement discussions.[10288547] (AW) [Entered: 01/27/2017 03:32 PM]
- 03/28/2017 41 This case is being considered for the July 2017 San Francisco oral argument calendar. The exact date of your oral argument has not been determined at this time.
The following is a link to the upcoming court sessions: http://cdn.ca9.uscourts.gov/datastore/uploads/calendar/sitdates_2017.pdf.
Please review these upcoming dates *immediately* to determine if you have any conflicts with them. If you do have conflicts, please inform the Court within 3 days of this notice by sending a letter to the Court using CM/ECF (**Type of Document:** File Correspondence to Court; **Subject:** regarding availability for oral argument).
The Court discourages motions to continue after this 3-day period.
The clerk's office takes conflict dates into consideration in scheduling oral arguments but cannot guarantee that every request will be honored. Your case will be assigned to a calendar approximately 10 weeks before the scheduled oral argument date.
Note that your case will be set for hearing in due course if it is not assigned to this calendar.
In addition, if parties would like to discuss settlement before argument is scheduled, they should jointly request a referral to the mediation unit. Such a referral will postpone the calendaring of oral argument. All such requests must be made within 3 days of this notice by sending a letter to the Court using CM/ECF (Type of Document: File Correspondence to Court; Subject: request for mediation). Once the case is calendared, it is unlikely that the court will postpone argument for settlement discussions.[10374157] (AW) [Entered: 03/28/2017 10:55 AM]
- 05/03/2017 42 Notice of Oral Argument on Tuesday, July 11, 2017 - 09:00 A.M. - Courtroom 1 - San Francisco CA.

View the Oral Argument Calendar for your case [here](#).

Be sure to review the [GUIDELINES](#) for important information about your hearing, including when to arrive (30 minutes before the hearing time) and when and how to submit additional citations (filing electronically as far in advance of the hearing as possible).

When you have reviewed the calendar, download the [ACKNOWLEDGMENT OF HEARING NOTICE form](#),

- complete the form, and file it via Appellate ECF or return the completed form to: SAN FRANCISCO Office. [10420615] (AKM) [Entered: 05/03/2017 01:31 PM]
- 05/04/2017 [43](#) Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Julie Dunne for Appellee Apple Inc.. [10422135] [15-17382] (Dunne, Julie) [Entered: 05/04/2017 12:25 PM]
2 pg, 160.01 KB
- 05/10/2017 [44](#) Filed clerk order (Deputy Clerk: OC): The motion for leave of court to file brief of California Employment Lawyers Association as amicus curiae is GRANTED. The brief tendered July 5, 2016, is ordered filed. Appellants' motion for judicial notice filed June 27, 2016, is GRANTED. Appellants' motion to take judicial notice filed December 23, 2016, is GRANTED. [10430079] (OC) [Entered: 05/10/2017 04:48 PM]
1 pg, 31.9 KB
- 05/10/2017 [45](#) Filed clerk order: The amicus brief [18] submitted by CELA is filed. Paper copies are not required per the Court's 7/20/16 order. [10430140] (GV) [Entered: 05/10/2017 05:13 PM]
1 pg, 185.16 KB
- 05/11/2017 [46](#) Filed (ECF) Acknowledgment of hearing notice. Location: San Francisco. Filed by Attorney Kimberly A. Kralowec for Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. [10431664] [15-17382] (Kralowec, Kimberly) [Entered: 05/11/2017 04:30 PM]
2 pg, 58.99 KB
- 06/15/2017 [47](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher Corrected Motion to take judicial notice of Copies of official records maintained by the California Department of Industrial Relations at its San Francisco facility, and two records of this Court filed in Alcantar v. Hobart Service, No. 13-55400 (9th Cir. 2013-14) (See Dkt. 13). Date of service: 06/15/2017. [10475781] [15-17382] (Kralowec, Kimberly) [Entered: 06/15/2017 04:37 PM]
41 pg, 3.83 MB
- 06/16/2017 [48](#) Filed clerk order (Deputy Clerk: OC): Plaintiffs-Appellants' Corrected Motion for Judicial Notice is GRANTED. [10477133] (OC) [Entered: 06/16/2017 02:16 PM]
1 pg, 31.32 KB
- 07/11/2017 49 ARGUED AND SUBMITTED TO SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL. [10504159] (DAB) [Entered: 07/11/2017 11:12 AM]
- 07/11/2017 [50](#) Filed Audio recording of oral argument.
Note: Video recordings of public argument calendars are available on the Court's website, at <http://www.ca9.uscourts.gov/media/> [10504939] (BJK) [Entered: 07/11/2017 03:42 PM]
1 pg, 15.04 MB
- 08/16/2017 [51](#) Order filed for PUBLICATION (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL) The clerk of this court is hereby directed to file in the California Supreme Court, under official seal of the United States Court of Appeals for the Ninth Circuit, copies of all relevant briefs and excerpts of the record, and an original and ten copies of this order and request for certification, along with a certification of service on the parties, pursuant to California Rule of Court 8.548(c), (d). This case is withdrawn from submission, and the clerk is directed to administratively close this docket, pending further order from this court. The parties shall notify the clerk of this court within seven days after the California Supreme Court accepts or rejects certification. If an opinion is rendered by that court, the parties shall again notify the clerk of this court within seven days of the issuance of the opinion. The panel retains jurisdiction over further proceedings. IT IS SO ORDERED. [] [10546348]--[Edited: attached PDF of order. 08/16/2017 by SLM] (RMM) [Entered: 08/16/2017 09:02 AM]
15 pg, 218.87 KB
- 08/16/2017 [52](#) Transmitted to the California State Supreme Court: an original certification order; a copy of the certified docket report; 4 briefs; 5 volumes of excerpts of record. Tracking Information: UPS 1Z 950 159 03 5433 9992. [10547160] (MM) [Entered: 08/16/2017 01:40 PM]
2 pg, 67.77 KB
- 08/28/2017 [53](#) Filed (ECF) notice of appearance of Janine Renee Menhennet for Amicus Curiae CELA. Date of service: 08/28/2017. [10560559] [15-17382] (Menhennet, Janine) [Entered: 08/28/2017 12:04 PM]
2 pg, 79.15 KB
- 08/28/2017 54 Added attorney Janine R. Menhennet for CELA. [10560746] (RL) [Entered: 08/28/2017 01:24 PM]
- 08/29/2017 [55](#) Filed (ECF) Amicus Curiae CELA Correspondence: August 23, 2017 Letter to the California Supreme Court in Support of the Order Certifying a Question to the Supreme Court of California Dated August 16, 2017, Ninth Circuit Docket Number 51. Date of service: 08/29/2017 [10562076] [15-17382] (Menhennet, Janine) [Entered: 08/29/2017 09:47 AM]
20 pg, 409.14 KB
- 09/01/2017 [56](#) Filed (ECF) Appellants Debra Speicher, Seth Dowling, Amanda Frlekin, Aaron Gregoroff and Taylor Kalin Correspondence: Letter to California Supreme Court in Support of Review of Certified Question. Date of service: 09/01/2017 [10567907] [15-17382] (Kralowec, Kimberly) [Entered: 09/01/2017 03:52 PM]
33 pg, 297.59 KB
- 09/05/2017 [57](#) Filed non-party The Consumer Attorneys of California ("CAOC") letter dated 09/01/2017 re: Support for deciding certified question on behalf of Consumer Attorneys of California. Paper filing deficiency: None. (FYI PANEL) [10569560] (RL) [Entered: 09/05/2017 03:21 PM]
9 pg, 117.19 KB
- 09/05/2017 [58](#) Filed non-party Bet Tzedek Legal Services ("Bet Tzedek") letter dated 09/01/2017 re: Support for review of certified question. Paper filing deficiency: None. (FYI PANEL) [10571208] (RL) [Entered: 09/06/2017 02:41 PM]
7 pg, 93.86 KB

- 09/22/2017 [59](#) Received Supreme Court of California document re: The request for certification directed to this court from the United States Court of Appeals for the Ninth Circuit is accepted. Pursuant to California Rules of Court, rule 8.548(f)(5), the issue is rephrased as follows: Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees compensable as "hours worked" within the meaning of California Industrial Welfare Commission Wage Order No. 7? For the purposes of briefing and oral argument, appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling, and Debra Speicher are deemed the petitioners in this court. (Cal. Rules of Court, rule 8.520(a)(6).) (FYI PANEL) [10590847] (RL) [Entered: 09/22/2017 01:51 PM]
1 pg, 17.12 KB
- 10/20/2017 [60](#) Received a copy of Supreme Court of California order re: On application of appellants and good cause appearing, it is ordered that the time to serve and file the opening brief on the merits is extended to and including December 19, 2017. (FYI PANEL) [10628240] (RL) [Entered: 10/23/2017 03:26 PM]
1 pg, 12.94 KB
- 07/10/2018 [62](#) Received in the Supreme Court of the State of California notice regarding Application to file Amicus brief & proposed brief of amicus curiae California Correctional Peace Officers' Association, supporting plaintiffs and appellants. [10939671] (RL) [Entered: 07/12/2018 10:53 AM]
30 pg, 1.3 MB
- 07/10/2018 [63](#) Received in the Supreme Court of the State of California notice regarding Motion for judicial notice by Amicus Curiae California Correctional Peace Officers' Association; memorandum of points and authorities; declaration of Yonatan L. Moskowitz. [10939806] (RL) [Entered: 07/12/2018 11:28 AM]
61 pg, 2.47 MB
- 07/11/2018 [61](#) ENTRY UPDATED. Received in the Supreme Court of California notice regarding On application of amicus curiae Bet Tzedek Legal Services and good cause appearing, it is ordered that the time to serve and file its application to file an amicus curiae brief in support of appellant is hereby extended to and including August 8, 2018. (See Cal. Rules of Court, rule 8.520(f).) (FYI PANEL) [10938942] (Corrected NDA 7/12/18) [10938942]--[Edited 07/12/2018 by RL] (RL) [Entered: 07/11/2018 03:41 PM]
1 pg, 14.76 KB
- 07/11/2018 [64](#) Received in the Supreme Court of the State of California notice regarding application of Retail Litigation Center, Inc. and National Retail Federation for permission to file amicus curiae brief and amicus curiae brief in support of Apple, Inc.. [10940701] (RL) [Entered: 07/12/2018 04:28 PM]
22 pg, 187.46 KB
- 08/16/2019 [65](#) Received a copy of Supreme Court of California order re: This court agreed to decide a question of California law in this matter on September 20, 2017. Pursuant to California Rules of Court, rule 8.548(f)(5), the certified question accepted from United States Court of Appeals for the Ninth Circuit is restated as follows: Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees compensable as "hours worked" within the meaning of California Industrial Welfare Commission Wage Order No. 7? The parties may serve and file supplemental briefs addressing the above question on or before August 28, 2019. Amici curiae may also serve and apply to file supplemental briefs addressing the above question on or before August 28, 2019. Any reply by the parties to the supplemental briefs, or to any brief by amicus curiae, must be served and filed on or before September 11, 2019. [11400558] (QDL) [Entered: 08/16/2019 03:18 PM]
1 pg, 14.9 KB
- 11/27/2019 [66](#) Received a copy of Supreme Court of California order re: Appellants' motion to augment the record, filed June 8, 2018, is granted. Appellants' requests for judicial notice, filed December 19, 2017 and January 31, 2018, are granted. Respondent's request for judicial notice, filed March 19, 2018, is granted. Amicus curiae California Correctional Peace Officers' Association's request for judicial notice, filed July 23, 2018, is granted. [11515147] (QDL) [Entered: 11/27/2019 02:36 PM]
1 pg, 14.04 KB
- 02/20/2020 [67](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher response to Court order dated 08/16/2017. Date of service: 02/20/2020. [11603213] [15-17382] (Kralowec, Kimberly) [Entered: 02/20/2020 11:55 AM]
33 pg, 411.12 KB
- 02/24/2020 [68](#) Filed (ECF) Appellee Apple Inc. Correspondence: Letter re response to certified question from California Supreme Court. Date of service: 02/24/2020 [11607231] [15-17382] (Boutrous, Theodore) [Entered: 02/24/2020 04:07 PM]
1 pg, 140 KB
- 03/04/2020 [69](#) Received a copy of Supreme Court of California order re: The time for granting or denying rehearing in the above-entitled case is hereby extended to and including May 13, 2020 or the date upon which rehearing is either granted or denied, whichever occurs first. [11618203] (QDL) [Entered: 03/04/2020 02:40 PM]
1 pg, 29.28 KB
- 05/15/2020 [70](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher response to Court order dated 08/16/2017. Date of service: 05/15/2020. [11692394] [15-17382] (Kralowec, Kimberly) [Entered: 05/15/2020 01:21 PM]
22 pg, 526.17 KB
- 05/15/2020 [71](#) Received a copy of the Supreme Court of California order re: The petition for rehearing is denied. [11693456] (QDL) [Entered: 05/18/2020 10:03 AM]
1 pg, 13.8 KB
- 05/18/2020 [72](#) Filed (ECF) Appellee Apple Inc. reply to response to Court order dated 05/13/2020. Date of service: 05/18/2020. [11693509] [15-17382] (Boutrous, Theodore) [Entered: 05/18/2020 10:31 AM]
5 pg, 132.97 KB

- 05/18/2020 [73](#) Received a copy of the Supreme Court of California opinion filed on 02/13/2020. [11694285] (QDL) [Entered: 05/18/2020 03:18 PM]
30 pg, 288.62 KB
- 05/19/2020 [74](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher reply to response to Court order dated 05/13/2020. Date of service: 05/19/2020. [11695795] [15-17382] (Kralowec, Kimberly) [Entered: 05/19/2020 02:35 PM]
25 pg, 923.17 KB
- 05/28/2020 [75](#) Filed order (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL) The parties are ordered to submit supplemental briefs addressing whether, following the California Supreme Court's decision, "there are factual disputes that would preclude summary judgment for Plaintiffs." Dkt. [72](#) at 2; Dkt. [73](#) at 3 & n.3. Apple is directed to file a supplemental brief not to exceed 2500 words within 14 days of this order. Plaintiffs are directed to file a responsive brief not to exceed 2500 words 14 days thereafter. No reply will be permitted absent further order of the court. [11703910] (OC) [Entered: 05/28/2020 01:15 PM]
1 pg, 34.2 KB
- 06/11/2020 [76](#) Submitted (ECF) Supplemental Brief for review. Submitted by Appellee Apple Inc.. Date of service: 06/11/2020. [11718715] [15-17382]--[COURT UPDATE: Attached corrected PDF of the brief. 06/11/2020 by KWG] (Boutrous, Theodore) [Entered: 06/11/2020 12:02 PM]
16 pg, 198 KB
- 06/11/2020 [77](#) Filed clerk order: The supplemental brief [76](#) submitted by Apple Inc. is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: tan. The paper copies shall be submitted to the principal office of the Clerk. [11719349] (KWG) [Entered: 06/11/2020 04:37 PM]
2 pg, 95.06 KB
- 06/15/2020 [78](#) Filed (ECF) Notice of withdrawal of counsel. Filed by Attorney Mr. Richard H. Rahm, Esquire for Appellee Apple Inc.. Party proceeding without counsel: No. Date of service: 06/15/2020. [11721636] [15-17382] (Rahm, Richard) [Entered: 06/15/2020 11:59 AM]
- 06/15/2020 [79](#) Terminated Richard H. Rahm for Apple Inc. in 15-17382 [11721776] (QDL) [Entered: 06/15/2020 01:08 PM]
- 06/16/2020 [80](#) Received 6 paper copies of Supplemental Brief [76](#) filed by Apple Inc.. (sent to panel) [11723405] (KWG) [Entered: 06/16/2020 11:34 AM]
- 06/25/2020 [81](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher Motion to take judicial notice of Pursuant to Federal Rule of Evidence 201, appellants respectfully ask the Court to take judicial notice of certain official records of the California Supreme Court. Date of service: 06/25/2020. [11733399] [15-17382] (Galloway, Brett) [Entered: 06/25/2020 11:25 AM]
37 pg, 1.03 MB
- 06/25/2020 [82](#) Submitted (ECF) Supplemental Brief for review. Submitted by Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. Date of service: 06/25/2020. [11733412] [15-17382] (Galloway, Brett) [Entered: 06/25/2020 11:28 AM]
16 pg, 264.9 KB
- 06/25/2020 [83](#) Submitted (ECF) supplemental excerpts of record. Submitted by Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher. Date of service: 06/25/2020. [11733418] [15-17382] (Galloway, Brett) [Entered: 06/25/2020 11:30 AM]
29 pg, 372.07 KB
- 06/25/2020 [84](#) Filed clerk order: The supplemental brief [82](#) submitted by appellants is filed. Within 7 days of the filing of this order, filer is ordered to file 6 copies of the brief in paper format, accompanied by certification (attached to the end of each copy of the brief) that the brief is identical to the version submitted electronically. Cover color: tan. The supplemental excerpts of record [83](#) submitted by appellants are filed. Within 7 days of this order, filer is ordered to file 3 copies of the excerpts in paper format securely bound on the left side, with white covers. The paper copies shall be submitted to the principal office of the Clerk. [11733438] (KWG) [Entered: 06/25/2020 11:42 AM]
2 pg, 95.52 KB
- 07/02/2020 [85](#) Received 3 paper copies of supplemental excerpts of record [83](#) in 1 volume(s) filed by Appellants. (sent to panel) [11741193] (LA) [Entered: 07/02/2020 02:46 PM]
- 07/02/2020 [86](#) Received 6 paper copies of Supplemental Brief [82](#) filed by Appellants. (sent to panel) [11742496] (SD) [Entered: 07/06/2020 11:16 AM]
- 08/26/2020 [87](#) Case resubmitted on this date to SPG, MTF and CBM. [11810287] (AKM) [Entered: 09/02/2020 08:06 AM]
- 09/02/2020 [88](#) FILED OPINION (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL) Plaintiffs' Motion for Judicial Notice is granted because these documents are court filings in the California Supreme Court proceeding regarding the question we certified. REVERSED and REMANDED with instructions. Judge: CBM Authoring. FILED AND ENTERED JUDGMENT. [11810295] (AKM) [Entered: 09/02/2020 08:13 AM]
16 pg, 151.72 KB
- 09/15/2020 [89](#) Filed (ECF) Appellants Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin and Debra Speicher bill of costs (Form 10) in the amount of 456.40 USD. Date of service: 09/15/2020 [11824934] [15-17382] (Kralowec, Kimberly) [Entered: 09/15/2020 02:15 PM]
1 pg, 122.5 KB

09/17/2020	<input type="checkbox"/> 90 4 pg, 97.24 KB	Filed (ECF) Appellee Apple Inc. Motion to file late petition for rehearing and/or petition for rehearing en banc of 4 pages. Date of service: 09/17/2020. [11827880] [15-17382] (Boutrous, Theodore) [Entered: 09/17/2020 02:07 PM]
09/17/2020	<input type="checkbox"/> 91 35 pg, 331.29 KB	Filed (ECF) Appellee Apple Inc. petition for panel rehearing (from 09/02/2020 opinion). Date of service: 09/17/2020. [11827885] [15-17382] (Boutrous, Theodore) [Entered: 09/17/2020 02:09 PM]
09/18/2020	<input type="checkbox"/> 92 1 pg, 32.33 KB	Filed order (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL) Appellee's motion to file a late petition for panel rehearing, Docket No. 90 , is GRANTED. [11829191] (OC) [Entered: 09/18/2020 12:17 PM]
09/18/2020	<input type="checkbox"/> 93 1 pg, 32.97 KB	Filed order (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL) Appellants are directed to file a response to Appellee's petition for panel rehearing, Docket No. 91 , filed September 17, 2020. The response shall not exceed 15 pages and shall be filed within 21 days of the filed date of this order. [11829195] (OC) [Entered: 09/18/2020 12:21 PM]
10/09/2020	<input type="checkbox"/> 94 22 pg, 205.75 KB	Filed (ECF) Appellants Amanda Frelkin, Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher response to Petition for Panel Rehearing (ECF Filing), Petition for Panel Rehearing (ECF Filing). Date of service: 10/09/2020. [11854413]. [15-17382] (Kralowec, Kimberly) [Entered: 10/09/2020 02:35 PM]
10/29/2020	<input type="checkbox"/> 95 13 pg, 46.1 KB	Filed order and amended opinion (SUSAN P. GRABER, MICHELLE T. FRIEDLAND and CONSUELO B. MARSHALL). Appellee's Petition for Panel Rehearing is GRANTED IN PART. The opinion filed on Sept. 2, 2020, reported at 973 F.3d 947, is amended as follows. On page 952, replace <Apple failed to raise this argument before the district court in opposing Plaintiffs' motion for summary judgment; the argument is therefore forfeited. Davidson v. O'Reilly Auto Enters., LLC, 968 F.3d 955, — (9th Cir. 2020)> with <It is unclear whether this issue was adequately raised in the district court, and the district court did not reach it. On remand, the parties may make their respective arguments about preservation of this issue and its merits, so the district court may consider those arguments in the first instance>. No further petitions for panel rehearing or rehearing en banc will be entertained. [11875184] (AKM) [Entered: 10/29/2020 08:20 AM]
11/06/2020	<input type="checkbox"/> 96 1 pg, 94.48 KB	MANDATE ISSUED.(SPG, MTF and CBM) Costs taxed against Appellee in the amount of \$453.50. [11883961] (QDL) [Entered: 11/06/2020 08:19 AM]

EXHIBIT E

Case: 15-17382, 06/27/2016, ID: 10030304, DktEntry: 12, Page 1 of 73

No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

APPELLANTS' OPENING BRIEF

Kimberly A. Kralowec
Kathleen S. Rogers
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

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I. INTRODUCTION

Plaintiffs-Appellants in this certified class action were hourly-paid employees of defendant Apple Inc. who worked at Apple's retail stores in California. They, and the class members ("Apple Employees" or "plaintiffs"), spent uncompensated time having their personal phones, bags and technology checked by managers and store leaders (the "Checks"). They went through the Checks not because they wanted to, but because Apple has a written policy that all employees "*must*" have their bags searched and their personal phones and technology checked "every time" they leave a store (the "Check Policy").

Plaintiffs-Appellants' lawsuit against Apple contends that time spent going through Checks is compensable under California law. In particular, the time falls within the definition of "hours worked" stated in the applicable Wage Order of the California Industrial Welfare Commission ("IWC"), and therefore must be paid pursuant to the Wage Order and the California Labor Code.

The district court granted Apple's motion for summary judgment and denied plaintiffs' cross-motion for summary judgment. In doing so, the court misconstrued the Wage Order's definition of compensable "hours worked."

(1)

The Wage Order contains two independent tests for “hours worked,” and time is compensable if either test is met. 8 Cal. Code Regs. §11040, ¶2(K); *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582 (2000).

“Hours worked” includes:

- (1) “the time during which an employee is subject to the *control* of an employer” (the “‘control’ test”); and
- (2) “all the time the employee is suffered or permitted to *work*, whether or not required to do so” (the “‘suffered or permitted to work’ test”).

8 Cal. Code Regs. §11040, ¶2(K) (emphasis added).

The district court misinterpreted, and misapplied, both tests.

(a)

“Control” Test: Apple Employees subjected to Checks were not allowed to leave the store at the end of their shifts. While Checks were conducted, they remained under their managers’ immediate physical supervision, as they opened up their bags, pulled out their technology cards, and displayed them both for inspection. As a result, the employees were unable to use the Check time effectively for their own purposes. Recognizing that the Checks fell squarely within the scope of *Morillion*, 22 Cal.4th at 583, 586, Apple conceded, and the

district court held, that the employees were under Apple's "control" during the Checks. ER 8:18-20, 47:20-48:13.

Nonetheless, the district court still ruled in Apple's favor. It held that the "control" test contained a second element in addition to "control": that the Checks must also be "required." The district court concluded that because employees could "choose" to avoid the Checks by leaving their phones, bags, purses and other technology at home, the Checks were not "required," even if "controlled."

This was error. The Wage Order's plain text imposes only one element: "control." The Order does not say "required." In fact, the Order used to say "required," but in 1947, the IWC amended it, and replaced the word "required" with "control." What is more, in the very next clause of the same sentence, the Order uses the word "required." This shows that the words have different meanings, and that the governing standard is "control," not "control and required."

The district court reached a different conclusion only by disregarding the Order's plain text, by misconstruing *Morillion*, and by improperly engrafting concepts developed in distinguishable cases involving commute time. Neither *Morillion*, nor any other decision cited by the district court, holds that the "control" test comprises two elements ("required" and "controlled"). It does not.

Moreover, even if "required" were a second essential element (which it is not), it would be met here because Apple's policy *required* employees either to

leave their phones and bags at home or forfeit the right to leave store premises, and their employer's control, without first undergoing a mandatory Check.

In short, the "control" test was satisfied.

(b)

"Suffered or Permitted to Work" Test: The district court also held that the Checks were not compensable under the independent "suffered or permitted to work" test. Without citing a single authority for what "work" means, the court held that the Checks were not "work" because they were unrelated to the employees' primary job responsibilities and involved "passive" activity.

This, too, was error. By its plain meaning, "work" includes any exertion or effort to attain an end—especially if controlled by and benefiting one's employer. California decisional law makes clear that benefit to the employer is highly relevant to whether an activity is compensable "work." Here, the Checks substantially benefited Apple by preventing and deterring theft.

Contrary to the district court's holding, an activity need not be related to an employee's primary job duties to qualify as "work"—although here, the Checks were, because retail sales jobs, by their very nature, involve access to unsecured merchandise throughout the workday. In holding otherwise, the district court imported a liability standard drawn from federal law, one never adopted by the IWC.

Finally, in concluding that the Checks were “passively endured,” the court ignored the efforts that the employees must engage in, *i.e.*, searching for a manager to do the Check when they want to leave, opening up bags, displaying contents, moving contents around, unzipping internal compartments, responding to security personnel directions, and other exertion. At a minimum, whether the Checks were “passive” or “active” presented a material fact question for the jury.

In short, the “suffered or permitted to work” test was met, and Apple’s summary judgment motion should not have been granted.

(2)

These critical questions of California law should be referred to the California Supreme Court¹ for decision, and the judgment should be reversed.

II. JURISDICTIONAL STATEMENT

This appeal arises from the district court’s November 7, 2015 order on the parties’ cross-motions for summary judgment. Excerpts of Record (“ER”) 4-22. Final judgment was entered on the same date, and costs were imposed on January 27, 2016. ER 1-3.

When the action was commenced, the district court had federal question jurisdiction under the Fair Labor Standards Act, 28 U.S.C. §1331; 29 U.S.C. §216(b), and diversity jurisdiction under the Class Action Fairness Act, 28 U.S.C.

¹ All references to the “Supreme Court” are to the California Supreme Court.

§1332(d)(2)(A)). After the federal and non-California state-law claims were dismissed, the district court exercised supplemental jurisdiction over the California claims pursuant to 28 U.S.C. section 1367(a). ER 577-79.

This Court has appellate jurisdiction under 28 U.S.C. section 1291. Plaintiffs filed their timely notice of appeal on December 3, 2015. *See* Fed. R. App. P. 4(a)(1)(A); ER 53-59.

III. ISSUES PRESENTED FOR REVIEW

1. Does the first test for “hours worked” in Wage Order 4 (8 Cal. Code Regs. §11040, ¶2(K))—“time during which an employee is subject to the *control* of an employer”—include “required” as an essential element in addition to “control,” even though “control” is stated in the text of the Order and “required” is not, and even though the Order was amended in 1947 to specifically replace the word “required” with the word “control”?

2. If the first test for “hours worked” in Wage Order 4 (8 Cal. Code Regs. §11040, ¶2(K))—“time during which an employee is subject to the *control* of an employer”—includes “required” as a second essential element, is the test met when an employer’s policy required employees to either leave their phones, purses and bags at home or submit to mandatory and controlled security searches?

3. In the second test for “hours worked” in Wage Order 4 (8 Cal. Code Regs. §11040, ¶2(K))—“suffered or permitted to *work*, whether or not required to do so”—what does “work” mean?

4. In the second test for “hours worked” in Wage Order 4 (8 Cal. Code Regs. §11040, ¶2(K))—“suffered or permitted to *work*, whether or not required to do so”—does “work” encompass security searches during which employees physically complied with managers’ directions, on store premises, while under the managers’ control; where the employees’ jobs entailed access to valuable unsecured merchandise; and where the searches benefited the employer by preventing and deterring theft?

IV. PRIMARY AUTHORITY

IWC Wage Order 4 states, in relevant part:

“Hours worked” means the time during which an employee is *subject to the control of an employer*, and includes all the time the employee is *suffered or permitted to work, whether or not required to do so.*

Id. ¶2(K) (emphasis added).²

V. STATEMENT OF THE CASE

A. The Consolidated Amended Complaint

This certified class action, commenced in 2013, challenges Apple’s practice of failing to compensate its retail store employees for time spent undergoing onsite

² The relevant language of Wage Order 7, which Apple contends applies, is identical. *See* 8 Cal. Code Regs. §11070, ¶2(K), 4(B); ER 8:28.

security searches of their bags and technology—searches done while the employees are under Apple’s control, on Apple’s premises, and solely for Apple’s benefit, as a theft-prevention measure. ER 583-84, ¶¶1-4, 589-91, ¶¶28-31.

Plaintiffs allege that this time is compensable under California law because it falls within the definition of “hours worked” in Wage Order 4. ER 584, ¶4.

The Consolidated Amended Complaint asserts five claims: violations of Wage Order 4 and the Labor Code (including sections 510, 1194, 1194.2 and 1198) for failing to pay minimum and overtime wages for all hours worked (ER 594-95 ¶¶42-50); “unlawful” conduct in violation of California’s Unfair Competition Law (Bus. & Prof. Code §§17200 et seq.) (ER 596-97 ¶¶51-55); failure to provide accurate itemized wage statements in violation of Labor Code section 226 (ER 597-98 ¶¶56-59); waiting time penalties under Labor Code section 203 (ER 598 ¶¶60-63); and violations of the Labor Code Private Attorneys General Act (“PAGA”) (Lab. Code §§2698 et seq.) (ER 599 ¶¶64-68).

B. Order Granting Class Certification

On July 16, 2015, the district court granted class certification of the California state-law claims pursuant to Federal Rule of Civil Procedure 23. ER 544-58. In its order, the court directed the parties to file summary judgment motions on “the main issue of compensability under California law,” ER 557:17-18, and ruled that “bag searches will be adjudicated as compensable or not based

on the most common [factual] scenario, that is, an employee who brought a bag to work purely for personal convenience,” ER 553:23-25.

C. Cross-Motions for Summary Judgment

As directed, after class notice, the parties filed cross-motions for summary judgment on October 1, 2015. ER 605-06; *see* ER 80-86, 379-84.

1. Plaintiffs’ Motion

Plaintiffs’ motion, as well as their opposition to Apple’s motion, relied on the following facts (*see* ER 82:4-84:2; *see also* ER 4:23-6:28 (district court’s statement)):

Apple’s Check Policy: Since at least 2009, Apple’s hourly paid retail store employees have been subject to a written policy requiring that their bags and Apple devices—including their iPhones, iPads and Apple-branded laptops—be checked every time they exit a store (the “Check Policy”). ER 107-108 [at 32:24-33:20, 33:25-34:6, 34:24-35:4], 115, 386:11-387:2, 392, 394, 396, 398, 400, 402, 406. The applicable page of the Check Policy, which “appl[ies] to all employees of Apple Inc.,” provides as follows:

All personal packages and bags must be checked by a manager or security before leaving the store.

Personal technology must be verified against your Personal Technology Card (see section in this document) during all bag searches.

- Do not leave the store prior to having your personal package or back [sic] searched by a member of management or the security team

ER 115; *see also* ER 5:5-28 (quoting policy), 394-406.

The technology card policy requires Apple Employees to record all their Apple technology on a “Personal Technology Card,” including the descriptions and serial numbers of the products. ER 115, 117-18, 170 [at 18:22-19:3], 241-42. Every time an Apple Employee leaves a store “for any reason,” he or she “must ensure the sales leader verifies the serial numbers on [the] card against the product [the employee is] carrying.” ER 117; *see* ER 201 (checks “must be conducted” “every time an employee leaves the store”), 230 (“check out with a manager any time you leave the store”).³

Apple does not compensate employees for time spent on the Checks. ER 110 [at 85:10-12], 239, 307 ¶8, 322, 326; *see* ER 6:25-28.

The Checks Are Mandatory: Apple’s bag and technology Check Policy is a mandatory policy. ER 69-70 [at 48:23-50:6], 112 [at 100:20-101:2], 115, 193-94, 200-01, 203, 206, 208, 220-21, 228, 230, 242. Apple Employees do not have the right to choose whether they want to comply. ER 112 [at 100:20-01:2], 239, 242 (identifying Personal Technology Card policy as one of several “important

³ Checks are conducted not only at the end of the day, but also at lunch. ER 117, 118, 197 ¶4, 303, 307 ¶6, 392, 346 ¶14, 352 ¶14, 392 (“before you leave the store for any reason (such as lunch, end of day)”).

Apple policies” and “as an Apple employee, you are obligated to follow ALL Apple policies” (emphasis in original)).

Checks were conducted in every Apple store during the class period. ER 244-53, 94:25-95:2, 255-89; *see* ER 6:18-19 (district court’s fact summary).

Apple Employees Are Subject to Discipline for Not Submitting to Checks: Apple alerts employees that “[f]ailure to comply with [the Check] policy may lead to disciplinary action, up to and including termination.” ER 115, 392-406. Thus, Apple Employees who failed to comply with the Check Policy have been forced to attend “Warning Meeting[s]” (ER 232); been cited for “Behavior to be Corrected” (ER 234-35); and been subject to a “Coaching Tracker” (ER 237). One employee who complained about Checks was told: “you don’t get to pick and choose what policies to follow.” ER 239.

Apple Dictates All Aspects of How Checks Are Conducted: The procedures for conducting Checks are determined by Apple and described during leadership training and in corporate documents published on Apple communication platforms. *E.g.*, ER 109 [at 63:8-14], 206, 300.

Among other things, managers are instructed to: (i) “[a]sk the employee to open every bag, brief case, back pack, purse, etc.”; (ii) “[a]sk the employee to remove any type of item that Apple may sell”; (iii) “verify the serial number of the employee’s personal technology against the personal technology log”; (iv)

“[v]isually inspect the inside of the bag and view its content”; (v) “ask the employee to unzip zippers and compartments so you can inspect the entire contents of the bag”; (vi) “[i]f there are bags within a bag, such as a cosmetics case, be sure to ask the employee to open these bags as well”; and (vii) “ask the employee to remove” any “questionable item from the bag.” ER 300; *see also* ER 6:1-17 (district court’s fact summary), 303 (during Checks, “the guard may ask you to see in all the pockets, etc. in your bag” and “ask you to move things around in your bag so they can see effectively”); 314 (“we are asked by a manager to pull the [technology] card out of our wallet, show him the serial numbers listed on the card, then pull our devices out, find the serial number in the settings, and show the manager that the serial number[s] on the devices match the serial numbers on the card. Then we are subjected to a bag search, and finally, we are allowed to leave the store.”); 354 ¶8 (Checks involve inspection of “each compartment of each employee’s bag”); 345 ¶6 (managers would “physically search through the compartments” of employees’ bags).⁴

⁴ *See also* ER 411:6 (“I open up my bag and lift up my Apple shirt so they can see in the bag”); 460:15-17 (“I open the bag for the manager” and “move [things] around” “so the manager can see under them”); 477:24-25 (“the manager asks me to move [items in my bag] so he or she can see in the bag”); 488:20-21 (“I normally have my backpack or purse open and prepared for the bag check”); 508:27 (“[t]he employee opens his or her bag”); 529:20-23 (“The employee approached a manager and opened his or her bag Occasionally, the manager

In addition, Apple: (i) instructs Store Managers to implement the mandatory Checks (ER 200-01, 203, 205-06, 208, 210, 212, 214-15, 217-18, 220-21, 223, 225, 300); (ii) decides whether Apple Employees should be disciplined for not complying with the Check Policy (ER 115, 232, 234-35, 237, 239); (iii) issues Personal Technology Cards for Apple Employees to identify their Apple products (ER 115, 117-18, 170 [at 18:22-19:3], 241-42); and (iv) prepares written instructions describing the Check Policy and other Apple policies (ER 115, 200-01, 206, 300, 392-406).

Apple Employees Are Confined to Store Premises During and While Waiting for Checks: During Checks, Apple Employees are confined to their stores and are not allowed to leave the premises, which means they may not run personal errands, get meals or engage in other personal activities outside the store until a Check is conducted. ER 66 [at 129:16-25], 147 ¶6, 151 ¶5, 155 ¶3, 166 ¶6, 175 ¶5, 179-80 ¶6, 183 ¶3, 184 ¶5, 190 ¶6, 197 ¶4, 198 ¶9, 230, 232, 293 ¶4, 306 ¶3, 307 ¶8, 311 ¶3, 314, 345 ¶5, 346 ¶1, 329 ¶4, 350-51 ¶5, 356 ¶5, 371 ¶5.

The employees' confinement to the premises includes time spent waiting for Checks to be conducted. *E.g.*, ER 122 ¶7, 127-28 ¶5, 131 ¶4, 135-36 ¶5, 140 ¶6, 143-44 ¶¶5-7, 147 ¶7, 152 ¶6, 156-57 ¶6, 162 ¶6, 167 ¶7, 171 [at 31:1-3, 31:21-23]

asked the employee to move a large item in the bag (such as a sweatshirt) out of the way so that the manager could see within the bag”).

175 ¶7, 179 ¶6, 184 ¶5, 190 ¶6, 198 ¶7, 293-94 ¶5, 297 ¶5, 298 ¶8, 302, 307 ¶¶6-8, 312 ¶6, 330 ¶¶5-7, 334 ¶6, 338-41 ¶¶67-74 & ¶¶92-93, 345-46 ¶¶8-9, 351 ¶8, 357-58 ¶9, 371-72 ¶6, ¶10. The waits are caused by a variety of factors, including searching for a store manager to conduct a Check; waiting for the manager to finish assisting a customer; waiting in line for a Check to be performed; the absence of a guard to conduct the Check; and the actual performance of the Check. *See generally id.*⁵

Checks Are Conducted by Apple Store Managers or Security

Personnel: Checks are carried out on the premises by “a manager or member of the security team (where applicable).” ER 115; *see* ER 5:18-20 (quoting policy), 206, 210, 292, 392-406; *see also* ER cites in paragraph immediately above.

Apple Knows or Should Know That Apple Employees Go Through

Checks: Apple: (i) created the Check Policy (*See* ER 114-15); (ii) has received complaints about Checks (*See* ER 314-15, 317-19, 322, 324, 326); and (iii) acknowledged in discovery that every Apple Store has conducted Checks on the

⁵ *See also* ER 140 ¶ 6 (“The security checks were time consuming because after I clocked out, I would have to search around the store for a manager [who was often busy helping customers or performing other tasks.]”); 175 ¶ 7 (“The time spent looking for or waiting for a manger and then waiting in line for other employees to finish their security checks took up the bulk of the time.”).

premises. *See* ER 244-53. Apple management is also aware of the waiting times caused by the mandatory Checks.⁶

The Checks Benefit Apple By Preventing and Deterring Theft: Apple implemented the Check Policy, and conducts the Checks, in order to prevent and deter theft. ER 170 [at 20:7-10], 200-01, 206, 208, 217-18, 227-28, 232, 234, 363 [at 54:21-55:14], 377. The Checks are part of both Apple’s “Shrink Analysis and Action Plan” and Apple’s “Internal Theft” policy. ER 200-01, 206.

Apple Employees’ complaints to senior management about the Check Policy fell on deaf ears. *See* ER 123:26-124:2 (employees’ “complaints [were] ignored and [they] were told that the off-the-clock security check process was simply Apple’s policy.”), 314-15, 317-19, 322, 324, 326.

2. Apple’s Motion

Apple’s motion rested entirely on three basic facts that it asserted were determinative of the compensability question, namely:

- (1) Employees who did not bring a bag to work, and who left their “personal Apple technology,” including their iPhones, at home, would not be checked. ER 382:20-384:2 [citing ER 392-406, 419, 423-24,

⁶ *See, e.g.*, ER 302 (“We know sometimes there is not a guard present at the front door [to perform Checks] because they are opening the side door for shipment, a vendor, etc. and you have to wait until the guard returns to check out.”); 194, 221 (“I know it can be a challenge to find a leader at times [to conduct Checks]....”).

440, 446, 450, 468, 478, 481, 493, 496-97, 508, 512, 516, 520, 524, 528-29, 532-33, 536, 539-40].

- (2) Some employees never, or rarely, brought a bag to work and some employees rarely brought their iPhones to work. ER 384:5-26 [citing ER 411, 414, 419, 423, 433-34, 455, 459, 464, 468, 472, 476-78, 485, 488, 496-97, 500-01, 543].⁷
- (3) Pursuant to the district court’s class certification order, bags, iPhones, and other personal Apple technology were brought to work for “personal convenience.” ER 380:11-15 [citing ER 553:23-25].

Based on these facts, Apple argued that time spent waiting for and undergoing Checks was not compensable under California law. ER 380.⁸

3. Hearing on the Motions

The district court conducted a lengthy hearing on the cross-motions. *See generally* ER 23-52.

During the discussion of the “control” test, Apple conceded that “control” existed, but contested the purported second element, “required”:

⁷ Apple also relied on “one figure” from an expert report, to which plaintiffs objected, and on which the district court did not rely because the fact was undisputed. ER 21:17-24.

⁸ Apple’s opposition to plaintiffs’ motion rested on the same three facts. ER 72:15-74:28. While Apple also mentioned some other facts in its opposition, Apple characterized these as either “not relevant” or “irrelevant” to the compensability question. ER 75:3, 76:5, 77:6, 77:23.

THE COURT: So what I think you're saying is: Okay, *we concede control*. Once you're standing in the line waiting to go home and the clock goes past 15 minutes and then 16 and it's ticking away and you're thinking about all the things you've got to do when you're going to get home and you're waiting in line because they don't have enough people there to get you through the line in a hurry—I know you say that never happens, but probably it does happen every now and then. So when you're waiting for your turn in a long line on a cold winter day trying to get home, all of those factors are true. *You are under of the control of Apple. Right?*

But you're [sic] point is: Well, you didn't have to be in that line to begin with. It wasn't a requirement that you get in the line. You could have been—it was only a requirement that you stand in line if you elected to bring any of those things for your personal convenience. *So, therefore, you say the requirement part is not met. That's your argument.*

[APPLE'S COUNSEL]: That is correct, your Honor, as to the control theory.

ER 47:20-48:13 (emphasis added).

As to the independent “suffered or permitted to work” test, Apple contended that its employees were “not performing a duty or a task that the employer hired them to perform” during Checks, and that “employees were not hired for the purpose of submitting to checks.” ER 36:9-13.

D. Order Granting Apple's Motion and Denying Plaintiffs' Motion

The district court granted Apple's motion and denied plaintiffs' motion. ER 8-21.

“Control” Test. According to the district court, the “control” test “requires proving two elements.” ER 8:15. The first element, “control,” was satisfied, as Apple conceded, but the second element, “mandatory,” was not:

The control theory of liability requires proving two elements. The first is that the employer restrains the employee’s action during the activity in question. The second is that the employee has *no plausible way to avoid the activity*; put differently, *the activity must be mandatory and not optional at the discretion of the worker*. Here, the first element is met, *namely control*, for once the worker wishes to leave with a bag, the worker is restricted and must stand in line for the security screening. The second element, however, is not met, *for the Apple worker can choose not to bring to work any bag or other items subject to the search rule*.

ER 8:14-21 (emphasis added).

“Suffered or Permitted to Work” Test. The district court also held that Apple’s employees were not “suffered or permitted to work” during Checks because the activity was not “work.” ER 19:1-21:15. Notwithstanding plaintiffs’ evidence that the Checks were conducted for Apple’s benefit—to detect and deter theft—they were not compensable, according to the court, because the Checks “had no relationship to plaintiffs’ job responsibilities; they were peripheral activities relating to Apple’s theft policies.” ER 20:8-9, 20:19-28 (citing *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513, 518 (2014)). The Checks were also not compensable because they were not “an active job responsibility,” but rather “passive activity” that the employees “endured.” ER 20:18, 21:4-7.

E. Entry of Final Judgment

Final judgment was entered on November 7, 2015. ER 3. An order awarding costs to Apple followed. ER 1. Plaintiffs timely appealed. ER 53-59.

VI. SUMMARY OF ARGUMENT

The questions of California law presented by this appeal should be referred to the California Supreme Court for decision. In addition, the judgment should be reversed because the district court misconstrued both the “control” test and the “suffered or permitted to work” test. Under either or both tests, the Check time is compensable. Apple’s summary judgment motion should have been denied, and plaintiffs’ should have been granted.

VII. ARGUMENT

A. Standard of Review

This Court reviews an order granting summary judgment *de novo*. *Padfield v. AIG Life Ins. Co.*, 290 F.3d 1121, 1124 (9th Cir. 2002). Examining the evidence in the light most favorable to the nonmovant, this Court must determine “whether there are any genuine issues of material fact and whether the district court correctly applied the relevant substantive law.” *American Civil Liberties Union v. City of Las Vegas*, 333 F.3d 1092, 1097 (9th Cir. 2003).

“[S]ummary judgment is appropriate only where the moving party has demonstrated that there is no genuine issue of material fact [To preclude

summary judgment], all that is required is that sufficient evidence supporting the claimed factual dispute be shown to require a jury or judge to resolve the parties' differing versions of the truth at trial.” *Giles v. GMAC*, 494 F.3d 865, 872 (9th Cir. 2007) (internal citations and ellipses omitted).

Interpretation of a statute is also a question of law that this Court reviews de novo. *Sea-Land Servs., Inc. v. Lozen Int'l LLC*, 285 F.3d 808, 813 (9th Cir. 2002).

B. Regulatory Framework: The IWC's Wage Orders

The IWC “is the state agency empowered to formulate regulations (known as wage orders) governing employment in the State of California.” *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal.4th 557, 561 (1996). Wage Orders are “quasi-legislative regulations” and are to be “construed in accordance with the ordinary principles of statutory interpretation.” *Singh v. Superior Court*, 140 Cal.App.4th 387, 392 (2006) (citing *Collins v. Overnite Transp. Co.*, 105 Cal.App.4th 171, 178-179 (2003)).

“When construing a statute, a court's goal is to ascertain the intent of the enacting legislative body so that [the court] may adopt the construction that best effectuates the purpose of the law.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 567 (2007) (internal quotation omitted). The first step is to look to the “ordinary meaning” of the statute's words “in their statutory context,” because this “is usually the most reliable indicator of legislative intent.” *Id.*

The Wage Orders “are entitled to ‘extraordinary deference, both in upholding their validity and in enforcing their specific terms.’” *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012) (quoting *Martinez v. Combs*, 49 Cal.4th 35, 61 (2010)). Thus, Wage Orders and “statutes governing conditions of employment are to be construed broadly in favor of protecting employees.” *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal.4th 1094, 1103 (2007) (citing *Sav-on Drug Stores, Inc. v. Superior Court*, 34 Cal.4th 319, 340 (2004), *Ramirez v. Yosemite Water Co.*, 20 Cal.4th 785, 794 (1999); *Lusardi Constr. Co. v. Aubry*, 1 Cal.4th 976, 985 (1992)). Moreover, the IWC is “empowered to go beyond ... federal regulations in adopting protective regulations for the benefit of workers.” *Bono Enters., Inc. v. Bradshaw*, 32 Cal.App.4th 968, 976 (1995).

C. The Questions of California Law Presented by this Appeal Should be Referred to the California Supreme Court for Decision

This Court may refer questions of state law to the California Supreme Court if the answers to those questions “could determine the outcome” of an appeal and there is “no controlling precedent.” Cal. R. Ct. 8.548(a)(1)-(2).

The questions presented by this appeal should be so referred. They will be outcome-determinative, and as the district court recognized, “[t]here is no decision on point.” ER 8:21-22, 33:17-18.

This Court frequently refers, and the Supreme Court regularly accepts, unresolved questions concerning the proper interpretation of California’s Wage Orders and Labor Code. *See, e.g., Troester v. Starbucks Corp.*, No. 14-55530, Dkt. 42 (9th Cir. Jun. 2, 2016) (referring question concerning whether federal *de minimis* doctrine applies to Labor Code claims); *Mendoza v. Nordstrom, Inc.*, 778 F.3d 834 (9th Cir. 2015) (referring questions on Labor Code’s “one day’s rest in seven” language); *Kilby v. CVS Pharmacy, Inc.*, 739 F.3d 1192(9th Cir. 2013) (referring questions on Wage Orders’ “suitable seats” requirement); *Peabody v. Time Warner Cable, Inc.*, 689 F.3d 1134 (9th Cir. 2012) (referring questions on Wage Orders’ commissions and minimum wage requirements); *Sullivan v. Oracle Corp.*, 557 F.3d 979 (9th Cir. 2010) (referring questions on Labor Code’s overtime requirements).

D. The District Court’s Ruling Was Based on an Erroneous Interpretation of California Law Governing Compensable “Hours Worked”

Under Wage Order 4, employers must pay their employees at least minimum wage, plus overtime, for all “hours worked.” 8 Cal. Code Regs. §11040, ¶¶3(A)(1)(a), 4(B). The Order’s definition of “hours worked” contains two independent tests for compensability—the “control” test and the “suffered or permitted to work” test. *Id.*, ¶2(K). Time is compensable if it meets either test. *Morillion*, 22 Cal.4th at 582; ER 8:9-13, 35:20-36:4.

The district court held that the Checks did not meet either of the two tests (ER 8-21), and in so holding, misconstrued both.

1. Plaintiffs Were “Subject to” the Employer’s “Control” During Bag Checks

As the Wage Order’s plain text makes clear, all time during which the employee was “subject to the control of the employer” is compensable time. In the Supreme Court’s words, “[t]he level of the employer’s *control* over its employees ... is determinative.” *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal.4th 833, 840 (2014) (quoting *Morillion*, 22 Cal.4th at 587) (alteration and ellipsis in original; emphasis added). The district court engrafted a second element—“mandatory” or “required” activity—onto the “control” test.

This was error. Nothing in the Wage Order or the governing case law supports such an element. Moreover, the element (if it exists at all) was developed in the context of commute-time cases, which are distinguishable. Finally, even if such an element existed (which it does not), it was met here.

a. Apple Conceded “Control” During the Checks

Apple conceded, and the district court held, that the employees were under Apple’s “control” during the Checks. ER 8:18-20, 47:20-48:13. The employees were “restrain[ed] from leaving the work place” and remained under the employer’s direct supervision during the Checks, and were thereby “foreclosed from numerous activities in which they might otherwise engage,” and

“prevent[ed] from using the time effectively for [their] own purposes.”

Mendiola, 60 Cal.4th at 840; *Morillion*, 22 Cal.4th at 583, 586.

b. The Wage Order’s “Control” Test Has One Element, “Control”

But “control” was not enough for the district court. Even if Apple “controlled” its employees during the Checks, the court held, the time was not compensable because the employees could “choose” to avoid the Checks by not bringing their iPhones, purses, bags, or other Apple technology to work. ER 8:15-22. To be compensable, “the activity must be mandatory and not optional at the discretion of the worker.” ER 8:17-18, 10:17-20; *see* ER 48:6-11 (noting purported “requirement part” of the test).

The problem with this interpretation is threefold. First, it is inconsistent with the Wage Order’s plain language, which requires only “control”—not “mandatory” or “required” activity. Second, the cases cited by the district court in support of this purported second element actually show that “control” and “required” are distinct concepts, and only the former must be shown. Third, to the extent commute-time cases lend any support to the district court’s decision (which they do not), such cases should be confined to their facts.

(1) **The Wage Order’s Plain Language Shows that “Control” Does Not Mean both “Controlled” and “Required”**

The Wage Orders’ current “definition” of “hours worked” has been unchanged since 1947, when the IWC revised the definition “[i]n response” to the federal Portal-to-Portal Act. *Martinez*, 49 Cal.4th at 59-60; *see Morillion*, 22 Cal.4th at 591.

Notably, before 1947, Wage Order 4NS used the word “*required*” instead of the word “*control*.” They defined “Hours Employed” to “include all time during which”:

1. A [person] is ***required*** to be on the employer’s premises ready to work, or to be on duty, or to be at a prescribed work place.
2. A [person] is suffered or permitted to work, whether or not ***required*** to do so.

Wage Order 4 NS (Amended) (Apr. 14, 1943, eff. Jun. 28, 1943), ¶2(h) (Plaintiffs’ Motion for Judicial Notice (“MJN”), filed herewith, Ex. 1) (emphasis added); *see also Morillion*, 22 Cal.4th at 592 n.1 (quoting Wage Order 1 NS).⁹

In the Orders adopted in 1947, the IWC retained the word “required” in the second test, but chose to substitute the word “control” for the word “required” in the first test:

⁹ Wage Order 7 NS, which is the series of Orders Apple contends applies in this case, has identical language. *See* Wage Order 7 NS (Apr. 5, 1943, eff. Jun. 21, 1943), ¶2(f) (MJN Ex. 3).

“Hours worked” means [1] the time during which an employee is subject to the control of an employer, and includes [2] all the time the employee is suffered or permitted to work, whether or not required to do so.

Wage Order 4 R (Feb. 8, 1947, eff. Jun. 1, 1947), ¶2(h) (MJN Ex. 2) (emphasis added).¹⁰ The Orders now use two different words—“control” and “required”—to describe the two tests for compensable “hours worked.”

Two conclusions must be drawn, both of which show that the district court misinterpreted Wage Order 4.

First, if a statute or regulation uses two different words, two different meanings “must be presumed.” *Rashidi v. Moser*, 60 Cal.4th 718, 725 (2014); *see Singh*, 140 Cal.App.4th at 399 (applying this rule to IWC Wage Orders). Indeed, the words “control” and “required” have two different plain-language meanings. The dictionary definition of “*control*” is “to exercise authority or dominating influence over; direct; regulate.” *American Heritage Dictionary* (2d Coll. Ed. 1982).¹¹ By contrast, “*require*” means “to impose an obligation on; compel.” *Id.*; *see also Merriam-Webster’s Collegiate Dictionary* (11th ed.) (“to impose a compulsion or command on”).

¹⁰ Wage Order 7 R contained the same revised definition. *See* Wage Order 7 R (Feb. 8, 1947, eff. Jun. 1, 1947), ¶2(h) (MJN Ex. 4).

¹¹ *Accord Black’s Law Dictionary* (10th ed. 2014), “control” (“to exercise power or influence over”); *Merriam-Webster’s Collegiate Dictionary* (11th ed.), “control” (“to exercise restraining or directing influence over”); *see also Bono*, 32 Cal.App.4th at 974-75 (relying on dictionary definitions of “control”).

It is possible to “direct” or “regulate” without “compelling.” Hence, it is possible to “control” activity without “requiring” it. The IWC selected the word “control” for the first test for compensable “hours worked,” and a different word, “require,” in the same sentence for the second test.

While not binding on this point, federal law has long recognized a distinction between “control” and “require” in the employment context. Before the Portal-to-Portal Act, the U.S. Supreme Court construed compensable “work” as all “physical or mental exertion (whether burdensome or not) *controlled or required* by the employer” *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944) (emphasis added). As “commonly used,” these words have different meanings—an activity can be “controlled,” or “required,” or both. *See id.*

Second, in 1947, the IWC knowingly elected to use the word “control,” rather than “required,” for the first test for compensable “hours worked,” when previously, the word “required” was used for both tests. In general, when a statute or regulation is amended to change the wording, a change in meaning is presumed. *People v. Mendoza*, 23 Cal.4th 896, 916 (2000); *Estate of Simpson*, 43 Cal.2d 594 (1954) (“Changes in wording or phraseology are presumed to have been deliberately made”).

The IWC used the word “control.” It did not say “required,” as in the second test. It did not say “controlled *and* required.” “Control” is what it meant. An activity can be “controlled” without being “required”—even if “required” activity is often also “controlled.” The district court’s contrary holding upends the Wage Order’s plain language and the IWC’s deliberate word choice.

In fact, considering this exact change, from “require” to “control,” the Supreme Court in *Morillion* pointedly explained that “[c]ontrol’ *may* encompass activities described by the eliminated [‘require’] language ...,” implying that “required” can be, but is not always, an element of “control.” 22 Cal.4th at 592 (emphasis added). “Required” was unquestionably central to the *Morillion* court’s conclusion that “control” existed, and that the bus rides were compensable (*id.* at 586-88, discussed below), but *Morillion* did not say that “control” is limited to “required” activity, or that “required” is a necessary component of “control” in every case. *See id., passim.*

In short, the Wage Order’s plain language makes clear that when the IWC said “control,” it meant “control,” not “controlled and required.” The IWC knows how to use the word “required” when that is what it means. Here, it purposely used a different and broader word—“control.” Its choice is binding.

(2) **The Case Law Provides No Support for the District Court’s Engrafted Second Component**

The district court believed that *Morillion* imposes a “require” component, in addition to “control.” ER 8-9, 10:9-14. But *Morillion* does not say this. Nor do the district court’s two other main cited cases—*Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006) and *Alcantar v. Hobart Service*, 800 F.3d 1047 (9th Cir. 2015) (ER 9-10)—dictate such a reading of the Wage Order.

In *Morillion*, the Court held that time spent by agricultural workers on required bus rides from a central meeting point to the fields was compensable. 22 Cal.4th at 582, 586-87. The agricultural workers argued that they were “subject to” the employer’s “control” during the rides because the rides were “compelled,” and the Supreme Court agreed. *Id.* at 582, 588. The Supreme Court then rejected the employer’s argument that “control” was absent because the workers could read, sleep, or “perform other personal activities” during the rides. *Id.* at 586. “Control” existed during the rides because the workers could not “effectively” use the time “for their own purposes.” *Id.*

The employer believed such a ruling would mean that all “required” activity would be compensable, even if not “controlled.” *Id.* The Supreme Court disagreed, holding that the “level of the employer’s control over its employees [during the activity], rather than the mere fact that the employer requires the

employees' activity, is *determinative*." *Id.* at 587 (citing *Bono*, 32 Cal.App. 4th at 975) (emphasis added).

Put another way, conduct can be "required" without being "controlled." *See id.* *A fortiori*, conduct can be "controlled" without being "required."

This district court quoted the "mere fact" sentence from *Morillion* and read it for the opposite proposition: that conduct cannot be "controlled" without being "required." ER 9:2-4. That does not follow from *Morillion*, especially given the Court's explicit holding that "[u]nder California law it is *only* necessary that the worker be subject to the 'control of the employer' in order to be entitled to compensation." *Id.* at 584 (citation omitted) (emphasis added). Moreover, when the Supreme Court recently quoted the same sentence in *Mendiola*, it replaced the qualifying clause on which the district court relied with an ellipsis, holding simply: "[t]he level of the employer's *control* over its employees ... is determinative." *Mendiola*, 60 Cal.4th at 840 (quoting *Morillion*, 22 Cal.4th at 587) (alteration and ellipsis in original).

The district court also made much of a footnote in *Morillion*, in which the Supreme Court cited a Fifth Circuit opinion applying federal law. ER 9:7-11 (citing 22 Cal.4th at 589 n.5). In the footnote, the Court said that the Fifth Circuit's holding in *Vega v. Gasper*, 36 F.3d 417 (5th Cir. 1994), was "consistent with" its conclusion that required bus rides were compensable, because in *Vega*,

the “employees were free to choose—rather than required—to ride their employer’s buses.” 22 Cal.4th at 589 n.5. However, neither that footnote, nor any other part of *Morillion*, holds that conduct *must be* “required” in order to be “controlled” in every case.¹² Such a holding would conflict with the Wage Order’s plain language, as discussed above. Moreover, in the body of *Morillion*, the Court clearly said that because state law provides “greater protection,” its decision did *not* hinge on *Vega* or other cases construing the federal Portal-to-Portal Act. 22 Cal.4th at 589, 592. The district court erred by elevating the *Vega* footnote over both the Wage Order’s text and the body of *Morillion*.

The district court also heavily relied on an intermediate appellate opinion, *Overton v. Walt Disney Co.*, but again, the court misconstrued the opinion. ER 9:12-20, 10:14-20.¹³

In *Overton*, Disneyland employees were assigned to one of four employee parking lots. 136 Cal.App.4th at 266. Three lots were near an employee entrance, but the Katella lot was about a mile away, so the employer ran a free shuttle from

¹² Moreover, the *Vega* footnote is dicta, unnecessary to the Supreme Court’s central holding in *Morillion*. *Simmons v. Superior Court*, 52 Cal.2d 373, 378 (1959) (“statements of conclusions not necessary to the decision” are dicta).

¹³ Also, while intermediate appellate decisions may be persuasive, this Court “is not bound by them if it believes the California Supreme Court would decide otherwise.” *Chemstar, Inc. v. Liberty Mut. Ins. Co.*, 41 F.3d 429, 432 (9th Cir. 1994).

that lot to the nearest employee entrance. *Id.* The question was whether time spent riding the shuttle was compensable “hours worked.” *Id.* The Court of Appeal held it was not. *Id.* at 268-74.

After discussing *Morillion*, the Court of Appeal said that the “key factor” was “whether [the employer] *required* its employees who were assigned parking in the Katella lot to park there and take the shuttle.” *Id.* at 271 (italics in original; underline added). The answer to *both* questions was no. *See id.* The time was not compensable because the employees were not “foreclosed from” using it for their own purposes within the meaning of *Morillion*. *See id.* at 269.

The opinion emphasized that the employees “were free to choose forms of transportation which bypassed the Katella lot entirely (train, bus, being dropped off, vanpool)” *and* that “[t]he employees were also free to choose not to ride the shuttle even if they did park in the Katella lot.” *Id.* (emphasis added). This point—that *neither* driving to work *nor* taking the shuttle was mandatory—was stressed throughout the opinion. *See id.* at 267, 269 (“parking in the Katella lot *and* riding the shuttle were not mandatory” (emphasis added)); 271, 272 (“The issue under *Morillion* is whether [the] employees were required to drive to the Katella lot *and* take the shuttle” (emphasis added)); 273 (“Overton was not required to park in the Katella lot *or* take the shuttle in any de facto sense.” (emphasis added)). The district court overlooked this. ER 9:15-18.

In *Overton*, the time was not compensable because employees could choose whether to drive to work, and if they did, they could *also* choose not to take the shuttle. Neither activity was “required,” and at no time did the employer exercise “control.” In this case, by contrast, employees could choose whether to bring bags or Apple tech devices to work, but if they did, the Checks were mandatory. And, as Apple concedes, during the Checks, employees were subject to Apple’s “control.” Hence, time spent undergoing Checks is compensable “hours worked.”

Overton does not support a general proposition that compensable time must be both “controlled” and “required,” as the district court held. *Overton* did not involve activity that was “controlled” but not “required.” Instead, the activity in *Overton* was *neither* “controlled” *nor* “required.” If construed as the district court read it, *Overton* would be inconsistent with *Morillion* and the Wage Order’s plain text. It should not be so construed.¹⁴

This Court’s opinion in *Stevens v. GCS Service, Inc.*, 281 Fed.Appx. 670 (9th Cir. 2008), demonstrates that under *Morillion*, conduct can be “required” without being “controlled.” In *Stevens*, the employer provided its employees with company-branded vans and required the employees to drive the vans to work. *Id.*

¹⁴ At a minimum, *Overton* illustrates why this question should be referred to the Supreme Court for decision. See *K F Dairies, Inc. & Affiliates v. Fireman’s Fund Ins. Co.*, 179 F.3d 1226, 1226-27 (9th Cir. 1999) (questions properly referred where intermediate appellate decisions “are in potential conflict” with Supreme Court precedent).

at 672. Nevertheless, applying *Morillion*, this Court held that the drive time was not compensable because during the drive, the employees were free to “decide when to leave for work and which route to take” and could use the company van “for personal purposes.” *Id.* The employer’s “requirement” that employees use the van did not “subject [them] to [the employer’s] control during the commute.” *Id.* The two words—“required” and “controlled”—have different meanings, and under the Wage Order and *Morillion*, only “control” must be shown. *See id.*

Stevens stands in contrast to *Rutti v. Lojack Corp.*, 596 F.3d 1046 (2010), in which commute time was compensable under *Morillion* because the employer *both* “required” the employees to drive the company car *and* exercised “control” during the ride by “forbidding” employees from “attending to any personal business along the way.” *Id.* at 1061-62.

The district court read *Stevens* and *Rutti* as supporting the conclusion that activity must always be both “required” and “controlled” to be compensable. ER 14:27-15:7.¹⁵ Neither case said this. Instead, they both demonstrate that “required” and “control” are distinct concepts, that either can exist without the other, and that the determinative one under *Morillion* is “control.” Here, time

¹⁵ The district court also relied on an unpublished intermediate appellate opinion, *Pantoja v. Brent*, 2014 WL 72655 (Cal. App. Feb. 25, 2014) (ER 15:1-2), but that decision, consistent with *Stevens*, held that time driving the required company van to work was not compensable, but subsequent drive time to worksites was compensable because “controlled” under *Morillion*. *Id.* at *1, *3.

spent on Checks was compensable because it was “controlled” by Apple. No additional element need be shown.

The same point is illustrated in *Cervantez v. Celestica Corp.*, 618 F.Supp.2d 1208 (C.D. Cal. 2009). There, the court held that pre-shift time inside the employer’s facility was compensable, even though the employees were not required to “arrive early,” and “if [they do], they are free to—and do—use this time as they choose, and are not prohibited from leaving the premises.” *Id.* at 1222. The time was compensable under *Morillion* because it was “controlled,” even though “not required.” *Id.* While employees could “engage in limited personal activities during this period,” they could not “use the time effectively for their own purposes,” and thus were “subject to” the employer’s “control.” *Id.* at 1215, 1222.

Cervantez also held that time spent waiting for and undergoing “required” security screenings before entering the employer’s facility was compensable, citing *Morillion’s Vega* footnote. *Id.* at 1216. “Applying *Vega* here, the distinguishing factor is obvious: employee choice. Plaintiffs here have no choice; instead they must submit to security screening and ensuing delay before every shift.” *Id.* The district court cited this part of *Cervantez* to support its holding that “required” is a necessary element of “control.” ER 13:16-16:5. But *Cervantez* did not say this, and the district court’s reasoning ignored what *Cervantez did* say on post-

screening, pre-shift time. The screenings were “controlled” because “required,” and thus compensable; but the post-screening, pre-shift time was *also* compensable because it was also “controlled,” even though not “required,” and even though the employee could choose to avoid it by not arriving so early. 618 F.Supp.2d at 1215, 1222.

Similarly, in *Betancourt v. Advantage Human Resourcing, Inc.*, 2014 WL 4365074 (N.D. Cal. Sept. 3, 2014), the court held that a temporary staffing agency employee was under the agency’s “control” “during his interview with [an agency client]” because the agency “organized the date, time and place of the interview,” “tightly controlled the flow of information between [the client and the employee] before and after the interview,” and “exercised the lion’s share of control over” the employee’s time spent “*at the interview.*” *Id.* at *4, *5 (emphasis in original). The court reached this conclusion without considering whether the interview was also “required.” *See id.*¹⁶ Thus, *Betancourt*, like *Cervantez*, recognized that the pertinent inquiry is the degree of “control” exercised over and during the activity in question—not whether the activity was also “required” or could be avoided by a pre-activity employee “choice.” *See also Sullivan v. Kelly Servs., Inc.*, 2009 WL

¹⁶ The district court disputed this reading of *Betancourt*, ER 13:6-7, but *Betancourt* says quite clearly that “this Court ha[d] *already found* that [the employee] was under [the employer’s] *control* during his interview” before it also held, several paragraphs later and for a different purpose, that the interview was “required.” 2014 WL 4365074 at *6 (emphasis added).

3353300, *4 (N.D. Cal. Oct. 16, 2009) (focusing on degree of control exercised by employer “during the time [plaintiff] attended” staffing agency interviews, not on whether the interviews were “required”).¹⁷

The difference between “require” and “control” is also shown in *Bono*, 32 Cal.App.4th 968, a case cited favorably in *Morillion*. There, the court considered the expansive definitions of “control” in the *Oxford English Dictionary* (2d ed. 1989) (“OED”) and *Webster’s New World Dictionary* (2d Coll. Ed. 1988). “Control” can mean any of the following: “[t]o exercise restraint or direction upon the free action of; to hold sway over, exercise power or authority over; to dominate, command”; “[to] ‘exercise ... authority over; direct; command.” 32 Cal.App.4th at 975 (quoting dictionaries). Applying this definition, the court

¹⁷ The district court also disputed this reading of *Sullivan*, simply because the *Sullivan* court rejected the employer’s argument that the interviews were “voluntary.” ER 13:8-11) (citing *Sullivan*, 2009 WL 3353300 at *4). This does not change the fact that *Sullivan* had already found “control” based on the other restrictions it mentioned. As the district court recognized, “neither *Betancourt* nor *Sullivan* directly held the mandatory nature of the interviews dispositive.” ER 13:5-6. The cases should have been read to support plaintiffs’ position, not Apple’s. The Wage Orders must be construed to protect employees, not employers. *Martinez*, 49 Cal.4th at 61; *Murphy*, 40 Cal.4th at 1103.

Another case the district court should have read differently is *Ridgeway v. Wal-Mart Stores, Inc.*, 107 F.Supp.3d 1044 (N.D. Cal. 2014) (ER 11:27-12:14). *Ridgeway* held that layover time was compensable because of a variety of restrictions imposed by the employer, including that the employees “were prohibited from taking layovers at their own homes,” but the decision does not state that “control” can be shown in no other possible way. *Id.* at 1055.

held that an employer can “prevent[]” an “employee from using the time effectively for his or her own purposes” if the employer “*directs, commands or restrains* an employee from leaving the work place” *Id.* (emphasis added).

The district court misread *Bono*, which did not hold that to “command” an activity is the *only* way to exercise “control.” ER 12:15-24. *Bono* reasonably and correctly held that “an employee continues to be subject to employer control if the employer requires the employee to remain at the worksite,” because within the worksite, employees cannot use their time “effectively for their own purposes.” 32 Cal.App.4th at 975 (emphasis added).¹⁸ Nothing in *Bono* holds that an employer cannot *also* exercise “control” over activity that is not “required.” *See also Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1535 n.10 (2008) (“The ultimate consideration in applying California law is determining the extent of the ‘control’ exercised.” (citation omitted)).

The *Oxford English Dictionary*, cited in *Bono*, defines “require” as “[t]o demand of (one) to do something” or “[to] ask for ... authoritatively or

¹⁸ Because of this general rule, the IWC created a special exception for public housekeeping industry employees who are “required to reside on the employment premises.” 8 Cal. Code Regs. §11050, ¶2(H). For such employees, only the “time spent carrying out assigned duties shall be counted as hours worked.” *Id.* Absent this special exception, “a resident employee must be paid for the entire time he spends on the premises,” because all that time would fall within the “control” test. *Brewer v. Patel*, 20 Cal.App.4th 1017, 1022 (1993). The requirement to remain on the employer’s premises distinguishes such time from that considered in *Stevens*, and from other normal commute cases. *See* Part VII(D)(1)(b)((3)), *infra*.

imperatively, or as a right; to demand, claim, insist on having.” This plain-language definition is narrower than “control,” which includes “to exercise ... direction upon,” “direct,” “regulate,” or “exercise restraining or directing influence over.” *OED, supra; American Heritage Dictionary, supra; Merriam-Webster’s Dictionary, supra*. The IWC chose to use the term “control,” not “require.” The two words represent distinct concepts, and the definitions make plain that conduct can be “controlled” with—or without—also being “required.”

To support its holding that “required” is one of “two necessary elements” of the “‘control’ prong,” the district court heavily relied on *Alcantar*. ER 9:21-10:9, 10:17-20. *Alcantar*, however, does not dictate the outcome of this appeal. There, the plaintiff claimed that his “normal commute” time was compensable because, “while commuting to and from work in [the employer’s] vehicles, [he was] under [the employer’s] control.” 800 F.3d at 1050. He asserted that as a practical matter, he was required to drive the company vehicle to and from work because he was responsible for securing its tools, and that the employer imposed restrictions during the commute amounting to “control.” *Id.* Citing *Overton*, the district court in *Alcantar* rejected the first point, holding that plaintiff had “the option” to drive his own vehicle “for the sake of convenience,” and granted defendants’ summary judgment motion on that basis. *Alcantar v. Hobart Service*, 2012 WL 6539547, *3 (C.D. Cal. Dec. 13, 2012) (citing *Overton*, 136 Cal.App.4th at 271-72).

On appeal, plaintiff did not argue that the district court misconstrued *Overton*, or that it erred by holding that “required” and “controlled” were dual elements of compensable time. *See generally* 800 F.3d at 1050-51, 1054-55 (summarizing plaintiff’s arguments).¹⁹ Instead, he argued only that the record raised a genuine factual dispute concerning whether the employees’ “choice” to drive their own vehicles to work was “illusory.” *Id.* at 1050, 55.²⁰ This Court agreed, reversed, and remanded on that ground. 800 F.3d at 1055-56.

Before reaching the “illusory” choice question, and without examining the Wage Order’s wording, this Court said that to prevail, the plaintiff “must prove not only that [the employer’s] restrictions on him during his commute were such that he was under [the employer’s] control, but also that ... employees are, as a practical matter, required to commute in [the employer’s] vehicles.” *Id.* at 1054-55. But this was not a contested issue, and was not briefed as such.²¹ The panel’s comments on it should not dictate the outcome in this case, in which the point has been briefed and squarely “presented for decision.” *Arkansas Game and Fish*

¹⁹ *See* Appellant’s Opening Brief, *Alcantar v. Hobart Service*, No. 13-55400, Dkt. 11-1, at 1-2, 36-44 (9th Cir. Aug. 18, 2013) (“AOB”) (MJN Ex. 5); Appellant’s Reply Brief, *Alcantar v. Hobart Service*, No. 13-55400, Dkt. 26-1, at 21-25 (9th Cir. Jan. 2, 2014) (“ARB”) (MJN Ex. 6).

²⁰ *Accord* AOB at 37, 42, 44; ARB at 21-23.

²¹ Plaintiff’s appellate briefs did not even discuss *Overton*, although the case was central to the district court’s order. AOB at 36-44; ARB at 21-25; *see Alcantar*, 2012 WL 6539547 at *3-*4.

Comm'n v. United States, 133 S.Ct. 511, 520 (2012).²² Moreover, *Alcantar* involved “normal commute” time, which is a distinct type of activity not relevant or controlling here (as discussed in Part VII(D)(1)(b)((3)), below).²³

The text of the Wage Orders, coupled with *Morillion*, are the binding authorities on “control.”²⁴ As discussed above, neither the Wage Orders nor *Morillion* supports the district court’s ruling, or the panel’s comment in *Alcantar*. Indeed, *Alcantar* shows that *Morillion* may be subject to misinterpretation, and that the California Supreme Court’s guidance is needed.²⁵

The district court recognized that many of the decisions on which it relied, including *Mendiola*, “did not focus on the mandatory nature of the activity,” and

²² *Accord Local 144 Nursing Home Pension Fund v. Demisay*, 508 U.S. 581, 592 n.5 (1993) (prior opinions’ comments on “unargued” issues should not be accorded “precedential effect”); *United States v. Pinjuv*, 218 F.3d 1125, 1129 (9th Cir. 2000) (later panels are “not bound” by such comments); *Fairbanks v. Superior Court*, 46 Cal.4th 56, 64 (2009) (“judicial decision is not authority for a point that was not actually raised and resolved”).

²³ Another case on which the district court heavily relied, *Novoa v. Charter Communications, LLC*, 100 F.Supp.3d 1013 (E.D. Cal. 2015) (ER 15:16-16:3) followed the lower court’s opinion in *Alcantar*, and other cases, and reached the same conclusion. This decision is not binding, is distinguishable because it involved “normal commute” time (as discussed below), and is inconsistent with *Morillion*, *Overton*, and the Wage Order’s text. It should not be followed.

²⁴ *Trishan Air, Inc. v. Federal Ins. Co.*, 635 F.3d 422, 427 (9th Cir. 2011).

²⁵ The district court cited an unpublished appellate opinion in which the majority and dissent disagreed on how to construe *Morillion*, further demonstrating the need for Supreme Court direction. ER 15:8-15 (citing *Amalgamated Transit Union, Local 1589 v. Long Beach Pub. Trans. Co.*, 2009 WL 1277735 (Cal. App. May 11, 2009)).

instead “focused *solely* on the scope of the employer’s [degree of] control” over the activity. ER 11:15-16, 11:22 (emphasis added); *see also* ER 12:17-19, 13:5-6 (same re *Betancourt* and *Sullivan*). That should have been a reason to rule for plaintiffs, not Apple. The Wage Orders are to be broadly interpreted in favor of employee protection, not employer protection. *Martinez*, 49 Cal.4th at 61; *Murphy*, 40 Cal.4th at 1103. Instead of applying this principle, this district court gave Apple the benefit of the doubt whenever possible, then compounded the error by ignoring the Orders’ plain text. Its judgment should be reversed.

(3) Principles Drawn From Commute Cases Should Not Be Extended to This Case

The district court also erred by refusing to recognize that cases involving commute time are factually and legally distinguishable from this case, and by allowing those precedents to dictate the outcome. *See* ER 14-16, 30:5-8.

Cases involving normal commute time are distinguishable for two reasons. First, under California law, “[a]n employee’s commute is not typically compensable ... , even ‘when the employee commutes in a vehicle that is owned, leased or subsidized by the employer.’” 800 F.3d at 1054 (quoting Cal. Lab. Code §510(b)); *see Novoa*, 100 F.Supp.3d at 1019-21 (same); *Alcantar*, 2012 WL 6539547 at *2 (same); *see also Morillion*, 22 Cal.4th at 588 (“employers do not risk paying employees for their travel time merely by providing them

transportation”). While plaintiffs in commute cases face this presumption, no such presumption exists outside the commuting context.

Second, normal commute activity happens away from the workplace, before or after the workday has begun or ended, and away from direct employer supervision (that is, it is ordinarily not “controlled” by the employer). In contrast, the Checks take place on the employer’s premises, during the regular workday between arriving and leaving work, including lunchtime, and under the employer’s direct supervision (that is, “controlled” by the employer, as Apple conceded).

Alcantar illustrates the point. There, the employees sought compensation for time spent driving from their homes to the employer’s branch location and from their homes to their assigned job sites—that is, their “normal commute” time. 800 F.3d at 1050. Such time is “not typically compensable,” *id.* at 1054, so the district court needed to find a way to differentiate the time from a “normal commute,” *see* 2012 WL 6539547 at *2-*3. One way a commute could be different is if the employer requires employees to drive or ride in a company vehicle. *Id.* at *3 (citing *Morillion*, 22 Cal.4th at 578-79; *Overton*, 136 Cal.App.4th at 265). If this is shown, the time is not considered typical commute time, and is compensable if employer “determined when, where and how [the employees] were to travel.” *Morillion*, 22 Cal.4th at 588. Compare *Alcantar*, 800 F.2d at 1054-55 (company van and other restrictions possibly imposed; time possibly compensable) *with*

Stevens, 281 Fed.Appx. at 672 (company van required but no other restrictions; time not compensable).

In most non-commute cases, including this one, that issue simply does not come up. If the activity takes place at work (like the Checks do), that factor already distinguishes the activity from normal commute time. If the employee is “restrain[ed] from leaving the work place” during the activity, then the activity meets the “control” test. See *Morillion*, 22 Cal.4th at 583 (citing *Bono*, 32 Cal.App.4th at 975). Compare *Cervantez*, 618 F.Supp.2d at 1222 (pre-shift time inside employer’s facility compensable because “controlled”) with *Watterson v. Garfield Beach CVS LLC*, 120 F.Supp.3d 1003, 1006-07 (N.D. Cal. 2015) (cited by district court at ER 16-18; applying “required” factor borrowed from four commute cases (*Morillion*, *Overton*, *Alcantar* and *Novoa*) to offsite activity that took place away from employer supervision).

The district court refused to recognize that commute cases are materially distinguishable from non-commute cases, saying that “no decision has ever drawn that distinction.” ER 14:22; see ER 16:8, 30:5-8, 51:8-16. This is inaccurate,²⁶ but it should not matter. The question is not whether other litigants made the same argument in past cases, leading other courts to consider it, but whether a

²⁶ E.g., *Alcantar*, 800 F.3d at 1054; *Novoa*, 100 F.Supp.3d at 1019-21; *Sullivan*, 2009 WL 3353300 at *5 (interview time compensable; travel time to interviews non-compensable).

“principled basis” exists for distinguishing commute cases. *Hart v. Massonari*, 266 F.3d 1155, 1172 (9th Cir. 2001). Here, it does.

If “required” is an essential element of “control” in commute cases, somehow added *sub silentio* to the Wage Orders for such cases, as the district court held, then it should be confined to commute cases.²⁷

c. Even if Both “Control” and “Required” Are Necessary Under the Wage Order (Which They Are Not), Both Elements Were Met Here

After holding that both “required” and “control” must be shown, the district court ruled for Apple because the employees “freely chose” to bring iPhones, bags, and personal technology to work “for their personal convenience,” and could “freely choose to avoid the Apple’s [sic] control during the searches” by leaving their bags, phones, and technology at home. ER 16:26-27, 13:14, 18:6-27, *passim*.

Even if “control” comprises two elements (which it does not), the trial court erred in holding that the Checks were not both “required” and “controlled.”

It is undisputed that Apple required employees to do one of two things: (1) either leave all bags, iPhones and other personal Apple technology at home, or (2)

²⁷ The district court claimed that non-commute cases also treated “required” as a necessary component of “control,” but cited only a single case in which this was even arguably true. ER 16-18 (citing *Watterson*, 120 F.Supp.3d 1003). *Watterson* is discussed in more detail below, but to the extent it relied on commute cases to engraft a “required” element onto the Wage Orders, the case should not be followed. Moreover, *Watterson* is distinguishable because the activity did not take place at work and under the employer’s nose, unlike the Checks.

submit to standing in line, displaying and opening their bags for search, moving around items inside the bags, and taking out and displaying their phones and cards for Checks. ER 6:2-17 (summarizing Check procedure).

Either option has a negative consequence for the employee: be inconvenienced by leaving their bags, phones and other personal technology at home, or be inconvenienced, delayed, and “controlled” by undergoing Checks. This is a no-win, Hobson’s “choice,” which they would not face but for the nature of their retail sales jobs.

The Court describes the ability to bring bags and phones to work as an “optional benefit” of the job (ER 18:11, citing *Watterson*, 120 F.Supp.3d at 1007), but under Apple’s Check Policy, employees can obtain that “benefit” only by forfeiting another term of employment—the right to leave the store (and Apple’s “control”) at the end of the shift without being Checked. The Checks are no more “voluntary” than the interviews in *Sullivan*, which employees could avoid only if they were “willing to forego” other employment terms. 2009 WL 3353300 at *4.

This also distinguishes another case heavily cited by the district court (at ER 16-18). In *Watterson*, an “optional benefit” was “purely voluntary” because it was “in no way tied to the Plaintiff’s actual employment or job duties”; impacted no “opportunities tied to her employment with Defendant” or “any terms of

employment”; and led to “conditions” that were “not at all related to [Plaintiff’s] day-to-day work as a clerk.” 120 F.Supp.3d at 1007-09.

The district court equated Apple employees’ “voluntary” “choice” to bring bags and phones to work with the employees’ “voluntary” decision to enroll for health insurance in *Watterson* (ER 17:9-13), but this ignores the work-related consequences of the former decision. If an Apple employee decides to bring a bag or phone to work, Apple changes the terms on which the employee is allowed to leave the premises (and its “control”), and confines her to the store to be Checked. ER 8:18-20. That condition is directly “tied to” the employee’s job duties and day-to-day work, which give her access to valuable unsecured merchandise—apart from which no Checks would be needed. Therefore, neither the choice to bring a bag or phone to work, nor the ensuing Checks, were “purely voluntary” in the sense described in *Watterson*.

This also distinguishes the free shuttle in *Overton*. In both *Overton* and *Watterson*, the “optional benefits” were “in no way tied” to “job duties,” “terms of employment,” or the employees’ “day-to-day work.” 120 F.Supp.3d at 1008-09; *see Overton*, 136 Cal.App.4th at 267-68. The benefits were therefore in no sense “required,” unlike the Checks here.

The district court also said that employees “benefited” from the Check Policy because, “[r]ather than prohibiting employees from bringing bags and

personal Apple devices into the store altogether, Apple took a milder approach to theft prevention” by allowing employees to bring personal items, subject to the Checks. ER 10:21-23. But the Checks would be wholly unnecessary if Apple approached theft prevention by adequately securing its merchandise. A rule requiring employees to leave bags and phones at home—a conceded “inconvenience” to them—or be Checked, is not a “benefit” to the employees.

In sum, the Checks were both “required” and “controlled.” For all employees who presented with a bag, iPhone, or other Apple technology, the Checks were mandatory; and it is undisputed that the employer exercised “control” during the Checks. ER 8:18-20, 47:20-48:13. The Check time is compensable “hours worked,” even under the district court’s erroneous construction of the governing legal standard.

2. Plaintiffs Were “Suffered or Permitted to Work” During the Checks

After erroneously holding that the “control” test had not been met, the district court turned to the “suffered or permitted to work” test. This test is separate and distinct from the “control” test, and provides an “independent” basis for liability under the Wage Order. *Mendiola*, 60 Cal.4th at 839; *Morillion*, 22 Cal.4th at 582; ER 8:5-12.

The district court held that this test was also unmet because the Checks were not “work.” ER 19-21. Its rationale was threefold. *First*, according to the court, whether an activity “benefits” the employer is not relevant to whether the activity constitutes “work.” ER 19:14-22 (citing *Martinez*, 49 Cal.4th at 69-70). As a result, the court refused to consider the evidence that the Checks benefited Apple by deterring theft. *See id.* at 19:14-22, 21:8-10. *Second*, the Checks were not “work” because they “had no relationship to plaintiffs’ job responsibilities; they were peripheral activities relating to Apple’s theft policies.” ER 20:8-9. *Finally*, the Checks were not “work” because employees “passively awaited” as “managers or security guards conducted the [Checks].” In sum, “Plaintiffs did not *work* during this time.” ER 20:10-11 (original emphasis); *see also* ER 21:4-6.

This holding was error. Under California law, the Checks easily meet the “suffered or permitted to work” test.

a. **The Checks Were “Work” Because They Were Exertion that Benefited Apple**

Although Wage Order 4 does not define “work,” the Order does stipulate that activity can be “work” “whether or not” the employer “required” the activity. 8 Cal. Code Regs. §11040, ¶2(K). In common parlance, “work” means any “activity in which one exerts strength or faculties to do or perform something.” *Merriam-Webster’s Dictionary, supra*. It also means “physical and mental

exertion to attain an end, especially as controlled by and for the benefit of an employer; labor.” *Black’s Law Dictionary, supra, cited in Betancourt*, 2014 WL 4365074 at *6; *see also American Heritage Dictionary, supra* (“Physical or mental effort or activity directed toward the production or accomplishment of something”).

As the Supreme Court explained in *Mendiola*, to qualify as “work,” an activity need not involve active exertion. “[A]n employer, if he chooses, may hire a man to do nothing, or to do nothing but wait for something to happen.” 60 Cal.4th at 840 (quoting *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944)). Even idle, “on-call” time may be compensable “work” if the time “benefit[s] ... the employer.” *Id.*; *see also id.* at 841 (whether time is “primarily” for employer’s benefit); *cf. Tennessee Coal*, 321 U.S. at 598 (“work” includes “physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer”).

What is more, if “immediate control” is exercised over an activity that “benefit[s] ... the employer,” there is no question that the time “must be compensated.” *Ghazaryan*, 169 Cal.App.4th at 1535 (citation omitted), *cited with approval in Mendiola*, 60 Cal.4th at 841; *see also Black’s Law Dictionary, supra* (“*especially* as controlled by and for the benefit of an employer” (emphasis added)).

The Checks meet this plain-language definition of “work.” They involve “exertion” or “effort,” including finding a manager or supervisor;²⁸ holding up and opening bags; opening internal pockets and moving contents; complying with employer directions; and pulling out and displaying devices and tech cards. ER 6:2-17 (describing Check procedure); *supra* pp. 10-14. The Checks “attain an end”—namely, confirming that employees who spent their shifts working with unsecured merchandise left all the merchandise behind—which benefits Apple by deterring and preventing theft, both present and future.²⁹ *Supra* p. 15; *see Mendiola*, 60 Cal.4th at 481 (theft-prevention activities “primarily ... benefit” the employer). On top of all that, Apple concededly controlled employees during the Checks. ER 8:18-20, 47:20-48:13.

None of this mattered to the district court. In fact, although *Mendiola* plainly held that “benefit” to the employer is relevant in assessing whether an activity is “work,” the district court, citing *Martinez*, refused to consider the considerable benefits of the Checks to Apple. ER 19:14-22; 21:9-10.

This was error and a misreading of *Martinez*.

²⁸ ER 392 (“It is your responsibility to find a manager or member of the security team ... to search your bags and packages before leaving the store.”), 115 (“Find a manager ... to search your bags ...”), 394-406 (same).

²⁹ ER 212 (“[B]e very thorough with bag checks and tech cards, as these are key components to the impression of control in the store.”).

The *Martinez* plaintiffs undisputedly “worked” by picking strawberries. *See* 49 Cal.4th at 42-43. The question was whether the produce merchants who sold the strawberries were plaintiffs’ “employers,” and therefore liable for unpaid wages. *Id.* at 42-43, 48-49, 51. The answer turned on the definition of “employ” in Wage Order 14: “to engage, suffer or permit to work.” *Id.* at 51 (citing 8 Cal. Code Regs. §11140, ¶2(C)).

Under this definition, the merchants were not “employers.” *Id.* at 69-71. Neither “suffered or permitted plaintiffs to work because neither had the power to prevent plaintiffs from working.” *Id.* at 70. The Court rejected the argument that the merchants became “employers” because they “knew plaintiffs were working, and because plaintiffs’ work benefited” them. *Id.* at 69; *see id.* at 70 (describing this as a “downstream benefit” argument). In *that* context, the Court said: “the concept of a benefit is neither a necessary nor a sufficient condition for liability under the ‘suffer or permit’ standard.” *Id.* at 70.

The Court did *not* say that “the concept of a benefit” to the *undisputed* employer “is neither a necessary nor a sufficient condition” for an activity to constitute “work.” The sentence addressed the “‘suffer or permit’ standard” in the definition of “employ” in Wage Order 14 (¶2(C)), *not* the definition of “hours worked.” Picking strawberries was indisputably “work,” so the question was: “engage[d], suffer[ed] or permit[ed] to work” by whom? Knowing that plaintiffs

were working, and that the work would benefit them, did not make the merchants “employers.” 49 Cal.4th at 69-71. Instead, “the basis of liability is the defendants’ knowledge of and *failure to prevent* the work from occurring.” *Id.* at 70 (emphasis in original).

Martinez thus provides no support for the conclusion that the Checks are not “work.” Apple is the undisputed “employer” in this scenario. Apple knew about the Checks and had “the power to prevent” them. The question—not presented in *Martinez*—is whether the Checks are “work.” Under *Mendiola* and plain definitions of “work,” it is not only relevant, but likely determinative, that Apple benefited from the Checks. 60 Cal.4th at 840 (even “idleness” constitutes “work” if it benefits the employer); *Betancourt*, 2014 WL 4365074 at *6 (employees “worked” during interviews that were “clearly conducted for [the employer’s] benefit,” even though the interviews also benefited the employees); *see Morillion*, 22 Cal.4th at 594 (activities can be compensable “hours worked” even if they “benefit[] both employees and employers”).

Here, the Checks not only involved “exertion” to “attain an end,” and not only benefited Apple, but also involved “immediate control” by the employer. *Ghazaryan*, 169 Cal.App.4th at 1535. They are compensable “work.” *Id.*

b. **The District Court’s “Peripheral Activities” Holding Improperly Imported a Less Protective Federal Standard that Finds No Support in California Law**

The district court also held that the Checks were “peripheral activities” with “no relationship to plaintiffs’ job responsibilities,” and therefore not “work.” ER 20:8-9, 21:5-6. This conclusion was wrong both factually and legally.

Factually, the Checks *do* relate to employees’ job responsibilities. These are retail sales jobs. The jobs necessarily require employees to access and handle Apple-owned merchandise in order to make sales and assist customers. The need for Checks is a function of the type of merchandise Apple chooses to sell—valuable devices small enough to conceal in bags—and the fact that Apple fails to keep the merchandise locked up or otherwise adequately secured from theft. Absent these characteristics of the employer’s business and the nature of the employee’s jobs, the Checks would be unnecessary.

Legally, in holding that “peripheral activities” are non-compensable under California law, the district court effectively imported the less-protective standard of the federal Portal-to-Portal Act, under which “preliminary and postliminary” activities are non-compensable. 29 U.S.C. §254(a), *cited in Morillion*, 22 Cal.4th at 589. The court went so far as to cite *Busk* for the proposition that the Checks “lacked the integral or indispensable relationship to the employees’ job responsibilities.” ER 20:19-28 (citing *Busk*, 135 S.Ct. at 518). Although the court

claimed it was not applying federal law (ER 21:1-2), the standard it used mirrored the federal one, leading to an outcome identical to *Busk*.

This ruling contravened the Supreme Court’s repeated admonition that the IWC has never adopted the federal standard for “hours worked.” *Mendiola*, 60 Cal.4th at 843; *Morillion*, 22 Cal.4th at 590-92; *Bono*, 32 Cal.App.4th at 977; *see also Martinez*, 49 Cal.4th at 68. This ruling disregarded the IWC’s decision to amend the Wage Orders in 1947, “[i]n response to” the enactment of the Portal-to-Portal Act, in order “to provide employees with greater protection than federal law affords.” *Martinez*, 49 Cal.4th at 59-60. This ruling ignored the fact when the IWC wishes to adopt a federal standard, it knows how and does so explicitly, as shown in Wage Order 4 itself. *Morillion*, 22 Cal.4th at 592.

In Wage Order 4, for employees in the health care industry, the definition of “hours worked” is tied to the federal standard. For these employees, it means:

the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, *as interpreted in accordance with the provisions of the Fair Labor Standards Act*.

8 Cal. Code Regs. §11040, ¶2(K), second sentence (emphasis added).

The adjacent sentence, which governs this case, contains no such qualifying language. Instead, “*all* the time the employee is suffered or permitted to work” is compensable—regardless of whether “preliminary,” “postliminary,” or “peripheral” to the “principal activity” the employee was hired to do. *Id.*, first

sentence (emphasis added). Because the Wage Orders “differ substantially” from the federal standard, *Morillion*, 22 Cal.4th at 590, 594, the outcome in this case should have differed substantially from *Busk*. Under the definition of “work” discussed above, the Check time should have been held compensable.

The Supreme Court regularly declines to “import” into the Wage Orders “any federal standard, which expressly eliminates substantial protections to employees, by implication.” *Id.* at 590. The district court’s approach was inconsistent with that principle, and should be reversed.

Apple contended below that its employees were not hired to undergo Checks (ER 36:9-13), but again, this is not the governing standard under Wage Order 4—as shown not only by the definition of “work” discussed above, but also by the special language of Wage Order 5. In Wage Order 5, “hours worked”:

includes all the time the employee is suffered or permitted to work, whether or not required to do, and in the case of an employee who is required to reside on the employment premises, that *time spent carrying out assigned duties* shall be counted as hours worked.

8 Cal. Code Regs. §11050, ¶2(H) (emphasis added). “Wage Order 4, as noted, does not contain language limiting hours worked to ‘time spent carrying out assigned duties.’” *Mendiola*, 60 Cal.4th at 843. Instead, the pertinent question is whether the employer “suffered or permitted” “work,” which means exertion to attain an end—whether that end is an “assigned duty” or not. When the exertion

benefited the employer and took place under the employer's immediate control, it constitutes "work" and is compensable. *Ghazaryan*, 169 Cal.App.4th at 1535.

c. **Under California Law, "Work" Does Not Have to Be "Active" to Be Compensable**

Finally, the district court held that during the Checks, plaintiffs "passively awaited" while others "conducted the searches," and "merely passively endured the time." ER 20:10-11, 21:4. For this reason, the Checks were not "work." *Id.*

There are two problems with this holding.

First, the record does not support these factual findings. Apple's Check Policy required far more than mere "passive endurance." As discussed above, the Checks involved active exertion, including finding managers, obeying managers' directions, displaying and opening bags, moving the contents around, and other physical effort.

Second, even if all plaintiffs did was "passively await" and "endure" the Checks, that does not mean the activity was not "work." As held in *Mendiola*, even "idleness" can be compensable "work," and employees can be hired "to do nothing but wait for something to happen." 60 Cal.4th at 840. "Active" exertion is not an essential element of "work." *See id.*; *see also Tennessee Coal*, 321 U.S. at 598 ("whether burdensome or not"). Even time spent sleeping is sometimes compensable. 60 Cal.4th at 842.

Here, even if plaintiffs' sole responsibility was to "passively" "wait for" Checks to be conducted, that activity is compensable for numerous reasons, including that the employer knew about it, benefited from it, and controlled it. *Mendiola*, 60 Cal.4th at 840; *Ghazaryan*, 169 Cal.App.4th at 1535.

d. At a Minimum, Whether Checks are "Work" Presents Genuine Issues of Material Fact, Precluding Summary Judgment in Apple's Favor

Under the erroneous legal standards adopted by the district court, whether the Checks constitute "work" presents genuine issues of material fact. The district court made factual findings, on disputed evidence, concerning whether plaintiffs "passively awaited" and "endured" the Checks, and whether the Checks were "peripheral" to plaintiffs' "job responsibilities." ER 20, 21.

Even if this Court agrees with the district court's interpretations of the law (which it should not), the district court erred by making factual findings in ruling on Apple's motion. The motion should not have been granted in the face of these genuine fact questions. *Giles*, 494 F.3d at 872. They should be decided by a jury.

E. Applying the Correct Legal Standard, Apple's Motion Should Have Been Denied, and Plaintiffs' Should Have Been Granted

As discussed in detail above, the Checks meet the "control" test, the "suffered or permitted to work" test, or both. This means that Apple's motion should have been denied.

It also means that plaintiffs' motion should have been granted. All of the material facts were undisputed, and Apple conceded "control" within the meaning of the "control" test. As explained in detail above, even considering the three additional facts on which Apple relied in opposing plaintiffs' motion (Part V(C)(2), *supra*), the "control" test was met, as was the "suffered or permitted to work" test.³⁰

In its opposition, Apple raised some other purportedly disputed facts (ER 75-78), but described them all as "irrelevant" or "not relevant" to the "hours worked" question. ER 75:3, 76:5, 77:6, 77:23. They were. They presented no impediment to granting plaintiffs' motion, because the relevant, material facts were undisputed.

In short, the district court erred by not resolving the central liability question in plaintiffs' favor and granting plaintiffs' motion.

³⁰ The disputed facts mentioned in Part VII(D)(2)(d), immediately above, are immaterial to this conclusion. They matter only if this Court agrees with the trial court's legal conclusions (which it should not), in which case Apple's motion should be denied and the case remanded for resolution of these factual disputes.

VIII. CONCLUSION

For the reasons discussed above, the Court is respectfully asked to refer the questions presented in this appeal to the California Supreme Court.

In addition, the Court should reverse the judgment, including the costs award, with directions to deny Apple's motion for summary judgment, grant plaintiffs' motion, and conduct further proceedings, including those necessary to award damages to the class. At a minimum, the Court should reverse the judgment, including the costs award, with directions to deny Apple's motion and conduct further proceedings, including trial.

Dated: June 27, 2016

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Kathleen S. Rogers

McLAUGHLIN & STERN
Lee S. Shalov
Brett R. Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT F

Case: 15-17382, 06/27/2016, ID: 10030292, DktEntry: 11-1, Page 1 of 33

No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

EXCERPTS OF RECORD
Volume 1 of 4 (Pages 1 to 22)

Kimberly A. Kralowec
Kathleen S. Rogers
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

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No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

PLAINTIFFS-APPELLANTS' MOTION FOR JUDICIAL NOTICE

Kimberly A. Kralowec
Kathleen S. Rogers
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

I. MOTION FOR JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201 and in connection with Appellants' Opening Brief filed concurrently with this motion, Plaintiffs-Appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher (collectively "Appellants"), on behalf of themselves and the certified class,¹ move the Court to take judicial notice of copies of official records maintained by the California Department of Industrial Relations at its San Francisco facility, and two records of this Court filed in *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. 2013), as follows:

Exhibit 1 to Declaration of Kimberly A. Kralowec filed herewith ("Kralowec Decl."): Wage Order 4 of the California Industrial Welfare Commission ("IWC") (8 Cal. Code Regs. §11040) (Professional, Technical, Clerical, Mechanical and Similar Occupations) – Historical Version – Wage Order 4NS (Apr. 14, 1943, eff. Jun. 28, 1943).

Exhibit 2 to Kralowec Decl.: IWC Wage Order 4 (Professional, Technical, Clerical, Mechanical and Similar Occupations) – Historical Version – Wage Order 4-52 (May 15, 1952, eff. Aug. 1, 1952).

¹ Plaintiff-Appellant Amanda Frlekin appeals in her individual capacity; she is not a class representative.

Exhibit 3 to Kralowec Decl.: IWC Wage Order 7 (Mercantile Industry) – Historical Version – Wage Order 7-NS (Apr. 5, 1943, eff. Jun. 21, 1943).

Exhibit 4 to Kralowec Decl.: IWC Wage Order 7 (Mercantile Industry) – Historical Version – Wage Order 7R (Feb. 8, 1947, eff. Jun. 1, 1947).

Exhibit 5 to Kralowec Decl.: Appellant’s Opening Brief, *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. Aug. 19, 2013) (relevant excerpts, cover and pp. 1, 2, 36-44).

Exhibit 6 to Kralowec Decl.: Appellant’s Reply Brief, *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir. Jan. 2, 2013) (relevant excerpts, cover and pp. 21-25).

II. DISCUSSION

A. The Material to be Noticed and its Relevance to this Appeal.

Appellants request the Court take judicial notice of the four historical versions of IWC wage orders (Kralowec Decl. Exhs. 1, 2, 3 & 4) because Appellants’ appeal raises the issue of the proper interpretation of California law governing compensable “hours worked” under Wage Order 4. *See* 8 Cal. Code Regs. §11040, ¶2(K). The four historical Wage Orders are relevant to Appellants’ argument that the district court misconstrued that provision.

The California Supreme Court regularly takes judicial notice of historical versions of IWC Wage Orders when construing current Orders. *See, e.g., Brinker*

Restaurant Corp. v. Superior Court, 53 Cal.4th 1004, 1026-32, 1034-39, 1041-49 (2012) (extensively considering language of historical Wage Orders in construing meal period and rest break provisions); *Martinez v. Combs*, 49 Cal.4th 35, 59-60 (2010) (considering Wage Orders’ amendment history dating back to 1947); *Reynolds v. Bement*, 36 Cal.4th 1075, 1083 n.3 (2005) (granting judicial notice of six historical Wage Orders); *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 591-93 & n.1 (2000) (considering historical changes in Wage Orders’ definition of “hours worked” and quoting Wage Order 1 NS (1947)).

Appellants also ask the Court to take judicial notice of two briefs filed in *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir.) (Kralowec Decl. Exhs. 5 & 6) offered to establish that the appellant there did not argue or dispute the “required” and “controlled” issue in his appeal from the lower court’s ruling in *Alcantar v. Hobart Service*, 2013 WL 156530 (C.D. Cal. Jan. 15, 2013) (a decision relied upon by the district court below in its opinion from which Appellants here appeal).

B. Legal Authority for Taking Judicial Notice of this Material.

Because “[t]he court may take judicial notice at any stage of the proceeding,” it may be taken for the first time on appeal. Fed. R. Evid. 201(d); *see also Lowry v. Barnhard*, 329 F.3d 1019, 1024 (9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1. Paragraph (b)(2) of Rule 201 states in part that “[t]he

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court may judicially notice a fact that is not subject to reasonable dispute because it: ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Judicial notice of wage orders is “appropriate as these documents are matters of public record.” *Stitt v. San Francisco Mun. Transp. Agency*, 2013 WL 121259, *3 (N.D. Cal. Jan. 8, 2013). With regard to the briefs filed in *Alcantar v. Hobart Service*, No. 13-55400 (9th Cir.), “[a] court may take judicial notice of its own records in other cases.” *Rogers v. Giubino*, 625 Fed.Appx. 779, 782 n.1 (9th Cir. 2015).

III. CONCLUSION

For the foregoing reasons, the Court should grant this motion for judicial notice of the six exhibits attached to the Kralowec Declaration.

Dated: June 27, 2016

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Kathleen S. Rogers

McLAUGHLIN & STERN
Lee S. Shalov
Brett Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT H

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No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

APPELLANTS' REPLY BRIEF

Kimberly A. Kralowec
Kathleen S. Rogers
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

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I. INTRODUCTION

In stores across California, Apple runs a highly profitable retail business selling small electronic devices. Instead of adequately securing these devices from theft, Apple shifts the cost of inventory control to its employees. Apple’s retail employees are subjected to mandatory—but unpaid—security searches of their bags and personal technology “every time” they leave a store. These “Checks” take place on store premises, during the regular workday, under the immediate physical direction of Apple managers and store leaders. While Apple does not pay its employees for Check time, it disciplines them for not submitting to Checks.

Under California law, the time employees spend doing Checks is compensable under the Wage Order’s “control” test, its “suffered or permitted to work” test, or both. Accordingly, the judgment in Apple’s favor should be reversed. Given the importance of these critical questions, the Court is respectfully asked to refer them to the California Supreme Court for decision.

II. ARGUMENT

A. **The Questions Concerning the Meaning of “Hours Worked” Should be Referred to the California Supreme Court for Decision**

The need for Supreme Court guidance is demonstrated by the many pending cases in which compensability of security search time is being actively litigated. *E.g.*, *Scott-George v. PVH Corp.*, 2016 WL 3959999 (E.D. Cal. Jul. 22, 2016); *Ogiamien v. Nordstrom, Inc.*, 2015 WL 773939 (N.D. Cal. Jul. 16, 2015);

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Rodriguez v. Nike Retail Servs., Inc., No. 5:14-cv-01508-BLF (N.D. Cal.); *Lawson v. Staples Contract and Commercial, Inc.*, No. BC542237 (Los Angeles Super.); Brief of *Amicus Curiae* CELA (Dkt. 18-2), 15 n.1 (**citing eight more cases**).

Every day, thousands of California employees are subjected to unpaid security searches. The Supreme Court has not yet considered “hours worked” in this context, and the district court found “no decision on point.” ER 8:21-22. The time is ripe for the questions presented in this appeal to be referred to that Court.

B. The “Control” Test Encompasses One Element, “Control,” Which Concededly Has Been Met; No Second Element Exists

Apple does not dispute that it conceded “control” below, nor does it contest the district court’s finding of “control.” RB 21-43, *passim*; *see* AOB 23-24 (citing ER 8:18-20, 47:20-48:13). Instead, Apple’s brief stands or falls on the notion that the “control” test includes an element mentioned nowhere in the Wage Order’s text. Apple’s argument relies almost wholly on decisional law (RB 21-27, 30-43), but the first source of meaning is the Order’s *text*. *Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 16 (2016); *Martinez v. Combs*, 49 Cal.4th 35, 63 (2010).

Apple’s brief says almost nothing about the text. RB 27-28. This is not surprising, because the text flatly contradicts Apple’s position. What is more, Apple’s position is contrary to the decisions on which it depends.

Apple would have the Court contract the Wage Order’s broad definition of “hours worked” so that less employer-controlled time is compensable. But courts must “liberally construe” the Wage Orders “to *favor* the protection of employees,” not the reverse. *Augustus v. ABM Security Servs., Inc.*, ___ Cal.5th ___ (Dec. 22, 2016) (slip op. at 5) (emphasis added). In fact, courts are “bound” to interpret the Wage Orders in light of this “broader [protective] purpose.” *Id.* at 14-15.

To serve that purpose, the judgment should be reversed.

1. Apple’s Contrary Position Conflicts With the Wage Orders’ Plain Text

Although “the words of the wage order [are] the best indicator of the IWC’s intent,”¹ Apple’s discussion of the Wage Order’s text is relegated to a single paragraph. RB 27-28. In that paragraph, Apple does not—because it cannot—dispute that the word “required” is not stated in the language of the Wage Order’s “control” test. Nor can Apple dispute that in 1947, the IWC purposely amended the definition of “hours worked” to remove the word “required” and substitute the word “control.” *Id.*; see AOB 25-26.

The Wage Order’s text should be the beginning and the end of the analysis. The “control” test simply does not say that an activity, to be compensable, must be both “controlled” and “required.” Engrafting an unstated second element into the

¹ *Kilby*, 63 Cal.4th at 16.

Wage Order’s text would contravene the principle that the Orders must be “accorded the same dignity as statutes” and construed in accordance with their plain language. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1026-27 (2013); *see Augustus*, slip op. at 8.

Apple offers only two text-based arguments in support of its contrary position, neither of which has merit.

First, Apple says that “subject to” (in the phrase “*subject to* the control of an employer”) “means the activity must be ‘required’ by the employer.” RB 27-28. That argument stands the text on its head. “*Subject to*” means “affected by or possibly affected by (something).”² It also means “exposed, liable, or prone” to something, or “dependent on or exposed to (some contingency).”³ In other words, it means the opposite of what Apple claims. An activity can be compensable whenever an employee is “affected by,” “exposed to,” or “liable to” employer “control.” That is the reverse of “*require*,” which means to “impose an obligation on” or “compel.” *American Heritage Dictionary* (2d Coll. Ed. 1982); *see* AOB 26.

To support its “subject to” argument, Apple relies on *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 586-87 (2000), as its only cited authority. But the

² *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003), *cited in Augustus*, slip op. at 8.

³ *Black’s Law Dictionary*, “subject,” senses 2, 3 (10th ed. 2014). Notably, Apple offers no definition of the term.

words “subject to” are not discussed on the cited pages of *Morillion*. In fact, *Morillion* does not hold anywhere that “subject to” means “required,” or that the “control” test can be met *only* by proving that an activity is “required.” *See id.*, *passim*. What *Morillion* did hold (as discussed in more detail below) is that “required” is one way to prove “control,” and that “an employee who is subject to an employer’s control does not have to be *working* during that time to be compensated under” the Wage Order. *Id.* at 582, 586 (emphasis added).

In short, nothing in the words “*subject to*” engrafts a second element into the “control” test.

Apple’s second text-based argument is that “the 1947 Wage Order did not just replace ‘control’ for ‘required’ in the pre-1947 Wage Order but changed the entire definition of ‘hours worked.’” RB 28. That is true, but does not aid Apple’s argument that the deliberate change from “required” to “control” should be ignored. In fact, it is all the more reason to respect that change. *See People v. Mendoza*, 23 Cal.4th 896, 916 (2000); *Estate of Simpson*, 43 Cal.2d 594, 600 (1954). The IWC had very good reason for making it.

Faced with a similar argument by an employer, the DLSE has explained that the IWC’s wholesale definition change “clearly” demonstrated its intent to “**broaden**” the prior definition of “hours worked”:

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The IWC's change in the language of the Orders which define "Hours Worked" *clearly indicated that the Commission intended to broaden the definition.* The 1947 IWC definition of "hours worked" replaced the requirement that the employee be on the employer's premises, or on duty or at a prescribed workplace, and simply provided that the employer must pay for all hours the employee is "subject to the control" of the employer. That definition, unknown in federal law, continues to be the definition of "Hours Worked" for state law purposes. ... [T]he Commission completely changed the language of the Orders. The change ... clearly indicate[s] that even the more restrictive disjunctive language contained in the 1942 Orders was not as restrictive as the Commission felt necessary.

DLSE, Response to Request for Determination Pursuant to Government Code Section 11347.5, *quoted in* Cal. Office of Administrative Law, Response to Request for Reconsideration, 1990 OAL Determination No. 11, at 4 (emphasis added) (MJN Exs. 7, 8); *see Martinez*, 49 Cal.4th at 59-60 (IWC's 1947 amendments were "[i]n response to" the enactment of the federal Portal-to-Portal Act, which dramatically weakened protections of federal law).

As the Supreme Court explained in *Morillion*, in order to give effect to the new, "broaden[ed]" definition, "control" must be construed to encompass *more* than just the "time during which an employee is required to be on the employer's premises, or to be on duty, or to be at a prescribed work place." 22 Cal.4th at 591-92 & n.7 (quoting Wage Order 1 NS).⁴ While the new "control" test "*may* encompass activities described by the eliminated language," it should not be

⁴ *Accord* Wage Order 4 NS (Amended), ¶2(h); Wage Order 7 NS, ¶2(f) (MJN, Dkt. 13, Exs. 1, 2).

construed to encompass *only* those activities. *See id.* at 592 (emphasis added). Otherwise, the amendment would have no meaning. Like the Legislature, the IWC should not be presumed to have enacted useless amendments. Nor should the new “control” test be narrowed “by implication” or construed to “eliminate[] substantial protections to employees.” *See id.*

Apple asks this Court to ignore both that (a) the Wage Order does not say “require and control,” and (b) the IWC explicitly deleted the word “require” in order to substitute the “broader” term “control,” thereby enhancing employee protection. The plain definitions of those two words—which Apple does not address anywhere in its brief—make clear that conduct may be “controlled” (that is, “directed or regulated”⁵) without being “required” (*i.e.*, “compelled”⁶). AOB 26-27 (discussing definitions of “require” and “control”); *see Augustus*, slip op. at 8 (relying on “ordinary meaning” of Wage Order’s words, citing dictionaries).

The district court erred by accepting Apple’s argument. It finds no support whatsoever in the plain text of the Wage Order. This Court is respectfully asked to enforce the Wage Order as written by reversing the district court’s judgment.

⁵ *American Heritage Dictionary* (2d Coll. Ed. 1982); *see Bono*, 32 Cal.App.4th at 975 (“exercise restraint or direction upon the free action of”).

⁶ *American Heritage Dictionary*, *supra*; *Merriam-Webster’s Collegiate Dictionary*, *supra* (“to impose a compulsion or command on”).

2. The Decisions Support Adhering to the Wage Order's Plain Text, Not Ignoring It

Apple's only other reasons for ignoring the Wage Order's plain text are both based on *Morillion*. RB 28. According to Apple, *Morillion* supposedly held that "an activity must be both 'required' and 'controlled' before [the] time would be considered 'hours worked' under the 'subject to the control of an employer' test," and supposedly "rejected the premise that control alone could render an activity 'hours worked' under that test." *Id.* (citing *Morillion*, 22 Cal.4th at 588).

Neither purported holding can be found in *Morillion*, as a careful review of the opinion shows. *See* AOB 29-31. Nor does *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006), on which Apple heavily relies (RB 30-34), justify ignoring the Wage Order's text. The federal authorities on which Apple relies (RB 34-43) do not support its position, either. Finally, Apple offers no persuasive reason why principles drawn from commute cases should apply in this litigation. RB 42-43; AOB 42-45. What the opinions all support, instead, is that the Wage Order's text is paramount.

a. *Morillion*

In *Morillion*, agricultural employees were "required" to ride their employer's buses from specified meeting points to the fields where they harvested produce, and were not allowed to drive their personal vehicles. 22 Cal.4th at 579. In almost the first paragraph of its analysis, the Court said that it "agree[d]" with

the employees' argument that the "control" test was met "because [the employees were] compelled to travel on [their employer's] buses." *Id.* at 582.

Immediately thereafter, the Court held that the "control" test and the "suffered or permitted to work" test were two "independent" tests, and that the latter "[did] not limit" the former. *Id.* at 583-83.

Contrary to Apple's position, the Court had no occasion to consider whether conduct that is not "required" can meet the "control" test. *See id., passim.* That is because *Morillion* involved activity that was indisputably "required," and because the employer's primary argument below was that the "suffered or permitted to work" clause modified the "control" test—an argument the Supreme Court found meritless. *See id.* at 584-85 (Court of Appeal, in conflating the two tests, had engaged in "improper judicial legislation" by "redefining 'hours worked'").

After holding that the bus-ride time was compensable because "required," and thus "controlled," the Court turned to—and rejected—the employer's argument that "plaintiffs were not under its control during the required bus rides because they could read on the bus, or perform other personal activities." *Id.* at 586. The Court explained that "[a]llowing plaintiffs the circumscribed activities of reading or sleeping *does not affect, must less eliminate, the control Royal exercises by requiring them to travel on its buses and prohibiting them from effectively using the travel time for their own purposes.*" *Id.* (emphasis added).

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The employer’s next argument was that such an “interpretation of ‘hours worked’” would be “so broad” as to encompass “*all* activity the employer ‘*requires*,’ including all commute time, because employees would not commute to work unless the employer required their presence at the work site” *Id.* (emphasis added). The Court disagreed, explaining that in “requiring” employees to ride the company bus, the employer exercised “control” by “determining when, where, and how plaintiffs must travel.” *Id.* at 586-87. The Court made clear that “[t]he level of the employer’s *control* over its employees, rather than the mere fact that the employer *requires* the activity, is determinative.” *Id.* at 587.

The *Morillion* Court made a careful, reasoned decision *not* to hold that “required” conduct must always be deemed “controlled” in every case. *See id.* Apple contends that this part of *Morillion* should be read to mean the opposite—that no conduct can *ever* be “controlled,” in any case, unless “required.” RB 28. Such a reading of *Morillion* would belie the care shown by the Court in focusing on the degree of “control” the employer exercised during the bus rides themselves, as well as the Court’s careful decision not to make a sweeping holding that would conflate “control” with “required” conduct.⁷

⁷ *See Slavkov v. Fast Water Heater Partners I, LP*, 2015 WL 8482141, *2 (N.D. Cal. Dec. 10, 2015) (“the overall ‘level of control’ exhibited in each case ... is determinative, not that the presence or absence of any particular fact creates a

It also belies the Court's own subsequent expression of *Morillion*'s holding: "The level of the employer's *control* over its employees ... is determinative." *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833, 840 (2014) (ellipsis in original); see AOB 30. Notably, Apple's discussion of the "control" test does not so much as mention this clear language from *Mendiola*. RB 21-45.

Elsewhere in its brief, Apple tries to piece together support for its inaccurate reading of the Wage Order and *Morillion* by counting up the number of times the words "required" and "control" are used in the opinion, and quoting each of those snippets. RB 22-25 & n.3. Of course those words appear repeatedly in the opinion. The activity considered in *Morillion* was in fact "required," and the employer raised a series of arguments concerning the meaning of "control" that the Court addressed and disposed of. None of the snippets changes the facts of *Morillion*, which did not involve an activity that was "controlled" (as in this case) but (arguably) not "required."

Nor does *Morillion* hold, in any of Apple's selectively-quoted snippets, that conduct can never be deemed "controlled" unless "required." Such a holding would have been contrary to the Wage Order's plain text, to which the Court was careful to adhere. See 22 Cal.4th at 586-87, 591-92. All the snippets establish is

bright-line test. [A plaintiff] could demonstrate sufficient employer control even in the absence of certain facts deemed relevant in ... *Morillion*.").

that a “required” activity, such as the bus rides in *Morillion*, can satisfy the “control” test depending on “the level of control [the employer] exercises” during the activity. *Id.* at 586.

Apple highlights *Morillion*’s statement that “employers may provide *optional* free transportation to employees without having to pay them for their travel time, so long as employers do not *require* employees to use this transportation.” RB 27 (quoting *Morillion*, 22 Cal.4th at 594). According to Apple, this language means that *no* activity can ever be compensable unless it is “required,” because once an employee boards the optional company bus, the employee is “controlled”—yet the Court said such time would be non-compensable. *Id.* This argument proves too much. The Court’s hypothetical assumes an optional bus ride during which employees are not required to, and do not, perform any tasks. That is not this case.

Suppose an employer provides “optional free transportation,” but employees who choose to use it must, during the ride, clean farming implements while supervised by a foreman. That travel time would be “controlled”—but for a different reason than it was deemed “controlled” in *Morillion*.⁸ There, the

⁸ See 22 Cal.4th at 589-90 (whether employees perform “work during the travel period” is “not dispositive” because the travel time in *Morillion* was already “compulsory,” and therefore “controlled” for that reason alone); *id.* at 589 n.5 (if employees were required to “load tools or prepare for work while on the buses,”

employer exerted “control” “by determining when, where, and how [employees] must travel.” *Id.* at 586. In the example above, the employer exerted “control” by “directing” or “regulating” the employees’ conduct during the travel. *American Heritage Dictionary, supra; see Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 975 (1995). Under the Wage Order, the travel time would be compensable in both cases.

In this case, the Check time is compensable because Apple “directed” or “regulated” the employees’ conduct during the Checks.

This undermines Apple’s heavy reliance on *Morillion*’s footnote 5, which cites a Fifth Circuit opinion, *Vega v. Gasper, supra*. RB 25-26. Footnote 5 simply recognizes that because the bus rides were “required,” and therefore “controlled,” the Court did not need to reach other possibly distinguishing factors, such as whether the employees performed employer-directed tasks during the rides. 22 Cal.4th at 589 n.5. For this reason, the outcome of *Vega* (that time spent on the optional company bus was non-compensable) was “consistent with” the outcome of *Morillion*, even though *Vega* applied less protective federal law. *Id.*

More recently, the Fifth Circuit explained that “[t]he voluntary use of transportation” in *Vega* “was *not dispositive* in concluding the travel time was

that could make the time compensable, even if the bus rides were otherwise optional (citing *Vega v. Gasper*, 36 F.3d 417 (5th Cir. 1994)).

noncompensable” under federal law. *Griffin v. S&B Engineers & Constructors, Ltd.*, 507 Fed.Appx. 377, 382-83 (5th Cir. 2013) (emphasis added). Rather, it was dispositive that the employees *performed no employer-directed tasks* during the rides, and were not “restrict[ed]” from “engaging in personal activities such as sleeping and reading.” *Id.* at 383. Absent evidence of such employer-directed tasks, even *mandatory* travel time on the company bus is non-compensable under federal law. *See id.* That rule stands in stark contrast to California law, under which either mandatory travel time or employer-directed tasks would be sufficient to meet the Wage Order’s “control” test. *See Morillion*, 22 Cal.4th at 586-87.

To construe footnote 5 as Apple suggests would elevate the footnote above the lengthy section of *Morillion* explaining why the Wage Orders’ definition of “hours worked” provides *greater* protections than federal law. 22 Cal.4th at 589-94. It would ignore what even less-protective federal law deems dispositive—namely, whether the employees engaged in employer-directed tasks during the time for which compensation is claimed. *Griffin*, 507 Fed.Appx. at 383; *Vega*, 36 F.3d at 425.⁹ It would have the perverse effect of weakening the Wage Order so that employees would have less protection under California law than federal law.

⁹ *See also Imada v. City of Hercules*, 138 F.3d 1294, 1295 (9th Cir. 1998) (mandatory travel time non-compensable under Portal-to-Portal Act where employees “perform no police officer duties or other work while engaged in travel”). Under federal law, the tasks would have to be “part of the regular work of

This Court is respectfully asked to construe *Morillion* in a manner consistent with body of the opinion and the Wage Order's text.

In this case, Apple concededly exercised "control" during the Checks. While participating in Checks, the employees were engaged in employer-directed tasks, were confined to company premises, and were restricted from using the time for personal purposes. The time is therefore compensable under the Wage Order's "control" test, as construed in *Morillion*.

b. *Overton*

In arguing that the Wage Order's "control" test has two elements, instead of one, Apple also relies heavily on *Overton*. RB 30-34. Apple misunderstands the facts and holding of that case.

In *Overton*, Disneyland employees claimed compensation for time spent riding on the company shuttle from the remote Katella parking lot to the park entrance. 136 Cal.App.4th at 266-67. The Court of Appeal held that the time did not meet the Wage Order's "control" test as construed in *Morillion*. *Id.* at 269-71. The time was not "controlled" because the employees were not required to drive to work, *or* to park in the Katella lot, *or* to take the shuttle. *Id.* at 271. In contrast to

the employees." *Vega*, 36 F.3d at 424. Under California law, they would not, so long as the employee is "subject to the employer's control." *Morillion*, 22 Cal.4th at 582.

Morillion, the *Overton* employer did not “determin[e] when, where, and how [its employees] must travel.” *Id.* at 269 (quoting *Morillion*, 22 Cal.4th at 586).

Apple contends that this case is factually comparable to *Overton*. RB 33. It is not. In *Overton*, if an employee chose to park in the Katella lot, that employee was still “free to choose not to ride the shuttle.” 136 Cal.App.4th at 271. In this case, if an employee chose to bring a bag to work, that employee was *not* “free to choose” to skip the Checks. Because the Checks are concededly “controlled” by Apple, they are compensable under the Wage Order.

Apple’s *Overton* argument is based on a false premise. Apple claims that employees are always, by definition, “controlled” from the moment they set foot on a company bus, even if the bus ride is optional, because they are “confined to the bus” during the ride. RB 32-33; *see id.* 27 (same argument, citing *Morillion*). The problem with Apple’s reasoning is that *Overton* does not say this, and neither did *Morillion*.

In *Morillion*, employees who rode the bus were “controlled” because the “when, where and how” of their commute was “determin[ed]” by their employer. 22 Cal.4th at 586. The employees did not “decide when to leave, which route to take to work, and which mode of transportation to use.” *Id.* at 586-87. They could not “choose ... to run errands before work [or] to leave from work early for personal appointments.” *Id.* at 587. They were “controlled.” *See id.*

The *Overton* employees, by contrast, were not “controlled.” Every aspect of their decision to board the shuttle was optional. They decided which “mode of transportation to use” to get to work: their car plus the shuttle. They decided to park in the company lot, they decided not to walk to the entrance, and they decided not to run personal errands. They were not “controlled” at any time.

For these reasons, *Overton* provides no support for Apple’s contention that optional company bus rides are always, by definition, employer-“controlled.” And it provides no support for Apple’s contention that employer-“controlled” activity is never compensable under the Wage Order unless it is *also* “required.”

Notably, the *Overton* employees did *not* contend that they performed employer-directed tasks during the shuttle rides. 136 Cal.App.4th at 265-67, 271-73, *passim*. If they had, the time would have been compensable.

In this case, Apple’s employees are “controlled” during the Checks, in which the employees participate under their employer’s immediate supervision and direction. The time is compensable.

c. Federal Decisions

Apple disagrees with plaintiffs’ reading of this Court’s pair of decisions, *Rutti v. Lojack Corp.*, 596 F.3d 1046 (2010) and *Stevens v. GCS Service, Inc.*, 281 Fed.Appx. 670 (9th Cir. 2008). In both cases, employers “required” their employees to drive the company car to work, but in *Rutti*, the time was

compensable because the employer exercised “control” during the drive, while in *Stevens*, the employer did not. *Rutti*, 596 F.3d at 1061-62; *Stevens*, 281 Fed.Appx. at 672; see AOB 33-35. Apple contends that these cases show that an activity can meet the “control” test only if it is “required” (RB 34-35, 37-38), but if that were true, neither panel would have had occasion to consider the degree of “control” exercised by the employer during the drives. As *Rutti* and *Stevens* make clear, conduct can be “required” without being “controlled,” and vice versa.

Apple also relies heavily on *Alcantar v. Hobart Service*, 800 F.3d 1047 (9th Cir. 2015), in which the district court’s incorrect reading of *Morillion* and *Overton* was not challenged on appeal. See *id.* at 1050, 1055-56; AOB 39-41. Instead, the plaintiff accepted the (incorrect) premise that his commute time was non-compensable unless he was “required” to drive the company vehicle to and from work. 800 F.3d at 1050, 1055. As a result, he argued on appeal that his purported “choice” not to was actually “illusory.” *Id.* at 1050.¹⁰ This Court found triable issues on this point, and reversed the judgment. *Id.* at 1055-56.

Apple contends that *Alcantar* supports the conclusion that under *Morillion*, conduct cannot be “controlled” unless “required.” RB 36. However, this issue was not presented in *Alcantar*, so this Court did not consider whether the “restrictions” imposed by the employer during the commute were sufficient,

¹⁰ See MJN filed 6/27/16, Dkt. 13, Exs. 5, 6.

standing alone, to constitute “control.” *See* 800 F.3d at 1050 (discussing “restrictions”), 1055-56. Instead, the Court turned to the only point on which the plaintiff claimed error—that the record “raise[d] a genuine dispute of material fact” on whether, “as a practical matter,” use of the company vehicle was “required.” *Id.* at 1055. Comments on an un-argued issue should not “control the judgment in a subsequent suit when the very point is presented for decision.” *Arkansas Game and Fish Commission v. United States*, 133 S.Ct. 511, 520 (2010).

Finally, Apple relies on three district court decisions. RB 38-41. *Scott-George* simply followed the district court’s erroneous ruling in this case; *Novoa v. Charter Communications LLC*, 100 F.Supp.3d 1013 (E.D. Cal. 2015), was wrongly decided and distinguishable (AOB 41 n.23, 42-44).

Apple’s third cited case, *Cervantez v. Celestica Corp.*, 618 F.Supp.2d 1208 (C.D. Cal. 2009), supports plaintiffs, not Apple. AOB 35-36, 44. *Cervantez* held that “required” pre-shift security screening time was compensable, 618 F.Supp.2d at 1216 & n.7, but so was pre-shift time inside the employer’s facility, where the employees were under employer “control”—even though they were *not required* to “arrive early,” and could choose when to arrive at work based on their own “personal circumstances, necessity or preference,” *id.* at 1222. Apple’s brief discusses the former holding, but ignores the latter (although appellants’ brief emphasized it). RB 38-40. *Cervantez* recognized that under *Morillion*, the correct

inquiry is the “level of control” exercised by the employer during the activity in question—not just whether the activity was “required” or could be avoided by a pre-activity personal “choice.” See 618 F.Supp.2d at 1216, 1222. Chief Judge Phillips’ approach in *Cervantez* gives full effect to the Wage Order’s plain text, which Apple’s arguments do not.

d. Commute Decisions

Apple offers no persuasive reason why principles drawn from commute decisions should trump the Wage Order’s plain text or dictate the outcome of this case. RB 42-43. Plaintiffs in commute cases must overcome a presumption that commute time “is not typically compensable,” and the concept of “required” commute time developed in that specific context. See *Alcantar*, 800 F.3d at 1054 (citing Lab. Code §510(b); *Morillion*, 22 Cal.4th at 588; AOB 42-43. Moreover, Checks are factually distinguishable from commute time in critical ways: they take place on the employer’s premises, during the regular workday, under the employer’s immediate direction. That is, they are far more strictly “controlled” than any ordinary commute time. See AOB 42-45.

Apple has no response to either of these points, except to repeat the district court’s comment that no reported decision has distinguished commute cases (RB 42)—but this does not eliminate these two “principled bas[es]” for doing so. *Hart v. Massonari*, 266 F.3d 1155, 1172 (9th Cir. 2001).

Apple cites non-binding district court decisions, but they are inapposite. Plaintiffs addressed *Watterson v. Garfield Beach CVS LLC*, 120 F.Supp.3d 1003 (N.D. Cal. 2015), in their opening brief (AOB 45 n.27, 46-47); *Scott-George* simply followed the district court's erroneous ruling in this case; and *Cervantez* did not apply any purported "two-element test" to "controlled" pre-shift time inside the employer's facility. 618 F.Supp.2d at 1222.

The concept of "required" commute time should be confined to commute cases. Under the Wage Order, the Checks are compensable because "controlled."

3. If "Required" is a Second Element of the "Control" Test, It is Met Here

Even if "required" is a second element of the Wage Order's "control" test (which it is not), that element is satisfied. As explained in plaintiffs' opening brief (at 10-11, 45-58), the Check policy is a mandatory policy, not a "voluntary" one, and employees may not choose to skip being Checked. The Checks are therefore both "required" and "controlled."

Unable to deny that the Checks are "required," Apple tries to shift the focus of the "control" test away from the Checks, to the activity that *preceded* them. Rather than focusing on the "event" "during which the employee was subject to the employer's control," Apple says the focus must be on "the activity that *led to* [that] event." RB 59 (emphasis added); *id.* 3-4, 44-45. According to Apple, the

employees' "voluntary" decision to bring a bag or technology to work was "the activity that *led to*" the Checks, and because *that* activity was not "required," the Checks cannot be deemed "required." *Id.*

Apple's attempt to reformulate the "control" test finds no support in the Wage Order, which makes no reference to the "activity that *led to*" the "controlled" time. 8 Cal. Code Regs. §11040, ¶2(K). Here, regardless of what "led to" them, the *Checks* are "time during which" the employees were "controlled." *Bono*, 32 Cal.App.4th at 975.

Nor do the cases recognize such a distinction. In *Morillion*, the Supreme Court focused on the "level of control" during the bus rides themselves. 22 Cal.4th at 586-87. *Rutti* hinged on the degree of "control" during the drive to work, not the activity preceding the drive. 596 F.3d at 1061-62. In *Vega*, compensability hinged on "control" during the ride itself, not the preceding decision to board the bus. *Griffin*, 507 Fed.Appx. at 382-83 (citing *Vega*, 36 F.3d at 422-25).

Apple claims that plaintiffs are "foreclosed" from arguing that the Checks were "required" because they agreed that employees chose to bring bags and technology to work for "personal convenience." RB 44. That argument assumes that the "control" test focuses on "the activity that *led to*" the time for which compensation is claimed, rather than on the time itself. As just explained, that is

wrong. The proper focus is the Checks, not events preceding them. All employees who underwent Checks were both “required” to do so and “controlled.”

4. Policy Considerations, Which Cannot Override the Wage Order’s Plain Text, Favor Plaintiffs, Not Apple

Apple’s final contentions rest on “policy” (ER 29-30), but policy arguments cannot “override” the Wage Order’s plain language. *Morillion*, 22 Cal.4th at 594. In fact, the policy considerations all favor plaintiffs, not Apple.

Apple’s desire to impose unpaid Checks on its retail workforce is a function of Apple’s choice to operate stores selling valuable merchandise small enough to hide in a bag or coat.¹¹ The cost of security measures sufficient to protect these items from theft should be borne by Apple, not its employees. Unpaid Checks are Apple’s way of shifting the cost of doing business onto the backs of its employees, rather than absorbing those costs itself. That is not only unfair to employees, but also contrary to California law, which is “designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (citing Lab. Code §2802).

¹¹ ER 208 (iPod nano; 3x1.5 to 1.5x1.5 inches); ER 219 (iPod touch; 4.8x2.3 inches); <http://www.apple.com/ipodnano/specs/>; <http://www.apple.com/ipod-touch/specs/>.

The Checks would be wholly unnecessary if Apple adequately secured its merchandise. Apple requires the unpaid Checks instead of taking other steps to prevent theft that might be more difficult or costly.

Apple suggests it could “simply prohibit” employees from bringing bags and iPhones to work (RB 29), but the record does not show that Apple ever actually considered doing that. Such a rule would be highly unpopular and would not solve the problem because Apple sells merchandise small enough to hide in coat pockets. If someone brings a ten-piece set of luggage to work (RB 30), which the record does not show ever happened, Apple could hold it in the manager’s office instead of searching it.¹²

The Wage Order’s language is “broad” for a reason. Employer-controlled workplace activities, like the Checks, should be compensated—regardless of whether they can be “avoided” by employee “choice.” Any other ruling would allow employers to require employees to perform extra tasks and assignments without pay, simply by imposing “optional” conditions that employees can “avoid.” Here, Apple *disciplines* employees for not complying with its Check policy. AOB 11. If a task is so integral to the job, so important, and so controlled,

¹² Some Apple locations already do this for large personal items. ER 241; *see* ER 117 (items can be left in manager’s office).

that an employer can fire an employee for not performing it, the time should be compensable. That is the only rule that avoids employer abuse.

C. The “Suffered or Permitted to Work” Test Also Has Been Met

Apple’s arguments on the “suffered or permitted to work” test can be distilled down to two basic points: the Checks are not “work” because: (1) they are unrelated to the employees’ primary job duties; and (2) they do not benefit Apple. Both contentions are meritless.

1. “Work” Means Physical or Mental Exertion to Achieve an End, Especially as Controlled By and for the Benefit of an Employer

As explained in plaintiffs’ opening brief, “work” means physical or mental exertion to achieve an end, “especially as controlled by and for the benefit of an employer.” AOB 49-53 (quoting *Black’s Law Dictionary* (10th ed. 2014); citing *Mendiola*, 60 Cal.4th at 840-41; *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1535 (2008)).¹³ The Checks plainly meet this test, which is drawn from plain-language dictionary definitions and California precedents. *See Augustus*, slip op. at 8 (relying on “ordinary meaning” and “most common understanding” of words in Wage Order, citing dictionaries).

¹³ *Accord Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590, 598 (1944) (“physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer”).

Apple contends that the Checks are not “work,” but offers no other definition of the term. RB 46-50. Instead, Apple makes the circular argument that to qualify as “work,” an activity must be “work-related.” RB 48, 56 (quoting *Stevens*, 281 Fed.Appx. at 672); *id.* 47 (“work” can include the activity of “persons [who] are working”).¹⁴ Without first defining the term “work,” however, these points are unhelpful.

The “most common understanding”¹⁵ of “work” is the definition stated above. It is rooted in the term’s “ordinary meaning”¹⁶ and the case law. Apple does not, and cannot, cite any authority that defines “work” differently.

Instead of offering a supported definition of “work,” Apple argues that plaintiffs “cannot show they were ‘working’” during the Checks “because [they] were not required to engage in that activity.” RB 47; *see id.* 49 (activity cannot be “work” unless “required in the first place”), 50 (same). These arguments fly in the face of the Wage Order. Under the “suffered or permitted to work” test, time is compensable “whether or not required.” 8 Cal. Code Regs. §11040, ¶2(K). Apple

¹⁴ See also RB 48 (“work” can include “calls to discuss work” or “interviews” for “work”).

¹⁵ *Augustus*, slip op. at 8.

¹⁶ *Id.*

attempts to conflate this test with the “control” test, but they are “independent,” and each must be examined on its own terms. *Morillion*, 22 Cal.4th at 582.¹⁷

Apple contends that “work” must be a “job duty” related to the “purpose” for which an employee was hired. RB 50, 56. However, Apple cites no authority in support of this contention. None of Apple’s cited cases hold this, nor do they purport to offer *any* definition of “work,” let alone an exclusive one. RB 48-49 (citing cases), 53-55 (citing more cases).

While “unauthorized overtime” or other exertion related to an employee’s primary job duties is certainly “work,” that is not the only type of exertion that can meet the definition. In *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590 (C.D. Cal. 2015), the court had no difficulty concluding that security search time could be compensable “work” under the “suffered or permitted to work” test. *Id.* at 613-14.

Apple’s proposed definition of “work” mirrors the less protective standard of the federal Portal-to-Portal Act, which the IWC has never adopted. AOB 55 (citing *Mendiola*, 60 Cal.4th at 843; *Morillion*, 22 Cal.4th at 590-92). Apple makes no attempt to defend the district court’s improper reliance on the federal

¹⁷ Apple cites *Watterson* for a contrary view (RB 50), but a district court order cannot trump *Morillion* or the Wage Order’s text.

“peripheral activities” framework in its order. ER 20, citing *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513 (2014).

Nor has Apple any response to the sentence in Wage Order 4 governing certain health care employees, which expressly adopts the federal standard. AOB 56 (citing 8 Cal. Code Regs. §11040, ¶2(K)). The adjacent sentence, applicable to this case, does not. Apple also ignores Wage Order 5, which, for certain employees, limits compensability to “time spent carrying out assigned duties.” *Id.* (citing 8 Cal. Code Regs. §11050, ¶2(H)). No such “assigned duties” limitation appears in the language of Wage Order 4 governing this case. Absent such language, none should be inferred. *Augustus*, slip op. at 11-12 (relying on this exact distinction in rejecting employer’s arguments on “rest breaks”).

Apple challenges plaintiffs’ citations of *Mendiola* and *Ghazaryan* in support their definition of “work” (exertion to achieve an end, especially if controlled by and for the benefit of an employer). AOB 50-53. Notwithstanding Apple’s efforts to distinguish those cases, both bolster the definition of “work” found in *Black’s*. *Mendiola*, 60 Cal.4th at 840; *Ghazaryan*, 169 Cal.App.4th at 1535. If “immediate control” is exercised over an activity that “benefit[s] ... the employer,” the time “must be compensated.” *See id.*

2. The Checks Involve Physical or Mental Exertion to Achieve an End, and Controlled by and Benefiting Apple

Apple makes no attempt to respond to plaintiffs' detailed discussion of why the trial court misconstrued *Martinez* and erred by disregarding the benefits to Apple of the Checks. AOB 51-53; RB 45-57, *passim*.

Instead, Apple repeatedly argues that plaintiffs somehow "stipulated" that the Checks "benefited only them and not Apple." RB 52-57. Apple goes so far as to refer to this argument as "California law." RB 55-56. It is nonsense.

In granting class certification, the district court ruled that "bag searches will be adjudicated as compensable or not based on the most common [factual] scenario, that is, an employee who brought a bag to work purely for personal convenience." ER 553:23-25. This ruling did not purport to resolve anything about whether the Checks benefited Apple, or to weigh Apple's convenience against employees' convenience. *See* ER 552:25-554:16. Rather, the ruling was intended to address "individual special circumstances," such as an employee's "medical necessity" to bring a bag to work. ER 553:2, 554:5; *accord* SER 5 (class notice). Under the district court's ruling, "the class issue would presuppose nothing more than personal convenience." ER 553:3.

Apple tries to twist this ruling into a "stipulation" by plaintiffs that the Checks cannot be "work" because they were "voluntary." RB 54-57. The district

court did not see it that way; the ruling is not mentioned in its discussion of the “suffered or permitted to work” test. ER 16-18. Apple’s argument not only misconstrues the ruling, but also, once again, conflates the “suffered or permitted to work” test with the “control” test. It should be rejected.

Apple relies heavily on *Watterson* and its “optional benefit” language (RB 50, 56, 57), but that language related to the “control” test, not the “suffered or permitted to work” test. 120 F.Supp.3d at 1006-07. *Watterson*’s single paragraph on the latter test (*id.* at 1009) provides no guidance on what “work” means, and the “optional benefit” framework simply does not apply to the Checks. AOB 46-47.

Apple does not—because it cannot—dispute how the Checks are physically conducted, or that the Checks involve exertion and effort, including finding a manager or supervisor, displaying and opening bags, opening internal pockets and moving contents, complying with employer directions, and pulling out and displaying tech cards. *See* AOB 10-14, 51. Apple’s own stated “end” is to detect and deter theft, which directly benefits Apple. The activity meets the plain-language definition of “work,” discussed above. Apple offers no persuasive or supported reason to depart from that definition.

III. CONCLUSION

The Court is respectfully asked to refer the questions presented in this appeal to the California Supreme Court. Because the Checks are compensable, and

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because Apple identifies no disputed facts that could otherwise defeat plaintiffs' summary judgment motion (RB, *passim*; see AOB 58-59), the judgment and costs award should be reversed with directions to deny Apple's summary judgment motion, grant plaintiffs' motion, and conduct further proceedings, including damages to the class.

Dated: December 23, 2016

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Kathleen S. Rogers

McLAUGHLIN & STERN
Lee S. Shalov
Brett R. Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT I

Case: 15-17382, 12/23/2016, ID: 10245509, DktEntry: 36-1, Page 1 of 5

No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

PLAINTIFFS-APPELLANTS' MOTION TO TAKE JUDICIAL NOTICE

Kimberly A. Kralowec
Kathleen S. Rogers
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

I. MOTION TO TAKE JUDICIAL NOTICE

Pursuant to Federal Rule of Evidence 201 and in connection with Appellants' Reply Brief filed concurrently with this motion, Plaintiffs-Appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher (collectively "Appellants"), on behalf of themselves and the certified class,¹ move the Court to take judicial notice of copies of official records maintained by the California Department of Industrial Relations ("DIR"), as follows:

Exhibit 7 to Declaration of Kimberly A. Kralowec filed herewith ("Kralowec Decl."): California Office of Administrative Law, Letter Upholding Determination No. 11, Docket No. 89-018, Determination Dated July 31, 1990 (Sept. 7, 1990).

Exhibit 8 to Kralowec Decl.: California Office of Administrative Law Determination No. 11, Docket No. 89-018 (July 31, 1990).²

¹ Plaintiff-Appellant Amanda Frlekin appeals in her individual capacity; she is not a class representative.

² Plaintiffs-Appellants filed a previous Motion For Judicial Notice with their Opening Brief in this Court, along with a Declaration of Kimberly A. Kralowec attaching Exhibits 1 through 6, which Plaintiffs-Appellants asked the Court to judicially notice. For convenience and clarity, the exhibits addressed in the instant motion are numbered consecutively, next in order, as Exhibits 7 and 8, and are attached to a separate Declaration of Kimberly A. Kralowec.

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II. DISCUSSION

A. The Material to be Noticed and its Relevance to this Appeal.

Appellants request the Court take judicial notice of the above-referenced exhibits which are copies of records maintained by the California Department of Industrial Relations (“DIR”) as follows: (1) an official determination issued by the California Office of Administrative Law (“OAL”)³ (concerning an enforcement policy of the Division of Labor Standards Enforcement (Kralowec Decl., Exh. 8); and (2) OAL’s subsequent letter response declining to reconsider or reverse its determination (Kralowec Decl., Exh. 7). Both of these records constitute official determinations of OAL. Pursuant to Evidence Code sections 452, subdivision (c) and 459, subdivision (a), the Court may take judicial notice of these official acts of an executive department of this state. *See Sheet Metal Workers Int’l Ass’n, Local Union No. 104 v. Rea*, 153 Cal.App.4th 1071, 1075 (2007).

Further, the Court may take judicial notice of these documents maintained by DIR pursuant to Evidence Code section 452, subdivision (c), which permits a court to take judicial notice of the records and files of a state administrative board

³ OAL is the California agency charged with reviewing all regulations of state executive agencies for compliance with the Administrative Procedures Act. See http://www.allgov.com/usa/ca/departments/government-operations-agency/office_of_administrative_law?agencyid=235.

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(see Kralowec Decl., ¶2, regarding retrieval of these records maintained by DIR).

See *Fowler v. Howell*, 42 Cal. App. 4th 1746, 1750 (1996).

B. Legal Authority for Taking Judicial Notice of this Material on Appeal.

Because “[t]he court may take judicial notice at any stage of the proceeding,” it may be taken for the first time on appeal. Fed. R. Evid. 201(d); see also *Lowry v. Barnhard*, 329 F.3d 1019, 1024 (9th Cir. 2003); *Bryant v. Carleson*, 444 F.2d 353, 357 (9th Cir. 1971); Circuit Advisory Committee Note Seven to Ninth Circuit Rule 27-1. Paragraph (b)(2) of Rule 201 states in part that “[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.”

III. CONCLUSION

For the foregoing reasons, the Court should grant this motion to take judicial notice of the two exhibits, 7 and 8, attached to the Kralowec Declaration.

Dated: December 23, 2016

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Kathleen S. Rogers

(5 of 39)

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McLAUGHLIN & STERN
Lee S. Shalov
Brett Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT J

Appellate Courts Case Information

Supreme Court

Change court 

Docket (Register of Actions)

FRLEKIN v. APPLE

Division SF

Case Number S243805

Date	Description	Notes
08/17/2017	Request to answer question of state law filed	Information only: United States Court of Appeals for the Ninth Circuit
08/17/2017	Received:	Appellant's opening brief, Appellee's brief, appellant's reply brief, proposed amicus curiae, appellee's supplemental excerpts of record volume one (1), Four (4) excerpts of record (Volumes 1 through 4) and misc. documents.
08/24/2017	Received:	Letter from Janine R. Menhennet, counsel for California Employment Lawyers Association, supporting the request of the U.S. Court of Appeals for the Ninth Circuit that this court answer a certified question of law.
09/20/2017	Request for certification granted	<p>The request for certification directed to this court from the United States Court of Appeals for the Ninth Circuit is accepted. Pursuant to California Rules of Court, rule 8.548(f)(5), the issue is rephrased as follows: Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees compensable as "hours worked" within the meaning of California Industrial Welfare Commission Wage Order No. 7?</p> <p>For the purposes of briefing and oral argument, appellants Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling, and Debra Speicher are deemed the petitioners in this court. (Cal. Rules of Court, rule 8.520(a)(6).)</p> <p>Votes: Cantil-Sakauye, C.J., Corrigan, Liu, Cuéllar and Kruger, JJ.</p> <p>Chin, J., was recused and did not participate.</p>
09/29/2017	Received:	Letter, dated 9/29/2017, from Kimberly Kralowec, counsel for appellant Frlekin.
10/11/2017	Application for extension of time filed	Counsel for appellants requesting an extension of time to file the opening brief on the merits until and including December 19, 2017.
10/17/2017	Extension of time granted	On application of appellants and good cause appearing, it is ordered that the time to serve and file the opening brief on the merits is extended to and including December 19, 2017.

12/19/2017	Opening brief on the merits filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
Opening brief on the merits filed. Due on 12/19/2017 By 60 Day(s)		
12/19/2017	Motion for judicial notice filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
01/05/2018	Application for extension of time filed	Respondent sees a 60-day extension to March 19, 2018, to file answer brief on the merits.
01/11/2018	Extension of time granted	On application of respondent and good cause appearing, it is ordered that the time to serve and file the answer brief on the merits is extended to and including March 19, 2018.
01/31/2018	Note: Mail returned and re-sent	Counsel Peter Roald Dion-Kindem's copy of 1/11/2018 order resent to The Dion-Kindem Law Firm.

01/31/2018	Motion for judicial notice filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
02/22/2018	Change of contact information filed for:	Krawlowec Law, P.C., counsel for appellants
03/19/2018	Answer brief on the merits filed	<p>Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous</p> <p>Answer brief on the merits filed. Due on 03/19/2018 By 60 Day(s)</p>
03/19/2018	Motion for judicial notice filed	<p>Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous</p>
04/03/2018	Application for extension of time filed	appellants requesting 69 day extension until June 8, 2018 to file reply brief on the merits. by Kimberly A. Kralowec, counsel
04/05/2018	Extension of time granted	On application of appellants and good cause appearing, it is ordered that the time to serve and file the reply brief on the merits is extended to and including June 8, 2018.
06/08/2018	Reply brief filed (case fully briefed)	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p> <p>Reply brief filed (case fully briefed). Due on 06/08/2018 By 0 Day</p>

06/08/2018	Motion to augment record filed	----- Amanda Frlekin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel ----- Taylor Kalin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel ----- Aaron Gregoroff, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel ----- Seth Dowling, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel ----- Debra Speicher, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel
06/15/2018	Received:	Notice of Errata to Opening Brief on the Merits, by Kimberly A. Kralowec, counsel for appellants.
06/18/2018	Application to file amicus curiae brief filed	By Corbin K. Barthold, counsel for Washington Legal Foundation, in support of respondent.
06/19/2018	Filed:	Apple Inc.'s Response to Plaintiffs' Motion to Augment the Record ----- Apple, Inc., Defendant and Respondent Theodore J. Boutrous, Retained counsel
06/28/2018	Request for extension of time to file amicus curiae brief	Ari Stiller, counsel for amicus curiae Bet Tzedek Legal Services, seeks a 30-day extension to August 8, 2018, to file its amicus application in support of appellant.
07/03/2018	Permission to file amicus curiae brief granted	The application of Washington Legal Foundation for permission to file an amicus curiae brief in support of respondent is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/03/2018	Amicus curiae brief filed	Amicus curiae: Washington Legal Foundation Attorney: Corbin K. Barthold
07/05/2018	Application to file amicus curiae brief filed	By Zachary Hutton, counsel for amicus curiae California Employment Law Council and Employers Group, in support of respondent.(Brief under separate cover.)
07/05/2018	Application to file amicus curiae brief filed	By Aaron Kaufmann, counsel for amicus curiae California Employment Lawyers Association, in support of appellants.

07/09/2018	Extension of time granted	On application of amicus curiae Bet Tzedek Legal Services and good cause appearing, it is ordered that the time to serve and file its application to file an amicus curiae brief in support of appellant is hereby extended to and including August 8, 2018. (See Cal. Rules of Court, rule 8.520(f).)
07/10/2018	Application to file amicus curiae brief filed	By Eric Boorstin, counsel for amici curiae the Chamber of Commerce of the United States of America, California Chamber of Commerce, and Civil Justice Association of California in support of respondent.(CRC 8.25(b))
07/10/2018	Application to file amicus curiae brief filed	By David T. Mara, counsel for amicus curiae Consumer Attorneys of California, in support of appellants. (CRC 8.25b))
07/10/2018	Application to file amicus curiae brief filed	By Karin Vogel, counsel for amici curiae Retail Litigation Center, Inc. and National Retail Federation, in support of respondent. (CRC 8.25(b))
07/10/2018	Application to file amicus curiae brief filed	By Yonata Moskowitz, counsel for amicus curiae California Correctional Peace Officers' Association, in support of appellants. (CRC 8.25(b))
07/10/2018	Received:	Motion for Judicial Notice By Yonata Moskowitz, counsel for amicus curiae California Correctional Peace Officers' Association, in support of appellants.
07/23/2018	Permission to file amicus curiae brief granted	The application of the Chamber of Commerce of the United States of America, California Chamber of Commerce, and Civil Justice Association of California for permission to file an amicus curiae brief in support of respondent is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: Chamber of Commerce of the United States of America Attorney: Eric Samuel Boorstin Amicus curiae: California Chamber of Commerce Attorney: Eric Samuel Boorstin Amicus curiae: Civil Justice Association of California Attorney: Eric Samuel Boorstin
07/23/2018	Permission to file amicus curiae brief granted	The application of Consumer Attorneys of California for permission to file an amicus curiae brief in support of appellants is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: Consumer Attorneys of California Attorney: David Thomas Mara
07/23/2018	Permission to file amicus curiae brief granted	The application of Retail Litigation Center, Inc. and National Retail Federation for permission to file an amicus curiae brief in support of respondent is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: Retail Litigation Center, Inc. Attorney: Karin Dougan Vogel Amicus curiae: National Retail Federation Attorney: Karin Dougan Vogel

07/23/2018	Permission to file amicus curiae brief granted	The application of California Employment Law Council and Employers Group for permission to file an amicus curiae brief in support of respondent is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: California Employment Law Council Attorney: Zachary Perry Hutton Amicus curiae: Employers Group Attorney: Zachary Perry Hutton
07/23/2018	Permission to file amicus curiae brief granted	The application of California Employment Lawyers Association for permission to file an amicus curiae brief in support of appellants is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: California Employment Lawyers Association Attorney: Aaron David Kaufmann
07/23/2018	Permission to file amicus curiae brief granted	The application of California Correctional Peace Officers' Association for permission to file an amicus curiae brief in support of appellants is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
07/23/2018	Amicus curiae brief filed	Amicus curiae: California Correctional Peace Officers' Association Attorney: Yonatan Lavi Moskowitz
07/23/2018	Motion for judicial notice filed	Amicus curiae: California Correctional Peace Officers' Association Attorney: Yonatan Lavi Moskowitz
07/20/2018	Filed:	Letter, dated 7/19/2018, from amici California Employment Law Council and Employers Group regarding newly published decision.
08/08/2018	Application to file amicus curiae brief filed	Application to file amicus curiae brief filed. Due on 08/08/2018 By 30 Day(s) Bet Tzedek Legal Services, Amicus curiae Ari Stiller, Retained counsel Ari Stiller, counsel for amicus curiae Bet Tzedek Legal Services, seeks permission to file amicus brief in support of appellant Amanda Frlekin.
08/23/2018	Permission to file amicus curiae brief granted	The application of Bet Tzedek Legal Services for permission to file an amicus curiae brief in support of appellant Amanda Frlekin is hereby granted. (See Cal. Rules of Court, rule 8.520(f).)
08/23/2018	Amicus curiae brief filed	Amicus curiae: Bet Tzedek Legal Services Attorney: Ariel J. Stiller-Shulman

09/13/2018	Request for extension of time to file amicus curiae brief	<p>Application for Extension of Time to File Consolidated Answer to Amicus Curiae Brief</p> <p>-----</p> <p>Taylor Kalin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel</p> <p>-----</p> <p>Aaron Gregoroff, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel</p> <p>-----</p> <p>Seth Dowling, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel</p> <p>-----</p> <p>Debra Speicher, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel</p> <p>-----</p> <p>Amanda Frlekin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel</p>
09/18/2018	Extension of time granted	On application of appellants and good cause appearing, it is ordered that the time to serve and file an answer to the amicus curiae briefs is hereby extended to and including October 9, 2018. (See Cal. Rules of Court, rule 8.520(f).)
09/19/2018	Application for extension of time filed	Theodore Boutrous, Jr., counsel for respondent, seeks 15-days' extension to October 9, 2018, to file consolidated answer to the amicus curiae briefs.
09/26/2018	Extension of time granted	On application of respondent and good cause appearing, it is ordered that the time to serve and file the response to the amicus curiae briefs is extended to and including October 9, 2018.
10/09/2018	Response to amicus curiae brief filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p> <p>Response to amicus curiae brief filed. Due on 10/09/2018 By 15 Day(s)</p> <p>Consolidated response to amici curiae briefs</p>

10/09/2018	Response to amicus curiae brief filed	<p>Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous</p> <p>Response to amicus curiae brief filed. Due on 10/09/2018 By 13 Day(s)</p> <p>Consolidated response to amici curiae briefs.</p>
10/15/2018	Change of contact information filed for:	<p>Kimberly A. Kralowec, counsel for appellants. The new address for counsel is:</p> <p>Kralowec Law, P.C. 750 Battery Street, Suite 700 San Francisco, CA 94111</p>
08/09/2019	Application to appear as counsel pro hac vice (granted case)	For Lee S. Shalov for petitioners. Kimberly A. Kralowec of Kralowec Law P.C. as main counsel.
08/14/2019	Supplemental briefing ordered	<p>This court agreed to decide a question of California law in this matter on September 20, 2017. Pursuant to California Rules of Court, rule 8.548(f)(5), the certified question accepted from United States Court of Appeals for the Ninth Circuit is restated as follows: Is time spent on the employer's premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees compensable as "hours worked" within the meaning of California Industrial Welfare Commission Wage Order No. 7? The parties may serve and file supplemental briefs addressing the above question on or before August 28, 2019. Amici curiae may also serve and apply to file supplemental briefs addressing the above question on or before August 28, 2019. Any reply by the parties to the supplemental briefs, or to any brief by amicus curiae, must be served and filed on or before September 11, 2019.</p> <p>Chin, J., was recused and did not participate.</p>
08/20/2019	Application to appear as counsel pro hac vice granted	The application of Lee S. Shalov for admission pro hac vice to appear on behalf of appellants is hereby granted. (See Cal. Rules of Court, rule 9.40.)
08/19/2019	Note: Mail returned (unable to forward)	Copy of 8/14/2019 order for counsel Michael Gerald Leggieri: "RTS... no such recipient at this address"

08/28/2019	Supplemental brief filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
08/28/2019	Supplemental brief filed	<p>Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous</p>
09/11/2019	Reply to supplemental brief filed	<p>Plaintiff and Appellant: Amanda Frlekin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
09/11/2019	Reply to supplemental brief filed	<p>Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous</p>

09/20/2019	Oral argument letter sent	<p>Dear Counsel:</p> <p>Please be advised that the court could set this case for argument within the next few months.</p> <p>Schedules showing the court's oral argument dates and locations for the next twelve months can be found at http://www.courts.ca.gov/supremecourt.htm by clicking on "calendars," and then accessing the "Oral Argument Calendar Dates" documents.</p> <p>Any counsel who believes good cause exists to avoid scheduling oral argument for a particular date (including counsel who, before receiving this letter, have previously asked to avoid certain dates) should inform the court within 7 calendar days from the date of this letter with a detailed explanation for such cause. Thereafter, counsel must immediately update the court on an ongoing basis as additional conflicts constituting good cause may arise.</p> <p>Examples of conflicts previously found to constitute good cause to avoid scheduling argument on any particular date include significant health-related issues; prepaid and nonrefundable travel arrangements booked in advance of the court's notification regarding oral argument; and significant family events such as weddings. Examples of conflicts previously found not to constitute good cause include scheduled trial and hearing dates in lower courts; conflicting professional seminars, meetings, or conventions; and planned significant family events that do not conflict with the actual dates on which argument might be held.</p> <p>Once the court files an order setting this case for oral argument, that date will not be changed absent exceptional cause, such as a medical emergency.</p> <p>Immediately upon filing of the calendar setting this case for argument, the court will send counsel an email communication with (1) a copy of that document; (2) an appearance sheet, upon which counsel must provide the names of the attorney or attorneys who will present argument, along with further instructions governing any request to divide argument time; and (3) a general notice regarding appearance for oral argument before the court.</p> <p>If a party wishes to bring to the court's attention new authorities, new legislation, or other matters that were not available in time to be included in the party's brief on the merits, the party must comply with California Rules of Court, rules 8.630(d) and 8.520(d).</p> <p>Sincerely,</p> <p>JORGE E. NAVARRETE Clerk and Executive Officer of the Supreme Court</p>
09/25/2019	Notice of Unavailability of Counsel Filed	<p>Counsel asks to avoid the potential oral argument dates of November 4-8, and December 2-6, 2019. Counsel also asks that this court avoid placing this case on the same oral argument calendar as <i>Montrose Chemical Corporation of California v. S.C. (Canadian Universal Insurance Company)</i>, S244737 in which he is also lead counsel.</p> <p>Apple, Inc., Defendant and Respondent Theodore J. Boutrous, Jr., Retained counsel</p>

09/25/2019	Letter sent to:	<p>Theodore J. Boutrous, Jr., counsel for respondent</p> <p>Dear Counsel:</p> <p>The court has directed me to thank you for your letter dated September 24, 2019, and to advise you of its conclusion that your request to avoid the potential oral argument dates of November 4-8, 2019, is supported by good cause, and that your request to avoid the potential oral argument dates of December 2-6, 2019, is not. The court will endeavor to honor your request to not schedule this case on the same calendar as Montrose Chemical Corporation v. S.C. (Canadian Universal Insurance Company), S244737.</p> <p>Please immediately update the court on an ongoing basis if additional conflicts constituting good cause arise. As you were previously informed, once the court files an order setting this case for oral argument, that date will not be changed absent exceptional cause, such as a medical emergency.</p> <p>Sincerely,</p> <p>JORGE E. NAVARRETE Clerk and Executive Officer of the Supreme Court</p>
10/23/2019	Notice of Unavailability of Counsel Filed	<p>Counsel asks to avoid the potential oral argument dates of December 3-6, 2019.</p> <p>Apple, Inc., Defendant and Respondent Theodore J. Boutrous, Jr., Retained counsel</p>
10/24/2019	Letter sent to:	<p>Theodore J. Boutrous, Jr., Retained counsel</p> <p>Dear Counsel:</p> <p>The court has directed me to thank you for your letter dated October 22, 2019, and to advise you of its conclusion that your request to avoid the potential oral argument dates of December 3 - 6, 2019, is not supported by good cause.</p> <p>Please immediately update the court on an ongoing basis if additional conflicts constituting good cause arise. As you were previously informed, once the court files an order setting this case for oral argument, that date will not be changed absent exceptional cause, such as a medical emergency.</p> <p>Sincerely,</p> <p>JORGE E. NAVARRETE Clerk and Executive Officer of the Supreme Court</p>
11/06/2019	Justice pro tempore assigned	<p>Hon. Lee Smalley Edmon Second Appellate District, Division Three</p>
11/13/2019	Case ordered on calendar	<p>To be argued on Wednesday, December 4, 2019, at 9:00 a.m., in Los Angeles.</p>

11/25/2019	Motion for judicial notice granted	Appellants' motion to augment the record, filed June 8, 2018, is granted. Appellants' requests for judicial notice, filed December 19, 2017 and January 31, 2018, are granted. Respondent's request for judicial notice, filed March 19, 2018, is granted. Amicus curiae California Correctional Peace Officers' Association's request for judicial notice, filed July 23, 2018, is granted.
12/04/2019	Cause argued and submitted	
01/10/2020	Filed:	Supplemental Authorities Letter dated January 10, 2020. Amanda Frlekin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel Taylor Kalin, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel Aaron Gregoroff, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel Seth Dowling, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel Debra Speicher, Plaintiff and Appellant Kimberly Ann Kralowec, Retained counsel
01/27/2020	Received:	Response to Supplemental Authority Letter dated January 21, 2020. Apple, Inc., Defendant and Respondent Theodore J. Boutrous, Retained counsel
02/11/2020	Notice of forthcoming opinion posted	To be filed on Thursday, February 13, 2020 at 10:00 a.m.
02/13/2020	Opinion filed	We conclude that plaintiffs' time spent on Apple's premises waiting for, and undergoing, mandatory exit searches of bags, packages, or personal Apple technology devices, such as iPhones, voluntarily brought to work purely for personal convenience is compensable as "hours worked" within the meaning of Wage Order 7. Majority Opinion by Cantil-Sakauye, C. J. -- joined by Corrigan, Liu, Cuéllar, Kruger, Groban, and Edmon*, JJ. * Presiding Justice of the Court of Appeal, Second Appellate District, Division Three, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.
02/28/2020	Rehearing petition filed	Defendant and Respondent: Apple, Inc. Attorney: Theodore J. Boutrous
03/02/2020	Time extended to consider modification or rehearing	The time for granting or denying rehearing in the above-entitled case is hereby extended to and including May 13, 2020 or the date upon which rehearing is either granted or denied, whichever occurs first.

03/09/2020	Answer to rehearing petition filed	<p>Plaintiff and Appellant: Amanda Frelkin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Taylor Kalin Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Aaron Gregoroff Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Seth Dowling Attorney: Kimberly Ann Kralowec</p> <p>Plaintiff and Appellant: Debra Speicher Attorney: Kimberly Ann Kralowec</p>
05/13/2020	Rehearing denied	Chin, J., was recused and did not participate.
05/14/2020	Letter sent to counsel: opinion now final	

Click here to request automatic e-mail notifications about this case.

EXHIBIT K

Supreme Court of California

Jorge E. Navarrete, Court Administrator and Clerk

Electronically RECEIVED on 9/1/2017 by Ines Calanoc, Deputy Clerk



September 1, 2017

VIA ELECTRONIC FILING

Hon. Chief Justice and Associate Justices of the
California Supreme Court
350 McAllister Street
San Francisco, CA 94102

Re: **Letter in Support of Review of Certified Question:**
Frlekin v. Apple, Inc., California Supreme Court Case No. S243805
U.S. Court of Appeals for the Ninth Circuit Case No. 15-17382

Dear Honorable Justices:

Pursuant to Rule of Court 8.548(e)(1), plaintiffs-appellants Amanda Frlekin, individually, and Taylor Kalin, Aaron Gregoroff, Seth Dowling and Debra Speicher, on behalf of themselves and the certified class (hereafter “plaintiffs”), respectfully urge the Court to accept the question referred to it by the Ninth Circuit in their case, *Frlekin, et al. v. Apple, Inc.*, and to slightly restate the question in the manner stated below.

Introduction

The Ninth Circuit seeks this Court’s guidance on the meaning of the term “hours worked” in the Wage Orders.¹ If an activity meets the definition of “hours worked,” it is compensable under California law.² The certified question concerns the specific issue of whether time employees spend waiting for and participating in mandatory security searches at their employer’s behest is compensable “hours worked.” *Frlekin v. Apple, Inc.*, Order Certifying a Question to the Supreme Court of California at 2 (9th Cir. Aug. 16, 2017) (hereafter “Ninth Cir. Order”).

This question raises issues “of extreme importance to numerous employees and employers in California,” and this Court’s response to the question “will have significant legal, economic and practical consequences.” Ninth Cir. Order at 2, 14. The response “will govern the outcome of many disputes in both state and federal courts.” *Id.* at 14 (citing cases). This Court has not considered the issues raised by the certified question in any past case; there is no “clear

¹ See, e.g., 8 Cal. Code Regs. §11070, ¶2(G).

² *Id.* ¶¶3(A)(1)(a)-(b), 4(B) (requiring employers to pay minimum and overtime wages for “all hours worked”).



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controlling precedent”; and the answer will determine the outcome of the *Frlekin* matter. *Id.* at 2; *see* Cal. Rules of Ct., rule 8.548(a)(1), (a)(2), (f)(1).

Accordingly, and as discussed in more detail below, the Court is respectfully asked to exercise its discretion to accept and resolve the issues raised by the certified question.

The Wage Orders’ Definition of “Hours Worked”

The Wage Orders’ definition of “hours worked” sets forth two independent tests, and time is compensable if either test is met. 8 Cal. Code Regs. §11070, ¶2(K); *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582 (2000); *see* Ninth Cir. Order at 8.

The two tests are known as the “control” test and the “suffered or permitted to work” test. As defined in the Wage Orders, “hours worked” includes:

- (1) “the time during which an employee is subject to the **control** of an employer” (the “‘control’ test”); and
- (2) “all the time the employee is **suffered or permitted to work**, whether or not required to do so” (the “‘suffered or permitted to work’ test”).

8 Cal. Code Regs. §11070, ¶2(G) (emphasis added).³

Factual and Procedural Background

The certified class members in *Frlekin* are employees at Apple’s California retail stores. Apple maintained a statewide policy stating that if an employee brought a bag, purse, package or iPhone (or other Apple-branded personal technology device, such as an iPad or a Macbook) to work, the employee would be required to participate in a mandatory security search every time he or she left the store. *See* Ninth Cir. Order at 5-7; *Frlekin v. Apple, Inc.*, Appellants’ Opening Brief (“AOB”) at 9-15 (9th Cir. June 27, 2016).

The searches took place on store premises, during the regular workday, and under the immediate physical direction of Apple managers or security personnel. AOB at 9-15 (citing record). Apple conceded that the employees were under its “control” during the searches. Ninth Cir. Order at 9; *see* AOB 16-17. The employees were subject to discipline, up to and including

³ An identical definition appears in all fifteen Wage Orders, except that Orders 4 and 5 “include additional language.” *Morillion*, 22 Cal.4th at 581.



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termination, if they did not comply with the search requirement. Ninth Cir. Order at 7, 9. Nevertheless, Apple did not pay its employees for this time. *Id.* at 7.⁴

The parties filed cross-motions for summary judgment. The district court granted Apple's motion and denied plaintiffs' motion. The court held that the search time did not meet either of the two tests for "hours worked." ER 8-21.⁵

On behalf of themselves and the certified class, plaintiffs appealed, arguing that the district court misinterpreted, and misapplied, both compensability tests. AOB at 19-59; *Frlekin v. Apple, Inc.*, Appellants' Reply Brief ("ARB") at 2-30 (9th Cir. Dec. 23, 2016).

The Ninth Circuit's order certifying the "hours worked" question to this Court was preceded by full briefing and oral argument on both of the Wage Orders' two tests for compensability. *See id.*

Reasons to Accept the Ninth Circuit's Question

A. The Issues Raised by the Ninth Circuit's Question Are Critical to Hundreds of Employees Across California Who Participate in Employer-Mandated Security Searches Every Day

The issues raised by the Ninth Circuit's "hours worked" question are of widespread importance. Scores of California employees, such as those employed in Apple's retail stores, are required to participate in workplace security searches every day. Like the plaintiffs in this case, many of them have sued to be paid for the time.

Whether California law requires employers to pay for security search time is being litigated, or recently has been litigated, in many cases in federal and state courts alike. Federal cases involving compensability of security search time include:

⁴ On busy days, the searches could take as long as 45 minutes including wait time, none of which was compensated. *See, e.g.*, Excerpts of Record ("ER") 298 ¶¶8,339 ¶¶67, 341 ¶¶92. Estimates of the average time required for the searches (including wait time) ranged from 5 to 20 minutes or more. *E.g.*, ER 144 ¶¶7, 293-94 ¶¶5, 307 ¶¶6, 345-46 ¶¶8-9, 351 ¶¶8, 357-58 ¶¶9, 371-72 ¶¶6, 9. Employees often participated in more than one search per day; searches occurred both at the end of the day and when they left for lunch, for an average total of 10 to 40 minutes of unpaid time per day. *See id.*

⁵ For the Court's convenience, a copy of the district court's order is attached to this letter.



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- *In re Amazon.com, Inc., Fulfillment Center Fair Labor Standards Act (FLSA) and Wage and Hour Litigation*, MDL No. 2504, 2017 WL 2662607 (W.D. Ky. June 20, 2017);
- *Greer v. Dick's Sporting Goods, Inc.*, 2017 WL 1354568 (E.D. Cal. Apr. 13, 2017);
- *Roberts v. Marshalls of CA, LLC*, 2017 WL 1152967 (N.D. Cal. Mar. 28, 2017);
- *Chavez v. Converse, Inc.*, 2016 WL 4398374 (N.D. Cal. Sept. 18, 2016);
- *Scott-George v. PVH Corp.*, 2016 WL 3959999 (E.D. Cal. Jul. 22, 2016);
- *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590 (C.D. Cal. 2015);
- *Ogiamien v. Nordstrom, Inc.*, 2015 WL 773939 (N.D. Cal. Jul. 16, 2015);
- *Miranda v. Coach, Inc.*, 2015 WL 636373 (N.D. Cal. Feb. 13, 2015);
- *Ceja-Corona v. CVS Pharmacy, Inc.*, 2015 WL 222500 (E.D. Cal. Jan. 14, 2015);
- *Rodriguez v. Nike Retail Services, Inc.*, No. 5:14-cv-01508-BLF (N.D. Cal.).

See Ninth Cir. Order at 14 (citing cases); *Frlekin v. Apple, Inc.*, Brief of California Employment Lawyers Association as *Amicus Curiae* at 15 n.1 (9th Cir. Jul. 5, 2016) (citing cases).

The same or similar compensability issues have also arisen in California state court cases, including *Lawson v. Staples Contract and Commercial, Inc.*, No. BC542237 (Los Angeles Super.), *Murphy v. CVS Caremark Corp.*, No. BC464785 (Los Angeles Super.), and *Stoetzel v. State of California*, No. CJC11004661 (San Francisco Super.).

As will be explained in detail below, this Court's guidance is needed on the proper interpretation of both of the Wage Orders' two tests for "hours worked."

B. This Court's Guidance is Needed on the Proper Interpretation of the "Control" Test

The Wage Orders define "hours worked" to include all time during which an employee is "subject to the *control* of an employer." 8 Cal. Code Regs. §11070, ¶2(G) (emphasis added). The district court held that the security search time did not meet this test—even though Apple conceded that the time was "controlled." ER 8-18; see Ninth Cir. Order at 9. The court relied entirely on the fact that the employees could "choose" not to bring a bag or iPhone to work in the



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first place. This antecedent choice, the court reasoned, meant that the searches were not “required,” and therefore could not be deemed “controlled,” regardless of the magnitude of employer restraints imposed during the searches themselves. ER 8-11, 14-18.

Under a “strictly textual analysis,” this was error. Ninth Cir. Order at 8-9; *see* AOB 24-28; ARB 3-7. The Orders state that time is compensable if “control[led]”; they do not state that the time must also be “required.” The two words are not synonyms. The IWC recognized this in 1947 by amending the definition of “hours worked” to remove the word “required,” which had been used in the prior series of Orders, and replacing it with the word “control.”⁶

In short, the district court erroneously read into the Orders an element (“required”) that is unstated anywhere in the Orders’ plain text.

The two main California cases on which the court relied in support of its ruling are *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000) and *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006). As the Ninth Circuit recognized, however, neither of these decisions considered whether the employer’s “control” was vitiated through an employee’s pre-activity “choice.” *See* Ninth Cir. Order at 9-11. Quite simply, neither case presented those facts, which meant that neither case had occasion to hold (and did not hold) that an employer’s “control” is always negated by such a pre-activity “choice” as a matter of law.

A close review of the two decisions bears this out. In *Morillion*, the employer required all employees to take the company bus; there were no relevant antecedent “choices.” *See* 22 Cal.4th at 579. In *Overton*, the employer did not require anything: the employees were not required to drive to work, and if they did, they were not required to park in the company lot or take the company shuttle. 136 Cal.App.4th at 266-68 & n.6, 271. Hence, while the bus-ride time was compensable in *Morillion*, it was not compensable in *Overton*.

In *Frlekin*, unlike both *Morillion* and *Overton*, the searches—concededly “controlled” by Apple—were also mandatory for all employees who presented with a bag or Apple-branded technology device.

The Ninth Circuit closely examined the Wage Orders’ text, plus *Morillion* and *Overton*, and found that none of those authorities drew a clear “line between purely voluntary actions and

⁶ Compare Wage Order 7NS ¶2(f) (Apr. 5, 1943, eff. Jun. 21, 1943) with Wage Order 7R ¶2(h) (Feb. 8, 1947, eff. Jun. 1, 1947).



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strictly mandatory actions,” and therefore did not squarely answer the compensability question presented by *Frlekin* or similar security search cases. Ninth Cir. Order at 13.⁷

The Court is respectfully asked to take up the Ninth Circuit’s certified question and draw a clear line. The time is ripe to do so. *Morillion* is this Court’s leading case on the “control” test, but it was decided 17 years ago. *Overton* is the only published Court of Appeal opinion to substantively construe *Morillion*, but that was 11 years ago.

Not only is guidance needed on the question presented by *Frlekin*, but, also, two other aspects of *Morillion* call out for particular clarification by this Court.

One is the so-called “*Vega* footnote.”⁸ The district court relied heavily on this footnote, which cited a Fifth Circuit opinion, *Vega v. Gasper*, 36 F.3d 417 (5th Cir. 1994), handed down more than two decades ago. The district court reasoned: “*Morillion* specifically distinguished the facts in *Vega* ... (in which time on an employer-provided bus was not compensable), because ‘the *Vega* employees were free to choose—rather than required—to ride their employer’s buses to and from work’” ER 19:7-11 (quoting *Morillion*, 22 Cal.4th at 589 n.5).

Based largely on this footnote, the district court read *Morillion* as holding that “control” is not enough; the activity must also be “required.” ER 5-6, 10.

Four years ago, however, the Fifth Circuit clarified its holding in *Vega*. In *Griffin v. S&B Engineers & Constructors, Ltd.*, 507 Fed.Appx. 377 (5th Cir. 2013), the Fifth Circuit explained that “[t]he voluntary use of transportation” in *Vega* “was *not* dispositive in concluding the travel time was compensable” under federal law. *Id.* at 382-83 (emphasis added). Rather, it was dispositive that the employees performed no employer-directed tasks during the rides, and were not “restrict[ed]” from “engaging in personal activities such as sleeping and reading.” *Id.* at 383.

⁷ The Ninth Circuit also observed that the “choice” to bring a bag to work is not truly a “voluntary” one, given the reasons why people typically carry bags. Ninth Cir. Order at 12-13. The same is true of carrying one’s iPhone to work.

⁸ *Morillion*, 22 Cal.4th at 589 n.5.



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Griffin casts significant doubt on the continuing validity of *Morillion*'s *Vega* footnote. It is also unclear whether the *Vega* footnote is dicta, as plaintiffs argued,⁹ or whether it constitutes a binding holding on California law, as the district court construed it.

The other aspect of *Morillion* that calls out for clarification is this: The Ninth Circuit recognized critical differences between security search cases, like *Frlekin*, and “travel” or commute-time cases, like *Morillion* and *Overton*. Ninth Cir. Order at 11-12. Employers’ business interest in loss prevention is significantly greater than their interest in how employees choose to travel to work. *Id.* As far as commute-time is concerned, employers’ only interest is in their employees’ timely arrival; beyond that, employers do not usually care. *Id.*

As a result, employers tend to exercise significantly greater levels of control over employees during onsite security searches than they do during offsite, pre-shift commute time, which is usually not controlled at all. *See id.*; *see also* AOB 42-45; ARB 20-21.

The onsite security searches in *Frlekin* bear no resemblance to ordinary commute time. Apple’s employees are unable to engage in personal activities while participating in the searches. The employees are concededly under their employer’s control, confined to the store, and may not leave until the searches are done, on pain of losing their job. The plain text of the Wage Order requires no more for compensability—even as construed in *Morillion*. *See* AOB 23-48; ARB 2-25.

In short, litigants and lower courts need this Court’s further guidance on the “control” test, including whether and how the principles stated in *Morillion* apply outside the commute context.

C. This Court’s Guidance is Needed on the Proper Interpretation of the “Suffered or Permitted to Work” Test

After holding that the search time was not compensable under the “control” test, the district court turned to the separate and independent “suffered or permitted to work” test. ER 19-12. The court held that this test was not satisfied, either, because the security searches were not “work.” *Id.* The court reached this conclusion even though the searches involved physical

⁹ AOB 30-31. The footnote says only that *Vega* is “consistent with” the outcome of *Morillion*. 22 Cal.4th at 589 n.5. That comment is a far cry from a binding decision that a principle stated by a federal court in a case construing less-protective federal law should dictate whether time is compensable under California law.



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exertion; were concededly controlled by Apple; and were done for Apple’s benefit to deter and prevent theft. *See id.*; AOB 48-58; ARB 25-30.

This Court’s guidance is needed on what activities constitute “work” under the “suffered or permitted to work” test. In *Frlekin*, and in other similar security search cases, the definition of “work” could be outcome-determinative.

Ordinarily, the Wage Orders’ text would be the first source of meaning.¹⁰ However, the Orders do not define the term “work.” *See generally* 8 Cal. Code Regs. §11070. Nor has this Court ever announced a conclusive definition of what “work” means.

In *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal.4th 833 (2014), the Court provided some guidance when it explained that an activity need not be either active, or burdensome, in order to be compensable “work”: “[A]n employer, if he chooses, may hire [an employee] to do nothing, or to do nothing but wait for something to happen.” *Id.* at 840 (quoting *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944)). *Mendiola* also recognized that entirely idle, “on-call” time may be compensable “work” if the time “benefit[s] ... the employer.” *Id.*; *see also id.* at 841 (whether time is “primarily” for employer’s benefit).

More recently, this Court consulted dictionary definitions in determining the “ordinary,” “plain,” and “commonsense” meaning of words used in the Wage Orders. *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 265 (2016) (citing *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1103 (2007)).

In ordinary parlance, “work” means any “activity in which one exerts strength or faculties to do or perform something.” *Merriam-Webster’s Collegiate Dictionary* (11th ed.). *Black’s* defines “work” as “physical and mental exertion to attain an end, *especially* as controlled by and for the benefit of an employer; labor.” *Black’s Law Dictionary* (10th ed. 2014) (emphasis added); *see also American Heritage Dictionary* (2d Coll. Ed. 1982) (“Physical or mental effort or activity directed toward the production or accomplishment of something ...”).

In *Frlekin*, plaintiffs argued that the searches were compensable “work” because they involved exertion to achieve an end. AOB 49-51. Employees had to track down a manager or supervisor; open and hold up their bags for inspection; open up internal pockets inside the bag; move around and sometimes remove the contents of the bag; comply with any other physical

¹⁰ *Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 16 (2016); *Martinez v. Combs*, 49 Cal.4th 35, 63 (2010).



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directions of their managers; pull out, open up and display the settings pages in their devices; and pull out and display their technology cards. *Id.* at 11-12, 51 (citing record); *see* Ninth Cir. Order at 12 (during the searches, the employees’ “movements are compelled” by the employer).

If the activity must also be “controlled by and for the benefit of an employer,” as suggested by *Black’s*, that part of the test was amply met, too. AOB at 51; ARB at 25, 30. Apple concededly “controlled” the employees during the searches, and the searches benefited Apple by preventing and deterring theft. AOB at 15, 50-51.

The district court did not adopt this plain-language, commonsense definition of “work.” Instead, it held that the searches were not “work” because: (1) they “had no relationship to plaintiffs’ job responsibilities” but instead were “peripheral activities relating to Apple’s theft policies”; and (2) they were supposedly a “passive” activity, not an “active” one. ER 20:8-11.

The problem with that analysis is that neither of these elements is part of a plain-language definition of the term “work.” Also, in adopting the former element, the district court relied, improperly, on federal concepts that this Court has repeatedly recognized have never been adopted in California. *Id.* at 20-21; *see Mendiola*, 60 Cal.4th at 843; *Morillion*, 22 Cal.4th at 590-92; *Martinez*, 49 Cal.4th at 59-60. The latter part of the district court’s holding contradicts this Court’s guidance in *Mendiola* concerning compensability of inactive, “on call” time.

To make matters worse, the district court expressly refused to consider the fact that the searches benefited Apple, citing this Court’s opinion in *Martinez*. ER 19. The district court misread that opinion. *See* AOB 51-53. In *Martinez*, this Court was not construing the “hours worked” section of the Wage Orders; rather, the Court considered and construed the definition of “employ”—an entirely separate Wage Order provision. *Id.* (citing *Martinez*, 49 Cal.4th at 51, 69-71; 8 Cal. Code Regs. §11040, ¶2(C)).

This Court’s guidance is needed to clarify *Martinez*, expand on *Mendiola*, and inform California employers and employees, once and for all, what kinds of activities qualify as “work” for purposes of the Wage Orders’ “suffered or permitted to work” test.

Request to Restate the Question

If the Court decides to accept the Ninth Circuit’s question, plaintiffs respectfully request that the question be slightly restated. *See* Cal. Rules of Court, rule 8.548(e)(3), (f)(5).



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Apple’s security search policy applied not only to bag searches, but also to searches of Apple-branded personal technology devices, such as iPhones, iPads and Apple-branded laptops. ER 4-6; *see* AOB 9-10. The governing legal principles are the same, but restating the question will avoid any doubt about whether this Court’s eventual answer covers both the “bag check” and the “tech check” aspects of the searches.

The restated question would read as follows (proposed additions underscored; proposed deletion interlineated):

Is time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages, ~~or bags,~~ or technology devices voluntarily brought to work purely for personal convenience by employees compensable as “hours worked” within the meaning of California Industrial Welfare Commission Wage Order No. 7?

Conclusion

For the reasons stated above, the Court is respectfully asked to accept and decide the issues raised by the Ninth Circuit’s certified question. The Court is also respectfully asked to restate the question in the manner proposed above.

Respectfully submitted,

/s/ Kimberly A. Kralowec

Kimberly A. Kralowec
State Bar No. 163158

cc: See attached proof of service

Enclosure

EXHIBIT L

No. S243805

Supreme Court
OF THE
State of California

SUPREME COURT
FILED

DEC 19 2017

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AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

Deputy

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

Opening Brief on the Merits

Kimberly A. Kralowec (Bar No. 163158)
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Lee S. Shalov (N.Y. Bar No. LS-7118)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. QUESTION PRESENTED

Is time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees compensable as “hours worked” within the meaning of California Industrial Welfare Commission Wage Order No. 7?

II. INTRODUCTION

In stores across California, Apple runs a highly profitable retail business selling small—and valuable—electronic devices. Instead of adequately securing these devices from theft, Apple requires its retail store employees to participate in mandatory—but unpaid—security searches, or “Checks,” of their bags, purses, packages, and iPhones. On the busiest days, the Checks can take 20 to 40 minutes to complete.

The question referred to this Court by the Ninth Circuit is whether the Check time is compensable under California law. It is.

It meets either, or both, of the two “independently define[d]” tests for compensable “hours worked” in Wage Order 7. *See* 8 Cal. Code Regs. §11070, ¶2(G); *Frlekin*, 870 F.3d at 871 (citing *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582 (2000)).

As defined in Order 7, “hours worked” includes:

- (1) “the time during which an employee is subject to the ***control*** of an employer” (the “‘control’ test”); and/or
- (2) “all the time the employee is ***suffered or permitted to work***, whether or not required to do so” (the “‘suffered or permitted to work’ test”).

8 Cal. Code Regs. §11070, ¶2(G) (emphasis added).

(1)

The Check time meets the “control” test.

As the Ninth Circuit explained, the Checks take place “on site,” and employees may not leave the store until they submit to the Check procedure. *Frlekin v. Apple, Inc.*, 870 F.3d 867, 872 (9th Cir. 2017). The employees are placed under the physical direction of a store manager or a guard, who “compel[s]” the employees to take specific “actions and movements.” *Id.* at 873. Among other actions, employees must open up their bags, unzip internal compartments, pull out their iPhones and technology cards, and display the contents. Employees who refuse to comply with these directions, or who refuse to be Checked, are subject to discipline, including termination. *Id.* at 870.

In the Ninth Circuit’s words, “employees who bring a bag or package to work and therefore must follow the [employer’s] search procedures are clearly under the ‘control’ of the employer.” *Id.* at 871. In fact, Apple “*concede[d]*” that it “controlled” its employees “while awaiting, and during,” the Checks. *Id.* (emphasis added).

Hence, under a “textual analysis,” the Check time easily meets the “control” test. *Id.*

Nevertheless, the district court granted summary judgment in Apple’s favor. It disregarded the employer’s conceded “control” over the Check time, reasoning that the time was not “required” because employees could supposedly “avoid” the Checks by “choosing” to leave their purses and iPhones at home.

This was error for several reasons.

First, the Wage Order’s plain text provides no support for this view. Under the plain text, time is compensable “during which” employees are “control[led].” The test is not limited to “unavoidable” or “required” activities.

In fact, the adoption history of the “control” test shows that the district court’s interpretation of the test is even narrower than a weaker prior compensability standard that the IWC purposely abandoned in 1947, and replaced with the “control” test. The Wage Order should not be construed to reinstate an older, abandoned standard. Instead, the “control” test should be applied in accordance with its plain language.

Second, the district court misread *Morillion*, in which this Court held that mandatory bus-ride time from a meeting place to the fields was compensable under the “control” test. 22 Cal.4th at 582-87. The employer exercised no other “control” in *Morillion*, so it was “dispositive” that the employees could not “choose” to “avoid” the compulsory bus rides. *Id.* at 587, 589 n.5.

This case, however, involves other employer “controls” not present in *Morillion*. As the Ninth Circuit recognized, employers have a “greater” interest in theft prevention than in how employees travel, so they tend to exercise “greater” levels of control over security search time than over travel time. *Frlekin*, 870 F.3d at 872-73.

The *Morillion* employees were free to sleep and read during the bus rides. 22 Cal.4th at 586. In this case, by contrast, the employees were required to physically perform employer-directed tasks during the Check time. 870 F.3d at 873. They were “restrained from leaving the work place” until the Checks were completed, prevented

from using the Check time “effectively for [their] own purposes,” and subjected to discipline if they refused to submit to the Check procedure. 22 Cal.4th at 583, 586, 587.

The employees in this case were under a *greater* level of control than in *Morillion*, not a lesser one. As this Court later confirmed in *Mendiola*, it is the ““level of the employer’s control”” that is ““determinative”” under the Wage Orders.¹

Morillion did not hold that even the highest levels of employer “control” must be disregarded whenever an activity can theoretically be “avoided” thorough a pre-activity “choice.” Such a holding does not appear in *Morillion* because the case did not present those facts, and because it would have contravened the Wage Order’s text.

As the Ninth Circuit understood, practically speaking, employees have no meaningful “choice” to leave their purses and iPhones at home. *Frlekin*, 870 F.3d at 872. For this reason, the Checks are no more “optional” than the bus rides in *Morillion*.

In short, the Check time is “compensable” under the “control” test.

(2)

The Check time is also compensable under the “suffered or permitted to work” test. 8 Cal. Code Regs. §11070, ¶2(G).

The district court held that the Checks were not “work,” but by its plain meaning, “work” means physical or mental effort to accomplish an end. The Checks easily meet that description, and they were also “suffered or permitted” by an employer, Apple.

¹ *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833, 840 (2014) (quoting *Morillion*, 22 Cal.4th at 587).

While not an essential element of this test, the Checks also benefited Apple by “advanc[ing] [Apple’s] interest in loss prevention.” *Frlekin*, 870 F.3d at 873.

Apple *should* pay for “work” that it “suffered and permitted” (and also “controlled”) in order to protect its own “valuable goods” from theft. *See id.* The district court erred by importing a less-protective federal standard into California law.

In sum, the Check time meets either, or both, of the two tests for compensable “hours worked.” Accordingly, the answer to the Ninth Circuit’s question is “yes.”

III. STATEMENT OF FACTS

A. The Operative Complaint

This certified class action, commenced in 2013, challenges Apple’s practice of failing to compensate its employees for time spent undergoing onsite security searches of their bags and technology—searches done while the employees are under Apple’s control, on Apple’s premises, and for Apple’s benefit as a theft-prevention measure. Excerpts of Record (“ER”) 583-84, ¶¶1-4, 589-91, ¶¶28-31. On behalf of themselves and the certified class, plaintiffs seek relief for Apple’s failure to pay minimum and overtime wages for all “hours worked,” as defined in the applicable Wage Order.² ER 584, ¶4, 594-95 ¶¶42-50; *see also* ER 596-99 ¶¶51-68.

B. Order Granting Class Certification

In 2015, the district court granted class certification of the California claims. ER 544-58; *see Frlekin*, 870 F.3d at 870. In its order, the court directed the parties to file

² The complaint asserts violations of Wage Order 4, the relevant provisions of which are identical to Wage Order 7, cited in the Ninth Circuit’s question. *Compare* 8 Cal. Code Regs. §11040, ¶2(K) *with id.* §11070, ¶2(G).

summary judgment motions on “the main issue of compensability under California law” (ER 557:17-18), and ruled that “bag searches will be adjudicated as compensable or not based on the most common [factual] scenario, that is, an employee who brought a bag to work purely for personal convenience” (ER 553:23-25).

C. Cross-Motions for Summary Judgment

As directed, after class notice, the parties filed cross-motions for summary judgment in October 2015. ER 605-06; *see* ER 80-86, 379-84.

1. Plaintiffs’ Motion

Plaintiffs’ motion, and their opposition to Apple’s motion, relied on the following facts (*see* ER 82:4-84:2; *see also* ER 4:23-6:28 (district court’s statement)):

Apple’s Check Policy: Since at least 2009, Apple’s hourly paid retail store employees have been subject to a written policy requiring that their bags and Apple devices—including their iPhones, iPads and Apple-branded laptops—be checked every time they exit a store (the “Check Policy”). ER 107-108 [at 32:24-33:20, 33:25-34:6, 34:24-35:4], 115, 386:11-387:2, 392, 394, 396, 398, 400, 402, 404, 406. The Check Policy, which “appl[ies] to all employees of Apple Inc.,” provides as follows:

Employee Package and Bag Searches

All personal packages and bags must be checked by a manager or security before leaving the store.

General Overview

All employees, including managers and Market Support employees, are subject to personal package and bag searches. Personal technology must be verified against your Personal Technology Card (see section in this document) during all bag searches.

Failure to comply with this policy may lead to disciplinary action, up to and including termination.

Do

- Find a manager or a member of the security team (where applicable) to search your bags and packages before leaving the store.

Do Not

- Do not leave the store prior to having your personal package or back [sic] searched by a member of management or the security team (where applicable).
- Do not have personal packages shipped to the store. In the event that a personal package is in the store, for any reason, a member of management or security (where applicable) must search that package prior to it leaving the store premises.

ER 115; *see also* ER 5:5-28 (quoting policy), 394-406; *Frlekin*, 870 F.3d at 870.

The technology card policy requires Apple Employees to record all their Apple-branded devices on a “Personal Technology Card,” including the descriptions and serial numbers of the products. ER 115, 117-18, 170 [at 18:22-19:3], 241-42. Every time an Apple Employee leaves a store “for any reason,” he or she “must ensure the sales leader verifies the serial numbers on [the] card against the product [the employee is] carrying.” ER 117; *see* ER 201 (checks “must be conducted” “*every time* an employee leaves the store” (emph. added)), 230 (“check out with a manager any time you leave the store”).³

Apple does not compensate employees for time spent on the Checks. ER 110 [at 85:10-12], 239, 307 ¶8, 322, 326; *see* ER 6:25-28; *Frlekin*, 870 F.3d at 870 (“Employees

³ Checks are conducted not only at the end of the day, but also at lunch. ER 117, 118, 197 ¶4, 303, 307 ¶6, 346 ¶14, 352 ¶14, 392 (“before you leave the store for any reason (such as lunch, end of day)”).

receive no compensation for the time spent waiting for and undergoing exit searches, because they must clock out before undergoing a search.”).

Checks were conducted in every Apple store during the class period. ER 244-53, 94:25-95:2, 255-89; *see* ER 6:18-19 (district court’s fact summary).

The Checks Are Mandatory: Apple’s bag and technology Check Policy is a mandatory policy. ER 69-70 [at 48:23-50:6], 112 [at 100:20-101:2], 115, 193-94, 200-01, 203, 206, 208, 220-21, 228, 230, 242. Employees do not have the right to choose whether they want to comply. ER 112 [at 100:20-01:2], 239, 241-42 (identifying Personal Technology Card policy as one of several “important Apple policies” and “as an Apple employee, you are obligated to follow ALL Apple policies”).

Apple refused to relax the policy, even after employees complained to senior management about its unfairness. *E.g.*, ER 123:26-124:2, 314-15, 317-19, 322, 324, 326. One employee who complained about Checks was told: “you don’t get to pick and choose what policies to follow.” ER 239.

Apple Employees Are Subject to Discipline for Not Submitting to Checks: Apple alerts employees that “[f]ailure to comply with [the Check] policy may lead to disciplinary action, up to and including termination.” ER 115, 392-406; *see Frlekin*, 870 F.3d at 870. Employees who failed to comply with the Check Policy have been forced to attend “Warning Meeting[s]” (ER 232); been cited for “Behavior to be Corrected” (ER 234-35); and been subject to a “Coaching Tracker” (ER 237).

Apple Dictates All Aspects of How Checks Are Conducted: The procedures for conducting Checks are determined by Apple and described during leadership training and

in corporate documents published on Apple communication platforms. *E.g.*, ER 109 [at 63:8-14], 206, 300.

First of all, employees must track down a manager (or security guard) to perform the Check. ER 392 (“It is your responsibility to find a manager or member of the security team ... to search your bags and packages before leaving the store.”), 115 (“Find a manager ... to search your bags”), 394-406 (same).

The managers are then instructed to, among other things: (i) “[a]sk the employee to open every bag, brief case, back pack, purse, etc.”; (ii) “[a]sk the employee to remove any type of item that Apple may sell”; (iii) “verify the serial number of the employee’s personal technology against the personal technology log”; (iv) “[v]isually inspect the inside of the bag and view its contents”; (v) “ask the employee to unzip zippers and compartments so you can inspect the entire contents of the bag”; (vi) “[i]f there are bags within a bag, such as a cosmetics case, be sure to ask the employee to open these bags as well”; and (vii) “ask the employee to remove” any “questionable item” from the bag. ER 300; *see also* ER 6:1-17 (district court’s fact summary).

The Checks require active employee participation. *E.g.*, ER 303 (during Checks, “the guard may ask you to see in all the pockets, etc. in your bag” and “ask you to move things around in your bag so they can see effectively”); 314 (“we are asked by a manager to pull the [technology] card out of our wallet, show him the serial numbers listed on the card, then pull our devices out, find the serial number in the settings, and show the manager that the serial number[s] on the devices match the serial numbers on the card. Then we are subjected to a bag search, and finally, we are allowed to leave the store.”);

345 ¶8 (Checks involve inspection of “each compartment of each employee’s bag”); 351 ¶6 (managers would “physically search through the compartments” of employees’ bags).⁴

In addition, Apple: (i) instructs Store Managers to implement the mandatory Checks (ER 200-01, 203, 205-06, 208, 210, 212, 214-15, 217-18, 220-21, 223, 225, 300); (ii) decides whether Apple Employees should be disciplined for not complying with the Check Policy (ER 115, 232, 234-35, 237, 239); (iii) issues Personal Technology Cards for Apple Employees to identify their Apple products (ER 115, 117-18, 170 [at 18:22-19:3], 241-42); and (iv) prepares written instructions describing the Check Policy and other Apple policies (ER 115, 200-01, 206, 300, 392-406).

Apple Employees Are Confined to Store Premises During and While Waiting for Checks: Until the Checks are completed, Apple Employees are confined to their stores and are not allowed to leave the premises, which means they may not run personal errands, get meals or engage in other personal activities outside the store until a Check is done. ER 66 [at 129:16-25], 147 ¶6, 151 ¶5, 155 ¶3, 166 ¶6, 175 ¶5, 179-80 ¶6, 183 ¶3, 184 ¶5, 190 ¶6, 197 ¶4, 198 ¶8, 230, 232, 293 ¶4, 306 ¶3, 307 ¶8, 311 ¶3, 314, 345 ¶5, 346 ¶11, 329 ¶4, 350-51 ¶5, 356 ¶5, 371 ¶5; *see Frlekin*, 870 F.3d at 870.

⁴ *See also* ER 411:9 (“I open up my bag and lift up my Apple shirt so they can see in the bag”); 460:15-17 (“I open the bag for the manager” and “move [things] around” “so that the manager can see under them”); 477:24-25 (“the manager asks me to move [items in my bag] so he or she can see in the bag”); 488:20-21 (“I normally have my backpack or purse open and prepared for the bag check”); 508:27 (“[t]he employee opens his or her bag”); 529:20-23 (“The employee approached a manager and opened his or her bag Occasionally, the manager asked the employee to move a large item in the bag (such as a sweatshirt) out of the way so that the manager could see within the bag”).

The employees are confined to the premises not just during the actual performance of the Check, but also while searching for a store manager to conduct it, which sometimes means waiting for the manager to finish assisting a customer, and while lining up behind other employees for everyone to be Checked. *E.g.*, ER 122 ¶7, 127-28 ¶5, 131 ¶4, 135-36 ¶5, 140 ¶6, 143-44 ¶¶5-7, 147 ¶7, 152 ¶6, 156-57 ¶6, 162 ¶6, 167 ¶7, 171 [at 31:1-3, 31:21-23] 175 ¶7, 179 ¶6, 184 ¶5, 190 ¶6, 198 ¶7, 293-94 ¶5, 297 ¶5, 298 ¶8, 302, 307 ¶¶6-8, 312 ¶6, 330 ¶¶5-7, 334 ¶6, 338-41 ¶¶67-74 & ¶¶92-93, 345-46 ¶¶8-9, 351 ¶8, 357-58 ¶9, 371-72 ¶6, ¶10.⁵

On the busiest days, the Checks can take as long as 45 minutes including wait time, none of which was compensated. *See, e.g.*, ER 298 ¶8, 339 ¶67, 341 ¶92. Estimates of the average time required for the Checks (including wait time) ranged from 5 to 20 minutes or more. *E.g.*, ER 144 ¶7, 293-94 ¶5, 307 ¶6, 345-46 ¶¶8-9, 351 ¶8, 357-58 ¶9, 371-72 ¶¶6, 9. Employees are often Checked more than once per day, because Checks are required both at the end of the day and when the employees leave for lunch. *See id.*

Checks Are Conducted by Apple Store Managers or Security Personnel:

Checks are carried out on the premises by “a manager” or, in stores with security guards, a “member of the security team.” ER 115; *see* ER 5:18-20 (quoting policy), 206, 210, 292, 392-406; *see also* ER cites two paragraphs above.

⁵ *See also* ER 140 ¶ 6 (“The security checks were time consuming because after I clocked out, I would have to search around the store for a manager (who was often busy helping customers or performing other tasks) and then wait in line for other employees to go through security checks and then go through the actual security check myself”); 175 ¶ 7 (“The time spent looking for or waiting for a manger and then waiting in line for other employees to finish their security checks took up the bulk of the time.”).

Apple Knows or Should Know That Apple Employees Go Through Checks:

Apple: (i) created the Check Policy (*see* ER 114-15); (ii) has received complaints about Checks (*see* ER 314-15, 317-19, 322, 324, 326); and (iii) acknowledged in discovery that every Apple Store has conducted Checks on its premises (*see* ER 244-53). Apple management is also aware of the waiting times caused by the mandatory Checks.⁶

The Checks Benefit Apple By Preventing and Deterring Theft: Apple implemented the Check Policy, and conducts the Checks, in order to prevent and deter theft. ER 170 [at 20:7-10], 200-01, 206, 208, 217-18, 227-28, 232, 234, 363 [at 54:21-55:14], 377. The Checks are part of both Apple’s “Shrink Analysis and Action Plan” and Apple’s “Internal Theft” policy. ER 200-01, 206. Managers are to “be very thorough with bag checks and tech cards, as these are key components to the impression of [merchandise] control in the store.” ER 212.

Apple’s Retail Sales Jobs Include Responsibility for Theft-Prevention:

Apple’s “Loss Prevention” policy states that it is part of all employees’ “responsibility” to take action “if [they] become aware of an internal theft issue or a possible internal theft issue.” ER 201; *see also* ER 200 (“Internal Theft” policy; same), 205 (“Shrink Analysis and Action Plan”; “entire staff” is “accountab[le]” for internal theft).

⁶ *See, e.g.*, ER 302 (“We know sometimes there is not a guard present at the front door [to perform Checks] because they are opening the side door for shipment, a vendor, etc. and you have to wait until the guard returns to check out.”); 194, 221 (“I know it can be a challenge to find a leader at times [to conduct Checks]....”).

2. Apple's Motion

Apple's motion rested entirely on three basic facts that it asserted were determinative of the compensability question, namely:

- (1) Employees who did not bring a bag to work, and who left their "personal Apple technology," including their iPhones, at home, would not be checked. ER 382:20-384:2 (citing ER 392-406, 419, 423-24, 440, 446, 450, 468, 478, 481, 493, 496-97, 508, 512, 516, 520, 524, 528-29, 532-33, 536, 539-40).
- (2) Some employees never, or rarely, brought a bag to work and some employees rarely brought their iPhones to work. ER 384:5-26 (citing ER 411, 414, 419, 423, 433-34, 455, 459, 464, 468, 472, 476-78, 485, 488, 496-97, 500-01, 543).
- (3) The district court granted class certification based on the assumption that employees brought bags, iPhones, and other personal Apple technology to work for "personal convenience." ER 380:11-15 (citing ER 553:23-25).

Based on these facts, Apple argued that time spent waiting for and undergoing Checks was not compensable under California law. ER 380.⁷

⁷ Apple's opposition to plaintiffs' motion rested on the same three facts. ER 72:15-74:28. Apple also mentioned some other facts, but characterized these as either "not relevant" or "irrelevant" to compensability. ER 75:3, 76:5, 77:6, 77:23.

3. The District Court's Order

The district court conducted a lengthy hearing on the cross-motions (*see generally* ER 23-52), during which Apple conceded that its employees were under its “control” while awaiting and during the Checks. ER 47:20-48:13; *see Frlekin*, 870 F.3d at 871.

Nevertheless, the district court granted Apple's motion and denied plaintiffs' motion. ER 8-21; *see Frlekin*, 870 F.3d at 870. The court held that the Check time was not compensable under the “control” test because employees could “choose” not to bring a bag or personal technology to work in the first place. ER 8:14-21. It further held that the Check time did not meet the “suffered or permitted to work” test because the Checks were not “work.” ER 19:1-21:15.

D. Ninth Circuit Proceedings

Plaintiffs filed a timely appeal. ER 53-59; *Frlekin*, 870 F.3d at 871. After full briefing and oral argument, the Ninth Circuit granted plaintiffs' request to certify the legal questions presented by their appeal to this Court. *See* Cal. Rules of Ct., rule 8.548.

As the Ninth Circuit recognized, and as Apple “concede[d],” “employees who bring a bag or package to work and therefore must follow the [employer's] search procedures are clearly under the ‘control’ of the employer while awaiting, and during, the search.” *Frlekin*, 870 F.3d at 871. “Under a strictly textual analysis,” therefore, the Check time is compensable. *Id.* (citing Wage Order 7, ¶2(G)). However:

Although the search is voluntary in that the employee could have avoided it by leaving his or her belongings at home, the employer nevertheless exercises control over the employee who does bring a bag or package to work. It is unclear under *Morillion* whether, in the context of on-site time

during which an employee's actions and movements are compelled, the antecedent choice of the employee obviates the compensation requirement.

Id. at 873.

On September 20, 2017, this Court agreed to decide the questions.

IV. ARGUMENT

Under a plain-language interpretation of the Wage Orders, the Check time meets both of the “independent”⁸ tests for compensability: (A) the “control” test; and (B) the “suffered or permitted to work” test. Because the Check time is compensable under either or both tests, the answer to the Ninth Circuit's question is “yes.”

A. The Wage Orders' Plain Text Must Be Liberally Construed to Protect and Benefit Employees and to Effectuate the IWC's Intent

In construing the Wage Orders, this Court “adopt[s] the construction that best gives effect to the purpose of ... the IWC.” *Augustus v. ABM Security Servs., Inc.*, 2 Cal.5th 257, 262 (2016) (citing *Brinker Rest. Corp. v. Superior Court*, 53 Cal.4th 1004, 1026-27 (2012); *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal.4th 1094, 1103 (2007)). “Time and again,” the Court has “characterized that purpose as the protection of employees” *Id.* (citing *Mendiola*, 60 Cal.4th at 840; *Martinez v. Combs*, 49 Cal.4th 35, 53-54 (2010); *Industrial Welfare Com. v. Superior Court*, 27 Cal.3d 690, 702 (1980)).

Hence, the IWC's Wage Orders “are liberally construed to protect and benefit employees.” *Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 11 (2016) (citing *Brinker*, 53 Cal.4th at 1026-27; *Industrial Welfare Com.*, 27 Cal.3d at 702). In fact, this Court considers itself “bound” to “liberally construe” the Wage Orders “to favor the protection

⁸ *Mendiola*, 60 Cal.4th at 839; *Morillion*, 22 Cal.4th at 582.

of employees.” *Augustus*, 2 Cal.5th at 262, 269 (citing *Brinker*, 53 Cal.4th at 1026-27; *Murphy*, 40 Cal.4th at 1103)).

The Court’s analysis of the IWC’s intent “begins with” the Wage Orders’ text, which is “[t]he best indicator” of that intent. *Id.* at 264 (quoting *Reynolds v. Bement*, 36 Cal.4th 1075, 1086 (2005)). *Accord Kilby*, 63 Cal.4th at 16; *Martinez*, 49 Cal.4th at 63. The Court construes the words in accordance with their “most common understanding” and “ordinary meaning,” often relying on plain-language dictionary definitions. *Augustus*, 2 Cal.5th at 265 (citing *Murphy*, 40 Cal.4th at 1103 (words are generally given their “plain and commonsense meaning”)).

B. The Check Time Is Compensable Under the “Control” Test

In the Wage Orders, the operative word of the first test for compensable “hours worked” is “*control*.” The Check time is compensable under the ordinary meaning of this word. Indeed, Apple conceded “control.” *Frlekin*, 870 F.3d at 871.

Nothing in the Wage Order’s plain text supports the district court’s conclusion that an employer’s “control” over its employees should be ignored because of a pre-activity occurrence—such as a pre-activity “choice.” Rather, the Wage Order focuses on, and makes compensable, the time “*during which*” the employees are “controlled.” Here, the time “during which” the employees are “controlled” is the Check time.

The district court’s narrow interpretation of the “control” test contradicts the IWC’s intent in crafting the definition of “hours worked,” as shown by an examination of the historical origin of that definition. The regulatory history shows that in 1947, the IWC purposely substituted the word “control” in place of the word “require”—which was

part of a weaker prior compliance standard—in order to broaden the definition of “hours worked.” The district court’s narrow reading is even *less* protective than the abandoned prior standard, because it would mean that to satisfy the “control” test, time must be not only “controlled,” but also “required,” and “unavoidably” so.

To adopt this less-protective compliance standard—one even weaker than a standard the IWC knowingly discarded 70 years ago—would not only contradict the Wage Orders’ plain text, but also derogate the Court’s “duty” to “liberally construe” the Orders “to promote worker protection.” *Mendoza v. Nordstrom, Inc.*, 2 Cal.5th 1074, 1091 (2017) (citing *Brinker*, 53 Cal.4th at 1027).

The district court’s main cited authority was *Morillion*. However, Apple exercised greater “control” than the employer in *Morillion*, because it required its employees to perform employer-directed tasks during the “controlled” time. Also, *Morillion* involved an undisputedly “required” and “unavoidable” activity. Thus, as discussed below, the Court had no occasion to conclusively rule on the impact of a pre-activity “choice.”

Ultimately, the district court erred by construing *Morillion* in a manner contrary to the Wage Order’s plain text—as the following discussion of the history of that text demonstrates.

1. Both the Enactment History and the Plain Text Show That the IWC Intended to Make All “Controlled” Time Compensable

The Wage Orders’ current definition of “hours worked” has not been changed since the IWC adopted it seventy years ago, in 1947. Both the “legislative and historical

context”⁹ of its adoption—and the ordinary meanings of the words the IWC chose to use in the current and historical definitions—demonstrate that the IWC intended to adopt a broad definition of compensable time for the greater protection of employees. The Check time easily meets that broad definition.

a. In 1947, the IWC Purposely Abandoned the Word “Required” and Replaced it With the Word “Control,” Thereby Broadening This Test for Compensability

As used in Wage Order 7, the term “hours worked” dates back to 1919, when the IWC first required mercantile industry employers to maintain records of “the *hours worked*” by all employees.¹⁰ The IWC imposed the same requirement in amended Orders issued in 1920 and 1922, which made an employer’s non-compliance a misdemeanor.¹¹

By 1931, the Legislature had added a similar provision, requiring employees to maintain records of “the *hours worked* daily” by each employee, to the uncodified act through which it had created the IWC.¹²

While the early Orders did not define “hours worked,” the recordkeeping requirement was an important enforcement mechanism. It enabled regulatory

⁹ *Martinez*, 49 Cal.4th at 52; *see Kilby*, 63 Cal.4th at 11-13 (examining regulatory history of relevant Wage Order provision).

¹⁰ Wage Order 5 Amended (Mercantile Industry) (April 22, 1919, eff. Jun. 21, 1919), ¶7 (Motion for Judicial Notice (“MJN”), filed herewith, Ex. 1) (emphasis added).

¹¹ Wage Order 5 Amended (Mercantile Industry) (Jun. 1, 1920, eff. Jul. 31, 1920), ¶11(a)-(b); Wage Order 5a (Mercantile Industry) (Dec. 29, 1922, eff. Apr. 8, 1923), ¶10 (MJN, Exs. 2, 3).

¹² Stats. 1913, ch. 324, §3(a) (as amended), *cited in Martinez*, 49 Cal.4th at 54. That requirement was codified in 1937 as Labor Code section 1174, and remains in force today. Lab. Code §1174(d). Failure to comply with the recordkeeping requirement is a misdemeanor. *Id.* §1175(d).

enforcement of—and employer compliance with—both the minimum wages and the maximum hours limitations imposed by the Orders. The 1919 Order, for example, established an hourly minimum wage for part-time employees and limited the number of hours an employee may work per day.¹³

Notably, in these Orders, the IWC “did not follow a federal model, as Congress would not enact the FLSA until 1938.” *Martinez*, 49 Cal.4th at 53 (footnote and citation omitted). That year, a few months after the FLSA was enacted, the U.S. Department of Labor (“DOL”) issued a regulation, comparable to California’s, requiring employers to record the “[h]ours worked each workday and each workweek” by all employees.¹⁴

Nine months later, the DOL’s Wage and Hour Division issued an Interpretive Bulletin defining “hours worked” as follows:

As a general rule, *hours worked* will include [1] all time during which an employee is *required* to be on duty or to be on the employer’s premises or to be at a prescribed work place, and [2] all time during which an employee is *suffered or permitted to work* whether or not he is required to do so.

U.S. Department of Labor, Wage and Hour Division, Office of the Administrator, Interpretative Bulletin No. 13 (July 1939) (emphasis added).¹⁵

In 1943, the IWC issued a “New Series” of Wage Orders (the “NS” series), each of which included a two-part definition of “[h]ours employed” resembling the 1939

¹³ Wage Order 5 Amended, *supra*, ¶¶3, 8.

¹⁴ 3 Fed. Reg. 2533 (Oct. 22, 1938) (emphasis added).

¹⁵ *Quoted in Bowers v. Remington Rand*, 64 F.Supp. 620, 625 (S.D. Ill. 1946); *Mortenson v. Western Light & Tel. Co.*, 42 F.Supp. 319, 321 (S.D. Iowa 1941).

federal Interpretive Bulletin. *E.g.*, Wage Order 7NS (Apr. 5, 1943, eff. Jun. 21, 1943), ¶2(f) (MJN, Ex. 4).

Under Wage Order 7NS:

“Hours employed” includes all time during which:

1. A [person] is ***required*** to be on the employer’s premises ready to work, or to be on duty, or to be at a prescribed work place.
2. A [person] is ***suffered or permitted to work***, whether or not ***required*** to do so. Such time includes, but shall not be limited to, time when the employee is required to wait on the premises while no work is provided by the employer and time when an employee is required or instructed to travel on the employer’s business after the beginning and before the end of her work day.

Id. ¶2(f) (emph. added); *see Morillion*, 22 Cal.4th at 592 n.7 (quoting Wage Order 1NS).

In 1944 and 1946, the U.S. Supreme Court handed down two opinions construing the FLSA, both of which expansively construed the “workweek” for purposes of overtime pay under federal law. *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590 (1944); *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). In 1947, Congress “swift[ly]” responded to these decisions by enacting the Portal-to-Portal Act, which severely contracted the definition of “hours worked.”¹⁶ The Act now excludes various categories of time from the definition, which otherwise would have been compensable under *Tennessee Coal* and *Anderson*.¹⁷

¹⁶ *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513, 516-17 (2014).

¹⁷ *See, e.g.*, 29 U.S.C. §§203(o) (curtailing definition of “hours worked” for purposes of minimum and overtime wages), 251(a) (expressing intent to limit employer liability

The IWC was swift to take action “[i]n response.”¹⁸ The IWC issued a “Revised” (or “R”) series of Orders in 1947, in which it changed its definition of “hours worked.” *E.g.*, Wage Order 7 R (Feb. 8, 1947, eff. Jun. 1, 1947) (MJN, Ex. 5). Instead of contracting the definition, however, the IWC expanded it by adopting the “control” test in place of the first part of the prior definition.

Under Wage Order 7 R’s new two-part definition:

“Hours Worked” means [1] the time during which an employee is subject to the *control* of an employer, and includes [2] all the time the employee is *suffered or permitted to work*, whether or not required to do so.

Id. ¶2(h) (emphasis added).

In 1952, the IWC adopted its next series of Orders. *E.g.*, Wage Order 1-52 (May 15, 1952, eff. Aug. 1952) (MJN Ex. 6). Although the Department of Labor had just codified the less expansive federal definition of “hours worked,”¹⁹ the IWC declined to follow the federal lead, choosing instead to readopt, unchanged, the broader and more protective definition from Wage Order 7NS. *Id.* ¶2(h).

Since 1952, the IWC has issued nine more amended Wage Orders for the mercantile industry, but it has never changed the definition of “hours worked.”²⁰ The

for payment of wages to employees), 254(a) (list of “activities not compensable” under federal law).

¹⁸ *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 591.

¹⁹ 15 Fed. Reg. 631 (Feb. 4, 1950).

²⁰ Wage Order 7-57 (May 30, 1957, eff. Nov. 15, 1957); Wage Order 7-63 (Apr. 18, 1963, eff. Aug. 30, 1963); Wage Order 7-68 (Sept. 26, 1967, eff. Feb. 1, 1968); Wage Order 7-76 (Jul. 27, 1976, eff. Oct. 18, 1976); Wage Order 7-80 (Sept. 7, 1979, eff. Jan. 1, 1980); Wage Order 7-80 (Revised) (Sept. 7, 1979, as amended eff. Jan. 1, 1984 and

current definition has been in effect, unaltered, for more than 70 years. 8 Cal. Code Regs. §11070, ¶2(G).

Not since 1947 and Wage Order 7 R, therefore, has “hours worked” depended on whether an employee was “*required*” to engage in any activity (including “to be on the employer’s premises ready to work, or to be on duty, or to be at a prescribed work place”).²¹

Instead, the IWC struck the word “*required*” from the first part of the definition, and replaced it with a broader, more protective test, that of employer “*control*.” At the same time, the IWC retained the “*suffered or permitted to work*” portion of the definition as a second, “independent” test for compensability.²²

Through these wording changes, the IWC “clearly indicated” that it “intended to *broaden* the definition” of “hours worked” beyond that of the 1942 Orders.²³ In particular, the IWC adopted the “control” test because “even the ... disjunctive language contained in the 1942 Orders was not as restrictive as the [IWC] felt necessary.”²⁴ Under

Jul. 1, 1988); Wage Order 7-98 (eff. Jan. 1, 1998); Wage Order 7-2000 (eff. Oct. 1, 2000); Wage Order 7-2001 (eff. Jan. 1, 2001).

²¹ Wage Order 7NS, *supra*, ¶2(f)(1) (emphasis added).

²² *Mendiola*, 60 Cal.4th at 839; *Morillion*, 22 Cal.4th at 582. The second test is addressed in Part IV.C, below.

²³ DLSE, Response to Request for Determination Pursuant to Government Code Section 11347.5, *quoted in* Cal. Office of Administrative Law, Response to Request for Reconsideration, 1990 OAL Determination No. 11, at 4 (emph. added) (MJN Ex. 7, 8).

²⁴ *Id.*

the new definition, “required” time encompassed by the prior definition may be compensable,²⁵ *along with* all other time subject to employer “control.”²⁶

b. The Ordinary Meaning of “Control” is Broader than the Ordinary Meaning of “Required”

This reading is borne out by the plain-language definitions of the two words.

“**Require**” means “to claim or ask for by right and authority.” *Merriam-Webster’s Collegiate Dictionary*, “require,” *vt.*, sense 1a (11th ed. 2003), *cited in Augustus*, 2 Cal.5th at 265. It also means “to impose a compulsion or command on: compel.” *Id.*, sense 3.²⁷ “**Control**” means to “exercise restraint or direction upon the free action of.” *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 975 (1995) (citing *Oxford English Dictionary*).²⁸ It also means to “regulate” or “hold in restraint.”²⁹

The word “**control**,” therefore, is expansive enough to encompass “compelled” or “commanded” activities, including those claimed “by right and authority” of an employer, while also embracing actions that are “regulated” or “directed” by an employer—even those not strictly “compelled” or claimed “by right and authority.” The

²⁵ See *Morillion*, 22 Cal.4th at 592 (“‘Control’ may encompass activities described by the eliminated language”).

²⁶ See *Rashidi v. Moser*, 60 Cal.4th 718, 725 (2014) (if a statute or regulation uses two different words, two different meanings “must be presumed”); *Singh v. Superior Court*, 140 Cal.App.4th 387, 399 (2006) (applying this rule to IWC Wage Orders).

²⁷ Accord *American Heritage Dictionary*, “require,” *tr.v.*, sense 3 (4th ed. 2000) (“to impose an obligation on; compel”), *cited in Augustus*, 2 Cal.5th at 265.

²⁸ Accord *id.*, “control,” *tr.v.*, sense 1 (“to exercise authority or dominating influence over; direct”); *Black’s Law Dictionary*, “control,” *vb.*, sense 1 (10th ed. 2014) (“to exercise power or influence over”); *Merriam-Webster’s Collegiate Dictionary*, *supra*, “control,” *vb.*, sense 2a (“exercise restraining or directing influence over”).

²⁹ *American Heritage Dictionary*, *supra*, “control,” *tr.v.*, senses 2, 3.

word amply serves the IWC's purpose to "broaden" the definition of compensable "hours worked" and expand it beyond the narrower definition of the NS series of Orders.³⁰

Notably, the IWC retained the word "required" in the second clause, describing the "suffered or permitted to work" test, while abandoning that word for the "control" test in the first clause. The IWC's decision to use two distinct words in the two independent tests was deliberate.³¹ The IWC could have revised the Order to encompass all "time during which an employee is subject to *a requirement* of an employer." It did not.

c. During and While Awaiting the Checks, the Employees Are Under Apple's "Control," as Apple Conceded, so the Time is Compensable Under the "Control" Test

(i)

As the Ninth Circuit recognized, under a "textual analysis," the employees in this case are "clearly under the *control* of the employer" (870 F.3d at 872 (emphasis added)) both during, and while awaiting, the Checks:

- The Checks are "regulated" by the employer: they are imposed pursuant to a written, mandatory employer policy, and employees are subject to discipline, including termination, if they refuse to participate.³² *Frlekin*, 870 F.3d at 870 ("Employees who

³⁰ It also serves the IWC's purpose to ensure that California's definition of "hours worked" would be broader than federal law after the Portal-to-Portal Act. *See Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 591.

³¹ *People v. Mendoza*, 23 Cal.4th 896, 916 (2000) (in general, when a statute or regulation is amended to change the wording, a change in meaning is presumed); *Estate of Simpson*, 43 Cal.2d 594, 600 (1954) ("Changes in wording and phraseology are presumed to have been deliberately made").

³² ER cites at pp. 6-8, *supra*.

fail to comply with the Policy are subject to disciplinary action, up to and including termination.”).³³

- The Checks are “directed” by the employer: they take place on the employer’s premises, under a manager’s immediate supervision, and employees are required to comply with the manager’s directions, including opening up their bags, unzipping internal compartments, and displaying the contents.³⁴ *Id.* at 873 (during the Checks, employees’ “actions and movements are compelled”).³⁵

- The Checks “hold” employees “in restraint”: the employees are not permitted to leave the employer’s premises until they have participated in the Checks.³⁶ *Id.* at 872 (Checks are “*on-site* search[es] during which the employee must remain on the employer’s premises” (emphasis in original)).³⁷

In this case, as Apple conceded, its employees were “clearly” under its “control” “while awaiting, and during,” the Checks. *Frlekin*, 870 F.3d at 871. Hence, the time is compensable.

³³ See *Morillion*, 22 Cal.4th at 587 (employees subject to “verbal warnings and lost wages” were “controlled”).

³⁴ ER cites at pp. 8-10, *supra*. Employees must also find and display their iPhones (or other Apple-branded devices), open up the settings page showing the serial number, and find and display their tech cards to compare the numbers. *Id.*

³⁵ See *Morillion*, 22 Cal.4th at 583, 586 (employees “foreclosed from [other] activities” and “prevented from using the time for their own purposes” were “controlled”); *Mendiola*, 60 Cal.4th at 840 (same).

³⁶ ER cites at pp. 10-11, *supra*.

³⁷ See *Mendiola*, 60 Cal.4th at 840 (employees “restrain[ed] ... from leaving the work place” are “controlled”); *Morillion*, 22 Cal.4th at 583 (same) (citing *Bono*, 32 Cal.App.4th at 975).

(ii)

This “textual analysis” does not change merely because the employees may have “voluntarily” brought their purses, bags or iPhones to work. *See Frlekin*, 870 F.3d at 869. Either way, the Check time meets the “control” test.³⁸

Under the Orders’ plain text, compensability does not depend on what happened *before* “the time *during which*” the employee exercised “control”—such as an employee’s pre-activity “choice” to bring a bag or iPhone. Instead, the text has focusing language. That language places the focus of the analysis squarely on “the time *during which*” the employer “control” occurred.

Unlike the pre-1947 text, which asked if the employer had “*required*” certain specified activities, the current text depends only on whether the employee was under employer “*control*” “*during*” the “time” in question. There is no carve-out for “controlled” time of any kind, including “controlled” time spent on activities that theoretically might be “avoided.” The IWC could have amended the Orders to read: “subject to the *unavoidable* control of an employer.” It did not.

Inferring such a qualification, as the district court did, would make the “control” test even less protective than it would have been if the IWC had retained the operative word “required,” instead of abandoning that word 70 years ago in favor of “control.”

Under the district court’s construction, only *some* activities “required” by an employer—those that are “unavoidable” in the strictest and least protective sense of that

³⁸ While irrelevant to the “control” test, as a practical matter, the Checks cannot truly be “avoided,” and therefore are not “voluntary” in any meaningful sense. *See Frlekin*, 870 F.3d at 872-73. This is addressed in Part IV.B.3, below.

word—are compensable. Here, for instance, the Checks *are* “required,” under common understandings of the term. They occur because Apple “commands” them to occur “by [its] right and authority” as an employer,³⁹ which Apple enforces through threat of discipline. According to the district court, however, an activity cannot be deemed “required” unless it is also strictly “*unavoidable*”—a qualifier appearing nowhere in the plain-language definition of the word “required,” *or* the word “control,” and appearing nowhere in the Wage Orders, either before or after 1947.

The Wage Orders’ plain text cannot reasonably be so construed. Such a construction would disregard even the highest levels of “*control*” exercised by an employer “*during*” workplace activities—nullifying the Wage Orders’ central, operative word, “control.” Such a construction would “redefin[e] ‘hours worked’” by “substitut[ing] other words” in place of the Wage Order’s “express language,” which would be “improper judicial legislation.” *Morillion*, 22 Cal.4th at 585. And it would contravene the Court’s “duty” to “liberally construe” the Wage Orders “to promote worker protection.” *Mendoza*, 2 Cal.5th at 1091 (citing *Brinker*, 53 Cal.4th at 1027).

Such a holding could, moreover, easily lead to employer abuse. If a “controlled” activity became non-compensable simply because of a pre-activity “choice,” then an employer could identify something most employees *want* to do—like bring their purses to work—and attach conditions to it: “You may bring your purse to work, but if you do, you’ll be required to perform tasks X, Y and Z without pay, and if you refuse, you will be

³⁹ *Merriam-Webster’s Collegiate Dictionary*, *supra*, “require,” *vt.*, senses 1a, 3; *American Heritage Dictionary*, *supra*, “require,” *tr.v.*, sense 3.

disciplined.” The employer could then claim that even the most closely “directed,” “regulated,” and “restrained” tasks, performed purely to meet the employer’s conditions, were not “controlled” because the employees could have “avoided” them.⁴⁰

The Wage Order’s plain language provides no support for this view. The IWC carefully chose to eliminate the word “*required*” from the Wage Orders and replace it with the broader word “*control*.” The IWC did not intend to make the new test narrower than the abandoned, prior test. The “best interpretation”—the one “most consistent with” the Court’s “practice of liberally construing” the Orders to “favor the protection of employees”⁴¹—recognizes all of this, and thus serves the IWC’s goal, 70 years ago, to *broaden* the definition of compensable “hours worked.”

In short, the Checks amply meet the “control” test. The answer to the certified question should be “yes.”

2. This Court, in *Morillion*, Did Not Contravene the Wage Orders’ Plain Text by Holding That an Employee’s Pre-Activity “Choice” Eviscerates an Employer’s “Control”

Contrary to the Wage Orders’ plain text, the district court held that the Checks did *not* meet the “control” test—even though Apple conceded that the time was “controlled.” The court relied entirely on the fact that the employees could “choose” not to bring a bag

⁴⁰ If the tasks were unrelated to the employee’s primary job duties, then the employer might also argue—as Apple successfully did here—that the tasks were not “work” within the meaning of the “suffered or permitted to work” test. Such an employer could get free services from its workforce by this means. That outcome, of course, would fly in the face of the Wage Order. Such hypothetical time is compensable under both tests for “hours worked,” including the “suffered or permitted to work” test (*see* Part IV.C, below).

⁴¹ *Augustus*, 2 Cal.5th at 262, 266 (citing *Brinker*, 53 Cal.4th at 1027).

(or iPhone) to work in the first place. This antecedent “choice,” the court reasoned, meant that the Checks were not “required,” and therefore could not be deemed “controlled”—regardless of the magnitude of the employer restraints imposed “during” the Check time itself. ER 8-18.

The district court’s main authority for this holding was *Morillion*. ER 9-10. The Ninth Circuit, however, recognized that there are material factual differences between *Morillion* and this case—including “the level of control” exercised by the employer and the employer’s greater “business interest” in controlling the time. *Frlekin*, 870 F.3d at 872-73. Therefore, the Ninth Circuit reasoned, while *Morillion* may provide “support” for the district court’s ruling (*id.* at 871), “uncertain[ty]” remains (*id.* at 872).

The Check time is compensable under *Morillion* for two basic reasons.

First, as already discussed above, under a straightforward reading of the Wage Orders’ plain text, all “controlled” time is compensable, and the Checks are concededly “controlled.” The Wage Order’s plain text should be the beginning and the end of the inquiry. As held in *Morillion* itself, for a Court to “redefin[e] ‘hours worked’” by “substitut[ing] other words” in place of the Wage Order’s “express language” is to engage in “improper judicial legislation.” 22 Cal.4th at 585.

Second, as will be explained in detail below, the employees in *Morillion* were not required to perform employer-directed tasks “during” the time in question, nor did *Morillion* involve a “controlled” activity that employees could theoretically “avoid”

through a pre-activity “choice.” The Court had no occasion to hold, and did not hold, that such an activity can never meet the “control” test.⁴²

Rather, as this Court subsequently confirmed in *Mendiola*, *Morillion* held that the “level of the employer’s control” during the activity is “determinative.” *Mendiola*, 60 Cal.4th at 840 (quoting *Morillion*, 22 Cal.4th at 587).

In short, the district court misapplied *Morillion*.

a. Under *Morillion*, the “Level of Control” Exercised by the Employer Is Determinative

A close reading of *Morillion* exposes the district court’s errors in applying it.

(i)

In *Morillion*, the employer’s written policy “required” agricultural employees to ride the company bus from specified meeting points to the fields, where the employees harvested produce; the policy prohibited the employees from driving their personal vehicles, on pain of disciplinary action. 22 Cal.4th at 579 & n.1.

That was the only “control” the employer exercised in *Morillion*. It was the only fact on which the employees based their argument that the bus-ride time met the “control” test. *See id.* at 579, 582.⁴³ The employees simply had no other “control” to

⁴² *Barry v. State Bar of California*, 2 Cal.5th 318, 325 (2017) (lower court “erred in relying on” an opinion of this Court “as authority ‘for a point that was not actually raised and resolved’ in that case”) (quoting *Fairbanks v. Superior Court*, 46 Cal.4th 56, 64 (2009)); *People v. Alvarez*, 27 Cal.4th 1161, 1176 (2002) (“No prior decision has confronted this precise issue, and it is axiomatic that cases are not authority for propositions not considered.” (footnote omitted)).

⁴³ *Morillion* considered Wage Order 14-80, whose definition of “hours worked” is identical to that of Wage Order 7-2001. 22 Cal.4th at 578, 581 (quoting 8 Cal. Code Regs. §11140, ¶2(G)).

assert, because the record showed that they were free to, and regularly did, engage in personal activities, such as reading and sleeping, during the bus rides. *Id.* at 586.

Based on that single “control,” this Court agreed with the employees that the bus-ride time was compensable. *Id.* at 582-87.

In so holding, the Court emphasized that the employees were “subject[ed] ... to verbal warnings and lost wages” if they refused to comply with their employer’s policy. *Id.* at 587. The policy, compliance with which was “compelled” through the threat of discipline, prevented the employees from “us[ing]” the bus-ride “time effectively for [their] own purposes,” and “foreclosed” “numerous activities in which they might otherwise [have] engage[d].” *Id.* at 586 (quoting *Bono*, 32 Cal.App.4th at 975). Hence, the time was “controlled,” and thus compensable. *Id.* at 586-87.

Under this standard, the Check time is also compensable. As explained above, the Checks are compelled through threat of discipline. And, while awaiting and undergoing Checks, employees are confined to their employer’s premises, unable to use the time effectively for their own purposes, and foreclosed from activities in which they otherwise would have engaged. The Checks are “controlled” under *Morillion*.

In fact, the Checks involve an even greater level of “control” than in *Morillion*. While the *Morillion* employees were free to read and sleep, Apple’s employees have to line up and participate in an inspection in which their “actions and movements” are “compelled” by the immediate directions of a manager. *Frlekin*, 870 F.3d at 873. This fact distinguishes this case from *Morillion*, as well as other commute-time cases.

In *Morillion*, the Court repeatedly emphasized that the bus rides were “requir[ed],” “compulsory” and “compel[led].” 22 Cal.4th at 587-88. It made sense to do so, given the facts of *Morillion*. Contrary to the district court’s conclusion below, however, the use of those words does not amount to a holding, as a matter of law for all future cases, that conduct can never be “controlled” unless it is also both “required” and “unavoidable,” in the narrowest sense of those words.

Morillion did not present those facts. In *Morillion*, the *only* “control” was the employer’s decision to impose compulsory bus rides, enforced through discipline, that the employees could not “choose” to avoid. Of course that was “dispositive.” *Id.* at 589 n.5. Given the facts of *Morillion*, the employees had no other “controls” to assert, and no other arguments to make. That is not this case.

The *Morillion* Court had no occasion to consider the full impact of IWC’s decision, in 1947, to abandon the word “require” and replace it with “control.” While the Court mentioned that amendment in holding that the IWC intended to depart from federal law (*id.* at 591), the Court had no other reason to consider the wording change, because the bus rides were undisputedly “required.” This case presents a reason to closely consider the wording change, which shows that the Checks are compensable, as discussed exhaustively above.

(ii)

The district court took several parts of *Morillion* out of their factual context.

One of those had to do with the employer’s claim that ordinary commute time would become compensable if any “required” activity meets the “control” test, because

“employees would not commute to work unless the employer required their presence at the work site.” *Id.* at 586.

The Court disagreed, focusing on the “level of control” exercised by the employer during an ordinary commute—which was low to non-existent. *Id.* at 587. The “level of control” prevailed over “the mere fact” that the commute time was on some level “required.” *Id.* An ordinary commuter might be disciplined for arriving late, but not for “decid[ing] when to leave, which route to take to work, [or] which mode of transportation to use,” nor does the employer “regulate” or “direct”⁴⁴ any of the commuter’s movements during the commute. *See id.* at 586-87. In other words, ordinary commuters are not “controlled” by their employer during their travel time. *Id.*

The Ninth Circuit recognized this important distinction: “In the context of travel to a work site, an employer’s interest is typically limited to the employee’s timely arrival. It is irrelevant to an employer how an employee arrives, so long as the employee arrives on time. So it makes little sense to require an employer to pay for travel time unless, as discussed at length in *Morillion*, the employer *requires* the employee to use the employer-provided transportation.” *Frlekin*, 870 F.3d at 872 (emphasis in original).

Non-travel cases, however, are quite different. This case involves “*on-site* search[es] during which the employee must remain on the employer’s premises” and “during which an employee’s actions and movements are compelled.” *Id.* at 872, 873 (emphasis in original). In such cases:

⁴⁴ *American Heritage Dictionary, supra*, “control,” *tr.v.*, senses 1, 2; *Merriam-Webster’s Collegiate Dictionary, supra*, “control,” *vb.*, sense 2a; *Bono*, 32 Cal.App.4th at 975 (citing OED definition of “control”).

both the level of control and the employer's business interest are greater. Once an employee has crossed the threshold of a work site where valuable goods are stored, an employer's significant interest in preventing theft arises. The employer's exercise of control over the bag-toting employee—albeit at the employee's option of bringing a bag—advances the employer's interest in loss prevention.

Id. at 872-73.

Therefore, “[a]lthough the search is voluntary in that the employee could have avoided it by leaving his or her belongings at home, the employer nevertheless exercises **control** over the employee who does bring a bag or package to work.” *Id.* at 873 (emphasis added).

The Ninth Circuit's analysis is consistent with this Court's holding, first stated in *Morillion* and later confirmed in *Mendiola*, that “[t]he level of the employer's **control** over its employees ... is determinative.” *Mendiola*, 60 Cal.4th at 840 (quoting *Morillion*, 22 Cal.4th at 587) (ellipsis in original) (emphasis added).

(iii)

The employer in *Morillion* also contended that if the bus-ride time were compensable, employers would stop “providing free transportation as a service to their employees.” 22 Cal.4th at 594. This Court disagreed, explaining that “employers may provide optional free transportation to employees without having to pay them for their travel time, so long as employers do not require employees to use this transportation.” *Id.*

In so stating, the Court once again focused on the level of “control”—or lack thereof—exercised by the employer during the travel time. The Court's remarks on this point assume truly “optional transportation,” free of any form of employer “control.”

The Court was prescient in predicting that *Morillion* would not discourage employers from offering truly “optional” company buses. An example of one came up six years later, in *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006). Unfortunately, the district court misconstrued *Overton*. ER 9-10, 18.

In *Overton*, the employer provided a free shuttle for employees assigned to a distant parking lot. The employees, however, were not “required” to drive to work in the first place. *Id.* at 267, 272-73. And if they did, they were not “required” to park in the distant lot (*id.* at 266 n.6); and regardless of where they parked, they were not “required” to ride the shuttle (*id.* at 267-68, 271). They could take an “early” shuttle or a later one, so long as they arrived to work on time. *See id.* at 268, 273. They were not “required” to engage in any employer-directed tasks during the shuttle rides, and no discipline of any kind resulted from the employees’ decision to use or not use the shuttle. *See id.* at 265-67, 271-73, *passim*. Applying *Morillion*, the Court of Appeal held that employees who rode the shuttle were not “controlled” during the rides. *Id.* at 269-74.

The district court failed to perceive that the “optional” shuttle rides in *Overton* differ markedly from the on-site security searches in this case. On pain of discipline, the Checks are “required” for all employees who “choose” to bring a bag to work. During the Checks, a manager or a security officer physically supervises and directs the employees’ “actions and movements.” The employees may not leave the store premises until the Checks are completed, and the employees can be fired if they refuse to participate. *Frlekin*, 870 F.3d at 870, 872-73.

Under *Morillion*, the Checks are “controlled,” not “optional.” In fact, as the Ninth Circuit recognized, the “level of control” exercised by the employer during the Checks is equal to if not “greater” than the “level of control” in *Morillion*. See 870 F.3d at 873.

A hypothetical illustrates the point. Suppose the *Morillion* employer had provided an “optional” bus, but “required” those who took the bus—on pain of discipline—to manually clean farming implements during the ride, under the physical supervision of a foreman, who directed the employees’ “actions and movements.” That would be a very high “level of control”—greater than a “required” bus ride during which employees can read or sleep, and far greater than an ordinary, albeit technically “required,” commute.

In such a case, the employer’s mandatory policy—enforced through threat of discipline—would prevent the employees from using the bus-ride “time effectively for [their] own purposes,” and would “foreclose” “numerous activities in which they might otherwise [have] engage[d].” *Morillion*, 22 Cal.4th at 586 (quoting *Bono*, 32 Cal.App.4th at 975). The time would therefore meet the “control” test, notwithstanding the employee’s pre-activity “choice.”

The same is true of the Checks in this case, as the Ninth Circuit perceived. *Frlekin*, 870 F.3d at 872-83.

(iv)

Finally, the district court relied heavily on *Morillion*’s “*Vega* footnote.” ER 9-10. In that footnote, the Court considered the facts of *Vega v. Gasper*, 36 F.3d 417 (5th Cir.

1994),⁴⁵ in which the employees “were free to choose—rather than required—to ride their employer’s buses to and from work.” *Morillion*, 22 Cal.4th at 589 n.5 (citing *Vega*, 36 F.3d at 425). The Court called this a “dispositive, distinguishing fact,” making the outcome of *Morillion* “consistent with” *Vega*. *Id.*

This case, however, differs from both *Morillion* and *Vega*. In neither case were the employees required, on pain of discipline, to engage in employer-directed tasks during the travel time. Here, the employees were required to engage in “compelled” “actions and movements” during the Check time. *Frlekin*, 870 F.3d at 873. That is a different—and higher—“level of control” than existed in either *Morillion* or *Vega*. It is sufficient to meet the “control” test—antecedent “choice” notwithstanding.

Recently, the Fifth Circuit explained that “[t]he voluntary use of transportation in [*Vega*] was not dispositive in concluding the travel time was noncompensable.” *Griffin v. S&B Engineers & Constructors, Inc.*, 507 Fed.Appx. 377, 382-83 (5th Cir. 2013). Rather, it was dispositive (under less protective federal law) that the employees performed no employer-directed tasks during the rides, and were not “restrict[ed]” from “engaging in personal activities such as sleeping and reading.” *Id.* at 383.

Like *Vega* itself, this Court’s *Vega* footnote does not state that the “voluntary” use of transportation is dispositive in every case, including cases with materially different facts, in which the employees **do** engage in employer-directed tasks and for that reason **are** restricted from engaging in personal activities. Rather, as explained in the body of

⁴⁵ *Abrogated on other grounds as stated in Bridges v. Empire Scaffold, L.L.C.*, 875 F.3d 222, 227-28 (5th Cir. 2017).

Morillion, the “level of control” is “determinative.” *Mendiola*, 60 Cal.4th at 840 (quoting *Morillion*, 22 Cal.4th at 587).

b. Security Searches Are Materially Distinguishable from the Travel Time Considered in *Morillion*

The Ninth Circuit recognized critical differences between security search cases, like this one, and travel-time cases, like *Morillion* and *Overton*. 870 F.3d at 872-73.

First, retail employers have a “significant interest in preventing theft,” which arises as soon as “an employee crosse[s] the threshold of a work site where valuable goods are stored.” *Id.* at 873. This interest did not exist in either *Morillion* or *Overton*.

In this case, Apple chooses to operate stores selling “valuable goods” small enough to hide in a bag or coat.⁴⁶ As a result, Apple has a “significant interest in preventing theft.” *Id.* Nevertheless, Apple fails to take security measures sufficient to protect the goods from being stolen. The unpaid Checks are Apple’s way of shifting part of its cost of doing business—namely, the cost of security—onto the backs of its retail workforce. This is not only unfair to the employees, but also contrary to California law, which is “designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (citing Lab. Code §2802).

Second, as the Ninth Circuit recognized, it is usually “irrelevant to the employer *how* an employee arrives [to work], so long as the employee arrives on time.” *Frlekin*,

⁴⁶ ER 208 (iPod nano, measuring from 1.5 by 1.5 in. to 3.01 by 1.56 in.); ER 219 (iPod touch, 4.86 x 2.31 in.); see https://support.apple.com/kb/sp656?locale=en_US (iPod nano specs); <http://www.apple.com/ipod-touch/specs/> (last visited Dec. 15, 2017).

870 F.3d at 872 (emphasis added). Employers thus have a “greater” interest in imposing theft-prevention measures than in regulating employee travel time. *Id.* at 873. To “advance” this “greater” interest, employers impose a “greater” “level of control” over “on-site security searches” than they do over most travel time. *Id.*⁴⁷

In this case, the security searches involved “on-site time during which an employee’s actions and movements are compelled” and “during which the employee must remain on the employer’s premises,” on pain of discipline. *Id.* at 870, 872, 873. As the Ninth Circuit comprehended, such close physical “direction,” “regulation,” and “restraint”⁴⁸ vastly exceeds any imposed by the employers during the bus rides in either *Overton* or *Morillion*.

This also distinguishes the Checks from ordinary commute time. Every employer does, on some level, “require” employees to spend time commuting. But ordinary commuters are not “required” to take a certain route to work or leave at a particular time. *Morillion*, 22 Cal.4th at 586-87. In this case, Apple certainly “requires” the Checks, or employees would not participate in them. The difference between the Check time and ordinary commute time is that Apple *also* “requires” the Checks to be conducted in a

⁴⁷ See, e.g., *Moore v. Ulta Salon, Cosmetics and Fragrance, Inc.*, 311 F.R.D. 590, 596 (C.D. Cal. 2015) (“All employees are required to have package/purse/pocket inspections conducted by management anytime they exit the store.” “It is the responsibility of the employee to notify a manager that he or she is in need of an exit inspection.” “All ... bags will be inspected, and employees are required to show the contents of their pockets.”).

⁴⁸ *American Heritage Dictionary, supra*, “control,” *tr.v.*, senses 1, 3; *Merriam-Webster’s Collegiate Dictionary, supra*, “control,” *vb.*, sense 2a; *Bono*, 32 Cal.App.4th at 975 (citing OED definition of “control”).

certain physical manner, under a supervisor’s immediate supervision, while employees are confined to store premises, and subject to discipline if they refuse to submit. *These* are the markers of “control” that make the Check time compensable under *Morillion*.

3. While the Checks Need Not Be Either “Required” or “Unavoidable” In Order to Meet the “Control” Test, They Are, in Fact, Both

The district court construed the Wage Orders in a “strict, formal sense” (*Frlekin*, 870 F.3d at 873) rather than a liberal, employee-protective one, as this Court’s precedents dictate.⁴⁹ It concluded that to satisfy the “control” test, an activity must be not only “controlled,” but also “required,” and “unavoidably” so. If this Court were to agree with that analysis—which it should not—the Checks are not only “controlled,” but also “required” and, practically speaking, “unavoidable.” Hence, they would meet even a highly conservative, employer-protective interpretation of the “control” test.

As discussed above, the Checks are “compelled” “by [the] “right and authority” of an employer, on pain of discipline, for all employees who present with a bag, purse or iPhone.⁵⁰ Hence, the Checks meet the plain-language definition of the word “require.”

The Checks are also, practically speaking, “unavoidable.” As the Ninth Circuit recognized, security searches that employees can “avoid” only by leaving their everyday personal belongings “at home” are only “nominally voluntary.” *See id.* at 873. That is because, “as a practical matter, many persons routinely carry bags, purses, and satchels to work, for all sorts of reasons. Although not ‘required’ in a strict, formal sense, many

⁴⁹ *E.g., Kilby*, 63 Cal.4th at 11 (citing *Brinker*, 53 Cal.4th at 1026-27).

⁵⁰ *See supra* footnote 39.

employees may feel that they have little true choice when it comes to the search policy, especially given that the policy applies day in and day out.” *Id.*

Notably, the policy applies “day in and day out” not only to “bags, purses, and satchels,” but also to Apple-branded technology devices, including the iPhone.⁵¹ These devices “are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy.” *Riley v. California*, 134 S.Ct. 2473, 2484 (2014).⁵² As with their purses and bags, therefore, employees have “little true choice” to “avoid” being Checked by leaving their iPhones at home when they go to work.

There is a rich irony in Apple’s argument that anyone, let alone its own employees, should “choose” to leave their iPhones at home—as if an iPhone were a needless luxury, instead of an essential communication and payment device, fully integrated into day-to-day modern life due to Apple’s persistent commercial promotion efforts. In Apple CEO Tim Cook’s words, “You wouldn’t think about leaving home

⁵¹ ER 115, 117-18, 241-42, 386:11-387:2, 392, 394, 396, 398, 400, 402, 404, 406. Petitioners have asked the Court to rephrase the certified question to expressly encompass these devices. *See* Letter filed Sept. 1, 2017 at 9-10; Letter filed Sept. 29, 2017.

⁵² *See also City of Ontario v. Quon*, 560 U.S. 746, 760 (2010) (noting “ubiquity” of cell phones in modern society; “Cell phone ... communications are so pervasive that some persons may consider them to be essential means or necessary instruments for self-expression, even self-identification.”); *Gomez v. Campbell-Ewald Co.*, 768 F.3d 871, 876-77 (9th Cir. 2014) (millions of “households now rely exclusively on wireless telephone service”); *People v. Valdivia*, 16 Cal.App.5th 1130, 1143 (2017) (“[T]here is an element of pervasiveness that characterizes cell phones Now it is the person who is not carrying a cell phone ... who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time.” (quoting *Riley*, 134 S.Ct. at 2490)).

without it.”⁵³ It is equally ironic that Apple would encourage its own employees to buy a Samsung Galaxy Note instead of an iPhone. But that is what Apple’s policy does. Employees who “choose” to carry a non-Apple-branded device are not Checked.⁵⁴

As a “practical” matter, employees’ so-called “choice” to leave their personal belongings at home—including their purses, bags, satchels, and iPhones—is an illusory one. *See Frlekin*, 870 F.3d at 873. These items are ubiquitous in modern society, and leaving them at home would be a significant personal inconvenience.

Moreover, as mentioned above, the employees in this case would not face this so-called “choice” but for Apple’s chosen business model of selling small, “valuable goods,” and the nature of Apple’s retail sales jobs, which require access to those goods.

Apple told the Ninth Circuit that it would rather “prohibit” its own employees from bringing their iPhones, purses and bags to work than pay for the Check time.⁵⁵ However, no record evidence suggests that Apple ever actually considered such an extreme step. Such a rule would be highly unpopular, would impair Apple’s ability to retain competent staff, and would not solve the problem because Apple sells “valuable goods” small enough to hide in coat pockets. If someone brought a steamer trunk to

⁵³ <https://9to5mac.com/2017/05/03/tim-cook-cnbc-interview/> (video at 5:58) (viewed 12/18/17).

⁵⁴ ER 118, 241-42.

⁵⁵ *E.g.*, Defendant-Appellee’s Brief (9th Cir. Dkt. 28-1) (“DAB”) at 29, 52.

work—as in the Ninth Circuit’s hypothetical (870 F.3d at 873)—Apple could hold it in the manager’s office instead of searching it.⁵⁶ No compensable time would then exist.

The Wage Orders’ language is “broad” for a reason. Employer-controlled workplace activities, like the Checks, *should be* compensated—regardless of whether they can be “avoided” by employee “choice.” Any other rule would allow employers to require employees to perform extra tasks and assignments without pay, simply by imposing “optional” conditions that employees can “avoid.” Here, Apple *disciplines* employees for not complying with its Check policy. If a task is so integral to the job, so important, and so controlled, that an employer can fire an employee for not performing it, the time should be compensable. That is the only rule that avoids employer abuse.

C. The Check Time Is Compensable Under the “Suffered or Permitted to Work” Test

After holding that the security Check time was not compensable under the “control” test, the district court turned to the separate and independent “suffered or permitted to work” test. ER 19-12. The court held that this test was not satisfied, either, because the Checks were not “work.” *Id.* The court reached this conclusion even though the Checks involve physical exertion; are concededly controlled by Apple; and are done for Apple’s benefit to deter and prevent theft. *See Frlekin*, 870 F.3d at 872-73.

The district court erred. The Checks easily meet a plain-language definition of “work.” Therefore, regardless of whether “required,” the Check time is compensable under this independent, alternative definition of “hours worked.”

⁵⁶ Some Apple locations already do this for large personal items. ER 241; *see* ER 117 (items can be left in manager’s office).

1. The Check Time Meets This Test Because It Involves Physical or Mental Effort to Accomplish Something and Is “Suffered or Permitted” by an Employer

(a)

Under Wage Order 7, compensable “hours worked” includes “all the time the employee is *suffered or permitted to work*, whether or not required to do so.” 8 Cal. Code Regs. §11070, ¶2(G) (emphasis added). The Wage Order does not define the term “work.” *See generally id.* Hence, the Court applies the word’s “most common” and “ordinary meaning.” *Augustus*, 2 Cal.5th at 265; *Murphy*, 40 Cal.4th at 1103.

In common parlance, to “work” means “[t]o exert effort; to perform, either physically or mentally.” *Black’s Law Dictionary, supra*, “work,” *vb.*, sense 1. It also means “[t]o exert oneself physically or mentally in order to do, make, or accomplish something.” *American Heritage Dictionary, supra*, “work,” *v.—intr.*, sense 1.⁵⁷

The noun form of the word means an “activity in which one exerts strength or faculties to do or perform something.” *Merriam-Webster’s Collegiate Dictionary, supra*, “work,” *n.*, sense 1.⁵⁸ *Black’s* defines it as “[p]hysical and mental exertion to attain an end, *especially* as controlled by and for the benefit of an employer; labor.” *Black’s Law Dictionary, supra*, “work,” *n.*, sense 1 (emphasis added).

⁵⁷ *Accord Merriam-Webster’s Collegiate Dictionary, supra*, “work,” *vi.*, sense 1a (“to exert oneself physically or mentally esp. in sustained effort for a purpose or under compulsion or necessity”).

⁵⁸ *Accord American Heritage Dictionary, supra*, “work,” *n.*, sense 1 (“Physical or mental effort or activity directed toward the production or accomplishment of something.”).

The Checks meet these plain-language definitions of “work.” Contrary to the district court’s reasoning, the Checks were not “merely passively endured.” ER 21:4. They involved “exertion” and “effort,” including tracking down a manager or supervisor, lining up, opening and holding out bags, opening internal pockets, moving the contents around, pulling out and displaying iPhones and tech cards, and physically complying with other employer directions.⁵⁹ The Checks accomplished something, namely, Apple’s stated goal of theft prevention and deterrence, by confirming that Apple’s unsecured “valuable goods” are not removed from the premises. *Frlekin*, 870 F.3d at 873.

Black’s definition of the noun form of “work” suggests that activities “controlled by and for the benefit of an employer” are “especially” worthy of the name. Here, the on-site Checks are concededly “controlled” by an employer, Apple, and they “benefit” Apple by preventing and deterring theft. Even under this narrower, less-protective language from *Black*’s, the Checks are “work.”

(b)

While security search time unquestionably meets the narrowest part of the *Black*’s definition, “control” should not be made an element of the “suffered or permitted to work” test. In the Wage Orders, “controlled” time and “suffered or permitted” “work” time are two separately-stated, “independent” tests for compensability. *Mendiola*, 60 Cal.4th at 839; *Morillion*, 22 Cal.4th at 582. The elements of one should not be imported

⁵⁹ ER cites at pp. 8-10, *supra*; see *Frlekin*, 870 F.3d at 873 (“on-site” Checks involve “compelled” “actions and movements”).

into the other. *Id.* Also, none of the plain-language definitions of “work,” quoted above, states that employer “control” is an essential component—including the one in *Black’s*.

Certainly, “controlled” time, such as the Checks in this case, can be “work,” but time that is neither “controlled” nor “required” can also be “work,” under the Wage Orders’ plain text. For example, unauthorized overtime is plainly “work,” defined as “physical or mental exertion to accomplish something,” and is compensable if the employer knew (or reasonably should have known) about it and “suffered or permitted” it to occur. *Morillion*, 22 Cal.4th at 584-85. As *Morillion* explained, the “suffered or permitted” portion of the test “encompasses a meaning distinct from merely ‘working.’” *Id.* at 584. That part of the test is what ties the compensable activity to the employment relationship—not whether the employer “controlled” (or “required”) it. *See id.*

In short, “control” is not an element of the “suffered or permitted to work” test.

Here, there is no dispute that the employer, Apple, “suffered or permitted” the Checks to occur. Apple knew the Checks were occurring in its stores, had the “power” to “prevent” them, yet failed to do so. *Martinez*, 49 Cal.4th at 69. As discussed above, the Checks are “work” because they involved exertion or effort to accomplish an end. Hence, the Check time is compensable under the “suffered or permitted to work” test.

(c)

The Ninth Circuit recognized that the Checks “advance [Apple’s] interest in loss prevention,” which plainly benefits Apple. *Frlekin*, 870 F.3d at 873. The district court flatly refused to consider those benefits, citing this Court’s *Martinez v. Combs* opinion. ER 19:14-22, 21:9-10. However, the district court misread *Martinez*.

In *Martinez*, the Court was not considering the definition of the word “work.” There was no dispute that by picking strawberries, the *Martinez* plaintiffs performed “work.” The dispute was over who “employed” them. *See* 49 Cal.4th at 48-51.

The Wage Orders define “employ” as “to engage, suffer, or permit to work.” *Id.* at 64 (quoting 8 Cal. Code Regs. §11140, ¶2(C)).⁶⁰ That definition is wholly separate from the definition of “hours worked,” which appears in a different subsection of the Orders and has a materially different regulatory history. *Id.* at 57-59, 69-71 (discussing enactment history of definition of “employ”).

After their primary employer went bankrupt, the *Martinez* employees sought wages from the “downstream” produce merchants who bought and resold the strawberries they had picked. *Id.* The employees argued that the merchants “employed” them because they “knew plaintiffs were working” and “because plaintiffs’ work *benefited* [them].” *Id.* at 69, 70 (emphasis added). These factors, the employees argued, satisfied the “suffer or permit” part of the definition of “*employ*.” *See id.*

This Court disagreed. *Id.* at 69-70. In order to “suffer or permit” work within the meaning of the definition of “employ,” the merchants would need to have the “power” to “prevent” the work from occurring. *Id.* Even if the merchants knew about and “benefited” from the plaintiffs’ work, “neither” of them “had the power to prevent” the plaintiffs “from working.” *Id.* at 70. Hence, the plaintiffs’ contention that the merchants “employed” them failed. *Id.* at 69-71. Absent the requisite “power” to “prevent” the work, “the concept of a benefit is neither a necessary nor a sufficient condition for

⁶⁰ *Accord* 8 Cal. Code. Regs. §11070, ¶2(D).

liability under the ‘suffer or permit’ standard” for determining whether a defendant “employed” someone. *Id.* at 69.

The district court misread this part of *Martinez*. *See* ER 19, 21. *Martinez* does not say that “benefit” to a conceded “employer” is irrelevant to whether an employee’s activity is “*work*.” Rather, *Martinez* says that “benefit” is not “necessary” or “sufficient” to determine whether a defendant “*employed*” someone. *See* 49 Cal.4th at 69-71.

In this case, the Checks obviously benefited Apple by preventing and deterring theft. *Frlekin*, 870 F.3d at 873. The district court dismissed this as irrelevant. But employers *should* pay for “work” that they “suffer and permit” in order to protect their “valuable goods” from theft. Here, the Checks are “work” that Apple “suffered or permitted” because doing so “advance[d]” Apple’s “interest in loss prevention.” *Id.*

The Checks meet all stated parts of the Wage Orders’ “suffered or permitted to work” test—and they also benefit Apple. The Check time is compensable.

2. To Qualify as “Work,” an Activity Need Not Be Part of an Employee’s Regular Job Duties

Finally, the district court accepted Apple’s argument that “work” must be a “job duty” related to the “purpose” for which the employees were hired.⁶¹ The Checks were not “work,” the court held, because they “had no relationship to plaintiffs’ job responsibilities.” Instead, they were “peripheral activities relating to Apple’s theft policies.” ER 20:8-9.

This, too, was error.

⁶¹ DAB 50, 56; *see* ER 36:9-13 (“duty or a task” they were “hired to perform”).

Nothing in the Wage Orders' plain text supports such a narrow, employer-centric reading of the word "work." Of course, while unauthorized overtime, and other activities related to an employees' primary job responsibilities, are certainly "work," those are not the only types of activity that can meet the definition. Neither the text of the Orders, nor the ordinary definition of "work" (discussed above), includes such a qualification.

To the contrary, under such a reading, California law would be no more protective than the federal Portal-to-Portal Act. The district court even cited that Act as "useful guidance," explaining that under federal law, "work" is not compensable unless the activity has an "integral or indispensable relationship to the employees' job responsibilities." ER 20:19-28 (citing *Integrity Staffing*, 135 S.Ct. at 518). Under the less-protective federal standard, activities that are "preliminary and postliminal [sic]" to an employee's regular job duties are generally not compensable. *Id.*

In 1947, however, the IWC amended the Wage Orders to "broaden" the definition of "hours worked" and ensure that California law would *not* be coextensive with the Portal-to-Portal Act. *Mendiola*, 60 Cal.4th at 843; *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 592. The 1947 amendment "belongs to a set of revisions intended to distinguish state wage law from its federal analogue" and "provide employees with greater protection than federal law affords." *Martinez*, 49 Cal.4th at 59-60.

As a result, the Wage Orders "differ substantially" from the federal standard governing compensable time. *Morillion*, 22 Cal.4th at 594.

When the IWC intends to adopt a federal standard, “it has explicitly so stated.” *Id.* at 590.⁶² For example, for certain employees covered by Wage Orders 4 and 5, the definition of “hours worked” is expressly tied to the federal standard:

Within the health care industry, the term “hours worked” means the time during which an employee is suffered or permitted to work for the employer, whether or not required to do so, *as interpreted in accordance with the provisions of the Fair Labor Standards Act.*

8 Cal. Code Regs. §§11040, ¶2(K) (emphasis added); *id.* §11050, ¶2(K) (same).

Similarly, for employees “required to reside on the employment premises,” Wage Order 5 expressly ties the definition of “hours worked” to the employee’s job duties:

all the time the employee is suffered or permitted to work, whether or not required to do, and in the case of an employee who is required to reside on the employment premises, that *time spent carrying out assigned duties* shall be counted as hours worked.

8 Cal. Code Regs. §11050, ¶2(H) (emph. added), *cited in Mendiola*, 60 Cal.4th at 843.

Unlike Wage Orders 4 and 5, Wage Order 7 contains no such express language narrowing the definition of compensable “work.” Order 7 neither explicitly adopts the federal standard, nor limits “hours worked” to “time spent carrying out assigned duties.” Instead, under Order 7, “*all* the time the employee is suffered or permitted to work” is compensable. 8 Cal. Code Regs. §11070, ¶2(G) (emphasis added). The Order’s plain language does not exclude “preliminary,” “postliminary,” or “peripheral” activities.

The district court erred by adopting a standard, tantamount to the federal one, “which expressly eliminates substantial protections to employees,” and doing so “by

⁶² *Accord Mendiola*, 60 Cal.4th at 843 (“the IWC knew how to explicitly incorporate federal law and regulations when it wished to do so”).

implication”—rather than based on “convincing evidence” of the IWC’s intent. *Morillion*, 22 Cal.4th at 592. There is no such “convincing evidence” in Order 7. In fact, the “absence” of language “analogous” to that used in Orders 4 and 5 is “compelling evidence” of the opposite conclusion—that “the IWC did *not* intend” Order 7 to be construed as those Orders would be. *Augustus*, 2 Cal.5th at 272 (emphasis added).

3. While Not an Element of This Test, Theft Prevention *Does* Relate to a Retail Sales Employee’s Regular Job Duties

Finally, the district court failed to perceive that theft prevention *is* part of a retail sales employee’s regular job duties. These jobs necessarily require employees to “cross[] the threshold of a work site where valuable goods are stored.” *Frlekin*, 870 F.3d at 873. Such employees must access and handle their employer’s “valuable goods” in order to make sales and assist customers. Apple’s own policies assign “responsibility” to these employees to take action if they “become aware” of a “theft issue.” ER 201; *see* ER 200. Not just managers, but the “entire staff” bears “accountability” for theft. ER 205.

Apple’s chosen business model is to sell devices small enough to conceal in bags—then fail to adequately secure the devices from theft. Absent these characteristics of the employer’s business and the nature of the employees’ jobs, the Checks would be unnecessary. Therefore, the Checks *do*, in fact, relate to the duties of the jobs for which the employees were hired—even though this is not an element of compensability under the Wage Order’s plain text and the ordinary meaning of the word “work.”

For all of these reasons, the Checks are compensable “hours worked” under the “suffered or permitted to work” test.

V. CONCLUSION

For the reasons discussed above, the Court is respectfully asked to answer the certified question “yes.”

Dated: December 19, 2017

Respectfully submitted,

By: 
THE KRALOWEC LAW GROUP
Kimberly A. Kralowec

McLAUGHLIN & STERN
Lee S. Shalov

Attorneys for Plaintiffs, Appellants and Petitioners

EXHIBIT M

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AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

Reply Brief on the Merits

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kralowecclaw.com

Lee S. Shalov (N.Y. Bar No. LS-7118)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. INTRODUCTION

To protect its “valuable goods” from theft, Apple requires all retail sales staff carrying bags or personal technology to participate in on-site security Checks. *Frlekin v. Apple, Inc.*, 870 F.3d 867, 870-73 (9th Cir. 2017). During the Checks, the employees are confined to store premises and “compelled” to participate in employer-directed actions. *Id.* at 872-73. Apple enforces its Check policy through threat of discipline; anyone who refuses to participate can be fired. *Id.* at 870-72 (citing ER 115).

Apple contends that the Check time is not compensable under either of the Wage Orders’ two “independent” tests for “hours worked,”¹ but in 61 pages of briefing, Apple does not address, or even mention, the *discipline* Apple imposes. The discipline is the elephant in Apple’s living room. Of the three “controls” Apple exerts, the discipline is the enforcement mechanism. Without it, the employees could not be forced to participate in the Checks, and Apple’s Check policy would mean nothing.

Yet, according to Apple, the discipline should be disregarded—as should *both* of Apple’s other “controls” over the Check time: confining employees to store premises and requiring them to engage in employer-directed actions—simply because the employees “chose” to bring their bags or personal technology to work.

Apple is wrong.

Apple’s position contravenes the Wage Orders’ text. The Check time is compensable because it is time “*during which* employees are subject to the *control* of an employer.” 8 Cal. Code Regs. §11070, ¶2(G). The IWC purposely abandoned a less

¹ *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 582 (2000).

protective prior test—covering only “required” time—in favor of the broader “control” test. Under plain-language definitions, the Checks are not just “controlled,” but also “required.” Apple’s proposed standard—“*unavoidably* required”—is weaker than the abandoned prior test and finds no support in the Orders’ text or adoption history.

Apple’s position also contradicts *Morillion*. There, as here, the employees were “controlled” through an employer’s threat of *discipline*. Contrary to Apple’s view, *Morillion* did not hold that *only* “unavoidably required” time can meet the “control” test. Instead, *Morillion* favorably cited *Bono*, in which the employees could have avoided the employer’s “control” (mandatory on-site lunches) by “choosing” to make “prior arrangements” to lunch offsite. 22 Cal.4th at 582-83 (citing *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 972, 974-75 (1995)).

In this case, Apple’s threefold controls exceed those exerted in *Morillion*. Apple’s controls include not only discipline, as in *Morillion*; but *also* confining employees to store premises, as in *Bono*; *and* requiring them to perform employer-directed tasks. These “controls” are greater than what *Morillion* found sufficient.

The Checks are also compensable “work” that Apple knowingly “suffered or permitted” to occur on its property. Seeking to engraft an element unstated in the Wage Orders, Apple argues that the Orders embrace only “work” “related” to the employees’ “regular job duties.” But the Wage Orders do not say this, and inferring such an element would make California law no more protective than federal law—the opposite of the IWC’s intent when it broadened the definition of “hours worked.” Moreover, the Checks

are plainly job-related duties, or Apple could not have enforced them through job-related discipline.

Hoping to prevent this Court from fully considering the issues presented by the Ninth Circuit’s question, Apple relies at length on a non-existent “stipulation” and certain district court rulings concerning class members with “special needs” to bring their bags to work. As will be seen, these rulings were far narrower than Apple would have the Court believe. This Court is no more precluded than was the Ninth Circuit from considering the ordinary, everyday reasons why employees carry their bags and iPhones to work. *See Frlekin*, 870 F.3d at 873. Finally, no prejudice would result from restating the certified question to cover personal technology.

As this Court recently reconfirmed, the Wage Orders exist “primarily for the benefit of the workers themselves,” and are intended to “accord them a modicum of dignity and self-respect.” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903, 952 (2018). Apple would have the Court disregard the Orders’ “remedial purposes” (*id.* at 953) and strip California workers of the “dignity” of carrying their belongings to work without being confined to their employer’s premises and searched for no pay.

Apple’s arguments should be rejected, and the Ninth Circuit’s question answered “yes.”

II. ARGUMENT

A. Apple’s Procedural Arguments Lack Merit

Attempting to block this Court’s full consideration of the case, Apple makes two procedural arguments, both of which fail.

1. Apple Misunderstands the District Court’s Orders Regarding Class Members With a “Special Need” to Bring Bags to Work

The purported “stipulation” repeatedly mentioned by Apple² is nothing more than the district court’s recognition that some class members may have had a “special need,” rather than an ordinary, everyday need, to bring their bags to work.

In the district court’s words, “[some] employees may need to bring a bag to work” because of “special needs” “they cannot control, such as a need for [1] medication, [2] feminine hygiene products or [3] disability accommodation.” SER 40:23-25; *see* ER 549:3-5, 553:17-21. The court’s concern from such “special needs” employees dated back to its earliest orders and proceedings. *See id.*³

Plaintiffs’ theory of liability, in contrast, has always been that the Wage Orders required Apple to compensate *all* class members for the Check time—not merely those with “special needs.” SER 14:1-27, 35:8-19, 38:9-10; MAR 43:21-47:18; 67:12-70:2. The case does not seek relief for Apple’s failure to make disability accommodations for “special needs” class members and/or for gender discrimination. ER 594-601.

Accordingly, when the district court proposed that the class notice should inform the class that “special needs” would not be litigated, plaintiffs had no objection, because it was irrelevant to Apple’s liability. *See* SER 36:12-13 (“we would be amenable to” the court’s proposal). Apple must compensate *all* employees for all “hours worked,” not just those with “special needs.” MAR 54:9-12, 55:8-19, 56:8-20, 57:13-19, 60:20-61:2. The

² ABM 10, 14-15, 22, 29-32, *passim*.

³ *Accord* Motion to Augment the Record (“MAR”), filed herewith, at 38:17-39:1; 50:10-13, 51:3-4, 52:25-53:2.

court decided that the class notice should also invite class members to intervene if they wished to pursue a “special needs” theory. ER 553:18-28, 557:9-14; SER 38:20-25.

Importantly, plaintiffs did not “stipulate” to this procedure, as Apple claims. ABM 10, 28, 32. Rather, the district court thought of it, then ordered it. *See* ER 552:27 (“the Court raised [this] concern”), 553:18-28, 557:9-14; SER 38:20-25; MAR 59:25-60:16, 62:20-63:7 (“I’m making [the notice procedure] up as I go”).

The district court approved class notice language—unquoted in Apple’s brief—expressly tied to the “special needs” the court had identified:

Plaintiffs will NOT assert that Apple must compensate Apple Employees for Checks when Apple Employees were required to bring bags and/or personal Apple technology *due to any “special needs,” such as the need to carry prescription medication or feminine hygiene products*. The Class will litigate this case EXCLUSIVELY on the theory that Class Members voluntarily chose to bring bags and/or personal Apple technology to work purely *for personal convenience*.

SER 6 (third paragraph under heading 2) (emphasis added).⁴

Consistent with these directives, plaintiffs have not argued that class members were “required” to bring bags or iPhones to work because of a “special need” for medication, disability accommodation, or to carry feminine hygiene products.⁵ But nothing bars this Court from considering people’s ordinary, everyday need to bring their

⁴ The last sentence was included over plaintiffs’ objection. MAR 73:12-74:7.

⁵ Apple’s obligation to pay for all “hours worked” should not depend on whether the employees were women with a “special need” to carry feminine hygiene products. In 1947, when the Orders covered *only* “women and minors” (*see* Order 7R, ¶1 (MJN Ex. 5)), the IWC probably understood that employees covered by the Orders routinely carried purses or bags containing such products. In 1976, when the IWC expanded the Orders to cover men, it retained the broad definition of “hours worked.” Men and women alike should be able to carry bags without adverse, and disparate, pay consequences.

bags and iPhones to work, or the flip side of the “convenience” coin—that leaving these items at home would be extremely inconvenient.

The Ninth Circuit recognized this:

The case ... involves only those employees who voluntarily brought bags to work purely for personal convenience. *It is thus certainly feasible for a person to avoid the search by leaving bags at home. But, as a practical matter, many persons routinely carry bags, purses, and satchels to work, for all sorts of reasons.* Although not ‘required’ in a strict, formal sense, many employees may feel that they have little true choice when it comes to the search policy, especially given that the policy applies day in and day out.

Frlekin, 870 F.3d at 873 (emphasis added).⁶ In other words, bags are brought “voluntarily” precisely *because* people need them, “for all sorts of reasons.” *Id.*

In plaintiffs’ opening brief, one alternative three-page argument rested on the Ninth Circuit’s reasoning just quoted. OBM 40-42. Seizing on this, Apple contends that almost every other argument in plaintiffs’ brief is somehow “precluded.” *E.g.*, ABM 10, 22, 29, 32. In fact, all of plaintiffs’ arguments are consistent with the Ninth Circuit’s understanding of the record. For this Court to consider all of them would neither “broaden” nor “expand” the certified question, as Apple incorrectly claims. ABM 28-32.

2. No Prejudice Would Result From Restating the Certified Question to Cover Personal Technology

In a further attempt to prevent the Court from considering all issues, Apple opposes plaintiffs’ request to restate the certified question to expressly cover personal technology devices. ABM 28-29. Checks were mandatory for employees carrying bags

⁶ See ER 549:5-7 (employees carry “food, clothing, keys” and other everyday belongings in their bags).

and/or Apple-branded devices.⁷ Apple references these devices repeatedly (ABM 13, 29-30, 37, 53), and concedes “the result would be the same” if the question were restated. ABM 29.

The Court may restate the question “[a]t any time.” Cal. Rule of Ct. 8.548(f)(5). The Court’s order accepting the question stated that “the issue is rephrased as follows,” but, perhaps inadvertently, the wording was not rephrased. *Compare* Order dated Sept. 20, 2017 *with Frlekin*, 870 F.3d at 869. To avoid confusion on remand, the Court is respectfully asked to grant the pending request to restate the question.

B. The Check Time is Compensable Under the “Control” Test

1. Apple May Not Retract its Concession That it “Controlled” its Employees During and While Awaiting the Checks

As the Ninth Circuit determined, Apple “concede[d]” that its employees were “clearly” under its “control” “while awaiting, and during, the search.” *Frlekin*, 870 F.3d at 971; *see* ER 8:18-20. Apple tries to backtrack (ABM 42-43), but the record is clear:

THE COURT: So what I think you're saying is: Okay, *we concede control*. Once you’re standing in the line waiting to go home ... because they don’t have enough people there to get you through the line in a hurry—I know you say that never happens, but probably it does happen every now and then. So when you’re waiting for your turn in a long line on a cold winter day trying to get home, all of those factors are true. *You are under of the control of Apple. Right?*

But you’re [sic] point is: Well, you didn’t have to be in that line to begin with. It wasn’t a requirement that you get in the line. ... [I]t was only a requirement that you stand in line if you elected to bring any of those things for your personal convenience. *So, therefore, you say the requirement part is not met. That’s your argument.*

⁷ Letters filed Sept. 1, 2017 (at 9-10) and Sept. 29, 2017; OBM 41 & n.51 (citing record).

[APPLE’S COUNSEL]: *That is correct, your Honor, as to the control theory.*

ER 47:20-48:13 (emphasis added).

2. Apple’s Position that “Control” is Not Enough to Meet the “Control” Test Conflicts With the Wage Orders’ Plain Text and Adoption History

Apple’s concession is consistent with the plain-language definition of the word “control”—a definition Apple does not contest. During the Checks, Apple “controlled” its employees by “exercis[ing] restraint or direction” upon their “free action,” by “regulat[ing]” their conduct, and by “hold[ing]” them “in restraint.” ABM 23 (citing four dictionaries plus *Bono*, 32 Cal.App.4th at 975).

Apple’s “controls” were threefold. First, Apple imposed the Check procedure under “threat of sanctions and loss of employment”—the *discipline* Apple’s brief ignores. *Frlekin*, 870 F.3d at 871. Second, the employees “may not leave the premises” until the on-site Checks are conducted. *Id.* Third, during the Checks, employees are “compelled” to perform employer-directed “actions and movements.” *Id.* at 873. Whether “a few seconds” (ABM 13) or up to 45 minutes (OBM 11), the time is “controlled.”

Given the high degree of “control” Apple imposed during the Check process, Apple’s only hope is to argue that “control” is not enough to meet the “control” test. ABM 43. This argument, however, ignores the Wage Orders’ text, which is the first source of meaning and the “best indicator” of the IWC’s intent.⁸

⁸ *Augustus v. ABM Security Servs., Inc.*, 2 Cal.5th 257, 264 (2017); see *Martinez v. Combs*, 49 Cal.4th 35, 63 (2010).

a. Apple’s Text-Based Arguments Assume that the IWC Adopted a Meaningless Amendment in 1947

As a preliminary matter, Apple does not—because it cannot—dispute that the Wage Order’s “control” test does not use the word “required” (let alone “unavoidably required”). Nor can Apple dispute that in 1947, the IWC amended the definition of “hours worked” to remove the word “required” and substitute the word “control.” Apple does not disagree that “require” and “control” have different plain-language meanings, and that the latter word is broader—in fact, broad enough to encompass both “required” and non-“required” tasks. *See generally* ABM 44-50.

Instead, Apple makes two text-based arguments, both of which boil down to the assertion that the IWC’s amendment from “required” to “control” was meaningless.

First, Apple cites the phrase “whether or not required to do so” from the “suffered or permitted to work” test; points out its *absence* from the “control” test; and argues that the *absent* phrase “suggests” the “control” test covers *only* “required” conduct. ABM 44-45. Second, Apple claims that by deleting from the “control” test both the word “require” and the list of “things an employee is ‘required’ to do,” the IWC intended to “*simplify* the Wage Order’s language,” with no attendant change in meaning. *Id.* 45-46.

These arguments cannot be squared with the Wage Order’s text. Simply put, the IWC kept the word “require” in the “suffered or permitted to work” test, and removed it from the “control” test. When “different word[s]” are used in the same regulation, “it must be presumed” that a “different meaning” was “intended.” *Rashidi v. Moser*,

60 Cal.4th 718, 725 (2014); *see Briggs v. Eden Council for Hope & Opportunity*, 19 Cal.4th 1106, 1117 (1999).

The final phrase of the “suffered or permitted to work” test dates back to 1943. OBM 19-20. When the IWC amended the definition in 1947, it chose to leave the wording of the second test untouched—except to omit a sentence with illustrative examples. *Compare* Wage Order 7NS, ¶2(f) *with* Order 7 R, ¶2(h).

But the IWC materially *changed* the wording of the first test.

Instead of either retaining the word “require” or appending “whether or not required” to the first test—both of which would have been easy edits—the IWC chose a substantive change. It modified the *operative word* of the first test, changing it to “control,” while at the same time deleting the prior list of specified compensable activities entirely. Together, these changes show that the IWC intended that more time would become compensable under the new test than the prior test would have captured.

“Control” and “require” are not synonyms. If the IWC meant “require,” it easily could have kept the word “require,” which was already in the 1943 language. Notably, it did not. If the IWC had intended to capture only a broader range of “required” activities, as Apple claims, the fix would have been easy: “subject to a *requirement* of an employer.” Instead, the IWC chose a materially different fix: “subject to the *control* of an employer.”

Under well-established rules of statutory interpretation, when the words of a statute are changed, a change in meaning is presumed.⁹ Moreover, Courts do not presume that regulatory bodies like the IWC enact purposeless amendments.¹⁰

In arguing that the wording change means nothing and should be ignored, Apple cites three inapposite cases. ABM 47. Apple’s quoted language from *Perine* was not a court holding; it was a statement by the author of an amendment to a federal statute regarding “its purpose.”¹¹ From *Flesher*, Apple quotes the special rules, inapplicable here, governing “general revision or codification” of an entire act.¹²

Culbertson held, unremarkably, that because the Legislature had *retained* a criminal statute’s core language signifying two individuals, the amendment “simplifie[d] and clarifie[d]” the statute, which continued to require, for purposes of a sentencing enhancement, evidence of the two *participants*’ ages, not the aider and abettor’s age.¹³

In contrast to *Culbertson*, the core language here was *altered*, not retained—“require” was changed to a materially different word, “control.” No such amendment was considered in *Culbertson*, and nothing indicates that the IWC intended merely to

⁹ *People v. Mendoza*, 23 Cal.4th 896, 916 (2000); *Estate of Simpson*, 43 Cal.2d 594, 600 (1954).

¹⁰ *Viking Pools, Inc. v. Maloney*, 48 Cal.3d 602, 609 (1989) (“We cannot presume [the amendment] was a meaningless and idle gesture.”); *Stafford v. Realty Bond Service Corp.*, 39 Cal.2d 797, 805 (1952) (amendments are not construed as “idle acts”).

¹¹ *Perine v. William Norton & Co.*, 509 F.2d 114, 120 (2d Cir. 1974).

¹² *Ex parte Flesher*, 81 Cal.App. 128, 136-37 (1927).

¹³ *People v. Culbertson*, 171 Cal.App.3d 508, 515 (1985). Also, there was no wording change “from ‘coparticipant’ to ‘participant,’” as Apple claims. ABM 47. The change was from “Any person participating” to “Any person who participates” 171 Cal.App.4th at 511, 515 n.4.

“simplify and clarify” the definition of “hours worked.” Apple’s construction, which would strip the amendment of any meaning, should be rejected.

b. Apple’s Text-Based Arguments Assume That the IWC Narrowed the Test for Compensable Time in 1947, Instead of Broadening It

As the DLSE explained in a formal brief filed with the Office of Administrative Law, “[t]he IWC’s 1947 change in the language of the Orders which defined ‘hours worked’ clearly indicated that the Commission intended to *broaden* the definition.” MJN Ex. 12 at 22-23 (emphasis added).

To accomplish this, the IWC “replaced” the disjunctive list of specified compensable activities from the 1942 Orders, and “simply provided that the employer must pay for all hours the employee is ‘*subject to the control*’ of the employer,” a definition “unknown in federal law.” *Id.* at 23-24 (emphasis in original). These changes “clearly indicate” that the “disjunctive language contained in the 1942 Orders was not as restrictive as the Commission felt necessary.” *Id.* at 24.¹⁴

The new definition, still in the Orders today, “is broad in and of itself,” and “there is little doubt” that it was “designed to encompass *much more* than ‘all the time during which an employee is necessarily *required* to be on the employer’s premises, on duty or at a prescribed work place.’” *Id.* at 27 (citation omitted) (emphasis added). While “control” certainly “*may* encompass activities described by the eliminated language,”¹⁵ the IWC’s “broadened” definition also covers “much more.” *Id.*

¹⁴ *Accord* MJN Ex. 7 at 4 (quoting same language).

¹⁵ *Morillion*, 22 Cal.4th at 592 (emphasis added).

Under the “broadened” definition, any time “the employee is not allowed to leave the premises” is compensable time. *Id.* at 18. That includes “during the meal period, before the shift begins *or after the shift ends.*” *Id.* at 24 (emphasis added). “So long as the employer controls the activities of the employee,” the time is compensable. *Id.*

Like the DLSE, this Court has repeatedly recognized that the 1947 amendments were adopted “in response” to the federal Portal-to-Portal Act, and that the IWC intended to make California law more protective than federal law. *Mendiola*, 60 Cal.4th at 843; *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 592. Given that the pre-1947 language mirrored that of the 1939 federal Interpretive Bulletin, the changes must be construed to make *more* time compensable than before, not *less* and not the *same*.

Apple has almost nothing to say about this adoption history, except to claim that the DLSE supposedly “did not discuss” exactly what the DLSE did discuss, namely, that the IWC intended to “broaden” the definition of “hours worked.” ABM 47-49.¹⁶ Apple identifies nothing from the regulatory history in support of any other view.

Apple claims the issue is whether the employees were “required” “to bring bags to work.” ABM 32. That is a red herring. Under any plain-language definition, the Checks themselves were “required,” or the employees would not have participated in them. Indeed, Apple enforced the Check policy through threatened—and actual—

¹⁶ Apple confusingly refers to the DLSE’s brief as a “letter” (ABM 47-49), when it was actually a formal brief filed with the OAL in a contested matter challenging the DLSE’s authority to issue opinion letters. MJN Ex. 12. Nor are there both a “letter” and “another related opinion,” as Apple misleadingly claims. ABM 49. There is a single DLSE brief, quoted in a letter and opinion of the OAL, in which the OAL adopted the DLSE’s arguments. *See* MJN Exs. 7, 8, 12.

discipline. OBM 8 (citing record). Moreover, the policy “compelled” the employees to perform employer-directed tasks (870 F.3d at 873) and “required” them to “remain on the premises” until the tasks were completed. MJN Ex. 12 at 24.

These “controls” are more than sufficient to meet the “control” test. Apple cannot deny that the Wage Order makes compensable all time “*during which*” employees are “controlled.” This language focuses the compensability analysis on the controlled activity, not what occurred before it.

Apple responds to this plain text by citing decisional law (ABM 50-51), but as discussed below, the decisions do not help Apple. The Wage Orders’ plain text does, in fact, mean that employees “must be compensated ‘*during*’ any time [they are] subject to any kind of restraint by the employer.” ABM 50 (emphasis added). To construe the test as Apple urges—to disregard what happened “during” the “controlled” time, and consider only “*unavoidably required*” tasks—would *narrow* the pre-1947 test, not “broaden” it.

3. Apple’s Reliance on Decisional Law, Including *Morillion*, is Misplaced

To engraft an unstated element onto the Wage Orders, Apple relies heavily on *Morillion* and a series of other commute-time cases. ABM 21-28, 33-42. However, Apple’s discussion of *Morillion* elides the facts, which show that Apple exerted a higher level of control than the employer in *Morillion*. Moreover, *Morillion* did not hold, as a matter of law, that no activity can ever be considered “controlled” unless the activity is “unavoidably required.” *Morillion* simply did not present those facts, and such a holding would have been contrary to the Wage Orders’ plain text.

As the Ninth Circuit recognized, there are material differences between Apple's Checks and the travel time considered in *Morillion* and other commuting cases. One of the most material is that, unlike most ordinary commuting time, the Checks took place on Apple's store premises during the regular work day. Principles drawn from commuting cases should not apply mechanically to onsite security searches like Apple's Checks.

a. Apple Exerted "Control" in Three Ways That Make the Check Time Compensable Under *Morillion*

Contrary to Apple's position, the Check time is compensable under the standard stated in *Morillion*. OBM 30-32. Although Apple exerted "control" differently than the *Morillion* employer, the time in question was nevertheless "controlled" and compensable in both cases. Indeed, Apple exercised a *greater* level of "control" during the Checks than the *Morillion* employer did during the bus rides.

Apple exerted "control" in three ways: (1) adopting a written policy enforced through threat of discipline; (2) confining employees to store premises, which prevents them from leaving for the day and going home; and (3) requiring employees to engage in employer-directed, "compelled" tasks. OBM 24-25.

Apple ignores the first "control" completely, then claims that the other two "controls" are "irrelevant." Apple is wrong.

(1) "Control" Through Threat of Discipline

Here, as in *Morillion*, the employer adopted a mandatory written policy that it enforced through threat of discipline. 22 Cal.4th at 586-87; 870 F.3d at 870-71. The

Morillion employer threatened “verbal warnings and lost wages,” while Apple threatened the greater penalty of “termination.” *See id.*

Here, as in *Morillion*, the written policy plus discipline was not the *only* “control” the employer exerted. In *Morillion*, the Court variously described the bus rides as “compulsory,” “requir[ed],” and “compel[led]” by the employer. *Id.* at 587-89 & n.5. That “control” was dispositive in *Morillion* because the employer exerted no other “control” during the rides. *See id.* at 586 (employees free to read or sleep).

Apple, in contrast, exerted two other “controls” not present in *Morillion*: the employees were **(a)** confined to store premises and **(b)** had to line up and perform employer-directed tasks. Those “controls” had the same effect as the “controls” considered in *Morillion*. They prevented employees from using the time “effectively for [their] own purposes,” and “foreclosed” “numerous activities in which they might otherwise [have] engage[d].” 22 Cal.4th at 586. Together with the threat of discipline, which Apple ignores, these “controls” are dispositive.

(2) “Control” Through Confining Employees On Site

Apple “controlled” its employees by confining them to store premises during the “on-site” Check time. 870 F.3d at 872. Apple calls this “irrelevant” (ABM 35), but under this Court’s precedents, it is highly relevant. As stated in *Morillion*, “[w]hen an employer directs, commands or restrains an employee *from leaving the work place* ..., that employee remains subject to the employer’s *control*.” *Morillion*, 22 Cal.4th at 583 (quoting *Bono*, 32 Cal.App.4th at 975) (emphasis added). In *Mendiola*, the Court quoted

that very language in holding that the “level of the employer’s control over its employees ... is determinative.” 60 Cal.4th at 840.

Apple claims that to consider all the controls Apple exercised *during* the Checks is to “look[] at the incorrect point in the process.” ABM 25. According to Apple, the focus should be on events occurring hours *before* the Checks—namely, the employees’ pre-activity “decision” not to leave all their personal belongings at home. *Id.*

But this argument contradicts the Wage Orders’ text. All time “*during which*” the employees were subject to employer control is compensable.

Nor does the case law aid Apple’s argument. In *Morillion*, the employees had no relevant pre-activity decision to make. However, in *Bono*—which *Morillion* favorably cited—the employees were not allowed to leave the plant during lunch “*unless* they ma[d]e prior arrangements to reenter.” 32 Cal.App.4th at 972 (emphasis added). Their on-site lunch time was “controlled,” and thus compensable, because they were “restrain[ed]” from “leaving the workplace”—even though they could have “chosen” to “avoid” the “restraint.” *Id.* at 974-75, *cited in Morillion*, 22 Cal.4th at 582-83.

Similarly, in *Cervantez*, the employees were “controlled” during pre-shift time inside the employer’s facility—even though they were not required to “arrive early” and could have avoided the “controlled” pre-shift time. *Cervantez v. Celestica Corp.*, 618 F.Supp.2d 1208, 1222 (C.D. Cal. 2009).

Recently, in *Sali*, the Ninth Circuit easily perceived that under *Morillion*, employees can be “restricted ... in a manner that amount[s] to employer control” in many ways, including “being required to remain on the employer’s premises *or* being restricted

from engaging in certain personal activities.” *Sali v. Corona Reg. Med. Ctr.*, 889 F.3d 623, 637 (9th Cir. 2018) (emphasis added) (citing *Morillion*, 22 Cal.4th at 584-87). Here, Apple’s Check policy imposes both of those restraints.

In short, the compensability analysis focuses on the “controls” the employer exercised “*during*” the time in question. Apple’s policy, which confined employees to store premises *during* the Checks, meets the “control” test.

(3) “Control” Through Employer-Directed Tasks

Apple’s third “control” was requiring its employees to perform employer-directed tasks during the Checks. *Frlekin*, 870 F.3d at 872-73; OBM at 8-10, 24-25 (citing record). In the Ninth Circuit’s words, the employees had to line up and perform “actions and movements” “compelled” by a manager. 870 F.3d at 873.

Apple claims that employer-directed tasks are “irrelevant” to the “control” test, citing *Morillion*’s “*Vega* footnote.” ABM 33-34. Apple is wrong. Nothing in the footnote holds that employer-directed tasks can *never* be considered in assessing whether time is compensable under the “control” test. *See* 22 Cal.4th at 589 n.5 (citing *Vega v. Gasper*, 36 F.3d 417 (5th Cir. 1994)¹⁷). To the contrary, the footnote suggests that if the employees *had been* “free to choose” not to ride the bus—that is, if the “dispositive” fact in *Morillion* had been absent—then other facts, including employer-directed tasks, would have been relevant and dispositive, as they are here. *See id.*¹⁸

¹⁷ *Abrogated on other grounds as stated in Bridges v. Empire Scaffold, L.L.C.*, 875 F.3d 222, 227-28 (5th Cir. 2017).

¹⁸ *See also Griffin v. S&B Engineers & Contractors, Inc.*, 507 Fed.Appx. 377, 382-83 (5th Cir. 2013) (“[t]he voluntary use of transportation” was “not dispositive” in *Vega*).

Apple also claims that employer-directed tasks should be irrelevant to the “control” test because, according to Apple, such tasks would fall within the “suffered or permitted to work” test instead. ABM 40-41. Apple takes issue with one of plaintiffs’ hypotheticals, claiming that if the *Morillion* employees had to clean farm implements during optional bus rides, the time would meet the latter test. *Id.*

That is certainly true, but it does not mean the time is not *also* “controlled.” The two tests are “independent,” not mutually exclusive. 22 Cal.4th at 582; Part II.C.3, *infra*. Employer-directed tasks are highly relevant to compensability under *both* tests. If they were irrelevant to the “control” test, as Apple claims, then *Morillion*’s “Vega footnote” would not have mentioned them. Here, they are dispositive of “control.”

b. Apple Misreads *Morillion* and its Progeny

(i)

Apple contends that the only fact from which “control” can ever be found—as a matter of law—is an employer-imposed “require[ment]” that the employees cannot “choose” to “avoid.” ABM 21-28. Apple calls this a “well-settled” “rule” (ABM 26-27), but *Morillion* did not hold this.

As discussed above, that the bus rides were “required” was “dispositive” in *Morillion* only because the employer exercised no other “control” during the rides, such as employer-directed tasks. *See* 22 Cal.4th at 579, 582, 586, 589 & n.5. By favorably citing *Bono*, *Morillion* recognized that time can be “controlled” in other ways, and that pre-activity “choices” do not eviscerate those “controls.” *Id.* at 582-83.

Apple's other cited cases provide no better support. In *Overton*, the employees were not "required" to drive to work or park in the distant lot, and if they chose to, they were not "required," on threat of discipline, to ride the employer's shuttle. *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263, 266-68 & n.6, 271-73 (2006). Hence, the shuttle-ride time was not compensable. *See id.* Had the employer "required" any of those things, that would have been a "key factor" in finding "control"—but the employer did not. *Id.* at 271; *see* OBM 35-36 (discussing *Overton*).

In *Rutti*, the employer not only "required" the employees to drive the company's vehicle, but *also* exercised "control" during the commute by "forbidding" employees from "attending to any personal business along the way." *Rutti v. Lojack Corp.*, 596 F.3d 1046, 1061-62 (9th Cir. 2010). Apple did not mention those facts from *Rutti*. If "required" were dispositive under *Morillion*, as Apple claims, then *Rutti* would have had no occasion to consider the level of "control" the employer exercised *during* the drives.

Finally, in *Alcantar*, the plaintiff did not challenge the district court's ruling that his commute time was non-compensable unless he was "required" to use the company vehicle. *Alcantar v. Hobart Service*, 800 F.3d 1047, 1050, 1055 (9th Cir. 2015). Instead, he argued that his purported "choice" not to was "illusory." *Id.* at 1050.¹⁹ The Ninth Circuit found triable issues on that point, and reversed—without considering whether the controls imposed *during* the commute were already sufficient to make the time compensable. *See id.* at 1050, 1055-56.

¹⁹ *See* MJN Exs. 9, 10 (*Alcantar* appellate briefs).

In sum, none of these cases contains the “rule” Apple claims, and none holds that an employer’s “controls” exercised *during* the activity in question must be ignored.

(ii)

Apple’s reading of *Morillion* is wrong because it rests on a false premise.

According to Apple, employees are always, by definition, “controlled” from the moment they set foot on a company bus—even if the bus ride is optional—because the simple act of being on a bus “foreclose[s]” other activities. ABM 24-25, 38-39, 42. Apple claims that *Morillion* “made clear that the bus rides *themselves* resulted in significant employer control,” and “acknowledged” that “*any* time spent on an employer’s bus” is “controlled” time. ABM 24, 38 (emphasis added).

Morillion did not say any of this.

The *Morillion* employees were “controlled”—*not* because they set foot on a company bus, but because the “when, where and how” of their commute was “determin[ed]” by their employer. 22 Cal.4th at 586. They could not “decide when to leave, which route to take to work, and which mode of transportation to use.” *Id.* at 586-87. They could not “choose ... to run errands before work [or] to leave from work early for personal appointments.” *Id.* at 587. In contrast, truly “optional” bus rides, which impose none of these restraints, are *not* deemed “controlled.” *Id.* at 594.

If, as Apple claims, optional company bus rides are always, by definition, employer-“controlled,” then the time would have been compensable in *Overton*.

The flaws in Apple’s reasoning are evident from Apple’s inability to articulate the argument without inventing a new and non-existent test for it—the so-called “restrictive

and required” test. ABM 23; *id.* at 24-25, 38-39. However, *Morillion* sternly warned against “redefining ‘hours worked’” by “substitut[ing] other words” for the Wage Orders’ “express language,” which is what Apple’s invented test does. 22 Cal.4th at 585.

c. Principles Drawn From Commuting Cases Should Not Dictate the Outcome of On-Site Security Search Cases

As the Ninth Circuit recognized, principles derived from commuting cases—including Apple’s cited decisions—should not be mechanically extended to on-site security search cases. *Frlekin*, 870 F.3d at 873. In such cases, “both the level of control and the employer’s business interest are greater” than in commuting cases. *Id.* at 872-73. This case is a prime example. To protect its “valuable goods,” Apple confined its employees on-site and “compelled” their “actions and movements.” *Id.* at 973.

Apple misunderstands the Ninth Circuit’s discussion of this point. ABM 35-36. The Ninth Circuit was not talking about just *any* “interest” or “benefit” to the employer, as Apple claims, but the *specific* “interest in preventing theft.” 870 F.3d at 873. Because of the employer’s “greater” interest in theft prevention, the employer typically exercises a greater “level of control” *during* the searches (*id.*)—which is, after all, the “determinative” factor. *Mendiola*, 60 Cal.4th at 840.

In security search cases, an employee’s “antecedent choice” should not “obviate[] the compensation requirement.” *Frlekin*, 870 F.3d at 873. The compensability analysis should recognize that people “routinely carry bags, purses and satchels to work, for all sorts of reasons,” which means employees have “little true choice” to “avoid” being searched. *Id.*; *see* ER 549:5-7. While Apple vigorously asserts that this point is

procedurally barred, Apple does not dispute the truth of the Ninth Circuit’s observations, or that employees have an ordinary, everyday need to carry their bags—and especially their iPhones, which are essential communication devices—to work. *See* OBM 41-42.

Instead of requiring Checks, Apple claims it could prohibit employees from bringing bags and iPhones “into the store altogether.” ABM 36-37. But there is no *evidence* that Apple has ever considered taking that conceded “draconian” step. *Id.* Such a step would interfere with Apple’s ability to hire and retain qualified staff.

Apple’s unpaid Checks already engender significant employee dissatisfaction,²⁰ and a draconian rule prohibiting bags and iPhones would strip Apple’s sales staff of their “dignity.” *Dynamex*, 4 Cal.5th at 952. Far from “penaliz[ing] Apple” (ABM 37), the Check policy allows Apple to have the type of workforce it wants for its stores. It allows Apple to run a profitable business selling small, valuable devices. And it allows Apple to avoid the expense of other, potentially costlier ways of securing its merchandise.

“Controlled” security search time, conducted on the employer’s premises and enforced through threat of discipline, should be compensable. Any other rule would lead to the very “type of ‘race to the bottom’” deprecated in *Dynamex*. 4 Cal.5th at 960. If employers can impose mandatory, onsite security searches without payroll impact, more and more California employees will be subjected to them, for no additional pay.

²⁰ ER 215 (employee “deemed it insulting” to be Checked); 220 (Check policy is “not an easy pill for our team to swallow”); 225 (tech Checks are “a huge shock to the person”); 239 (employee believed the Checks “violated her rights as an employee and a person since she was off the clock”); 314 (Checks are “both insulting and demeaning to Apple employees” and treat employees “as criminals”); 319 (“Why [do] we have to be treated as a thief?”).

C. The Check Time Satisfies the “Suffered or Permitted to Work” Test

The Check time not only meets the “control” test, but also satisfies the “suffered or permitted to work” test, and is compensable for that alternative reason.

1. The Checks Involve Exertion to Achieve an End

As plaintiffs’ opening brief explained, “work” means physical or mental exertion to accomplish an end, especially “for the benefit of an employer.” OBM 44-45 (citing *Black’s Law Dictionary* (10th ed. 2014); *American Heritage Dictionary* (4th ed. 2000); *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003)). This definition is the “common” and “ordinary” meaning of the word “work.” *See Augustus*, 2 Cal.5th at 265. Apple does not contest the definition, and offers no other.

The Checks plainly meet this definition. They involve the effort and exertion of “compelled” “actions and movements” needed to “follow [Apple’s] search procedures.” *Frlekin*, 870 F.3d at 871, 873. They accomplish Apple’ stated goal of deterring theft of “valuable goods,” which benefits Apple. *Id.*; *see* OBM 8-10, 45 (citing record).

Apple’s only response is to pretend there is “no dispute” that the Checks were “passively awaited.” ABM 54. In fact, the Ninth Circuit described the Checks otherwise.

2. “Work,” to be Compensable Under California Law, Need Not Relate to an Employee’s Regular Job Duties

Instead of offering a supported definition of “work,” Apple claims that an unstated element should be added to the test. According to Apple, an activity cannot be “work” unless the activity relates to “to the job the employees were hired to perform.” ABM 53-55. This argument ignores the Wage Order’s text, which includes no such qualification.

The IWC did not say “suffered or permitted to engage in job duties the employee was hired to perform.” Instead, it used the plain-language word “work.”

Inferring such a qualification would make California law no more protective than the federal Portal-to-Portal Act, under which an activity is not compensable unless it relates to an employee’s “principal” job duties. *See, e.g., Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014); *Alvarez v. IBP, Inc.*, 339 F.3d 894, 902 (9th Cir. 2003); *Young v. Beard*, 2015 WL 1021278, *9-*10 (E.D. Cal. Mar. 9, 2015).

This, in turn, would contravene the intent of the IWC, which purposely expanded the definition of “hours worked” in 1947 to ensure that California law is *not* coextensive with federal law. *Mendiola*, 60 Cal.4th 843; *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 592.²¹

What is more, Wage Orders 4 and 5, unlike Order 7, expressly state that “hours worked” is to be “interpreted in accordance with” federal law. 8 Cal. Code Regs. §11040, ¶2(K), 11050, ¶2(K). And, for certain employees covered by Order 5, “work” is limited to “time spent carrying out assigned duties.” *Id.* §11050, ¶2(H). These express qualifications would be meaningless if Order 7 were read to already include them.

Instead of addressing these points, Apple cites several unpublished rulings (ABM 54-55), but none helps Apple. *Young* construed federal law, not California law.²² *Saini*

²¹ *Accord Armenta v. Osmose, Inc.*, 135 Cal.App.4th 314, 317, 324 (2005) (“nonproductive time” is compensable “hours worked” under California law, which “protect[s] ... California employees to a greater extent than federally”).

²² *Young*, 2015 WL 1021278 at *7-*10.

considered a different question, namely, whether the defendant “employed” the plaintiff within the meaning of “employ,” not the meaning of “hours worked.”²³

Betancourt endorsed *Black’s* definition of “work,” and found the task compensable under that definition because it “benefited” the employer.²⁴ While *Betancourt* also held, unremarkably, that “a task [one’s] employer required” as “part of his responsibilities as an ... employee” was compensable “work,” *Betancourt* did not hold that the latter was an essential element of the definition.²⁵ Finally, *Watterson* is inapposite because the plaintiff “admitted” that the tasks in question “were not work.”²⁶

In short, Apple cites no authority supporting its proposed qualification of the plain-language term “work.” The qualification would contravene both the Wage Orders’ plain text and the IWC’s intention in adopting that text.

3. The Two Tests for “Hours Worked” are Complementary, Not Mutually Exclusive, As Apple Claims

Apple claims that the plain-language definition of “work” would render the “control” test “superfluous” because any activity meeting the “control” test “would surely also constitute work.” ABM 56. This is incorrect. In *Morillion*, the bus rides to the fields met the “control” test, even though the rides were not “work.” 22 Cal.4th at 580,

²³ *Saini v. Motion Recruitment Partners, LLC*, 2017 WL 1536276, *7 (C.D. Cal. Mar. 6, 2017) (citing *Martinez*, 49 Cal.4th at 67-68, which involved the same issue).

²⁴ *Betancourt v. Advantage Human Resourcing, Inc.*, 2014 WL 4365074, *6 (N.D. Cal. Sept. 3, 2014).

²⁵ *Id.* at *7.

²⁶ *Watterson v. Garfield Beach CVS, LLC*, 694 Fed.Appx. 596, 957 (9th Cir. 2017).

582. Similarly, in *Bono*, the employees were “controlled” during their lunch hour, although they performed no “work” during that time. 32 Cal.App.4th at 972.

Apple’s related argument—that the plain-language definition of “work” would “conflate” the two tests—fails for similar reasons. ABM 56. As held in *Morillion*, the two tests may “be independently satisfied,” which means that a “controlled” activity is compensable regardless of whether it *also* constitutes “work.” 22 Cal.4th at 584-85. Similarly, “work” “suffered or permitted” by an employer is compensable even if not *also* “controlled.” *Id.*

But *Morillion* did not hold that the converse is true, or that the two tests “cover[] distinct *behavior*,” as Apple claims. ABM 56; *see also* ABM 40-41.

Under Apple’s incorrect reading, an activity could meet *either* the “control” test, *or* the “suffered or permitted to work” test, but not both. According to Apple, behavior establishing that one test is satisfied would be “irrelevant”—even inadmissible—to prove that the other test is also met. *See id.* Nothing in the Wage Orders’ text suggests that this is how the tests function, and Apple’s own cited case recognizes they do not. *Betancourt*, 2014 WL 4365074 at *6-*7 (holding that the same activity met both tests).

4. The “Suffered or Permitted” Test is Qualified, Not “Overbroad” as Apple Asserts

Apple contends that the plain-language definition of “work” is overbroad, and if not qualified, “virtually anything an employee does” would be compensable. ABM 55. Apple also claims that if “benefit” to the employer is considered, then myriad activities

“an employee might do before arriving at work in the morning,” such as “getting dressed,” “eating healthy” or “exercising,” would be compensable “work.” ABM 57.

These arguments overlook the fact that the test is already qualified. “Work,” to be compensable, must *also* be “suffered or permitted” by an employer, which means the employer knew, or reasonably should have known, the “work” was occurring. *Morillion*, 22 Cal.4th at 584-85. That element “encompasses a meaning distinct from merely working.” *Id.* at 584. The off-site, pre-workday activities Apple identifies would not meet the “suffered or permitted” element of the test.

Here, Apple certainly knew the Checks were occurring, because they took place in Apple’s stores pursuant to company policy. Whatever else “suffered or permitted to work” may embrace, it certainly covers an activity like the Checks, which occur on-site, during the ordinary workday; are enforced by threat of discipline; are concededly “controlled”; and also *benefit* the employer by preventing and deterring theft.

Apple claims that under *Martinez*, the benefit to Apple cannot be considered in deciding whether the Checks constitute “work.” ABM 56-57. But Apple misconstrues *Martinez*, just as the district court did. *Martinez* considered whether a downstream produce buyer was the plaintiffs’ “employer,” which turned on the definition of the term “employ,” not the separate definition of “hours worked.” 49 Cal.4th at 69-70. In *that* context, to establish an employment relationship, “benefit” was neither “a necessary nor a sufficient condition.” *Id.*; see *Dynamex*, 4 Cal.5th at 939 (discussing this part of *Martinez*). In *this* case, by contrast, no one disputes that Apple is the “employer.”

Martinez did not hold that “benefit” is irrelevant to determining whether an activity performed at the conceded employer’s express behest constitutes “work.” Here, the Checks plainly benefited Apple, or Apple would have not have bothered to impose them, have managers spend time on them, or discipline employees for not doing them. *See Frlekin*, 870 F.3d at 873; ABM 36 (conceding that the Checks “promote[d] [Apple’s] interest in loss prevention”). Benefit to the employer is a relevant, but not an essential, part of the definition of compensable “work.”

Apple claims that the plain-language definition of “work” would embrace “walking from [the] parking lot to the office” or “rummaging [for] a security badge” on the way in. AMB 55. Not so. California law is already clear that routine commute time is generally not compensable (*Morillion*, 22 Cal.4th at 587; *Alcantar*, 800 F.3d at 1054), and this is not a commute case. Holding that discipline-enforced, on-site security Checks are compensable “work” would not alter the general commuting rule.

5. The Checks *Do* Relate to the Employees’ Regular Job Duties

In addition to failing legally, Apple’s position also fails factually. The Checks do, in fact, relate to the job duties of Apple’s retail sales employees, as the Ninth Circuit easily perceived. *Frlekin*, 870 F.3d at 873. If the Checks were unrelated to the employees’ jobs, then Apple would have no power to require the employees to participate in them, and no authority to discipline anyone who refused.

Apple’s own documents show that all employees bear “responsibility” for “internal theft.” ER 200-01, 206; OBM 12 (citing record). Apple’s “Loss Prevention” policy states: “Each and every employee is responsible for controlling loss in his/her

store,” both “external theft [and] internal theft.” MAR 14. “Loss prevention is a team effort to protect the company’s products, assets, and brand.” MAR 30.²⁷

Apple claims that the Checks prevent only *the Checked employee* from stealing (ABM 53-54), but in fact, the Checks “are key components to the impression of [merchandise] control in the store.” ER 212. Without “an impression of control,” “we are setting up our team to believe that something [stolen] will not be missed.” ER 228. The Checks “act as a deterrent” of theft, “like having a speed[] limit is a deterrent for speeding.” ER 363:11-14. In other words, the Checks communicate to *the workforce*—not just the Checked employee—that attempts to steal will be discovered.

Apple sought judicial notice of a declaration claiming its employees are not hired “for the purpose of submitting to bag or technology checks.” ABM 53 (citing Apple’s MJN Ex. A ¶4). But the declaration, even if considered for its truth,²⁸ would not prove the Checks lack a “*relationship* to plaintiffs’ job responsibilities.” Apple’s own documents, including several this declarant authenticated, state otherwise. MAR 14-22, 24-35; ER 200-01.

It is a road too far for Apple to contend that the Checks bear “no relationship” to “what the employees were hired by Apple to do.” ABM 53, 57. In *Moore v. Ulta Salon, Cosmetics & Fragrance, Inc.*, 311 F.R.D. 590 (C.D. Cal. 2015), the court had no difficulty concluding that similar security searches could be compensable “work” under

²⁷ *Accord* MAR 22 (“Shrinkage,” including “internal theft,” “is a controllable expense for which every employee must accept responsibility.”); ER 200-01 (same).

²⁸ *People v. Woodell*, 17 Cal. 4th 448, 455 (1998) (judicial notice extends only to fact that affidavit was filed, not truth of statements in it).

the “suffered or permitted to work” test. *Id.* at 613-14. Here, that Apple requires the Checks, on threat of *discipline*, further shows they are compensable “work.”

For all of these reasons, and for the more fundamental reason that the Wage Orders do not state that “work” must relate to the employees’ regular job duties, the Checks easily meet the “suffer or permitted to work” test.

D. Apple’s Retroactivity Argument Would Strip California Employees of the Wage Orders’ 71-Year-Old Protections

Apple contends that if the Court finds the Checks compensable “hours worked,” that holding should apply prospectively only, because it would upset “settled” law. ABM 59-61. This argument, however, assumes *Morillion* held something it did not.

The “general rule that judicial decisions are given retroactive effect” “is basic in our legal tradition.” *Newman v. Emerson Radio Corp.*, 48 Cal.3d 973, 978 (1989). When, as here, an opinion “undertakes to vindicate the original meaning of an enactment, putting into effect the policy intended from its inception, retroactive application is essential to accomplish that aim.” *Woosley v. California*, 3 Cal.4th 758, 794 (1992). In *Mendiola*, this Court rejected an employer’s similar argument concerning the Court’s interpretation of longstanding Wage Orders. 60 Cal.4th at 848 & n.18.

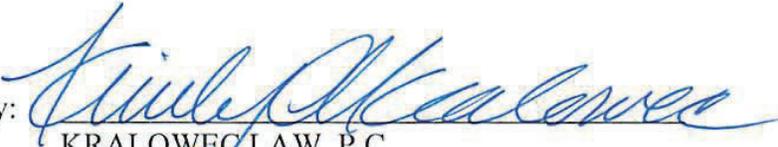
Here, no “compelling and unusual circumstances” justify “departure from the general rule” of retroactive application. *Newman*, 48 Cal.3d at 983. Apple’s employees should not be deprived of the possibility of a remedy under a remedial Wage Order amended 71 years ago for no other reason than their protection.

III. CONCLUSION

For the reasons discussed above and in appellants' opening brief, the answer to the certified question is "yes."

Dated: June 8, 2018

Respectfully submitted,

By: 
KRALOWEC LAW, P.C.
Kimberly A. Kralowec

McLAUGHLIN & STERN
Lee S. Shalov

Attorneys for Plaintiffs, Appellants and Petitioners

**CERTIFICATE OF COMPLIANCE WITH
WORD COUNT LIMIT**

The undersigned hereby certifies that the computer program used to generate this brief indicates that the text contains 8,394 words, including footnotes. *See* Cal. Rules of Court, rule 8.520(c)(1).

Dated: June 8, 2018


Kimberly A. Kralowec

EXHIBIT N

No. S243805

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

**Motion to Augment the Record; Memorandum in
Support; Declaration in Support; Proposed
Order [Cal. Rules of Ct., rule 8.155(a)]**

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Lee S. Shalov (N.Y. Bar No. LS-7118)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants, and Petitioners

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CLERK SUPREME COURT

MOTION TO AUGMENT THE RECORD; MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to California Rule of Court 8.155(a), Plaintiffs, Appellants and Petitioners Amanda Frlekin et al. (collectively “Appellants”), on behalf of themselves and the certified class, move the Court to augment the record on appeal (“excerpts of record”) with the following documents, all of which were previously filed with the United States District Court for the Northern District of California (“district court”) in this action (Declaration of Kimberly A. Kralowec, below (“Kralowec Decl.”), ¶2):

Exhibit 1 to Kralowec Decl. (pp. 0002-0012): Excerpts from the January 8, 2014 deposition of Carol Monkowski, Vice-President of Retail Strategy and then Senior Director of Field Operations for Defendant-Respondent Apple, Inc. (“Respondent”) (“Monkowski Depo.”), filed February 20, 2014 in the district court (Dkt. No. 145-1).¹ (Ms. Monkowski executed a declaration, which is not part of the excerpts of record, but is attached as Exhibit A to, and the subject of, Apple Inc.’s Motion for Judicial Notice, filed 3/19/18 with its Answer Brief on the Merits (“Answer Brief”) (“Monkowski Declaration”).

Exhibit 2 to Kralowec Decl. (pp. 0014-0022): Monkowski Depo., Exhibit 19, “Loss Prevention” section of Apple’s posted policy and procedure. (Dkt. No. 145-3).

Exhibit 3 to Kralowec Decl. (pp. 0024-0035): Monkowski Depo., Exhibit 22, excerpt from Apple’s CORE employee training facilitator’s guide, concerning “Loss Prevention.” (Dkt. No. 145-3).

¹ The Monkowski Depo. transcript and exhibits (Exhs. 1, 2 & 3 hereto) were filed by Respondent and authenticated in a declaration of Respondent’s counsel, Todd K. Boyer, at SER 52:27-53:1. Docket numbers (“Dkt. No.”) refer to the district court’s docket.

Exhibit 4 to Kralowec Decl. (pp. 0037-0040): Excerpts from reporter's Transcript of Proceedings from May 22, 2014 hearing before the Hon. William H. Alsup of the district court (on Respondent's motion for summary judgment), filed 5/31/14 in the district court (Dkt. No. 167).

Exhibit 5 to Kralowec Decl. (pp. 0042-0047): Excerpts from Plaintiffs' Motion for Rule 23(c)(4) Certification of Particular Issues, filed May 12, 2015 in the district court (Dkt. No. 246-2).

Exhibit 6 to Kralowec Decl. (pp. 0049-0064): Excerpts from reporter's Transcript of Proceedings from July 2, 2015 hearing before the Hon. William H. Alsup of the district court, (on Appellants' Motion for Rule 23(c)(4) Certification of Particular Issues), filed July 9, 2015 in the district court (Dkt. No. 295).

Exhibit 7 to Kralowec Decl. (pp. 0066-0070): Excerpts from Plaintiffs' Second Supplemental Brief Pursuant to Court Order in Support of Motion for Rule 23(c)(4) Certification of Particular Issues, filed July 8, 2015 in the district court (Dkt. No. 291).

Exhibit 8 to Kralowec Decl. (pp. 0072-0074): Excerpts from Joint Statement Regarding Class and Notice and Related Documents, filed July 29, 2015 in the district court (Dkt. No. 305).

For the following reasons, Appellants respectfully ask the Court to grant their motion to augment the excerpts of record herein with each of these exhibits.

II. ARGUMENT

Rule 8.155(a) provides that the reviewing court "may order the record augmented" "at any time" on "motion of a party," with "any document filed or lodged in the superior court" (Cal. R. Ct. 8.155(a)(1)) or "a certified transcript ... of

oral proceedings not designated under rule 8.130” (Cal. R. Ct. R. 8.155(a)(2)).² It is well established that this rule is to be construed liberally. *People v. Brooks*, 26 Cal.3d 471, 484 (1980); *People v. Gaston*, 20 Cal.3d 476, 483 (1978) (construing prior rule 12a).

When Appellants designated documents and transcripts for the excerpts of record, there was no apparent need for the materials Appellants now seek to add by this motion. Kralowec Decl., ¶¶3-4. Appellant’s excerpts of record complied with the Ninth Circuit’s rules, which provide that “excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor” (Circuit Rule 30-1.4), and provide for potential sanctions for over-designation (Circuit Rule 30-2).

The need to augment the record now arises from Respondents’ Answer Brief on the Merits, filed in this Court, including (1) arguments relying on statements in the Monkowski Declaration it has asked the Court to judicially notice, which Respondent did not include in its supplemental excerpts of record and never mentioned in its briefs to the Ninth Circuit; and (2) its discussion of the positions of counsel and certain rulings of the district court in connection with class certification, which did not mention important parts of the record that are essential to a complete understanding of these positions and rulings. Kralowec Decl., ¶3.

This motion is timely, will cause no delay, and demonstrates a compelling need for augmentation.

² Rule 8.155(a) refers to the “superior” court, but as the parties are before this Court on certified questions from the Ninth Circuit, the Rule should logically apply to documents and transcripts filed in the district court.

A. Augmentation to Include the Monkowski Deposition and Exhibits (Exhs. 1, 2 & 3 hereto) Should be Permitted to Refute Statements in the Monkowski Declaration Filed with Respondents' Request for Judicial Notice

While Respondent repeatedly cites the Monkowski Declaration in its Answer Brief,³ Respondent did not include that declaration in its supplemental excerpts of record, and did not rely on it in the Ninth Circuit briefing. Kralowec Decl., ¶3.

Accordingly, Appellants now seek to augment the record with an excerpt from Ms. Monkowski's deposition (Monkowski Depo.), and two exhibits to that deposition. The purpose of these excerpts is to refute the newly-submitted Monkowski Declaration. See Kralowec Decl., ¶2 & Exhs. 1, 2 & 3.

Regardless of whether the Court ultimately considers the substance of that declaration,⁴ in accordance with the liberal construction of Rule 8.155(a), Appellants should nonetheless be permitted to augment the record with Exhibits 1, 2 and 3 to refute Respondent's reframed arguments in its Answer Brief as to what constitutes "work" under the applicable Wage Order. Kralowec Decl., ¶3.

B. Augmentation to Include Excerpts from Transcripts of Hearings (Exhs. 4 & 6 hereto), and Appellants' Briefs and the Parties' Joint Statement (Exhs. 5, 7 & 8 hereto), Should be Permitted to Provide Full Context for the Parties' Positions and the District Court's Rulings on Class Certification

Repeatedly in its Answer Brief, Respondent asserts "facts" regarding Appellants' motion for, and the district court's rulings on, class certification. In

³ Respondent argues in its Answer Brief that a statement in the Monkowski Declaration, that "Apple does not employ individuals in its retail stores for the purpose of submitting to" Checks, is determinative of whether the Checks constitute "work" under the applicable Wage Orders. Answer Brief at 53. Appellants seek to add Exhibits 1, 2 & 3 to refute that statement. Kralowec Decl., ¶3.

⁴ Judicial notice may be granted of the fact that a declaration was filed, but not the truth of the statements made in it. *People v. Woodell*, 17 Cal. 4th 448, 455 (1998).

particular, Respondent cites a non-existent “stipulation” and certain rulings of the district court concerning class members with a “special need” to bring bags to work. *See, e.g.*, Answer Brief at 10-11.

Appellants seek to augment the record with additional pages from the transcripts of two hearings below (heavily cited by Respondent) and eleven pages of excerpts from documents filed in the district court below. Exhs. 4, 5, 6, 7 & 8 hereto. These documents provide the context for the district court’s rulings on which Respondent relies. Kralowec Decl., ¶4. These excerpts will aid the Court in ruling on the certified question because they provide a complete picture of the actual rulings made in the district court.

III. CONCLUSION

For the above reasons, this Court is respectfully asked to grant the motion to augment the record to include the documents attached hereto as Exhs. 1 through 8.

Dated: June 8, 2018

Respectfully submitted,

By: 

Kimberly A. Kralowec
KRALOWEC LAW, P.C.

Lee A. Shalov
MCLAUGHLIN & STERN, LLP

Attorneys for Plaintiffs, Appellants, and
Petitioners

DECLARATION OF KIMBERLY A. KRALOWEC IN SUPPORT OF MOTION TO AUGMENT THE RECORD

I, Kimberly A. Kralowec, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am appellate counsel of record for petitioners Amanda Frlekin et al. in the above-

referenced proceeding. I have personal knowledge of the matters stated below, and if called upon to testify, would do so competently as to them.

2. Exhibits 1 through 8 attached hereto are true and correct copies of the documents identified in the list above. Each of these documents was filed in the district court in the proceedings below. The documents are necessary, and augmentation should be granted, for the following reasons.

3. Exhibits 1 through 3 are needed to refute the declaration of Carol Monkowski, of which Apple now seeks judicial notice, and which Apple cites in connection with its arguments concerning the “suffered or permitted to work” test. Apple did not include this declaration in its supplemental excerpts of record in the Ninth Circuit, and the declaration was not cited in Apple’s Ninth Circuit briefing. As a result, Appellants had no occasion to seek to augment the record to include these materials in that court.

4. Exhibits 4 through 8 provide the context needed so that the Court may fully understand, and so that Appellants may fully respond to, Apple’s argument concerning certain positions taken by counsel, and certain rulings of the district court at the class certification stage, regarding “special needs” class members. Apple’s argument to this Court on that point differs in some respects from the argument presented in its Ninth Circuit brief, so there was no need to submit additional pages in that court in order to refute it. Now, Appellants respectfully request that the record be augmented to include sixteen additional hearing transcript pages, of which Apple’s supplemental excerpts of record included only selected portions (SER 26-38), plus eleven more pages of excerpts from the class certification briefing in the district court.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 8, 2018 at San Francisco, California.


Kimberly A. Kralowec

EXHIBIT O

No. S243805

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

Consolidated Answer to Amicus Curiae Briefs

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, CA 94111
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Lee S. Shalov (N.Y. Bar No. LS-7118)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. INTRODUCTION

To prevent and deter theft, many California employers require their employees to participate in mandatory onsite security searches, such as the “Checks” Apple imposes on its retail sales employees in this case. Employer-side interests, including those who filed four amici curiae briefs supporting Apple,¹ would prefer not to have to compensate their employees for any of this time—regardless of how heavily the employer-dictated search process might burden the employees.

The employer-side amici would disregard the *discipline* Apple exacts from employees who fail or refuse to submit to the Checks. They would disregard the fact that Apple *confines its employees to store premises*, not allowing them to leave until the Checks are completed. They would disregard the “compelled” “actions and movements” in which Apple’s employees must engage, under a manager’s immediate physical supervision. *See Frlekin v. Apple, Inc.*, 870 F.3d 867, 870-73 (9th Cir. 2017).

To support their position, the amici characterize Apple’s Check policy as an employee “benefit,” as if it were comparable to health insurance or a company car. According to the amici, the Check policy allows employees the “benefit” of carrying their purses, backpacks, and iPhones to work. They say that if this Court holds the Check time compensable, employers across California will immediately start banning bags at work.

The amici are wrong.

¹ Brief for Amici Curiae California Employment Law Council et al. (“CELC Br.”); Amicus Curiae Brief of the Chamber of Commerce et al. (“Chamber Br.”); Amicus Curiae Brief of Retail Litig. Center, Inc., et al. (“RLC Br.”); Brief of Washington Legal Found. as Amicus Curiae (“WLF Br.”).

Under the Wage Orders' plain text, none of the "controls" Apple concededly exerts over its employees "during" the Checks may be disregarded. The "level" or "extent" of those "controls" is "determinative."² In arguing otherwise, the amici misconstrue this Court's key precedent, *Morillion*, in the same way Apple did.

As for the claim that Apple will just ban bags altogether, rather than pay for the time, nothing in the record suggests that Apple has ever actually considered such a step, which Apple itself calls "draconian."³ To the contrary, there are many reasons to suppose that Apple, and other California employers, are unlikely to go that far. Presumably, they would like to keep their skilled employees. In Apple's case, the ban would have to extend to its own employees' iPhones and all Apple-branded devices. More fundamentally, if imposed for the purpose of theft prevention (as opposed to other reasons, such as workplace safety), an outright ban on purses, bags and smartphones is probably unlawful. In other words, amici's argument is nothing more than unfounded speculation, which is no cause to depart from the Wage Orders' plain text.

In addition to meeting the "control" test, the Check time also meets the independent "suffered or permitted to work" test. Recently, the Sixth Circuit examined the pre-1947 federal definition of the term "work," and easily perceived that security search time meets that definition. *In re Amazon.com, Inc. etc. Wage and Hour Litig.*

² *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal.4th 833, 840 (2015) (quoting *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 587 (2000)).

³ Answer Brief on the Merits ("ABM") 36-37. "OBM" and "RBM" refer to plaintiffs' opening and reply briefs on the merits. Other abbreviations have the same meanings as in plaintiffs' merits briefs.

(*Busk v. Integrity Staffing Solutions, Inc.*), ___ F.3d ___, 2018 WL 4472961, *8-*9 (6th Cir. Sept. 19, 2018) (hereafter “*Amazon.com*”).

The California definition of compensable “work” is even broader and more protective than federal law. If security search time meets the federal definition, it certainly meets the California one. While the employer-side amici claim that compensable “work” should be limited to so-called “primary activities” or “job-related duties,” the Wage Orders do not say this, and importing such a qualifier, in the guise of construing the word “work,” would contravene the IWC’s intent. Either way, the Checks are, in fact, related to the duties of these retail sales employees’ jobs.

One employer-side amicus, WLF, claims that the plain-language definitions of “control” and “work” are supposedly too “vague” to be enforceable. Such an argument can be concocted only by mischaracterizing plaintiffs’ contentions in this case, then offering a series of hypotheticals that can only be described as farcical. WLF also claims this Court’s ruling should apply prospectively only, but this argument, too, is seriously flawed, resting as it does on a misunderstanding of what the Wage Orders have said for over 70 years, together with a misreading of *Morillion*.

For all of these reasons, the employer-side amici’s arguments should be rejected.

II. ARGUMENT

A. Amici Offer No Argument that Defeats the Conclusion That the Check Time Is Compensable Under the “Control” Test

As explained in plaintiffs’ main briefs, the Wage Orders’ plain language dictates

that the Check time, which Apple concededly “controlled,”⁴ is compensable under the “control” test. The employer-side amici dispute this conclusion, offering arguments based on the Wage Orders’ text as well as the case law, including *Morillion*. They also offer various inapposite hypotheticals, and they contend that employers will simply ban all bags from the workplace if the Check time is held compensable.

None of these arguments has merit.

1. Amici’s Arguments Concerning the Wage Orders’ Plain Text Are Meritless

The adoption history of the “control” test shows that the IWC deliberately abandoned less-protective prior language, under which only certain listed “required” acts were compensable, and replaced it with the broader, present-day “control” test. OBM 17-30; RBM 14-25. Apple did not contest the plain meanings of the words “control” or “require,” though it had every incentive to do so.⁵ Only one employer-side amici brief, that of CELC (at 7-8), even attempted any textual arguments on the “control” test.

Citing several partial dictionary definitions, CELC contends that “control” means “direct,” and that “direct” is synonymous with “require.” CELC Br. 7. Thus, CELC claims, “control” means the same thing as “require.” *Id.* But as explained in plaintiffs’ opening brief, the plain-language definitions of the two words are *not* identical (OBM 23), and CELC offers no definition of the word “require,” so its syllogism is both incomplete and incorrect.

⁴ *Frlekin*, 870 F.3d at 871.

⁵ *See generally* ABM 44-50.

If CELC’s view were correct, the IWC’s deliberate choice to jettison the word “require” and replace it with “control” would become a meaningless amendment. Courts do not presume that regulatory bodies like the IWC make pointless changes to the text of their regulations. *See, e.g., Viking Pools, Inc. v. Maloney*, 48 Cal.3d 602, 609 (1989); *Stafford v. Realty Bond Service Corp.*, 39 Cal.2d 797, 805 (1952). This is particularly unlikely in the IWC’s case, given that all textual changes to the Wage Orders must be preceded by extensive statutorily-mandated proceedings, including public hearings.⁶

The IWC’s chosen word “control” is broad enough to capture both “required” actions and those that are “directed,” “restrained” or “regulated” by an employer. OBM 23-24 (discussing dictionary definitions of “control” and “require”). CELC overlooks the fact that it is possible to “direct” a non-“required” activity. The plain-language definition of the word “direct” includes to “guide (something or someone),”⁷ and to “manage,” “regulate,” “supervise or oversee.”⁸ It is not limited to “required” or “compulsory” actions. For example, a police officer may “direct” a driver who chooses, but is not required, to turn left. The noun form of the word, “direction,” includes both “[a]n act of

⁶ *See, e.g.,* Lab. Code §§1173, 1178, 1181. These requirements were codified in 1937, but date back to “the uncodified 1913 act that created the IWC.” *Martinez v. Combs*, 49 Cal.4th 35, 52 (2010) (citing Stats. 1913, ch. 324).

⁷ *Black’s Law Dictionary*, “direct,” *vb.*, sense 3 (10th ed. 2014) (“to guide (something or someone); to govern”). CELC cites sense 4 of this definition. *See also American Heritage Dictionary*, “direct,” *v.tr.*, sense 2 (5th ed. 2018) (“give guidance and instruction to”).

⁸ *American Heritage Dictionary*, *supra*, “direct,” *v.tr.*, sense 1.

guidance” and “an instruction on how to proceed”⁹—neither of which presupposes a “required” or “compulsory” act.

In short, the words “control,” “require,” and “direct” are not interchangeable synonyms. The IWC selected the phrase “subject to the *control* of an employer,” not “subject to the requirement” or “direction of an employer.” It chose this word knowingly, in order to “broaden” the definition of compensable “hours worked.”¹⁰

CELC contends that the final phrase of the “suffered or permitted to work” test—“whether or not required to do so”—would become “surplusage” unless the word “control” in the “control” test is construed as synonymous with “required.” CELC Br. at 7-8. That contention finds no support in the Wage Order’s text.

First of all, CELC asserts (incorrectly) that “the Legislature” (CELC apparently means the IWC) supposedly “*added*” the final phrase to the “suffered or permitted to work test.” CELC Br. at 8 (emphasis added). Based on that incorrect assertion, CELC suggests that the IWC chose *not* to add the same phrase to the “control” test. *Id.* But the phrase was not “added” in 1947. It dates back to the Orders’ earliest definition of “hours worked.”¹¹ In 1947, the IWC *retained* the phrase as part of the “suffered or permitted to

⁹ *Black’s, supra*, “direction,” *n.*, senses 3, 4; *see also American Heritage Dictionary, supra*, “direction,” *n.*, sense 1 (“management, supervision or guidance of a group or operation”).

¹⁰ *See* OBM 20-22; RBM 18-19; MJN Ex. 12 at 22-23.

¹¹ *See* Wage Order 7NS ¶2(f) (Apr. 5, 1943, eff. Jun. 21, 1943) (MJN Ex. 4).

work” test, while at the same time omitting a list of illustrative examples from that test.¹² Simultaneously, the IWC chose to *remove* the word “require” from the first test, and *replace* it with the broader word “control.” These amendments achieved the IWC’s goal of “broadening” the definition of compensable “hours worked,” while also making plain that “required” activity is not an element of *either* test.

CELC also overlooks the fact that the final phrase modifies the word “work,” not the word “control.” While it makes sense to say “suffered or permitted to work, whether or not required to do so,” it would have made no sense to say “subject to the control of an employer, whether or not required to do so.” Instead of appending a syntactically incorrect phrase to the first test, the IWC accomplished the same thing by substituting a broader word, “control,” in place of the prior word, “require.”

Far from “surplusage,” the final phrase ensures that the “suffered or permitted to work” test encompasses both “required” and non-“required” “work”—so long as the “work” was “suffered or permitted” by an employer, which means the employer knew or should have known it was occurring. *Morillion*, 22 Cal.4th at 584-85. The “control” test, in contrast, is not limited to “work,” but instead embraces all “*time* during which an employee is subject to the control of the employer.”

Each word and phrase of the “control” test plays a role. The word “time” makes plain that non-“work” that the employer decides to “control” is compensable, such as the bus-ride time in *Morillion*. *Id.* at 582. The phrase “during which” directs the focus onto

¹² Compare *id. with* Wage Order 7 R ¶2(h) (Feb. 1, 1947, eff. Jun. 1, 1947) (MJN Ex. 5); see OBM at 20-21 (discussing wording changes between 1943 and 1947 Orders); RBM 15-17 (same).

the “controlled” time itself, not what may have preceded it. The phrase “subject to” ensures that on-call time, for example, is compensable.¹³ And the word “control,” which the IWC selected to replace the narrower word “require,” ensures that all “controlled” time, whether “required” or not, is treated as compensable.

The two “independent” tests (*Morillion*, 22 Cal.4th at 582) thus function together to protect employees broadly and ensure they are compensated for all “hours worked.”

In a footnote, CELC contests plaintiffs’ reliance on the DLSE’s conclusions in a brief it filed with the Office of Administrative Law (“OAL”).¹⁴ This brief explained that the 1947 wording changes “clearly indicated that the [IWC] intended to *broaden* the definition” of compensable “hours worked.” MJN Ex. 12 at 22-23 (emphasis added). This explanation is consistent with what this Court has already recognized—that the IWC intended to ensure that California law would be *more* protective than federal law, including not only the Portal-to-Portal Act, but also other aspects of pre-1947 wage law.

¹³ See, e.g., *Mendiola*, 60 Cal.4th at 840-41 (“on call” *time*, performed by an employee engaged to wait, can meet the Wage Order’s “control” test and be compensable although no “work” is occurring); *Black’s*, *supra*, “subject,” senses 2, 3 (“exposed, liable, or prone” to something; “dependent on or exposed to (some contingency)”); *Merriam-Webster’s Collegiate Dictionary*, “subject to” (11th ed. 2003) (“affected or *possibly* affected by (something)” (emphasis added)), *cited in Augustus v. ABM Security Servs., Inc.*, 2 Cal.5th 257, 265 (2016).

¹⁴ CELC Br. at 9 n.4. No other employer-side amicus disputes the DLSE’s statements. CELC claims the statements are not “contemporaneous” with the 1947 amendments, but in appropriate cases, this Court relies on DLSE statements post-dating the relevant IWC action by decades. See, e.g., *Mendoza v. Nordstrom, Inc.*, 2 Cal.5th 1075, 1090 (2017) (citing 1986 DLSE opinion letter as “a useful source of guidance” on the meaning of Wage Order language adopted more than 30 years earlier); *Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 15 (2016) (citing 2012 DLSE brief for guidance on meaning of Wage Order language dating back to 1911).

Troester v. Starbucks Corp., 5 Cal.5th 829, 839-41, 845 (2018); *see also Mendiola*, 60 Cal.4th at 843; *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 592. The IWC “gave little weight” to concerns that animated federal law in the 1940s, and “placed more importance on the policy of ensuring that employees are fully compensated for all time spent in the employer’s control.” *Id.* at 845. CELC cannot identify any “statutory or regulatory history” to support a contrary view. *See id.* at 841.

Far from “vague observation[s],” the DLSE’s brief carefully reviewed the 1947 wording changes and provided background information on what led the IWC to adopt those amendments. RBM at 18-19 (discussing DLSE’s brief, MJN Ex. 12 at 18, 22-24, 27). As the DLSE’s brief explains, and as an independent review of the wording changes confirms, the IWC’s purpose was to broaden the scope of “hours worked” in order to more robustly protect California employees.

2. Amici’s Reliance on *Morillion* and Other Decisional Law is Misplaced

(a)

The employer-side amici rely heavily on decisional law, primarily *Morillion*, to argue that “control” is not enough to satisfy the plain language of the “control” test.¹⁵ However, they misconstrue *Morillion* in the same manner Apple did,¹⁶ and offer nothing new on how it should be read. A careful reading of *Morillion* reveals that the Court did

¹⁵ CELC Br. 3, 8-10; Chamber Br. 11-12, 13-14; RLC Br. 9-10; WLF Br. 4, 13-14.

¹⁶ For example, like Apple, the RLC brief (at 9) assumes that by definition, employees are under “the ‘control’ of [the] employer” whenever they set foot on a company bus. *See also* Chamber Br. at 15. As explained in plaintiffs’ reply brief, that assumption is a false one, based on an incorrect reading of *Morillion*. RBM 27-28.

not contravene the Wage Orders’ plan language by holding that only “unavoidably required” time can meet the “control” test. *Morillion* did not present those facts, and also involved a lesser degree of employer control than the present case—as already thoroughly explained in plaintiffs’ main briefs. OBM 30-38; RBM 21-28.

Courts applying *Morillion* have had no difficulty holding that all time “during which” an employer exercises “control” is compensable—notwithstanding the employees’ supposed ability to “choose” to “avoid” it.¹⁷ This Court, in *Mendiola*, recognized that time during which security guards were required to remain on site was “controlled” under *Morillion*, even though the guards could have avoided this “control” by requesting permission “to leave the worksite.” *Mendiola*, 60 Cal.4th at 837, 841.¹⁸

The Court reached this conclusion because, under the Wage Orders, “the *extent*” or “*level*” “of the employer’s control” during the time in question is what is

¹⁷ See, e.g., *Bono Enters., Inc. v. Bradshaw*, 32 Cal.App.4th 968, 972, 974-75 (1995) (time “controlled” under *Morillion* although employees could have avoided the restraint (on-site meal periods) by choosing to make “prior arrangements”); *Ridgeway v. Wal-Mart Stores, Inc.*, 107 F.Supp.3d 1044, 1054-55 (N.D. Cal. 2015) (time “controlled” under *Morillion* although employees could have avoided the restraint (on-site layover time) by requesting and obtaining “prior” permission to leave); *Cervantez v. Celestica Corp.*, 618 F.Supp.2d 1208, 1222 (C.D. Cal. 2009) (employer’s rule prohibiting employees from leaving the facility once they entered, without passing again through security, meant that all pre-shift time was “controlled”—even though the employees were not required to “arrive early” and thus could have avoided the “controlled” pre-shift time).

¹⁸ The only defense amici brief discussing *Mendiola* overlooks this fact. CELC Br. 11 & n.6. CELC’s reliance on an unpublished order, *Osman*, is misplaced because there, the restraint was imposed not by the employer, but by the U.S. government. *Osman v. Tatilek Support Servs., Inc.*, 2017 WL 945024, *5 (C.D. Cal. Mar. 1, 2017).

The Chamber’s brief (at 17-18) cites two other orders, but those merely followed the district court’s erroneous order in this case, so they are unhelpful. *In re Amazon.com, Inc. etc. Litig.*, 2017 WL 2662607, *2-*3 (W.D. Ky. Jun. 20, 2017); *Scott-George v. PVH Corp.*, 2016 WL 3959999, *7-*9 (E.D. Cal. Jul. 22, 2016).

“determinative.” *Id.* at 840 (quoting *Morillion*, 22 Cal.4th at 587 (emphasis added); citing *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1535 (2008) (“the amount of ‘control’ exercised by the employer” (emphasis added)); *Bono*, 32 Cal.App.4th at 974-75 (same)).

One employer-side brief attempts to distinguish *Bono*, a case favorably cited in *Morillion*, by claiming that “the restrictions placed on employees” in *Bono* were “mandatory” rather than optional. CELC Br. 11 n.6. Not so. The employees in *Bono* could have avoided the restraint of otherwise mandatory on-site meal periods by making “prior arrangements to reenter the plant after leaving for lunch.” 32 Cal.App.4th at 972. This distinction was “extremely significant,” because those employees who *did* make such “prior arrangements” were not “subject to the employer’s control.” *Id.* at 978 n.4.¹⁹ Consistent with the rule that the Wage Orders “must be liberally construed to accomplish” the “primary objective of protecting workers,” the time was compensable in *Bono*. *Id.* at 974-75.

The *commuting* cases on which the employer-side amici rely, starting with *Overton* and *Alcantar*, are distinguishable from this case.²⁰ Once again, the amici offer

¹⁹ CELC appears to believe this footnote means something it does not. The footnote is not part of *Bono*’s analysis of compensability under the “control” test. *See* 32 Cal.App.4th at 974-75. It appears three pages later, in a separate section of the opinion discussing the DLSE and Labor Commissioner’s authority to make “factual determinations” when assessing a particular employer’s compliance with the Wage Orders. *Id.* at 978 & n.4.

²⁰ *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006); *Alcantar v. Hobart Service*, 800 F.3d 1047 (9th Cir. 2015).

no new or different analysis of either decision.²¹ As already explained in plaintiffs' prior briefs, the *Overton* employer imposed no "control" of any kind on employees who took the free shuttle, and in *Alcantar*, the governing legal standard was neither contested nor briefed. OBM 35, 38-39; RBM 26-27.

In addition to *Alcantar* and *Overton*, CELC cites a third commuting case, *Stevens v. GCS Service, Inc.*, 281 Fed.Appx. 670 (9th Cir. 2008)²² *Stevens* is best read together with one of Apple's cited commuting cases, *Rutti v. Lojack Corp.*, 596 F.3d 1046 (9th Cir. 2010). In both cases, employers "required" their employees to drive the company car to work, but in *Rutti*, the time was compensable because the employer exercised "control" during the drive, while in *Stevens*, the employer did not. *Rutti*, 596 F.3d at 1061-62; *Stevens*, 281 Fed.Appx. at 672; see 9th Cir. AOB 33-35. If *only* "required" activities can meet the "control" test, as CELC claims, then *Stevens* would have had no occasion to consider the degree of "control" exercised by the employer *during* the drives. As *Rutti* and *Stevens* illustrate, conduct can be "required" without being "controlled," and vice versa. What matters is the "extent," "level," or "amount" of "control." *Mendiola*, 60 Cal.4th at 840; *Ghazaryan*, 169 Cal.App.4th at 1535 (emphasis added).

CELC cites the DLSE Enforcement Manual in support of the argument that if employees "voluntarily come in before their regular starting time or after remain after

²¹ CELC Br. 16-17; Chamber Br. 14-15; RLC Br. 15.

²² CELC cites a fourth commuting case, *Novoa v. Charter Comm'ns, LLC*, 100 F.Supp.3d 1013 (E.D. Cal. 2015), but *Novoa* is distinguishable for reasons explained in plaintiffs' Ninth Circuit opening brief (9th Cir. Dkt. 12 at pp. 41 n.23, 42-45), and the Ninth Circuit agreed it merited no discussion (870 F.3d at 871-73).

their closing time,” the time is not compensable. CELC Br. 19 (citing DLSE Manual §47.2.2). But CELC ignores the next section, which states that such time *is* compensable if “the employee ... has been directed by the employer to be on the premises,” which is true of the Checks. DLSE Manual, §47.2.2.1.²³

(b)

The employer-side amici strain mightily, as Apple did, to try to equate the Checks with optional employee benefits like health insurance or the “optional free transportation” discussed in *Morillion* (22 Cal.4th at 594). Apple has claimed that the Check policy is supposedly meant to “benefit” employees by allowing them to bring their purses, bags and iPhones to work.²⁴ The employer-side amici repeat that artifice,²⁵ but the Ninth Circuit saw through it. *Frlekin*, 870 F.3d at 872-73. Apple has no policy stating that these jobs come with the following “benefits”: two weeks’ paid vacation; health and dental; and getting to bring an iPhone X to work instead of a Samsung Galaxy Note 9.

To the contrary, the Check policy is a requirement imposed by Apple in the “Employee Conduct” manual. ER 114-115. It comprises a key part of Apple’s theft

²³ CELC’s reliance on *Alonzo v. Maximus, Inc.*, 832 F.Supp.2d 1122, 1129 (C.D. Cal. 2011), is misplaced. There, unlike here, the employer did not direct the employees to be onsite or perform employer-directed tasks. *Bamonte v. City of Mesa*, 598 F.3d 1217 (9th Cir. 2010), involved federal law, not California law, and is inapposite.

²⁴ ABM 36-37, 57, *passim*; Defendant-Appellee’s Brief (9th Cir. Dkt. 28-1) at 33, 50, 55.

²⁵ CELC Br. 17-18 (citing employee benefit cases); Chamber Br. 13 (equating the Checks with “tak[ing] advantage of an employer’s proffered program”); RLC Br. 9-10 (equating the Checks to the “company bus”); WLF Br. 4 (claiming that Apple offered its employees the “optional benefit” of “bringing a bag to work”).

detection and prevention policy.²⁶ The Check policy presupposes that everyone routinely brings their purses, bags, and iPhones to work. 870 F.3d at 870 (quoting ER 115). It applies broadly to “[a]ll employees”—with a narrow exception if an employee carries no bag or iPhone to work on a given day. *See id.* (quoting ER 115). The policy is not comparable to employee benefits like a free shuttle or health insurance. The “Employee Conduct” manual, where the Check policy appears, says nothing about any employee benefits.²⁷ The policy stems from Apple’s own voluntary choice of business model. Apple has become a trillion-dollar company²⁸ by choosing to sell small “valuable goods” in a retail setting (*id.* at 873),²⁹ while at the same time choosing not to adequately secure those goods from theft.³⁰

²⁶ *See Frlekin*, 870 F.3d at 873; ER 200-01 (“Shrink Analysis and Action Plan”), 206 (“Internal Theft” policy), 363 [at 54:21-55:14] (admitting Checks are for purpose of theft detection and deterrence); MAR 14 (“Loss Prevention” rules), 20-22 (“Internal Theft” and “Shrinkage” policies).

²⁷ ER 114 (index to “Employee Conduct” manual, covering Apple’s “business conduct” rules, “confidentiality” rules, “entrance and exit” policies, “harassment” policy, “insider trading” policy, and other rules that are “expected of you”).

²⁸ “Apple is the first \$1 trillion company in history,” *The Washington Post* (Aug. 2, 2018), available at <https://www.washingtonpost.com/business/economy/apple-is-the-first-1-trillion-company-in-history/2018/08/02/> [viewed 10/4/18].

²⁹ “Apple makes vast margins on its products,” including a “staggering 58% of the iPhone’s retail price,” and other products “are thought to enjoy similarly extravagant margins.” “Upsetting the Apple cart,” *The Economist* 83 (Sept. 15, 2018). In Q3 2018 alone, Apple’s net revenue came to \$11.5 billion (<https://www.apple.com/newsroom/2018/07/apple-reports-third-quarter-results/> [viewed 10/4/18]), and its cash on hand exceeded \$243 billion (<https://www.cnbc.com/2018/07/31/apple-q3-cash-ward-heres-how-much-money-apple-has.html> [viewed 10/4/18]).

³⁰ “Security cameras capture rash of brazen Apple Store robberies in California,” *ABC7 News* (Sept. 4, 2018), available at <https://abc7news.com/technology/video-rash-of-grab-and-run-thefts-plague-california-apple-stores-/4112085/> [viewed 10/4/18]; “Apple

Accordingly, the employer-side amici’s heavy reliance on employee benefit cases is misplaced. The Checks are not an employee “benefit.” They are an employer-imposed rule with an exception. Truly optional employee benefits do not come with the high levels of employer “control” exercised by Apple during the Checks, nor does “disciplinary action, up to and including termination,” typically follow for employees who take advantage of their benefits. *Frlekin*, 870 F.3d at 870.

CELC cites a district court order, *Watterson*, involving a group medical insurance plan.³¹ As the Ninth Circuit recognized, there, as in *Overton*, the employer neither “required” the employee to do anything, such as sign up for the plan, nor disciplined her for failing to do something. *Watterson v. Garfield Beach CVS, LLC*, 694 Fed.Appx. 596, 597 (9th Cir. 2017). Instead, *Watterson* concerned an offsite activity—a wellness screening—involving no employer direction or supervision whatsoever, and no threat of employer discipline of any kind. *Id.* It is therefore distinguishable from this case, which (a) does not involve employee benefits; and (b) involves a mandatory “on-site” task, a series of “compelled” “actions and movements” performed under a manager’s immediate

Store mob thefts are surging. Why can’t the company make the devices worthless?” *San Francisco Chronicle* (Sept. 1, 2018), available at <https://www.sfchronicle.com/crime/article/Apple-store-mob-thefts-are-surging-Why-can-t-13198014.php> [viewed 10/4/18].

As explained in the California Correctional Peace Officers’ Association’s amicus brief (“Peace Officers’ Br.”), Apple has apparently chosen a store layout design that enhances customer experience (and thus sales) at the expense of security. Peace Officers’ Br. at 18-19 & n.4. Apple is free to make that choice, but not to shift the burden and cost of the choice onto the backs of its employees by forcing them to undergo *unpaid* security searches.

³¹ CELC Br. 17-18 (citing *Watterson v. Garfield Beach CVS LLC*, 120 F.Supp.3d 1003 (N.D. Cal. 2015)).

supervision, and enforced through the employer’s “threat” of discipline—including “loss of employment”—for not performing them as directed. *Frlekin*, 870 F.3d at 871, 873.

Another benefit case cited by CELC is similarly distinguishable.³² In *Rodriguez v. Taco Bell Corp.*, 896 F.3d 952 (9th Cir. 2018), a fast food restaurant offered its employees one discounted meal per shift, but only if the meal was eaten in the restaurant. *Id.* at 954. The employees performed no employer-directed tasks while eating the meal, no manager physically supervised them, and the employer imposed no discipline for anything the employees did or did not do. *See id.* On those distinguishable facts, the Ninth Circuit held that time spent eating the meals was non-compensable. *Id.* at 956-57.

In so holding, the panel relied heavily on *Morillion*’s discussion of “optional free transportation” offered by employers without condition or “control.” *Id.* at 957 (citing *Morillion*, 22 Cal.4th at 594). The employer’s “discounted meal policy,” the panel explained, was “*intended* as a benefit to employees,” and “the employer could discontinue [it]” entirely if the meal time were held compensable. *Id.* (emphasis added). The panel was therefore willing to overlook the condition the employer tied to the “benefit”—namely, no discounted meals unless they are eaten on premises. *See id.*

Certainly, employers should not be discouraged from offering discounted lunches, or other truly ““optional”” “benefit[s] or service[s],” to their employees. *Rodriguez*, 896 F.3d at 957 (quoting *Morillion*, 22 Cal.4th at 594). As shown by *Overton* and *Watterson*, responsible employers can and do design their benefits to operate in ways that completely

³² Supp. Authority Letter of CELC et al., filed July 20, 2018.

avoid employer “control.”³³ That is what this Court contemplated in *Morillion*, when it held that “employers may provide optional free transportation to employees without having to pay their for their travel time”—“as long as” the benefit is offered free from employer “control.” 22 Cal.4th at 594. *Rodriguez* overlooked this.

The Chamber contends that if the Check time in this case is compensable, then other employers will be “reluctant to continue offering” benefits such as onsite child care, cafeterias and fitness centers. Chamber Br. 23-24. But this assumes that employees are confined to the employer’s premises or otherwise under their employer’s “control” while using those facilities. The Chamber cites nothing to support that assumption. The Chamber argues that some employees using onsite child care might “experience” the “temporary restriction” of being unable to abandon their child, or of making sure the child’s belongings are gathered up to take home after work (*id.* at 23), but none of this is a function of any “control” by the employer, and it would not make any of the time compensable.³⁴

³³ *Overton*, 136 Cal.App.4th at 269-74; *Watterson*, 694 Fed.Appx. at 597; *see also Stevens*, 281 Fed.Appx. at 672 (employer avoided “controlling” the employee’s commute time while driving the company car).

³⁴ The Chamber also suggests that employees who must clean up after using the office kitchen might claim compensation for that time. Chamber Br. 23. One real-life employer avoided hiring janitorial staff by forcing its employees to clean out the cockroaches from the microwave without pay—shifting that cost and burden to its employees. Amicus Curiae Brief of Bet Tzedek Legal Services at 15 n.2. In that example, the time should be compensable, as it should be here. As *Bono* recognized, compliance is a “case-by-case” question specific to each employer’s policies. 32 Cal.App.4th at 978.

The Chamber’s concern misses the mark because, fundamentally, this case does not involve employee benefits of the kind considered in *Overton*, *Watterson*, or *Rodriguez*. If employers wish to offer employee benefits without risking payroll impact, they need only follow the lead of the *Overton* and *Watterson* employers. They should not confine their employees to the worksite, and they should not force their employees, by threatening discipline or job loss, to participate in “compelled” “actions and movements” under a manager’s immediate physical supervision. 870 F.3d at 871, 873.

(c)

In a last-ditch effort to shift the focus away from the extensive (and conceded) “control” Apple exercises during the Checks, the CJA relies on tort-law principles to argue that “control” “should be assessed at the outset of a predictable chain of events rather than the endpoint.” CJA Br. 15-16. But this ignores the Wage Orders’ text, under which compensability depends on whether “control” is exerted “during” the activity in question. The argument also fails factually, because the first acts in this chain of events are (a) Apple’s choice to operate a retail business selling small “valuable goods,” and (b) Apple’s choice to adopt the Check policy instead of securing the goods from theft. Apple is also responsible for the last act in the chain—the “controlled” Checks themselves.

When it comes to an employer’s mandatory duty to comply with the Wage Orders, there is no such thing as “comparative fault,” nor is there any rule that employees “assume the risk” that an employer will violate the Orders by withholding earned wages. To import such tort-law concepts into wage-law cases would gut the time-honored rule that the Orders are construed liberally to protect employees. *Troester*, 5 Cal.5th at 839.

3. The Hypotheticals Posited by the Employer-Side Amici Are Inapposite

CELC and WLF each offer a series of exaggerated hypotheticals that bear no resemblance to the facts of this case. CELC Br. 1-2; WLF Br. 3, 7-10. The Court need not “prejudg[e]” any of these hypotheticals, and may instead “decide” the referred question based “only” on “the facts of this case as described by the Ninth Circuit.” *Troester*, 5 Cal.5th at 943.

To answer the referred question, the Court need only consider whether “time during which” employees are undergoing mandatory security searches is compensable if the employees are (a) confined to store premises during the searches; (b) compelled to engage in employer-directed “actions and movements” under a manager’s immediate supervision; and (c) subject to discipline, up to and including termination, if they refuse to participate. *See Frlekin*, 870 F.3d at 871, 873 (describing pertinent facts).

The answer depends on the “level” and “extent” of the employer’s “control” “during” the time in question (*Mendiola*, 60 Cal.4th at 840 (citing *Morillion*, 22 Cal.4th at 587)), so hypotheticals not involving a similar level of “control” are unhelpful.

(a)

In *Morillion*, the employer hypothesized that if the bus-ride time were compensable, then grooming time at home would also become compensable. 22 Cal.4th at 586. This Court disagreed, because employers typically do not “determin[e] when, where and how” their employees must groom—but if they did, that could reach a compensable “level of control.” *See id.*

CELC offers a grooming hypothetical that strays far from the facts of this case.³⁵ Here is a more helpful grooming hypothetical: An employer has a written policy stating that if an employee comes to work ungroomed, he must submit to mandatory employer-supervised shaving. He will be confined to the company bathroom, where a manager will physically direct the employee's arm and hand movements while he shaves, and he will be disciplined if he refuses or fails to shave correctly. In this hypothetical, which more closely resembles the facts of this case, the time is heavily employer-"controlled" and would be compensable under *Morillion*. CELC's grooming hypothetical assumes a significantly diminished, or nonexistent, "level" of employer "control," and is inapposite.

The rest of CELC's hypotheticals are similarly unhelpful. In CELC's commute-time hypothetical, an employer policy allows employees to use the company car, but only if they adhere to certain rules while driving. CELC Br. 1 (first bullet). Whether the driving time is compensable depends on the "extent" or "level" of the specific "controls" the employer imposed "during" the time in question. *Compare Rutti*, 596 F.3d at 1061-62 with *Stevens*, 281 Fed.Appx. at 672 (in two company car cases, the time was "controlled" in one but not the other). This sheds little light on whether the Check time is compensable. Moreover, as the Ninth Circuit recognized, mandatory onsite security search time is materially different from ordinary commuting time. 870 F.3d at 872-73.

CELC offers five more hypotheticals in a bulleted list, but none envisions the high "level" of employer "control" imposed by Apple "during" the Checks. CELC Br. 1-2.

³⁵ CELC Br. 1 (second bullet, positing an employee whose employer provides shower facilities and who chooses to shower and shave at work).

Many involve no “time during which” the employee is “controlled” at all, such as the parking lot, clothes-changing, and dog-walking examples.³⁶ CELC claims the time is non-compensable in these scenarios because the activities are “voluntary,” but this does not matter. What matters is that no employer determined “when, where and how” any tasks were performed, or otherwise “controlled” any employees’ “time.”

These hypotheticals are a far cry from Apple’s highly-“controlled” Checks.

(b)

WLF’s hypotheticals are even more unhelpful than CELC’s, and reveal a fundamental misunderstanding of plaintiffs’ arguments in this case.³⁷ WLF asserts that plaintiffs are supposedly advocating a rule that would mean that because you have to be at work on Monday, time spent flying home from your vacation on Sunday is compensable. *See* WLF Br. 3, 7-8. That is nonsense.

WLF seizes on plaintiffs’ discussion of the dictionary definitions of the words “control” and “require” in their opening brief. *Id.* at 6 (citing OBM 23, 26). But WLF misperceives plaintiffs’ *reasons* for citing those definitions. Together with the IWC’s considered decision to substitute “control” for “require,” the definitions demonstrate that “control” is a broader concept than “require.” The words are not synonyms, which means there is no binary “required-or-not-required” test for “controlled” time, as the district

³⁶ One of CELC’s hypotheticals involves unidentified “bulky items” stored in lockers, but Apple’s Check policy states that employees are not to “have personal packages shipped to the store.” 870 F.3d at 870 (quoting ER 115).

³⁷ WLF’s argument that the Wage Orders are supposedly “void for vagueness” is also based on the same fundamental misunderstanding of plaintiffs’ positions in this case. WLF Br. 5-10; *see* Part II.C, below.

court erroneously held.³⁸ To put a finer point on it, there is no binary “avoidably-or-unavoidably-required” test for “controlled” time. The purpose of that discussion was to demonstrate the district court’s error. WLF seems to have missed this.

Plaintiffs have said many times that the pertinent question is the “extent” or “level” of employer “control” exercised “during” the time at issue. *See Mendiola*, 60 Cal.4th at 840 (citing *Morillion*, 22 Cal.4th at 587). The “control” test is not a binary question of whether or not the time is “unavoidably required.” Such a non-existent “test” would ignore all other “controls” imposed “during” the time in question, even the heaviest, most time-consuming and burdensome ones, contrary to the Wage Orders’ plain text. *See Amicus Curiae Brief of Consumer Attorneys of California* at 25-26.

In this case, Apple’s “controls” heavily load the scale. The Checks involve employer-directed actions and movements, on the employer’s premises, subject to threat of terminating discipline. WLF’s hypotheticals—time spent going to bed early or getting ready for work in the morning, for example—fall off the other end of the scale. They have nothing to do with whether the *Check time* in *this* case is compensable. They are so absurd they have nothing to do with anything, really.

No one is claiming that an employee who decides to stay home on a work night instead of going out with friends is “controlled” during that time. WLF Br. at 7-8. Nor would such time become compensable if this Court rules in plaintiffs’ favor. The ruling

³⁸ ER 8-18 (order). Of course, the Checks in this case *are* “required,” or employees would not participate in them.

would be grounded in *Morillion* and *Mendiola* and would consider the “extent,” “level” and “amount” of employer “control” “during” the time in question.

(c)

Finally, the employer-side amici resort to threats. If this Court holds the Check time compensable, they say, then instead of doing the right thing and paying for the time, Apple and other employers across California will punish their employees by banning all purses, bags, and—in Apple’s case—all iPhones from the workplace.³⁹

This hypothetical, too, is overblown.

Nothing in the facts stated by the Ninth Circuit,⁴⁰ or elsewhere in the record, suggests that Apple has ever considered imposing a “no-bags-or-iPhones-at-work” rule. Apple admits it would be a “draconian” policy (ABM 36-37), and there is little reason to suppose that Apple, or other employers, would actually resort to it.⁴¹ Employers imposing such a policy would find themselves unable to hire and retain competent staff, and would be at a significant competitive disadvantage against other employers with less “draconian” workplace rules.

³⁹ CELC Br. 20; Chamber Br. 1, 25; RLC Br. 15; WLF Br. 4.

⁴⁰ *See Troester*, 5 Cal.4th at 843 (declining to “prejudg[e]” “factual permutations” extending beyond “the facts of this case as described by the Ninth Circuit”).

⁴¹ Apple’s CEO Tim Cook expressed disbelief and concern over Apple’s unpaid *Check* policy, let alone an outright ban on purses, bags, and iPhones. ER 314 (“Is this true?”). Apple’s Senior Director of Field Operations wanted to explore “more intelligent and respectful way[s] of approaching” the problem—not *less* intelligent and respectful ways, such as a banning bags. ER 317.

In fact, imposing such a rule could actually *worsen* an employer’s theft problem by fueling employee dissatisfaction,⁴² which is a well-recognized root cause of internal theft.⁴³ For employers like Apple, whose “valuable goods” are small enough to hide in coat pockets, a “no-bags” rule would be largely pointless.⁴⁴ In Apple’s case, moreover, the rule would have to ban employees from bringing not only their purses, bags and backpacks to work, *but also their iPhones*—an absurd idea that Apple has never remotely hinted at. *See* OBM 41-42 & n.53; Peace Officers’ Br. 20-24.

For a more fundamental reason, widespread imposition of a “no-bags-or-smartphones” rule is unlikely to occur, regardless of how the Court decides this case. Such a rule would be of questionable legality, at best. If imposed for the purpose of theft prevention, such a rule would contravene the policy reflected in myriad Labor Code and Wage Order provisions stating that the burden and cost of theft prevention is the employer’s alone to bear.⁴⁵ A “no-bags” rule would also have a disparate impact on

⁴² *See* RBM 29 n.20 (evidence of employee dissatisfaction already caused by Apple’s unpaid Check policy).

⁴³ “Surveys show that employee satisfaction plays a major role in deterring workplace theft. Employees who feel appreciated are less likely to steal and more likely to report a coworker for theft.” Guerin, *Essential Guide to Workplace Investigations* 270 (NOLO Press 2016); *see also* Bassett, *Solving Employee Theft: New Insights, New Tactics* 43 (2008) (“Create a positive work environment and you greatly reduce the possibility that your company will be plagued by employee theft.”).

⁴⁴ CELC’s suggestion that employers prohibit all bags except see-through plastic ones is also of questionable legality. CELC Br. 25. Such a rule would implicate privacy concerns and infringe on employees’ “dignity and self-respect.” *Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903, 952 (2018). In Apple’s case, it would not solve the problem anyway, because employees with iPhones would still be Checked.

⁴⁵ *See, e.g.*, Lab. Code §402 (employer must bear entire cost of bond insuring against risk of theft by employees entrusted with employer’s goods); 8 Cal. Code Regs. §11070,

women, who carry bags more often than men,⁴⁶ largely because women need to carry feminine hygiene products⁴⁷ and also because women’s clothing often lacks pockets adequate for essential belongings such as wallets, keys and smartphones.⁴⁸

A “no-bags-or-smartphones” rule would, moreover, run afoul of principles recognized in *Troester*. Apple’s theft problem exists due to the high value and small size of the products it chooses to sell, coupled with its failure to adequately secure these devices from theft.⁴⁹ Apple is certainly “in a better position” than its employees to mitigate these difficulties. *Troester*, 5 Cal.5th at 848. *Troester* teaches that employers

¶8 (prohibiting employers from requiring employees to make up “any cash shortage” or pay for “loss of equipment” “unless it can be shown that the shortage ... or loss is caused by a dishonest or willful act, or by the gross negligence of the employee”).

⁴⁶ See, e.g., *Scott-George*, 2016 WL 3959999 at *9 (carrying bags is “normal for women in our culture”).

⁴⁷ The Wage Orders used to require employers to make “sanitary napkins” “readily obtainable at a reasonable price” in workplace bathrooms. See Wage Order 7-68, ¶15(c). This provision was deleted in 1976, when the Orders were amended to extend to adult men. Now, only female prison inmates and certain public school students in low-income districts must be provided with feminine hygiene products. Educ. Code §35292.6; 15 Cal. Code Regs. §§1265, 1485. Everyone else must buy and carry their own.

⁴⁸ See, e.g., “Women’s Pockets are Officially Smaller than Men’s, Study Reveals,” *The Independent* (Aug. 25, 2018) (“on average, the pockets in women’s jeans were 48 per cent smaller ... [than] in men’s jeans,” and “just 40 per cent of the women’s jeans could fit an iPhoneX in the front pocket”), available at <https://www.independent.co.uk/life-style/fashion/womens-pockets-jeans-smaller-men-feminist-issue-the-pudding-a8507671.html> [viewed 10/4/18]; “It’s official: Women’s pockets too small for smartphones,” *CNET* (Aug. 21, 2018) (“Women’s slacks, dresses and business blazers often have zero pockets,” and “[o]nly 40 percent of women’s front pockets can fit a wallet *specifically designed to fit in front pockets.*” (emphasis in original)), available at <https://www.cnet.com/news/womens-pockets-too-small-for-smartphones-new-study-confirms/> [viewed 10/4/18].

⁴⁹ Apple’s chosen layout of its retail stores only exacerbates the problem. See *Peace Officers’ Br.* 18-19 & n.4; *supra* footnote 30.

facing this sort of “problem” or “difficulty” may not choose to solve it by shifting the “burden” onto their employees. *Id.*; *see also Kilby*, 63 Cal.4th at 21-22. Apple’s unpaid Check policy already does this, but the proposed “no-bags-or-iPhones” rule would place an even *greater*, “draconian” burden on Apple’s employees. It would flout the remedial purpose of the Wage Orders.

The Wage Orders serve to protect not only employee health and safety, but also employee “comfort,”⁵⁰ “dignity and self-respect.” *Dynamex*, 4 Cal.5th at 952. A “no-bags” policy would heavily burden the state’s most vulnerable workers, who are least able to escape “draconian” workplace rules by switching jobs. *See, e.g.*, *Bet Tzedek Br.* 14-15. If legalized, a “no-bags” policy would be the next milestone in the “race to the bottom” (*Dynamex*, 4 Cal.5th at 960), as employers shift more and more of the burden of theft prevention onto their employees, as by banning coats or clothes with pockets.

The Court need not conclusively decide whether a “no-bags” rule would be unlawful if imposed for theft-prevention purposes. That question is for a future case.⁵¹ For purposes of *this* case, the questionable legality of such a rule debunks the notion that employers across the state will immediately impose blanket “no-bag” rules if the Check time is held compensable. Such an unproven supposition is no reason to construe the “control” test other than in accordance with the Wage Orders’ plain text, viewed in the light most favorable to employee protection.

⁵⁰ Wage Order 7, 8 Cal. Code Regs. §11070, ¶¶13(A), 15(A), 15(B), 17.

⁵¹ Whether a “no-bag” rule would be lawful in a non-retail setting, if imposed for reasons other than theft prevention, such as safety, is also for a future case.

B. Amici Offer No Persuasive Reason Why the Checks Are Not “Work” Under the “Suffered or Permitted to Work” Test

The employer-side amici offer various definitions of the word “work,” drawn from federal law and other sources, to support an argument that the Check time does not meet the “suffered or permitted to work” test because it supposedly is not “work.” Chamber Br. 19-22; RLC Br. 11-14; CELC Br. 11-15. But in *Amazon.com*, the Sixth Circuit held that security search time easily meets the federal definition of “work,” and is therefore compensable under Nevada and Arizona law. Under California law, which is broader and more protective than federal law, the Check time is also compensable.

1. Even Under The Narrower, Federal Definition of “Work,” the Check Time is Compensable

The Sixth Circuit’s *Amazon.com* opinion arose out of the same litigation as *Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513 (2014), in which the U.S. Supreme Court held that time spent by Amazon warehouse employees undergoing mandatory security searches was non-compensable under the Portal-to-Portal Act. In so holding, the U.S. Supreme Court decided that the searches were not part of the “principal activity” the employees were “employed to perform.” *Id.* at 518. As a result, the searches were considered “postliminary activities,” which the Portal-to-Portal Act excludes from compensability. *Id.* at 518-19.

After remand, the plaintiffs argued that the security search time was nonetheless compensable under Nevada and Arizona law. *Amazon.com*, 2018 WL 4472961 at *2. The Sixth Circuit held that those states followed the federal definition of “work” from

early U.S. Supreme Court opinions, including *Tennessee Coal, Iron & R. Co. v. Muscoda Local. No. 123*, 321 U.S. 590 (1944). *Amazon.com*, 2018 WL 4472961 at *7-*8.

In *Tennessee Coal*, “work or employment” was defined as “[1] physical or mental exertion (whether burdensome or not) [2] controlled or required by the employer and [3] pursued necessarily and primarily for the benefit of the employer and his business.” 321 U.S. at 598. As the high Court later clarified, however, “‘exertion’ [is] not in fact necessary for an activity to constitute ‘work,’” because “‘an employer, if he chooses, may hire a [person] to do nothing, or to do nothing but wait for something to happen.’” *Amazon.com*, 2018 WL 4472961 at *9-*10 (quoting *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944); *Vance v. Amazon.com*, 852 F.3d 601, 610 (6th Cir. 2017)).

The Sixth Circuit easily perceived that security search time meets this definition, even if (as the defendants argued) “exertion” must be shown. *Id.* at *8. “[U]ndergoing security screening,” the Court said, “clearly does involve exertion.” *Id.* at *9. “The screenings surely are ‘required by the employer,’” and “Plaintiffs have alleged that the screenings are ‘solely for the benefit of the employers and their customers.’” *Id.* at *8. Hence, the time was compensable under Nevada and Arizona law. *Id.* at *10-*11.

Here, the Check time easily meets the *Tennessee Coal* definition. The Checks involve the “exertion” of lining up and performing “actions and movements.” *Frlekin*, 870 F.3d at 871, 873. The time is concededly “controlled” by the employer. *Id.* at 871. The activity is “pursued necessarily and primarily” for the employer’s “benefit” by preventing and deterring theft of its “valuable goods.” *See id.* at 873.

2. California’s Definition of “Work” is Broader and More Protective than the Federal Definition

RLC’s amicus brief urges the Court to adopt the three-part definition from *Tennessee Coal*. RLC Br. 13. As mentioned above, however, the is a definition of both “work *and employment*,” not merely “work.” 321 U.S. at 598 (emphasis added). The U.S. Supreme Court cited dictionary definitions of both “work” and “employ” in devising it. *Id.* at 598 n.11. This concept is obviously different from the Wage Orders’ chosen term, “work.” In other words, California law materially diverges from the definition in *Tennessee Coal*, both as a whole and when the three parts are separately considered.

Considering the second part first, “controlled or required by the employer” is *not* an element of California’s “suffered or permitted to work” test. California’s test states that “work” is compensable “whether or not required,” and “controlled” time is covered by the “control” test—a separately-stated, “independent” test for compensability. *Morillion*, 22 Cal.4th at 839. Defining “work” to cover only “controlled or required” time, as RLC and CELC both propose⁵² would contravene the Wage Order’s text and would conflate the two “independent” tests. *See* OBM 45-46.

California also treats the first part, “exertion,” differently. While California recognizes that an employer “may hire a [person] to do nothing, or to do nothing but wait for something to happen,” this is a codicil of the “control” test, not the “suffered or permitted to work” test. *Mendiola*, 60 Cal.4th at 841 (citations omitted). Hence, as plaintiffs have argued, plain-language definitions of “work” do include some level of

⁵² RLC Br. 13; CELC Br. 13 (arguing that compensable “work” should extend only to tasks an employer “direct[ed] or require[d]”).

“exertion,” but it need not be particularly demanding. Finding a manager, lining up, and being searched all involves “physical or mental exertion (whether burdensome or not).”⁵³

The third *Tennessee Coal* element, “pursued necessarily and primarily for the benefit of the employer and his business,” is tied to the definition of “employ” cited in that case, not the definition of “work.” 321 U.S. at 598 n.11. California treats this differently. This Court has considered “benefit” to the employer in connection with “on call” time under the “control” test—not the “suffered or permitted to work” test. *Mendiola*, 60 Cal.4th at 841. In the former context, the Court has recognized that time can be compensable “hours worked” even if it “benefits both employees and employers” more-or-less equally. *See Morillion*, 22 Cal.4th at 594 (noting “benefits” of employer-provided transportation). There is no “necessarily and primarily” element in California.

Nonetheless, the benefit to Apple is certainly a relevant factor. The Checks plainly benefit Apple by preventing and deterring theft. Apple would not take the trouble to impose them, pay its managers and security guards to do them, or discipline employees over them, if the Checks did not benefit Apple. If “work” must “benefit” the employer in order to be compensable, that element is met here.

RLC would take this element a step further, arguing not only that “benefit” is an essential element of the “suffered or permitted to work” test, but also that this element should be strictly construed to encompass *only* “work” that “*primarily* benefits” the

⁵³ RLC disputes this, claiming that because security searches are supposedly “routine,” that means they involve no “exertion.” RLC 15. That argument is contrary to *Amazon.com* and cannot be reconciled with the record or the Ninth Circuit’s description of the Check time in this case.

employer. RLC Br. 15. But the plain-language definition of “work” does not require “benefit” to an employer at all—not even the early *Black’s* definitions cited by RLC.⁵⁴ See OBM 46-48; RBM 34-35. This part of the *Tennessee Coal* definition encompassed the concept of “*employment*,” not “*work*.” 321 U.S. at 598 (emphasis added). To strictly construe the word “work,” in the manner RLC proposes, would import a less protective qualification into the Wage Orders without “convincing evidence” of the IWC’s intent. *Mendiola*, 60 Cal.4th at 843 (quoting *Morillion*, 22 Cal.4th at 592).⁵⁵

3. Under Broader California Law, “Work” is Not Limited to an Employee’s Ordinary Job Duties

The employer-side amici argue that California’s definition of compensable “work” should be limited to the “principal activities” or “job-related duties” the employee was “hired to perform.” CELC Br. 11-14; Chamber Br. 20-22; RLC Br. 14, 16; WLF Br. 10-11. However, importing such an exception into the definition of compensable “work” would contravene the IWC’s intent. This argument, therefore, should be rejected.

As just discussed, the less protective federal definition of “work and employment” from *Tennessee Coal* contained no such limitation. 321 U.S. at 598. The Portal to Portal

⁵⁴ RLC Br. 12 (“*Black’s Law Dictionary* (3d ed. 1933) at the time defined ‘work’ as ‘Any form of physical or mental exertions or both combined, for the attainment of some object other than recreation or amusement.’”); *id.* at 12 n.2 (quoting 1951 edition of *Black’s*); see OBM 44-45, RBM 30 (discussing plain-language definitions of “work”).

⁵⁵ Recently, in *Troester*, this Court declined to follow a U.S. Supreme Court opinion of similar vintage—one also reflecting a “less protective” standard—without “convincing evidence” of the IWC’s intent to adopt that standard. 5 Cal.4th at 840-41. *Accord Mendiola*, 60 Cal.4th at 843 (“The IWC intended to import federal rules only in those circumstances to which the IWC made specific reference.”); *Martinez*, 49 Cal.4th at 60 (1947 amendments were “intended to distinguish state law from its federal analogue,” and “provide greater protections than federal law affords”).

Act is what introduced an exception for “non-principal activities” into federal law for the first time.⁵⁶ Repeatedly, this Court has recognized that the IWC amended the Wage Orders in 1947 precisely in order to ensure that California law would *not* be construed as coextensive with the Portal-to-Portal Act. *Troester*, 5 Cal.4th at 845; *Martinez*, 49 Cal.4th at 59-60; *Morillion*, 22 Cal.4th at 590-94.

If the IWC wanted to import a “non-principal activities” exception into the “suffered or permitted to work” test, it easily could have done so when it amended that test in 1947.⁵⁷ If the IWC believed its Orders already included such an exception, it would not have later amended Orders 4 and 5 to state that “‘hours worked’ means the time during which an employee is suffered or permitted to work, whether or not required to do so, *as interpreted in accordance with the provisions of the Fair Labor Standards Act.*” 8 Cal. Code Regs. §11040, ¶2(K), §11050, ¶2(K) (emphasis added). Nor would the IWC have amended Order 5 to limit compensable “work,” for some employees, to “time spent carrying out *assigned duties.*” *Id.* §11050, ¶2(K) (emphasis added).

⁵⁶ See *Integrity Staffing*, 135 S.Ct. at 517; *Amazon.com*, 2018 WL 4472961 at *9 (“the Portal-to-Portal act excludes some ‘work’ from ... what is compensable activity” under federal law); Chamber Br. at 21-22 (arguing that under the Portal-to-Portal Act as construed in *Integrity Staffing*, security searches are not “an ‘integral part of the principal activities’ an employee is hired to perform”).

⁵⁷ Importantly, the IWC’s 1947 amendments were not confined to the “control” test. The “suffered or permitted to work” test, too, was amended. The IWC retained the core “suffered or permitted to work” language, while simultaneously deleting as unnecessary a list of illustrative examples of compensable “work,” some of which might have been construed as “preliminary” or “postliminary activities” under the Portal-to-Portal Act. See OBM 20 (quoting Wage Order 7NS, ¶2(f), making compensable certain “time” “after the beginning and before the end of [the employee’s] work day”); *id.* at 21 (quoting Wage Order 7 R, ¶2(h), which omits the illustrative examples). Those omitted activities would now fall within the “control” test.

Contrary to the Chamber’s argument, therefore, the Court should *not* “look to” federal law for “guidance” in construing Order 7.⁵⁸ *Troester*, 5 Cal.5th at 841. Order 7, unlike Orders 4 and 5, has no qualifying language evincing any intent to incorporate definitional or substantive limitations drawn from federal law.⁵⁹ Absent “convincing evidence of the IWC’s intent,” the Court does not “import” “less protective” federal standards “by implication.” *Id.* (quoting *Mendiola*, 60 Cal.4th at 843); *Morillion*, 22 Cal.4th at 592.

CELC, too, urges the Court to import what amounts to a “principal activities” qualifier into Order 7. *See* CELC Br. 11-15. According to CELC, the word “work,” by definition, is limited to “job-related” “duties” or “services” an employee was hired to perform and is paid for. *See id.* at 12-13. The plain-language definition of “work” belies this,⁶⁰ but again, to import that type of “job-related” or “principal activities” qualifier into Order 7 would contravene the IWC’s intent. The Court should decline CELC’s invitation to import such a qualifier in the guise of construing the plain-language word “work.”

⁵⁸ Chamber Br. 20-21. The Chamber makes another incorrect argument—that the “suffered or permitted to work” test is supposedly inapplicable to this case because the test applies only “outside” the “context” of “traditional” “employment relationships.” *Id.* at 19-20. The Chamber is mistaken. The rulings it cites construed the definition of “employ,” not the definition of “hours worked.” *Saini v. Motion Recruitment Partners, LLC*, 2017 WL 1536276, *7 (C.D. Cal. Mar. 6, 2017); *Gunawan v. Howroyd-Wright Employment Agency*, 997 F.Supp.2d 1058, 1063 (C.D. Cal. 2014). In any event, such an argument is waived. Apple has never claimed that the “suffered or permitted to work” test does not apply to this case, only that the test not been *met*.

⁵⁹ RLC’s claim that the IWC has supposedly “never reworked” the language of the “suffered or permitted to work” test overlooks the historical record. RLC Br. 12.

⁶⁰ OBM 44-45, RBM 30. That circular argument would allow employers to unilaterally exclude an activity from the definition of compensable “work” by the expedient of not paying for it.

CELC makes several text-based arguments (CELC Br. at 12-13), but these arguments all ignore the IWC's considered decision to modify Orders 4 and 5, but *not* Order 7, to incorporate less-protective standards such as "principal activities" or "assigned duties." None of CELC's arguments can overcome this unequivocal expression of the IWC's intent. In fact, the IWC's use of the word "duties" in Order 5, in the same sentence as the word "work," confirms that the IWC understands "assigned duties" to be a subset—not a synonym—of "work."⁶¹

RLC also claims that "work" should be confined to an employee's ordinary "job duties" (RLC Br. 14), but its only cited authority is *Watterson*, where the plaintiff "admitted" that the tasks in question "were not work." 694 Fed.Appx. at 597. None of the definitions of "work" cited by RLC includes such a qualifier. RLC Br. 12-14. RLC cites two early editions of *Black's* defining "work" as "exertions ... for the attainment of some object other than recreation or amusement." *Id.* at 12 & n. 2 (citing 1933 and 1951 editions of *Black's*). The Check time is a far cry from "recreation or amusement," and easily meets this definition.

Finally, WLF claims that unless "a connection to job duties" qualifier is read into the word "work," the sky will fall. According to WLF, employers will end up paying for "anything the employee does to *stay alive*," including "the employee's every breath." WLF Br. 10-11 (emphasis in original). Nonsense. WLF ignores the mechanism the

⁶¹ See also, e.g., Lab. Code §200(a) (defining "labor" to include the three distinct concepts of "labor, work or service"); *Bono*, 32 Cal.App.4th at 975 ("duty" means an "action ... required by or relating to one's occupation or position" (quoting Webster's New World Dictionary, "duty" (3d Coll. Ed. 1988)). If the IWC had meant "duties" or "services," it would use one of those terms instead of "work."

Wage Orders use to tie the “work” to the employment relationship. The “suffered or permitted” part of the test ensures that employers provide compensation only for “work” the employer knew or reasonably should have known was occurring. *Morillion*, 22 Cal.4th at 584-85. WLF’s absurd hypotheticals, such as eating healthy food, brushing one’s teeth and the like, fall well outside the scope of compensable “work” under the Orders.⁶²

Here, Apple plainly knew the Checks were occurring. They took place on Apple’s store premises, pursuant to written company policy. Apple monitored compliance with the Check policy and disciplined those who failed to adhere to it. There is nothing unfair about requiring Apple to pay for the Check time.

Fundamentally, what all the employer-side amici miss is that theft prevention *does* relate to a retail employer’s regular job duties. OBM 51; RBM 35-37. Apple would have no power to require the Checks, or to discipline its employees for failing to perform them, if the activity not relate to their jobs. As this Court has recognized, “reasonable attempts to investigate employee theft ... are a normal part of the employment relationship.” *Fermino v. Fedco, Inc.*, 7 Cal.4th 701, 717 (1994). If an employee were injured during a routine Check, workers’ compensation would be the exclusive remedy for that claim. *Charles J. Vicanti, M.D., Inc. v. State Comp. Ins. Fund*, 24 Cal.4th 800, 821 (2001). Accordingly, if the Court were to infer this unstated qualification into the Wage Orders’ text (which it should not), the unstated element would be satisfied.

⁶² See also Chamber Br. 22 (arguing that “commuting and grooming” would become compensable “work,” while also ignoring the “suffered or permitted” part of the test); RBM 33-35 (discussing Apple’s similar arguments).

C. The “Vagueness” and “Prospective-Only” Arguments Both Fail

WLF argues at length that the Wage Orders would be void for vagueness if the Check time were held compensable. WLF Br. 5-12. However, as discussed above, WLF can make this argument only by willfully misunderstanding plaintiffs’ arguments and the Wage Orders’ text. There is nothing unconstitutionally vague about the plain English words used in the Wage Orders. *See Bono*, 32 Cal.App.4th at 979 (rejecting a similar “vagueness” challenge to the Wage Orders’ definition of “hours worked”).

Similarly, WLF argues that if the Court holds the Check time compensable, that would represent a change in law, and should apply prospectively only. WLF Br. 13-18. This argument, too, rests on a misunderstanding of what the Wage Orders have always required, and on a misreading of *Morillion*. The “retroactivity” argument should be rejected for the reasons stated in plaintiffs’ reply brief (at 37) and in the amicus curiae brief of the California Employment Lawyers Association, which is incorporated here by reference.

III. CONCLUSION

For the reasons discussed above, in plaintiffs’ opening and reply briefs, and in the amici curiae briefs supporting plaintiffs, the answer to the certified question is “yes.”

Dated: October 9, 2018

Respectfully submitted,

By: 
KRALOWEC LAW, P.C.
Kimberly A. Kralowec

EXHIBIT P

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Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

Supplemental Brief on Restated Question

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, CA 94111
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Lee S. Shalov (*pro hac vice*)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. INTRODUCTION

As recently restated, the certified question accepted from the Ninth Circuit now encompasses “personal technology devices” in addition to “packages” and “bags.” The pertinent facts, law, and analysis are no different for “personal technology devices” than for “packages” and “bags.” All of the Check time embraced by the restated question is compensable under the “control” test, the “suffered or permitted to work” test, or both—for the same reasons previously explained in petitioners’ Opening Brief on the Merits, Reply Brief on the Merits, and Consolidated Answer to Amicus Curiae Briefs.

II. DISCUSSION

A. “Tech” Check Time Is Compensable Under the “Control” Test

Apple required its retail sales employees to comply with a single “Check” policy, which applied to personal packages, bags and Apple-branded “personal technology devices” alike. There are no relevant factual differences between Apple’s “bag” Checks and its “tech” Checks; the pertinent facts stated in the Ninth Circuit’s opinion apply equally to both. *See Frlekin v. Apple, Inc.*, 870 F.3d 867, 870-71, 872-73, *passim* (9th Cir. 2017).

All of the Checks imposed the identical restraints on Apple’s employees: (1) the Checks were all performed pursuant to Apple’s written company policy, which Apple enforced through threat of *discipline*; (2) during all Checks, the employees were *confined to store premises* and not permitted to leave and go home; and (3) during all Checks, employees were required to perform *employer-directed actions and movements*. *See* Opening Brief on the Merits (“OBM”) at 6-12 (summarizing facts, including facts

relevant to “tech” Checks, with record cites). Hence, all of the Checks are compensable under the “control” test for the same reasons already briefed.¹

1. Factually, Apple Exercised the Same Controls During “Tech” Checks as During Bag Checks

The pertinent section of Apple’s “Employee Conduct” manual (ER 114) expressly requires Checks not only of bags, but also of all Apple-branded personal technology devices, which includes iPhones, iPods, and MacBooks.² The section reads:

All employees, including managers and Market Support employees, are subject to personal package and bag searches. ***Personal Technology must be verified against your Personal Technology Card*** (see section in this document) during all bag searches. Failure to comply with this policy may lead to disciplinary action, up to and including termination.

Frlekin, 870 F.3d at 870 (quoting ER 115) (emphasis added); *see also* ER 392-406 (stating policy). “Tech” Checks and bag Checks are conducted “at the same time.” ER 109 [at 65:1-4], 171:10-12.

Apple requires its employees to record all of their personally-owned, Apple-branded devices on an Apple-issued “Personal Technology Card” on which the employee must write a description and the serial number of each device. ER 118, 170 [at 18:22-19:3], 193, 242. “Once the card is initially completed, a manager must verify the serial numbers and sign the card,” which then must be “carr[ied] at all times while working.” ER 118; ER 170 [at 19:5-6]. The cards “served as proof that the employees owned the

¹ *See* OBM at 16-43; Reply Brief on the Merits (“RBM”) at 13-29; Petitioners’ Consolidated Answer to Amicus Curiae Briefs (“AACB”) at 9-32.

² ER 117-18, 241-42, 300 (“tech” Check policy applies only to “employee-owned Apple product[s]” that can be purchased at an Apple store); ER 69 [at 48:13-14], 315 (“tech” Check policy does not apply to Samsung phones or Kindles).

devices listed when those devices were searched under the policy.” ER 5:27-6:1 (district court’s factual summary). Every time an employee leaves a store “for any reason,” he or she “must ensure” that a manager (or security guard) “verifies the serial numbers on [the] card against the product [the employee is] carrying.” ER 118. *Accord* ER 300, 303 (describing procedure).

The employees do this by, first of all, tracking down a manager (or a security guard) who is available to perform the Check, which often involves wait times and lining up while the manager Checks other employees or finishes other tasks.³ When the employees reach the head of the line, they are “asked to pull the [technology] card out of our wallet, show [the manager] the serial numbers listed on the card, then pull our devices out, find the serial number in the settings, and show the manager that the serial number[s] on the devices match the serial numbers on the card. Then we are subjected to a bag search, and finally, we are allowed to leave the store.” ER 314; *see* ER 156:3-7 (“The technology check was particularly time consuming because the manager ... would have to compare each letter and number of your devices’ serial numbers against the letter and number on your personal technology card.”), 300 (managers must “verify the serial number of the employee’s personal technology against the personal technology log”).

If a “questionable” personal technology device is found during a bag search, “Apple will reserve the right to hold onto the questioned item until it can be verified as employee owned.” ER 300; *see also* ER 118 (same). This procedure was intended to

³ ER 122 ¶7, 128 ¶5, 131¶4, 152 ¶6, 156 ¶6, 162 ¶6, 166 ¶6, 175 ¶7, 184 ¶5, 190 ¶6, 197 ¶5, 293 ¶5, 297 ¶5, 307 ¶6, 312 ¶6, 330 ¶5, 334 ¶6, 339 ¶¶69-72 (employee declarations on tracking down managers and waiting for “tech” Checks).

“make the employee more aware to log in all items at start of shift” on the employee’s “tech” card. ER 300. If the device “cannot be verified” as employee-owned, Apple will “keep” the device and the employee will be reported to “Loss Prevention.” ER 118, 300.

Until the entirety of this mandatory process is completed, the employees are not “allowed to leave the store.” ER 66 [at 127:23-128:4], 314.⁴ Together with the mandatory bag Checks, the “tech” Checks can take, on average, five to twenty minutes or more of employees’ off-the-clock, personal time every work day.⁵ Employees who fail to adhere to the “tech” Check policy are subject to discipline, “up to and including termination.” ER 115; *see Frlekin*, 870 F.3d at 870; OBM at 8 (citing record).

Employees find the “tech” Check policy degrading and insulting.⁶ The policy is imposed as one of many rules stated in an “Employee Conduct” manual that prohibits

⁴ ER 121 ¶¶3, 5, 127-28 ¶5, 131 ¶3, 136 ¶5, 151 ¶¶3, 5, 155 ¶3, 166 ¶4, 166 ¶6, 175 ¶6, 183 ¶3, 190 ¶6, 197 ¶4, 293 ¶5, 306-07 ¶¶3, 5, 311 ¶3, 329 ¶4, 345 ¶5, 350-51 ¶5, 356 ¶5, 371 ¶5 (employee declarations describing mandatory “tech” checks); *see also* ER 241-42 (describing “tech” policy as one of several “important Apple policies,” and “as an Apple employee, you are obligated to follow ALL Apple policies”), 324 (employees “don’t get to pick and choose” whether to follow “tech” Check policy).

⁵ ER 123 ¶10, 128 ¶5, 131 ¶4, 136 ¶6, 140 ¶8, 144 ¶7, 157 ¶6, 162 ¶6, 167 ¶7, 175 ¶7, 185 ¶¶7-8, 190, ¶6, 198 ¶7, 298 ¶8, 312 ¶6, 330 ¶5, 334 ¶8, 339 ¶¶67-68, 345 ¶8, 351 ¶8, 358 ¶10 (employee declarations on Check times). Apple claims the Checks take no more than “a few seconds” (30 seconds on “average”). *E.g.*, Answer Brief on the Merits (“ABM”) at 13, 39. Even if so, the time is no less compensable. *Troester v. Starbucks Corp.*, 5 Cal.5th 829, 844-45 (2018). The “tech” and bag Checks are “regularly reoccurring activities” that Apple has the capacity to track (ER 152:11-15, 330:17-21), and are therefore compensable. *Troester*, 5 Cal.5th at 846, 848. Even thirty seconds per day mounts up to over two hours’ work per full-time employee per year.

⁶ ER 215 (employee resisted using “tech” cards “as she deemed it insulting”); ER 225 (tech Checks are “a huge shock to the person”); ER 314-15 (“tech” Checks are “insulting and demeaning to Apple employees” and are “often performed in front of gawking customers,” which is “demoralizing”); ER 324 (tech Checks violated

Apple’s employees from engaging in unprofessional conduct such as “[h]arassment,” “[i]nsider [t]rading,” and improper deportment. ER 114. The rule applies to “all” employees, without exceptions (other than the rare circumstance of an employee who may have carried no bag or tech on a particular day), and it presumes that employees regularly bring their bags and Apple-branded tech devices to work. *See* ER 115.⁷

The “tech” Check policy materially benefits Apple. Like the bag Check policy, it enables Apple to earn handsome profits by selling small, valuable electronic devices, such as iPhones and iPods, without adopting other, potentially more costly measures to adequately secure the devices from theft.⁸ Managers must “be very thorough with bag checks *and tech cards*, as these are key components to the impression of control in the store.” ER 212 (emphasis added). Thus, the “tech” Checks deter theft not just as to individual Checked employees, but for Apple’s retail workforce as a whole.

employee’s “rights as an employee and a person since she was off the clock” and took “time away from her personal time”); ER 193 (“tech” Checks are “[n]ot an easy pill for our team to swallow”); ER 317-318 (questioning whether “tech” Checks are “a good business decision” and whether there is “a more intelligent and respectful” way to deter theft).

⁷ OBM at 41-42 & nn. 52-53 (discussing ubiquity of cell phones in modern life; citing authorities; citing Apple CEO Tim Cook’s remark about the iPhone that “You wouldn’t think about leaving home without it.”); ER 118, 366 ¶5 (Apple “support[s] the ownership of personal technology” and provided employee discounts for Apple devices such as iPhones).

⁸ *See, e.g.*, OBM at 12 (citing record), 38; RBM at 29; AACB at 20, 31-32; Amicus Curiae Brief of Correctional Police Officers’ Association at 18-19 & n.4.

2. Both “Tech” Check and Bag Check Time Is Compensable Under the “Control” Test

The “tech” Check time, like the bag Check time, is compensable under Wage Order 7 because it is “time during which an employee is subject to the *control* of an employer.” 8 Cal. Code Regs. §11070, ¶2(G) (emphasis added). Apple conceded that all Check time, not just bag Check time, is “controlled,”⁹ and the time falls within plain-language dictionary definitions of the word “control,” for reasons already briefed.¹⁰ The “unavoidably required” test adopted by the district court (and advocated by Apple) finds no support in the Wage Order’s text or regulatory history.¹¹ Under the oft-stated rule that the Wage Orders’ plain text must be liberally construed to protect employees, the time is compensable. *See, e.g., Troester*, 5 Cal.5th at 839.

This conclusion is fully supported by the relevant decisional law, as has also been previously briefed.¹² Under this Court’s precedents, the “extent,” “level” or “amount” of “the employer’s control” “during” the time in question is “determinative” of compensability. *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal.4th 833, 840 (2015) (citing *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 587 (2000); *Ghazaryan v. Diva*

⁹ ER 47:20-48:13 (discussing “any of those things” an employee might have “elected to bring” to work); *see Frlekin*, 870 F.3d at 871 (recognizing Apple’s concession as to bag Check time).

¹⁰ *See* OBM at 17-28 (discussing Wage Orders’ plain text and adoption history); RBM at 14-20 (same); AACB at 10-15 (same).

¹¹ *See id.* To the contrary, the regulatory history demonstrates that the IWC intended to jettison a less protective test (“required”) and substitute the more protective “control” test, thereby making more time, not less, compensable. *See id.*

¹² *See* OBM at 28-40 (discussing decisional law); RBM at 20-29 (same); AACB at 15-24 (same).

Limousine, Ltd., 169 Cal.App.4th 1524, 1535 (2009)).¹³ Applying this standard, “controlled” time is routinely held compensable even if not “unavoidably required”—the standard Apple advocates. *See, e.g., Mendiola*, 60 Cal.4th at 837, 841 (on-site time compensable even though it could be avoided by seeking permission “to leave the worksite”); *Bono Enters., Inc. v. Bradshaw*, 32 Cal.App.4th 968, 972, 974-75 (1995) (on-site meal period time compensable although employees could avoid it by making “prior arrangements”).¹⁴

Here, Apple’s controls are threefold. Apple imposes its “tech” and bag Checks **(1)** in a written company policy enforced through threat of *discipline*. During all Check time, Apple’s employees are **(2) confined to store premises** and not allowed to leave, and **(3)** required to follow Apple’s search procedures “during which [their] *actions and movements are compelled*.” *Frlekin*, 870 F.3d at 872 (emphasis added). In short, Apple exercised more and greater levels of “control” during “tech” and bag Check time than the employers did over the bus-ride time in both *Morillion* and *Overton*.¹⁵

¹³ *Accord Stoetzel v. Department of Human Resources*, 7 Cal.5th 718, 747 (2019) (*Morillion* “focused on the word ‘control,’” which was “the basis of our decision”).

¹⁴ *Accord Ridgeway v. Wal-Mart Stores, Inc.*, 107 F.Supp.3d 1044, 1054-55 (N.D. Cal. 2015) (on-site layover time compensable even though employees could avoid it by requesting “prior” permission to leave); *Cervantez v. Celistica Corp.*, 618 F.Supp.2d 1208, 1222 (C.D. Cal. 2009) (on-site pre-shift time compensable although employees were not required to “arrive early” and thus could have avoided the “control”); MJN Ex. 12 at 18, 24 (any time “the employee is not allowed to leave the premises” is compensable time, including “after the shift ends”).

¹⁵ *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006); *see* OBM at 30-38 (extensively discussing *Morillion* and *Overton*); RBM at 20-28 (same); AACB at 15-18 (same).

Under the Wage Orders’ plain text, the regulatory history, and the governing decisional law, “tech” Check time is “controlled” and compensable.

B. “Tech” Check Time Is Compensable Under the “Suffered or Permitted to Work” Test

The “tech” Check time is compensable for the independent reason that it is time “during which” the employees were “suffered or permitted to work.” 8 Cal. Code Regs. §11070, ¶2(G). Like the bag Checks, the “tech” Checks easily meet the plain-language, ordinary definition of “work,” for reasons previously briefed.¹⁶ They involve physical or mental exertion to accomplish an end, namely, deterring theft, which benefits Apple.¹⁷ As discussed above, Apple was not only aware of the “tech” Checks, but required, monitored and controlled them. Hence, the work was “suffered or permitted” by an employer, as the Wage Order requires. *Morillion*, 22 Cal.4th at 584-85. Apple should pay for the Check time, rather than shifting the cost of theft prevention onto the backs of its employees, contrary to the Wage Order’s text and purpose.¹⁸

Apple contends that compensable “work” should be confined to job duties the employees were “hired to perform”—essentially the same standard as the federal Fair

¹⁶ See OBM 43-51; RBM at 30-37; AACB at 33-41.

¹⁷ See OBM at 44-45 (citing *Black’s Law Dictionary* (10th ed. 2014); *American Heritage Dictionary* (4th ed. 2000); *Merriam-Webster’s Collegiate Dictionary* (11th ed. 2003)).

¹⁸ See AACB at 30-32 (citing Lab. Code §402; 8 Cal. Code Regs. §11070, ¶8 (both prohibiting employers from forcing employees to bear theft-prevention costs)).

Labor Standards Act, as modified by the Portal-to-Portal Act.¹⁹ This argument is as unavailing for “tech” Checks as it is for bag Checks. Wage Order 7 says “work,” not “job duties.” Moreover, Wage Orders 4 and 5 both say “assigned duties” and/or “as interpreted in accordance with the provisions of the Fair Labor Standards Act.” 8 Cal. Code Regs. §11040, ¶2(K), 11050, ¶2(K). To judicially construe Wage Order 7 as already including the same limitations would render the quoted language of Orders 4 and 5 meaningless. It would also contravene the IWC’s intent to ensure that the Wage Orders are *more* protective than the Portal-to-Portal Act. This Court will not import a less protective federal standard into the Wage Orders absent convincing evidence of the IWC’s intent, which is wholly absent here. *See Troester*, 5 Cal.5th at 841; *Mendiola*, 60 Cal.4th at 843; *Morillion*, 22 Cal.4th at 592.

Lastly, the “tech” Checks *do* relate to the employees’ job duties—for the same reasons the bag Checks do.²⁰ Apple’s business model involves selling unsecured, “valuable goods”²¹ at retail, and in Apple’s stores, loss prevention, including internal theft, “is a team effort to protect the company’s products, assets, and brand.”²² “Each and every employee is responsible for” it, and the employees’ success or lack thereof will

¹⁹ ABM 53-55; *see Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513, 517 (2014) (tasks outside the “principal activity” the employees were “employed to perform” are excluded from compensability under Portal-to-Portal Act).

²⁰ *See* OBM at 51; RBM at 35-37; AACB at 41.

²¹ *Frlekin*, 870 F.3d at 873.

²² Petitioners’ Motion to Augment the Record (“MAR”) at 30.

“affect[] how all of the team members are rated on their annual reviews.”²³ In short, “reasonable attempts to investigate employee theft ... are a normal part of the employment relationship.” *Fermino v. Fedco, Inc.*, 7 Cal.4th 701, 717 (1992).

III. CONCLUSION

For the reasons discussed above, the answer to the restated question is “yes.”

Dated: August 28, 2019

Respectfully submitted,

By:


KRALOWEC LAW, P.C.
Kimberly A. Kralowec

McLAUGHLIN & STERN
Lee S. Shalov

Attorneys for Plaintiffs, Appellants and Petitioners

CERTIFICATE OF COMPLIANCE WITH WORD COUNT REQUIREMENT

The undersigned hereby certifies that the computer program used to generate this brief indicates that the text contains 2,796 words, including footnotes. *See* Cal. Rules of Court, rule 8.520(d)(2).

²³ MAR at 14, 30; *see also* MAR 15-22, 24-35; ER 200-01, 206 (all employees bear “responsibility” for “internal theft”); OBM 12 (citing record); RBM 35-36 (citing record).

EXHIBIT Q

No. S243805

SUPREME COURT
FILED

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Supreme Court
OF THE
State of California

Deputy

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

Reply to Defendant's Supplemental Brief

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, CA 94111
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kralowecclaw.com

Lee S. Shalov (*pro hac vice*)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. INTRODUCTION

The parties agree that restating the certified question to encompass both “tech” Check and bag Check time does not change the analysis or the outcome. The parties vehemently disagree, however, on what the analysis and the outcome should be.

Plaintiffs’ positions are unchanged. Contrary to Apple’s view, and as explained in plaintiffs’ supplemental brief and below, all Check time, including “tech” Check time, is compensable under the “control” test, the “suffered or permitted to work” test, or both.

II. DISCUSSION

A. “Tech” Check Time Is Compensable Under the “Control” Test

Apple’s supplemental brief presents no argument that can defeat the conclusion that under Wage Order 7, the “tech” (and bag) Check time is “controlled” and thus compensable. *See* Apple’s Supp. Br. at 6-8.

Notably, Apple’s supplemental brief says nothing about the Wage Order’s plain text. *See id.* The text is the starting point for any analysis of whether the time is compensable, because the text is “[t]he best indicator” of the IWC’s intent. *See, e.g., Augustus v. ABM Security Servs., Inc.*, 2 Cal.5th 257, 264 (2016) (citing *Reynolds v. Bement*, 36 Cal.4th 1075, 1086 (2005)). Under plain-language dictionary definitions, “control” means to “exercise restraint or direction” upon; to “regulate” or “hold [someone] in restraint.” *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968, 975

(1995) (citing *Oxford English Dictionary* (2nd ed. 1989)); *American Heritage Dictionary*, “control,” *tr.v.*, senses 2, 3 (4th ed. 2000), *cited in Augustus*, 2 Cal.5th at 265.¹

Apple does not explain how the time “during which”² Apple required its employees to remain on store premises, “compelled” them to perform manager-directed “actions and movements,”³ and imposed discipline on them “up to and including termination”⁴ if they refused to comply with these directives, is not time “during which” Apple “exercise[d] restraint or direction upon” its employees, “regulate[d]” their actions, or “h[e]ld [them] in restraint.”

Apple does not address this because Apple has no answer to it. The “tech” Check time, like the bag Check time, is plainly “controlled,” as Apple has already recognized and conceded. *See Frlekin v. Apple, Inc.*, 870 F.3d 867, 871 (9th Cir. 2017).

Nor has Apple anything to say about the IWC’s decision to intentionally jettison the prior “required” test and to replace it with the broader, more employee-protective “control” test, which remains the governing test today. *Compare Wage Order 7S* (Apr. 5, 1943, eff. Jun. 21, 1943), ¶2(f) (Plaintiffs’ Motion for Judicial Notice (“MJN”), Ex. 4) *with Wage Order 7 R* (Feb. 8, 1947, eff. Jun. 1, 1947) (MJN, Ex. 5).

¹ *Accord American Heritage Dictionary, supra*, “control,” *tr.v.*, sense 1 (“to exercise authority or dominating influence over; direct”); *Black’s Law Dictionary*, “control,” *vb.*, sense 1 (10th ed. 2014) (“to exercise power or influence over”); *Merriam-Webster’s Collegiate Dictionary*, “control,” *vb.*, sense 2a (11th ed. 2003) (“exercise restraining or directing influence over”).

² 8 Cal. Code Regs. §11070, ¶2(G).

³ *Frlekin*, 870 F.3d at 872.

⁴ ER 115, *quoted in Frlekin*, 870 F.3d at 870.

Finding no support for its positions in the Wage Order’s text, Apple turns to the case law, once again relying heavily on *Morillion* and *Overton*,⁵ but saying nothing new about either decision. Apple’s arguments boil down to the notion that “control” is not enough to meet the “control” test, but neither case holds this. Plaintiffs’ prior briefs have already exhaustively discussed Apple’s erroneous readings of *Morillion* and *Overton*. See Opening Brief on the Merits (“OBM”) at 30-38; Reply Brief on the Merits (“RBM”) at 20-28; Answer to Amicus Curiae Briefs (“AACB”) at 15-18.

What this Court’s precedents actually hold, consistent with the Wage Order’s text, is that compensability depends on the “extent,” “level” or “amount” of “the employer’s control” “during” the time in question—not on whether the activity was “unavoidably required,” which is Apple’s unsupported reading. *Mendiola v. CPS Sec. Solutions, Inc.*, 60 Cal.4th 833, 840 (2015) (citing *Morillion*, 22 Cal.4th at 587; *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal.App.4th 1524, 1535 (2009)) (emphasis added).⁶

In Apple’s view, the *only* relevant fact is whether the employer “unavoidably required” an activity—not whether the employer exercised “control” during the activity. But under that approach, the Court would have to ignore the heavy restrictions on the

⁵ *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000); *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006).

⁶ *Accord Stoetzel v. Department of Human Resources*, 7 Cal.5th 718, 747 (2019) (*Morillion* “focused on the word ‘control,’” which was “the basis of our decision”); *Mendiola*, 60 Cal.4th at 837, 841 (on-site time compensable even though it could be avoided by seeking permission “to leave the worksite”); *Bono*, 32 Cal.App.4th at 972, 974-75 (mandatory on-site time was “controlled” and compensable although employees could take actions to avoid it); *Ridgeway v. Wal-Mart Stores, Inc.*, 107 F.Supp.3d 1044, 1054-55 (N.D. Cal. 2015) (same); *Cervantez v. Celistica Corp.*, 618 F.Supp.2d 1208, 1222 (C.D. Cal. 2009) (same).

employees’ freedom of movement that Apple exercised “during”⁷ the “tech” (and bag) Check time—including the employer-imposed prohibition against leaving store premises to go home until after the Checks are completed—in favor of an Apple-invented test, unstated in *Morillion* let alone in the Wage Order. *Morillion* itself forbids such rewriting of the Wage Order’s text. 22 Cal.4th at 585.

If Apple has its way, and the “tech” (and bag) Check time is deemed non-compensable, nothing would prevent employers from getting all sorts of free tasks out of their employees by the simple expedient of imposing “optional” conditions—such as if you “choose” to bring your purse or your iPhone to work, you will be required to stay late after your shift and clean the break room (including the cockroaches in the microwave),⁸ under a manager’s immediate physical supervision, on pain of discipline including termination. If the Check time is non-compensable, Apple (and other employers) will have no incentive to expedite the Checks, to mitigate the wait times for the Checks, or lessen the Checks’ intrusiveness into the employees’ persons and belongings.⁹ Such an outcome would disregard the Wage Orders’ “remedial purposes,” would intrude upon employees’ “dignity and self-respect,” and would set off a “race to the bottom” among California employers who wish to subject their employees to intrusive personal searches

⁷ 8 Cal. Code Regs. §11070, ¶2(G).

⁸ *Cf.* Amicus Curiae Brief of Bet Tzedek Legal Services at 15 n.2 (citing similar real-life example). In that hypothetical, according to Apple, the time would not be compensable under the “suffered or permitted to work” test, either, because cleaning out cockroaches is not part of the “regular job duties” the employees were hired to perform. As discussed in the next section, this is not how California law works.

⁹ *See id.* at 14.

without any payroll consequence. *See Dynamex Operations West, Inc. v. Superior Court*, 4 Cal.5th 903, 952, 953, 960 (2018). To avoid these adverse effects, the Check time should be held compensable, in accordance with the Wage Orders' plain text, regulatory history and the relevant decisional law.

Left with no other arguments to support its positions, Apple once again resorts to claiming that plaintiffs supposedly "stipulated away" their right to argue that "the choice to bring bags or personal devices to work was not a 'true choice.'" Apple's Supp. Br. at 6-7; *see id.* at 5-6. But even if Apple's characterization of the record were correct (it is not, as discussed below), the "tech" Check time remains "controlled" and compensable within the meaning of Wage Order 7, which looks to the degree of "control" exercised by the employer "during" the Check time itself. *Mendiola*, 60 Cal.4th at 840 (citing *Morillion*, 22 Cal.4th at 587). This conclusion does not turn on the factual point that Apple claims was "stipulated away."

What is more, Apple mischaracterizes what actually occurred below. The district court was concerned that some class members may have had a "special need" to bring bags or personal technology devices to work, such as a need to carry medications or as a disability accommodation. *See* RBM at 10-11 (citing record). This is clear from a portion of the class notice that Apple's supplemental brief neglects to quote:

Plaintiffs will NOT assert that Apple must compensate Apple Employees for Checks when Apple Employees were required to bring bags and/or personal Apple technology ***due to any "special needs," such as the need to carry prescription medication or feminine hygiene products.*** The Class will litigate this case EXCLUSIVELY on the theory that Class Members voluntarily chose to bring bags and/or personal Apple technology to work purely for personal convenience.

SER 6 (third paragraph under heading 2) (emphasis added). Plaintiffs have advanced no “special needs” arguments inconsistent with the district court’s directives.

Well aware of this record, the Ninth Circuit found no procedural bar to considering the ordinary, everyday reasons why people “routinely” carry “bags, purses, and satchels” with them to work. *See Frlekin*, 870 F.3d at 873. After all, if employees carry those belongings “voluntarily,” for reasons of “personal convenience,” it follows that leaving the belongings at home would be highly inconvenient to them, and that the employees would do it only involuntarily. The same is true of “tech” devices, especially essential modern communication devices such as the iPhone. *See, e.g., People v. Valdivia*, 16 Cal.App.5th 1130, 1143 (2017) (“Now it is the person who is not carrying a cell phone ... who is the exception.”).¹⁰

In short, the district court entered no gag order barring plaintiffs from mentioning, or the Court from considering, the reality that most people would prefer not to leave their bags and iPhones at home, for a variety of understandable, everyday reasons. *See generally Frlekin*, 870 F.3d at 873; *see also* OBM 40-42 (discussing points raised by Ninth Circuit).¹¹

Apple’s unpaid “tech” (and bag) Check policy exploits this reality and shifts the burden and cost of theft control to Apple’s employees. But under California law, the

¹⁰ *See also* OBM at 41-42 & nn.52-53 (citing additional authorities).

¹¹ *Accord* Amicus Curiae Brief of Bet Tzedek Legal Services at 17-19 (discussing some of the everyday, non-“special needs” reasons why employees, especially in low wage jobs, carry bags and devices with them).

employer must bear those burdens and costs,¹² especially when the employer is “in a better position” to mitigate the risk of theft by other means.¹³ Here, the employer’s chosen business model yields billions of dollars in profits by selling valuable small electronics that the employer chooses not to adequately secure.¹⁴ The employer, not the employees, should bear the burdens associated with the employer’s business decisions.

In sum, the Check time is, and should be, compensable under the “control” test.

B. “Tech” Check Time Is Compensable Under the “Suffered or Permitted to Work” Test

Apple’s arguments on the “suffered or permitted to work” test are equally unsupported. For one thing, Apple’s supplemental brief offers no definition of the word “work” as used in Wage Order 7. Apple’s Supp. Br. at 9. Apple cites no textual support for its position that under California law, as under federal law, only “regular job duties” employees were expressly hired to perform can be compensable under the “suffered or permitted to work” test. *See id.* at 2, 9.

Apple’s position cannot be squared with the plain text of Wage Orders 4, 5 and 7. The Orders say “work,” not “job duties.” And, as plaintiffs have repeatedly pointed out,

¹² *See, e.g., Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (citing Lab. Code §2802) (California law is “designed to prevent employers from passing their operating expenses on to their employees”); Lab. Code §402 (prohibiting employers from passing on certain theft prevision costs); 8 Cal. Code Regs. §11070, ¶8 (same).

¹³ *See Troester v. Starbucks Corp.*, 5 Cal.5th 829, 848 (2018) (employers may not ignore the Wage Orders’ requirement to pay for all “hours worked” simply because the time might be hard to track); *see also Kilby v. CVS Pharmacy, Inc.*, 63 Cal.4th 1, 22 (2016) (employers may not sidestep the Wage Orders’ requirement to provide suitable seats by designing the workspace in a way that makes seating difficult).

¹⁴ *See AACB at 20 & nn.28-30* (supporting citations).

Orders 4 and 5 already explicitly limit compensable time under the “suffered or permitted to work” test to certain “assigned duties,” and/or state expressly that the test is to be “interpreted in accordance with the provisions of the Fair Labor Standards Act.” 8 Cal. Code Regs. §11040, ¶2(K), 11050, ¶2(K). Wage Order 7 includes no such qualifying language. *Id.* §11070, ¶2(G). This was a purposeful decision by the IWC.

Apple makes no attempt to reconcile the Orders’ text, let alone explain how the qualifying language of Orders 4 and 5 would have any meaning left if Order 7, which is otherwise identical to Orders 4 and 5, is construed to *implicitly* include the same qualifications *expressly* stated in Orders 4 and 5. This textual problem is fatal to Apple’s position, and Apple has never offered any supported way around it.

Apple claims that “[d]efining ‘work’ without any connection to an employee’s job responsibilities would be boundless.” Not so. To be compensable, the work must be “suffered or permitted” *by an employer*, which means the employer knew or had reason to know the work was occurring. *Morillion*, 22 Cal.4th at 584-85. Here, Apple certainly knew that “tech” (and bag) Checks were taking place on Apple store premises, under a manager’s supervision, pursuant to a mandatory, written company policy. Moreover, the Check policy certainly benefited Apple by deterring theft, or Apple would not have gone to such lengths to adopt, implement and enforce the policy.

Apple argues that this plain-language construction of the “suffered or permitted to work” test would render the “control” test “superfluous.” Apple’s Supp. Br. at 9. But this argument assumes that an employer cannot know about “work” without also controlling it, which is plainly incorrect. Unauthorized overtime is a prime example of

time compensable under the “suffered or permitted to work” test but not the “control” test. On-call time is a prime example of time compensable under the “control” test but not the “suffered or permitted to work” test. The two tests are “independent” (*Morillion*, 22 Cal.4th at 582), and function together to broadly protect employees and ensure they are compensated for all “hours worked.” In this case, the Checks are compensable under *both* tests, not neither test, as Apple would have it.

Apple’s final point is that the “tech” (and bag) Checks are supposedly unrelated to the “regular job duties” these employees were hired to perform. Apple’s Supp. Br. at 2, 9. Plaintiffs have already explained in detail why both “tech” and bag Checks are directly related to these retail sales employees’ jobs. *See* Plaintiffs’ Supp. Br. at 12-13 (citing record); OBM at 51; RBM at 35-37; AACB at 41.

C. The Usual Rules of Retroactive Application Apply to this Court’s Resolution of the Restated Question

Apple’s supplemental brief does not mention the issue of retroactivity, or argue that the Court’s ruling on the compensability of “tech” Check time should apply prospectively only. *See generally* Apple’s Supp. Br. Nor has Apple ever argued that the Court’s eventual interpretation of the “suffered or permitted to work” test, either for “tech” Check or bag Check time, should apply other than retroactively. *See* ABM 59-61 (arguing only that the Court’s interpretation of the “control” test should be prospective); Apple’s Response to Amici Curiae Briefs at 24 (same).

Whatever the Court’s ruling on the “control” test may be, it will construe the 72-year-old test stated in the Wage Orders, in accordance with the Orders’ plain text, which

the IWC adopted in 1947 for no purpose other than to protect California employees even more broadly than prior law did. The ruling will “vindicate the original meaning” of the Wage Order’s text, “putting into effect the policy intended from its inception.” *Woosley v. California*, 3 Cal.4th 758, 794 (1992) (quoting *People v. Garcia*, 36 Cal.3d 539, 549 (1984)). To “accomplish that aim” (*id.*), the ruling must operate retroactively in accordance with the well-established general rule, “basic in our legal tradition,” that “judicial decisions are given retroactive effect.” *Newman v. Emerson Radio Corp.*, 48 Cal.3d 973, 978 (1989); *see also Mendiola*, 60 Cal.4th at 848 & n.18; *Waller v. Truck Ins. Exchange, Inc.*, 11 Cal.4th 1, 24-25 (1995); Amicus Curiae Brief of California Employment Lawyers Assn. at 3-9 (citing additional authorities).

III. CONCLUSION

For the reasons discussed above and in plaintiffs’ supplemental brief, the answer to the restated question is “yes.”

Dated: September 11, 2019

Respectfully submitted,

By: 
KRALOWEC LAW, P.C.
Kimberly A. Kralowec

McLAUGHLIN & STERN
Lee S. Shalov

Attorneys for Plaintiffs, Appellants and Petitioners

EXHIBIT R

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Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
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Answer to Petition for Rehearing

Kimberly A. Kralowec (Bar No. 163158)
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, CA 94111
Telephone: (415) 546-6800
Facsimile: (415) 546-6801
Email: kkralowec@kraloweclaw.com

Lee S. Shalov (*pro hac vice*)
MCLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, NY 10016
Telephone: (212) 448-1100
Facsimile: (212) 448-0066
Email: lshalov@mclaughlinstern.com

Attorneys for Plaintiffs, Appellants and Petitioners

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I. INTRODUCTION

Dissatisfied with this Court's decision, Apple seeks rehearing, claiming that the Court's opinion somehow went too far in resolving the Ninth Circuit's certified question, as it was written, in plaintiffs' favor. According to Apple, the Court made certain improper factual "findings," which Apple claims are unsupported by the record below, then exceeded its authority by misapplying the law to those newly-"found" facts, as the certified question expressly called upon the Court to do. Having lost in this Court, Apple now wants to be able to take another shot at persuading the Ninth Circuit, or the district court, to rule differently than this Court did in its opinion.

The rehearing petition should be denied. Apple's contentions are all incorrect. They rest on a misinterpretation of the Court's opinion and of the facts below, a disregard of the Ninth Circuit's factual summary in its order, and a misunderstanding of the law governing determination of certified questions.

This Court's opinion contains no improper factual "findings," let alone any "findings" that are unsupported by the record below as summarized by the Ninth Circuit in its order certifying the question. *See Frlekin v. Apple, Inc.*, 870 F.3d 867, 870-73 (9th Cir. 2017). To the contrary, the opinion carefully and closely adheres to the Ninth Circuit's own determinations that the security searches are "required as a practical matter, occur at the workplace, involve a significant degree of control, are imposed primarily for Apple's benefit, and are enforced through threat of discipline." *Compare* Slip op. at 23 *with Frlekin*, 870 F.3d at 870-73 (addressing each of these summarized facts). As the Court stated the case quite simply: "We agree with the Ninth Circuit." Slip op. at 20.

The question presented to this Court for decision was whether, under the facts stated by the Ninth Circuit and as subsequently reiterated in the Court’s opinion, the security search time is “*compensable* as ‘hours worked’ within the meaning of Wage Order 7.” Slip op. at 1 (emphasis added). The question presents an issue of law and necessarily called upon this Court to decide whether the security search time is indeed “compensable” under California law. The Ninth Circuit, moreover, expressly asked the Court to consider and determine “on which side of the line Plaintiffs’ claim falls”—that is, to *apply* the law to the facts presented. *Frlekin*, 870 F.3d at 873. That is precisely what the Court properly did in the portions of its opinion that Apple now challenges.

Apple may not like the Court’s decision, but that is far from a valid reason to grant a rehearing. “[A] rehearing will *not* be granted (and should not be sought) simply to enable a party to reargue the case.”¹ Apple’s rehearing petition unabashedly does this by rearguing the same case law already exhaustively covered in the merits briefing, including *Morillion*, *Overton*, and *Alcantar*. Petition for Rehearing (“Pet”) at 14.²

The irony of Apple’s current arguments should not go unremarked. In its answer brief on the merits, Apple invited the Court to apply “long-settled” California law to “a set of undisputed facts.” Answer Brief on the Merits (“ABM”) at 9; *see id.* at 12, 51 (“[u]nder the undisputed facts here”). Apple contended that as a factual matter, “Apple

¹ Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* ¶12:15 (Rutter Group 2019) (emphasis added).

² Citing *Morillion v. Royal Packing Co.*, 22 Cal.4th 575 (2000); *Overton v. Walt Disney Co.*, 136 Cal.App.4th 263 (2006); *Alcantar v. Hobart Service*, 800 F.3d 1047 (9th Cir. 2015).

employees” were not “subject to the control’ of Apple” during the searches. *Id.* at 21; *see id.* at 51 (arguing that “they were not ‘subject’ to [Apple’s] control” (alteration in original)). As a result, Apple argued, its employees’ search time was “not compensable.” *Id.* at 33; *id.* at 61 (“the checks at issue ... [were] not compensable”). Apple may not now complain that the Court somehow erred by addressing Apple’s own arguments as Apple briefed them, by applying the law to the facts as the Ninth Circuit expressly asked the Court to do, or by considering the full factual record in the course of that analysis.

As the Court is well aware, “rehearings in the supreme court are *rarely* granted.” Eisenberg, *supra*, at ¶12:205 (emphasis in original). Apple has advanced no valid reason to grant rehearing in this case. Nor should the Court’s opinion be modified in any respect. The petition should be summarily denied so that proceedings in the Ninth Circuit and district court may resume forthwith. The class members’ legal right to compensation has already been delayed for years as a result of the errors of law below. All proceedings in this Court should be concluded, and the class members’ rights vindicated, as promptly as possible, without affording Apple another bite at the proverbial apple.

II. REASONS WHY REHEARING SHOULD BE DENIED

A. The Petition Misreads the Court’s Opinion and Ignores the Ninth Circuit’s Order Referring the Certified Question

Apple claims that the Court’s opinion contains “impermissible and incorrect” factual “findings” unsupported by the record below. Pet. at 6-7, 15-22. In reality, the opinion contains no such improper factual “findings.” Apple can make this argument

only by misreading the Court's opinion *and* by ignoring the Ninth Circuit's order, which summarized and explained the facts on which this Court's analysis of the law was based. The entire section I.B of Apple's rehearing petition, where the argument is made, fails to mention the Ninth Circuit's order at all. Pet. at 15-22. The omission is telling.

(1)

Apple's most vociferous criticism of the Court's opinion is nothing more than a re-argument of a point Apple has already made many times before,³ including in the Ninth Circuit⁴—namely, that plaintiffs are supposedly barred from arguing, and that every Court in the land is forever barred from acknowledging, that people need to carry their bags and technology devices with them to work for all sorts of ordinary, everyday reasons, and that any so-called “choice” to leave their belongings at home is an illusory one. According to Apple, the record contains a “stipulation” that bars this argument. Pet. at 7, 15-17. But Apple has yet to cite any such “stipulation” (because none exists), and Apple continues to myopically ignore the district court's own orders stating that its concern was with class members who may have had a “special need” to carry these belongings, such as “the need to carry prescription medication or feminine hygiene products.” SER 6 (third paragraph under heading 2) (class notice); *see also* ER 552:25-553:28 (district court's class certification order referencing “special needs” as the *only* argument off limits in support of liability); Reply Brief on the Merits (“RBM”) at 10-12

³ ABM at 10, 14-15, 22, 29-3; Apple's Supplemental Brief at 6-7.

⁴ Defendant-Appellee's Brief (9th Cir. Dkt. 29) at 1-2, 10-14, 44-45 (vigorously making this same argument).

(discussing this point and citing record); Reply to Defendant's Supplemental Brief ("RDSB") at 9-10 (same).

Apple's argument is inconsistent with, and ignores, the Ninth Circuit's own view of the record and the district court's orders with regard to "special needs." *Frlekin*, 870 F.3d at 873. This Court correctly echoed the Ninth Circuit's and the district court's views when it quoted the orders below as to "special needs" and when it recognized, as the Ninth Circuit had already clearly explained, that nothing precluded "plaintiffs from asserting that, as a practical matter, [class members] have little genuine choice regarding whether to bring [bags or personal technology devices] to work." Slip op. at 22 n.7.

In acknowledging that the security searches "are, as a practical matter, required," this Court was properly expressing its "agree[ment] with the Ninth Circuit," whose own order said that "many employees may feel that they have little true choice when it comes to the search policy" *Id.* at 20 (quoting *Frlekin*, 870 F.3d at 873).⁵ There is nothing improper about this, nor is it an "impermissible" factual "finding," as Apple claims. Rather, it is a conclusion that follows from the Court's explicit rejection of Apple's argument that under California law, an activity must be "*unavoidably* required" to be compensable "hours worked." *See* Slip op. at 9-11. Apple continues to elide the distinction between a "required" activity and an "*unavoidably* required" one, and Apple ignores the Ninth Circuit's own determination that the searches are properly characterized as "required," even "*compelled*," based on the plain language of Apple's

⁵ Apple cites the district court's purported holding that "there was 'nothing illusory' about the choice employees had here" (Pet. at 6-7 (citing ER 14)), but the Ninth Circuit viewed the matter differently on appeal from that part of the order.

own written policy mandating them on threat of discipline. *Frlekin*, 870 F.3d at 869, 873 (emphasis added).

The Court’s discussion of whether the searches were not just “required” and “compelled,” but also “required as a practical matter,” comes late in the opinion (slip op. at 19-22 (Part II.B))—*after* the Court had already evaluated the text of Wage Order 7 and held that compensable “hours worked” is not limited to “required” activities, let alone “*unavoidably* required” ones. Slip op. at 7-11 (Part II.A). In Part II.B, the Court explained why Apple’s reliance on “*Morillion* and its progeny” was misplaced. Then, after discussing the decisional law, the Court set out a series of reasons why the security search time in this case is compensable. First, “Apple controls its employees *at the workplace*, where the employer’s interest—here, deterring theft—is inherently greater,” and where “the level of Apple’s control over its employees—the ‘determinative’ factor in analyzing whether time is compensable under the control standard (*Morillion, supra*, 22 Cal.4th at p. 587)—is higher” Slip op. at 14-15.⁶ Second, “[h]ere, ... the employer-*controlled* activity primarily serves the employer’s interests,” a statement grounded in Apple’s own “acknowledge[ment] that the exit searches promote its interest in loss prevention,” and “are an integral part of Apple’s internal theft policy and action plan.” *Id.* at 17 (emphasis added).⁷ Third, “Apple’s exit searches are enforceable by disciplinary

⁶ This echoes the Ninth Circuit’s own views and summary of the record. *Frlekin*, 870 F.3d at 872-73.

⁷ Apple says the Court “found” that the search procedure “conferred *no* benefit on employees.” Pet. at 6 (emphasis added) (citing slip op. at 17). In fact, the Court said the searches “are imposed *mainly* for Apple’s benefit by serving to detect and deter theft.”

action,” pursuant to Apple’s “explicit[]” “written policy.” *Id.* at 18.⁸ Fourth, “the employee’s ability to avoid an employer-controlled activity is *not* dispositive outside of the commuting context,” which means “the potential antecedent ‘choice’ by some employees not to bring any searchable items to work does *not* invalidate the compensation claims of the bag-toting or Apple-device-carrying employees who are *required* to remain on the employer’s premises while awaiting an exit search of those items.” *Id.* at 18 (emphasis added).⁹

For these compelling and dispositive reasons, the Court held, the search time is compensable. *See id.* at 23 (first paragraph). It was not until the Court’s “final[]” added point that the Court said it “agree[d] with the Ninth Circuit” that “many employees may feel that they have little true choice when it comes to the search policy, especially given that the policy applies day in and day out,” and that the searches are therefore not merely both “controlled” and “required” as a matter of Apple’s “mandatory” written policy, but also, “as a practical matter, required.” *Id.* at 20. Apple’s assertion that this so-called “finding” somehow “impacted [the Court’s] holding” too much (Pet. at 22; *id.* at 8) ignores the *context* of the Court’s discussion, which came only after the Court had already described Apple’s searches as “controlled,” “required” and “mandatory” and after

Slip op. at 17. In the Ninth Circuit’s words, the search policy “advance[d]” Apple’s “significant” “interest in loss prevention.” *Frlekin*, 870 F.3d at 873.

⁸ This is undisputed per the Ninth Circuit’s order. *Frlekin*, 870 F.3d at 870.

⁹ This is the main issue on which the parties disagreed and which the Ninth Circuit asked the Court to decide. *Id.* at 872-73.

the Court had already held that such activities are compensable even if they are also “theoretically avoid[able].” *Id.* at 14, 17, 19.

Straining to avoid the consequences of this Court’s and the Ninth Circuit’s shared evaluation of this issue, Apple goes so far as to argue that wording of the certified question—where it says “voluntarily brought to work purely for personal convenience”—means that the Ninth Circuit “necessarily presumed that the searches were *not* required.” Pet. at 1 (emphasis in original). That makes no sense. The certified question itself described the searches as “*required* exit searches of packages, bags [and] personal technology devices.” Slip op. at 1 (emphasis added).¹⁰ Under Apple’s reading, the question would be internally inconsistent, circular, and unanswerable. The Ninth Circuit would not have bothered to present the Court with such an absurd question, nor should the Court construe the question in the nonsensical manner Apple advances.

Pursuant to the plain language of the certified question itself, coupled with the plain language of Apple’s mandatory written search policy and Ninth Circuit’s understanding of the record on “special needs,” this Court properly described the searches as “controlled,” “required,” and “mandatory,” as well as “required as a practical matter.” Slip op. at 14, 17, 19, *passim*. As plaintiffs have repeatedly pointed out before, if bags are brought to work “voluntarily” and for “personal convenience,” as stated in the question and in the class notice, it is only logical that leaving them at home would be “involuntary,” rather than a true “choice,” and that doing so would be highly

¹⁰ The district court, too, described the searches as “mandatory,” which they are, pursuant to the unambiguous language of Apple’s own written search policy. ER at 5:6, 545:25.

“inconvenient.”¹¹ As to Apple-branded technology devices, Apple admitted as much in a brief of which this Court granted judicial notice, in which Apple described iPhones as “*practical necessities of modern life.*” Slip op. at 21 (quoting this brief) (emphasis added). Apple did not oppose, and does not now contest, the propriety of the Court’s order granting judicial notice of this brief.

This purported ground for rehearing is nothing more than a re-hash of positions that Apple previously advanced, and effectively lost, in the Ninth Circuit—namely, the same old arguments about a non-existent “stipulation” and supposedly “avoidable” searches. Apple repeated these points in the merits briefing in this Court, and lost a second time. Apple cannot even state the arguments now without citing and re-arguing the same authorities it already cited exhaustively in its merits briefs in both Courts. Pet. at 13 (bottom two lines) to 14 (once again citing *Morillion*, *Overton*, and *Alcantar*). These arguments have been unsuccessful for Apple because the record does not support them, nor does logic, nor does an understanding of the everyday reality of modern life in the 21st century as the Ninth Circuit described it, nor does California law as this Court construed it.¹²

The Court should dispose of Apple’s repeated arguments by summarily denying the rehearing petition.

¹¹ RBM at 11-12; RDSB at 10.

¹² Slip op. at 8-9, 11-20 (discussing the three decisions cited in Apple’s rehearing petition plus others that undermine Apple’s positions, including *Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833 (2015), *Madera Police Officers’ Assn. v. City of Madera*, 36 Cal.3d 403 (1984), and *Bono Enterprises, Inc. v. Bradshaw*, 32 Cal.App.4th 968 (1995)).

(2)

Apple also asserts that the Court made several other so-called “improper” factual “findings” in its opinion, and inappropriately resolved “disputed” facts in plaintiffs’ favor. Pet. at 18-22. In so claiming, Apple once again misreads the Court’s opinion and/or overlooks the Ninth Circuit’s own view of the record. Apple also backtracks from its own merits briefs, which said the “facts relevant” to the certified question were all “undisputed.” ABM at 12; *see also id.* at 1, 9, 51.

- Apple asserts that the Court “credited as true Plaintiffs’ contention that ‘nearly all’ Apple employees bring bags and smartphones to work,” then criticizes the Court for supposedly “ignor[ing]” other evidence that Apple says contradicts this. Pet. at 18-19 (citing slip op. at 3); *id.* at 6 (same).¹³ But on the cited page, the opinion actually reads: “*Managers estimated that 30 percent of Apple employees bring such bags to work; employees estimated that ‘nearly all’ do.*” Slip op. at 3 (emphasis added). Far from “crediting” plaintiffs’ evidence as “true,” that sentence mirrors the district court’s finding that “[e]mployee versus manager declarations reflect a wide range of estimates as to how many employees brought bags to work, ranging as low as thirty percent up to ‘nearly

¹³ Apple relies heavily on the testimony of one Dr. Hall (Pet. at 18), but the district court expressly declined to rely on that testimony (ER 21:22-23), and the Ninth Circuit’s order does not so much as mention it. Nothing obligated this Court to cite or rely on testimony that both federal courts considered immaterial and declined to consider. What is more, the testimony was seriously flawed on the merits, for reasons argued in plaintiffs’ motion to strike the report filed in the district court. *See* ER 21:17-24 (referencing this motion and denying it as “moot”). The Court should decline Apple’s invitation to rely on it when neither of the federal courts did and when plaintiff’s formal motion to strike it was not decided on the merits below.

all.” ER 549:10-11 (citing record).¹⁴ The sentence is not “incorrect” nor is it an inappropriate factual “finding.”

- Apple faults the Court for supposedly “finding” that “searches were required for *all* Apple employees who brought searchable items to work.” Pet. at 6 (emphasis added); *see also id.* at 19-21. Apple claims that the record shows, instead, that “store managers had discretion over whether to conduct exit searches,” some managers did not conduct any searches, and some stores had off-site break rooms where employees could store their bags in lockers. *Id.* at 20. But the Court’s discussion of Apple’s search policy (slip op. at 1-2, 15, 20, 23) adheres strictly to the Ninth Circuit’s order and Apple’s own written policy, which expressly states that it applies to “all” employees who bring bags or Apple devices to work. *Frlekin*, 870 F.3d at 870 (quoting policy; “Employees who bring a bag or package to work may not leave the premises before undergoing a search”); *id.* at 871 (“Under threat of sanctions and loss of employment, the employees may not leave the premises until the search is conducted”); ER 5:5-7 (Apple’s “written policy” “imposed mandatory searches”). In the certified question itself, moreover, the Ninth Circuit said the searches are “required.” *Id.* at 869. And, when Apple cited the same evidence and argued below that its “written policy wasn’t uniformly followed” (ER 548:7-25), the district court found that “the showing by Apple is not powerful enough to establish that the written policy was the exception rather than the rule.” ER 548:26-28;

¹⁴ The Court’s opinion is replete with signposts of a careful and diligent review of the record, by a meticulous writer and cite-checker, as illustrated by this example.

see also ER 555:7-12.¹⁵ Finally, in opposing plaintiff’s summary judgment motion, Apple conceded that this evidence was “not relevant” to the central legal question of whether the security search time was compensable “hours worked.” ER 75:3.

- Apple contends that the Court improperly “found” that the security searches invariably “take five to 20 minutes to complete.” Pet. at 21 (citing slip op. at 17).¹⁶ But the opinion actually says that these figures are “[e]mployee estimates.” Slip op. at 3. Nor did the opinion “emphasize[] that the searches were substantial in nature” due to their duration, as Apple claims (Pet. at 21); instead, the opinion merely (correctly) said that the searches “*can*” take five to 20 minutes to complete—not that they always do or that only searches of that length would be compensable under California law. Slip op. at 17 (emphasis added).¹⁷ Apple does not, and cannot, attempt to deny that class members did in fact testify that some searches and wait times lasted up to 45 minutes “[o]n the busiest days.” Slip op. at 3-4.¹⁸ The opinion contains no “improper” or “incorrect”

¹⁵ Apple also made this same argument in the Ninth Circuit, which did not consider it relevant enough to mention in its order. *See* Defendant-Appellee’s Br., *supra*, at 5.

¹⁶ Again, Apple relies on the testimony of Dr. Hall (Pet. at 22), which neither the district court nor the Ninth Circuit saw any need to credit. *See supra* footnote 13.

¹⁷ Such a holding would be inconsistent with this Court’s analysis of the purported “de minimis” defense in *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018). Here, the Court characterized the searches as imposing a “higher” “level of control” because of the intrusiveness and extent of the search *procedure*, without mentioning the potential long duration of the searches. Slip op. at 15.

¹⁸ *See, e.g.*, ER 298 ¶8, 338-39 ¶67, 341 ¶92. The “[e]mployee estimates” make sense considering that employees may searched repeatedly each day—“upon exiting the store for any reason (break, lunch, end of shift).” Slip op. at 3 (quoting Apple’s guidelines to managers).

“finding” on this point, nor does Apple explain how such a “finding” would have changed the Court’s analysis or its answer to the certified question. It would not have.

In sum, Apple’s contention that this Court made improper factual “findings” in its opinion is based on an overblown, exaggerated reading of the opinion. The argument is wholly unsupported by what the Court actually said, especially when considered in light of the Ninth Circuit’s order and its summary of the facts and issues.

B. The Petition Misunderstands the Procedure for Deciding Certified Questions and Misconstrues the Certified Question in this Case

Apple also contends that “it would not be within this Court’s authority to resolve” disputed factual questions “in the first instance.” Pet. at 8 (citing *Poosh v. Philip Morris USA, Inc.*, 51 Cal.4th 788, 793 (2011)); *see also id.* at 11-13. This argument fails. As discussed extensively above, the Court’s opinion did *not* “disturb the factual record developed in the federal courts” in this case, as Apple incorrectly claims. Pet. at 8; *see id.* at 11-13. Instead, the Court adhered carefully to the facts as described in the Ninth Circuit’s order and in the record, then applied the law to those facts in order to answer the certified question. Part II.A, *supra*. Apple’s assertion that this Court supposedly “disburb[ed] the fundamental structure of the federal case” (Pet. at 8 (citation omitted)) is nothing more than hyperbole.

The “determination of the legal effect” of the facts adduced in the federal court “presents an issue of *law*” proper for this Court to address in deciding a certified question from a federal court. *Doe v. Harris*, 57 Cal.4th 64, 68 (2013) (emphasis added). Apple’s petition conflates the act of “finding” improper facts—which the Court did not do—with

the act of determining the “legal effect” of the facts—which was necessary here in order to fully answer the certified question. Indeed, Apple’s own cited case, *Lehman Brothers*, recognizes that a federal court can and should invoke the certification procedure precisely in order to ask the state court to determine “the application of [state] law to” the facts presented in litigation before it. *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974) (quoting *Railroad Comm’n v. Pullman Co.*, 312 U.S. 496, 499 (1941)) (emphasis added).¹⁹ Doing so “allows federal courts to avoid mischaracterizing state law” in general but also avoids “produc[ing] an injustice *in the particular case*” before it. *Los Angeles Alliance for Survival v. City of Los Angeles*, 22 Cal.4th 352, 360 (2000) (emphasis added) (cited by Apple). That is what the Ninth Circuit did in this case, when it asked the Court to decide whether the security search time in question was “compensable” under California law or not. Slip op. at 1; *Frlekin*, 870 F.3d at 869.

The certified question, as worded, expressly called for this Court to apply the law stated in its opinion and decide whether the “required” search time “[i]s “compensable” or not. *Frlekin*, 870 F.3d at 869. The Court was further expressly asked to assess and decide “on which side of the [compensability] line Plaintiffs’ claim falls.” *Id.* at 873. The Court could not provide a complete answer to the certified question without doing exactly that. Apple overlooks this in arguing, rather presumptuously, that the Court “answered a question different from the certified question” posed. *See* Pet. at 22-27

¹⁹ Apple also cites *Salve Regina College v. Russell*, 499 U.S. 225 (1991), which involved the level of deference afforded on appeal to a district court’s determination of state law when the certification procedure is *not* utilized. *Id.* at 227, 231-34. The certification procedure was mentioned in a footnote, which said nothing inconsistent with the point from *Lehman Brothers* cited in the text above. *Id.* at 237 n.4.

(citing *Retired Employees Assn. of Orange County, Inc. v. County of Orange*, 52 Cal.4th 1171 (2011) (“*County of Orange*”). The Court answered precisely the question posed in exactly the terms in which it was posed.²⁰

At bottom, Apple’s petition essentially contends that the certified question, as written, somehow asked the Court to render a decision beyond the scope of its authority by addressing whether the time in question was “compensable.” If Apple thought the Ninth Circuit improperly framed the question (which it did not), then Apple should have raised the issue with the Ninth Circuit by motion years ago, in 2017, and/or Apple should have asked this Court to restate the question pursuant to Rule of Court 8.548, subdivision (e)(3). Apple did not do so. A rehearing petition filed after full briefing, oral argument and decision cannot cure Apple’s neglect to raise the (purported) issue earlier.

In answering certified questions, this Court routinely, and properly, applies the legal rules announced in its decisions to the facts presented by the record developed in the federal court. *E.g.*, *White v. Square, Inc.*, 7 Cal.5th 1019, 1032 (2019) (applying the standing rule announced in the decision by holding that the plaintiff in the federal action had “sufficiently alleged injury”); *Troester*, 5 Cal.5th at 843 (deciding “whether the de minimis rule is applicable to the facts of this case as described by the Ninth Circuit”); *Liberty Surplus Ins. Corp. v. Ledesma & Meyer Constr. Co.*, 5 Cal.5th 216, 221, 222 (2018) (applying the rules announced in the opinion by deciding “whether [the insurer]

²⁰ Apple’s summary of the certified question at the top of page 24 conveniently omits the word “required,” an essential part of the question, and also, once again, ignores that “voluntarily” and for “personal convenience” meant not “due to any ‘special needs,’” such as for purposes of carrying medication or as a disability accommodation. *See* Slip op. at 22 n.7; Part II.A, *supra* (citing record and Ninth Circuit’s order).

had a duty to defend” and by holding that the district court had “misapplied” California law); *Peabody v. Time Warner Cable, Inc.*, 59 Cal.4th 662, 669 (2014) (applying the rules announced in the opinion by holding that the defendant “may not” determine its commissions in the manner it wanted to); *Verdugo v. Target Corp.*, 59 Cal.4th 312, 317 (2014) (applying law announced in decision by deciding what “Target’s common law duty of care” entailed). That is what the Court did here, in order to answer the Ninth Circuit’s certified question in full, not in part.

Apple’s cited cases fail to support Apple’s cramped view of how the certified question procedure works. In *Pooshs*, the Court declined to address, as a factual matter, whether the plaintiff’s “smoking-related diseases” were in fact “distinct” from one another, because the necessary “factual record” on the point “was never developed” in the federal court at all. 51 Cal.4th at 793. Here, the parties presented a robust factual record on the relevant points, comprising hundreds of pages of material in five volumes of excerpts, which were fully considered by the Ninth Circuit before it issued its order certifying the question to this Court. *See Los Angeles Alliance*, 22 Cal.4th at 362 (certified question must be “presented on a factual record”). Nothing in *Pooshs* precludes this Court from relying on or otherwise utilizing that factual record when it exists.

To the contrary, Rule of Court 8.548 contemplates that the Court do precisely that by requiring the federal court to include “[a] statement of the relevant facts” in its written request, and by permitting the Court to obtain a full understanding of the factual background by requesting, and undertaking its own review of, all of the underlying “record materials, including transcripts and exhibits.” Cal. Rules of Ct., rule 8.548,

subds. (b)(3), (c); *see id.*, subd. (f)(3) (once the Court agrees to answer the certified question, “the rules on review and decision in the Supreme Court govern further proceedings in that court”). For the Court to then cite this factual record in its opinion is routine and proper, contrary to Apple’s suggestion to the contrary.

In Apple’s next cited case, *Sullivan*, the defendant’s motion for summary judgment was “based on stipulated facts” set forth in a written stipulation pursuant to federal summary judgment procedure. *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191, 1195 (2011).²¹ The Court declined to “speculate” about facts not stated in the written stipulation, because “[w]hether the parties are entitled to rely on facts or assertions beyond the stipulated facts to support or defeat the motion for summary judgment is a question of federal procedure for the federal courts.” *Id.* at 1208. *Sullivan* is a far cry from this case, which involves no such written fact stipulation, in which a more robust factual record exists, *and* in which the Court closely adhered to the Ninth Circuit’s own summary of the facts and its view of the record as expressed in the Ninth Circuit’s written order. *See* Parts II.A-B, *supra*.

Finally, Apple relies heavily on *County of Orange*, but there, the certified question asked whether, “as a matter of California law, a California county and its employees *can* form an implied contract that converts vested rights to health benefits on retired county employees.” 52 Cal.4th at 1176 (emphasis added). In answering that question, the Court said yes, a county and its employees “can” form such an implied contract “under certain

²¹ *See* Fed. R. Civ. Proc. 56(c) (referring to “stipulations ... made for purposes of the [summary judgment] motion only”).

circumstances,” which were elucidated in the opinion. *Id.* at 1176, 1194. However, the Court declined to *apply* that legal determination by deciding “[w]hether those circumstances exist in this case,” because that was “beyond the scope of the question posed to us by the Ninth Circuit.” *Id.* at 1194.²²

Here, in contrast to *County of Orange*, the Ninth Circuit elected to ask this Court not merely what “hours worked” means in the abstract, but also to determine whether the security search time at issue “[i]s ... compensable” under California law, and to say “on which side of the line Plaintiffs’ claim falls.” In other words, the question did not merely ask whether the security search time “can be” compensable, as in *County of Orange*, but also called for the Court to determine “the *application* of” the rule to “the particular case” by asking whether the search time *was* compensable. *Lehman Brothers*, 416 U.S. at 391 (emphasis added); *Los Angeles Alliance*, 22 Cal.4th at 360.²³

If Apple thought this framing of the question was improper, Apple easily could have asked either the Ninth Circuit, or this Court, to modify the question to track the narrower framing used by the Ninth Circuit in *County of Orange*. Apple did not, and must now accept this Court’s answer to the question as framed. Apple says the Court should have done nothing more than “articulate[] the conditions in which time spent

²² The Court also declined to decide whether the employees “had a contractual right to be part of a single unified pool with active employees for purposes of establishing health insurance premiums that vested when they retired,” because that, too, extended “beyond the scope of the certified question.” 52 Cal.4th at 1191.

²³ *See also, e.g., Doe*, 54 Cal.4th at 66, 73-74 (deciding whether plea agreements “can be” affected by changes in law, without taking next step of *applying* that rule, where certified question was worded in terms of “can be”).

waiting for and undergoing certain kinds of exit searches is compensable” (Pet. at 26), and “stop[] there,” but that would have been an incomplete answer because it would not have determined whether the time “[i]s ... compensable.” Slip op. at 1 (emphasis added); *see also Frlekin*, 870 F.3d at 869 (“Our phrasing of the question should not restrict the California Supreme Court’s consideration of the issues involved ...”).

As mentioned above, Apple briefed this matter in terms of whether the plaintiffs and the class members, in particular, were entitled to compensation under the facts before the Ninth Circuit. ABM at 21, 51; Apple’s Supplemental Brief (“ASB”) at 9-10.²⁴ Apple expressly asked the Court to find the time “not compensable.” ABM at 33, 61; ASB at 6, 10. Apple may not now backtrack from its own briefing by asserting that the Court should have issued nothing more than an abstract, advisory opinion on an academic legal question, without also addressing how the law applies in the case before it. The Court’s complete answer to the certified question posed should not be disturbed in any respect.

III. CONCLUSION

Apple’s purpose in filing this rehearing petition is transparent. Apple would like to be able to go back to the Ninth Circuit, or to the district court, and attempt to convince one of those courts that the search time is not compensable, contrary to this Court’s holding that it *is* compensable. Possibly, Apple thinks one of those courts will be more receptive to its arguments. But the Ninth Circuit held that *this* Court should assess and decide whether the time “[i]s ... compensable.” Apple had ample opportunity to object

²⁴ Plaintiffs’ briefing, too, was framed in terms of the facts of the case as adduced in the Ninth Circuit’s order and the record below. *E.g.*, Opening Brief on the Merits at 2-4, 24-25, 31, 38-43; RBM at 7, 14, 19-20, 21-25.

to that request, and to make all of the procedural and substantive arguments it had to make. The current rehearing petition merely restates points Apple already made in its Ninth Circuit briefing, in multiple briefs filed in this Court, and in two appellate oral arguments. Apple must accept the Court's ruling rather than continue to challenge it.

For the reasons discussed above, the rehearing petition should be denied.

Dated: March 9, 2020

Respectfully submitted,

By: 
KRALOWEC LAW, P.C.
Kimberly A. Kralowec

McLAUGHLIN & STERN
Lee S. Shalov

Attorneys for Plaintiffs, Appellants and Petitioners

**CERTIFICATE OF COMPLIANCE WITH WORD COUNT
REQUIREMENT**

The undersigned hereby certifies that the computer program used to generate this brief indicates that the text contains 5,780 words, including footnotes. *See* Cal. Rules of Court, rule 8.204(c)(5).

Dated: March 9, 2020

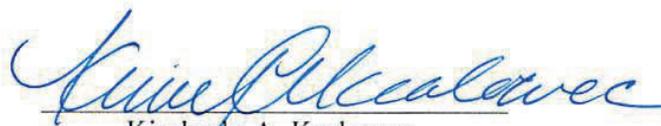

Kimberly A. Kralowec

EXHIBIT S

No. 15-17382

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

AMANDA FRLEKIN, TAYLOR KALIN, AARON GREGOROFF,
SETH DOWLING and DEBRA SPEICHER,
on behalf of themselves and all others similarly situated,

Plaintiffs-Appellants,

vs.

APPLE, INC.,

Defendant-Appellee.

On Appeal from a Judgment of the United States District Court for the
Northern District of California, Hon. William Alsup
No. C 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

APPELLANTS' SUPPLEMENTAL BRIEF

Kimberly A. Kralowec
Kathleen S. Rogers
KRALOWEC LAW, P.C.
750 Battery Street, Suite 750
San Francisco, CA 94111
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN, LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

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I. INTRODUCTION

Under the considered opinion of the California Supreme Court (hereafter, the “Supreme Court”), time spent pursuant to Apple’s search policy is “compensable” under California law. *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1042, 1056-57, 1058 (2020). Hence, plaintiffs’ summary judgment motion (ER 80-86) should have been granted.

Hoping to escape this result, Apple offers a series of arguments regarding so-called “disputed” facts, but these arguments ignore the relief sought by plaintiffs’ motion and the district court’s orders leading up to it. The arguments have also been waived. Apple’s remaining points misunderstand the certified question and the Supreme Court’s opinion, and are meritless.

Apple does not dispute that the judgment (ER 3) and costs award (ER 1-2) should be reversed with directions to deny Apple’s summary judgment motion. The Court is respectfully asked to also instruct the district court to grant plaintiffs’ summary judgment motion.

II. ARGUMENT

A. Plaintiffs’ Summary Judgment Motion Should Have Been Granted

When it granted class certification, the district court recognized: “The principal issue in this case is whether employee time spent complying with” Apple’s search policy “was compensable under California law.” ER 549:15-18. This

“generic issue,” the district court held, “overarches the entire controversy” if it is litigated on the supposition that employees brought their belongings to work for “personal convenience” and not because of any “special needs.” ER 553:1-8.

In granting class certification, the district court expressly instructed the parties to “move for summary judgment on the generic issue” of whether “time spent pursuant to Apple’s bag-search policy is compensable without regard to any special reason any employee brought a bag to work.” ER 557:14-15, ER 557:10-12. The district court further ordered: “The motion[s] should be directed only to the main issue of compensability under California law.” ER 557:17-18.

As the district court instructed, plaintiffs’ summary judgment motion was expressly directed to “the main issue of compensability under California law”:

Plaintiffs’ motion is made on the ground that there is no genuine issue as to any material fact regarding whether “*time spent pursuant to Apple’s bag-search policy is compensable without regard to any special reason any employee brought a bag to work*” and, therefore, judgment may be entered for the class on the “main issue of compensability under California law.”

ER 81:9-13 (quoting ER 557:10-12, 557:17-18) (emphasis added).

Given the California Supreme Court’s “yes” answer to the certified question, this motion should have been granted. The Supreme Court held that the search time is “compensable” under California law, answering in favor of the class the “generic” question presented by the motion. *Frlekin*, 8 Cal.5th at 1042, 1056-57, 1058.

Attempting to avoid this result, Apple contends that, procedurally, courts may not resolve liability questions at the summary judgment stage unless undisputed evidence *also* proves that every single class member is “entitled to compensation.” Apple’s Supplemental Brief (Dkt. 76) (“Supp.Br.”) at 1-2. This, of course, is incorrect. Rule 56(a) expressly authorizes “[p]artial [s]ummary [j]udgment” of the kind envisioned by the district court’s order. Fed. R. Civ. P. 56(a). The rule permits “disposition of less than the whole action,” including “as to a claim, defense or part of a claim or defense.” *Id.*, Advisory Committee Notes (2010 Amendment).

This Court’s recent *Ridgeway* decision confirms that in a class action, the core common question of an employer’s liability—that is, whether an employer’s policy violated California law—may be adjudicated through the summary judgment procedure, leaving questions of application of the policy and damages for later proceedings. *Ridgeway v. Walmart Inc.*, 946 F.3d 1066, 1081-82 (9th Cir. 2020). *Accord Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1060, 1064 (9th Cir. 2011) (certified class action; affirming district court’s grant of summary judgment on liability and jury’s subsequent award on damages); *Beaver v. Tarsadia Hotels*, 816 F.3d 1170, 1175 (9th Cir. 2016) (putative class action; affirming district court’s grant of summary judgment on liability in interlocutory appeal). Courts routinely grant such targeted summary judgment motions in class action cases. *E.g., Howell v. Advantage RN, LLC*, 401 F.Supp.3d 1078, 1092 (S.D. Cal. 2019) (granting

summary judgment on liability for defendant's failure to calculate overtime in manner required by law); *Bernstein v. Virgin America, Inc.*, 365 F.Supp.3d 980, 983-84 (N.D. Cal. 2019) (granting summary judgment on defendants' liability for violating Wage Orders and Labor Code, followed by separate proceedings on damages); *Rodman v. Safeway, Inc.*, 125 F.Supp.3d 922, 925 (N.D. Cal. 2015) (same motion procedure); *Solis v. Regis Corp.*, 612 F.Supp.2d 1085, 1086, 1087 (N.D. Cal. 2007) (granting summary judgment on liability although some employee class members declared they were unharmed by the violations; deferring damages and penalty amounts to later proceedings); *Medrano v. D'Arrigo Bros. Co.*, 336 F.Supp.2d 1053, 1064 (N.D. Cal. 2004) (granting summary judgment on liability where defendant "failed to pay wages due to at least some class members on some occasions as required by California [law]"; deferring remaining issues to later proceedings).

Apple's positions overlook this well-established procedure and the relief actually sought by plaintiffs' targeted summary judgment motion. The motion had nothing to do with the amount of "compensation" owed or "wages" recoverable by the class. Supp.Br. at 1-2. Those matters will be addressed later, as they were in *Ridgeway* and the other cases cited above.

B. The Purportedly “Disputed” Facts Identified by Apple Have No Bearing on Plaintiff’s Motion

Apple raises a series of supposedly “disputed” facts (Supp.Br. at 2-6), but none has any bearing on the Supreme Court’s “yes” answer to the certified question or on plaintiffs’ summary judgment motion as filed.

As a preliminary matter, Apple waived the argument that these so-called “disputed” facts are relevant—by repeatedly informing the Supreme Court that all of the relevant facts were “undisputed.” Answer Brief on the Merits, filed March 19, 2018 at 9, 12, 51 (Exhibit A to Appellants’ Motion for Judicial Notice (“MJN”), filed herewith). Moreover, Apple conceded below that the very “facts” Apple now raises were irrelevant to plaintiffs’ motion. ER 75:3 (whether class members were actually searched on a given day is “not relevant”); ER 77:6 (whether class members were actually disciplined is “irrelevant”); ER 77:23 (how long class members waited for checks is “irrelevant”).

Consistent with that view, most of these “facts” went unmentioned in Apple’s merits brief in this Court (Dkt. 29), and Apple omitted most of the “evidence” necessary to consider the “facts” from its excerpts of record (Dkt. 30).

As a result, Apple’s supplemental brief heavily cites district court docket materials outside the excerpts of record (Supp.Br. at 3-6), in violation of Circuit Rules 30-1.7 and 30-1.8(b). This is ample reason to reject Apple’s arguments about purportedly disputed “facts.” *In re O’Brien*, 312 F.3d 1135, 1137 (9th Cir. 2002)

(refusing to consider appellate arguments due to party's "failure to present a sufficient record"); *Palmerin v. City of Riverside*, 794 F.2d 1409, 1414 (9th Cir. 1986) (refusing to consider appellate argument where party failed to include relevant documents in appellate record).

Even if the purportedly "disputed" facts were properly before the Court, Apple's reliance on them would be misplaced:

(1) Apple claims some class members never brought bags or devices to work, so were never searched. Supp.Br. at 2-3. This has no bearing on the issue presented by plaintiffs' motion—namely, whether "time spent pursuant to Apple's bag-search policy" is "compensable" under California law. ER 81:10-11 (quoting ER 557:10-11). The Supreme Court held that the search time was "compensable" even though "[m]anagers estimated that [only] 30 percent of Apple employees bring such bags to work; employees estimated that 'nearly all' do." *Frlekin*, 8 Cal.5th at 1044; *see* ER 549:10-11 (district court's finding).¹ Regardless of this purported

¹ Apple relies heavily on a report of one Dr. Hall (Supp.Br. at 3), but Apple failed to include this report in the excerpts of record (Dkt. 30). The report was seriously flawed for reasons explained in plaintiffs' motion to strike, filed below. ER 21:17-24 (referencing this motion and denying it as "moot"). The Court should not rely on a report the district court refused to credit, especially where plaintiffs' motion to strike was never heard and Apple's appellate record omitted the report. Apple's attempt to rely on the report in the Supreme Court failed, probably for these reasons. *See* MJN Ex. B at 18, Ex. C at 13 n.13, and Ex. D.

dispute, all “time spent pursuant to [the] search policy” is “compensable.” Summary judgment on the issue is proper. *Ridgeway*, 946 F.3d at 1081-82.

(2) Apple claims that in some stores, managers ignored Apple’s mandatory written search policy, and/or off-site break rooms obviated the need for searches. Supp.Br. at 3-5. Again, none of this is relevant to whether “time spent” on searches is “compensable.” When Apple cited the same evidence and argued below that its “written policy wasn’t uniformly followed” (ER 548:7-25), the district court found that “the showing by Apple is not powerful enough to establish that the written policy was the exception rather than the rule. If need be, we can sort out at trial and by special verdict form which stores did and did not follow the written policy.” ER 548:26-28; *see also* ER 555:7-12. If Apple can prove that certain stores disregarded the mandatory search policy for the entire class period, then Apple will owe no compensation to class members who worked solely at those stores—even if plaintiffs’ summary judgment motion is granted. These “facts” have no bearing on the Supreme Court’s analysis of the compensability of “time spent” on actual searches.²

(3) Apple claims that some “time spent” undergoing searches was “de minimis.” Supp.Br. at 5-6. However, Apple waived this argument by not raising it

² The Supreme Court implicitly rejected this same argument by denying Apple’s rehearing petition, which also raised it. MJN Ex. B at 20-21, Ex. C at 14-15, and Ex. D.

in opposition to plaintiffs’ summary judgment motion below.³ *USA Petroleum Co. v. Atlantic Richfield Co.*, 13 F.3d 1276, 1284 (9th Cir. 1994) (if “party opposing ... summary judgment” fails to “inform the trial judge of the reasons” to deny the motion, that party “cannot raise such reasons on appeal”). *Accord BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 826 (9th Cir. 2000) (party “abandoned the argument” by not raising it in opposition to summary judgment below).

Apple was well aware of the potential “de minimis” defense (*see* ER 554:18-19 (class certification order)), but made a strategic decision to abandon it below in opposing summary judgment—and on appeal in this Court. Apple’s original merits brief is silent on this defense. Dkt. 29. Apple also omitted the “evidence” relevant to the defense from its excerpts of record. Dkt. 30; Supp.Br. at 5-6 (citing district court docket materials, not ER materials).⁴ It is too late for Apple to raise the defense in this Court now.

Moreover, Apple misstates the governing law. The defense “is not applicable to ... regularly reoccurring activities,” including activities required by the employer “on a regular basis or as a regular feature of the job.” *Troester v. Starbucks Corp.*,

³ ER 71-79 (portions of Apple’s opposition); Appellants’ Supplemental Excerpts of Record, filed herewith, 632-57 (remaining portions of opposition).

⁴ Again, Apple relies on an “expert” report that is not in the appellate record, that plaintiffs moved to strike, and that the district court did not credit. ER 21:17-24. It should not be considered, and is legally irrelevant in any event.

5 Cal.5th 829, 847, 848 (2018). As this Court previously held, Apple’s mandatory search policy governs all employees and “applies day in and day out.” *Frlekin v. Apple, Inc.*, 870 F.3d 867, 870, 873 (9th Cir. 2017). The search time, even if brief, is not the type of sporadic or “one-off” activity the “de minimis” defense is meant to embrace. *Troester*, 5 Cal.5th at 855.

(4) Apple’s final “disputed” fact pertains to whether, and how often, Apple *actually* disciplined employees for refusing to be searched. Supp.Br. 6. But the pertinent question is whether the search policy was “enforced through *threat* of discipline.” *Frlekin*, 8 Cal.5th at 1056 (emphasis added). Undisputedly, Apple enforced the policy through threatened discipline. *Id.* at 1042 (quoting policy); *Frlekin*, 870 F.3d at 870 (same). The Supreme Court was well aware of, and cited, the actual instances of discipline Apple identifies. *Frlekin*, 8 Cal.5th at 1053. This purportedly “disputed” fact is a red herring, irrelevant to the conclusion that “time spent” on searches is “compensable.”

C. Apple’s Remaining Contentions Are Meritless

Apple’s several remaining arguments are meritless:

➤ Apple claims the Supreme Court lacked “authority to resolve factual disputes” and that there is a “gap between” the Court’s “view of the ... facts and the evidence in the record.” Supp.Br. at 7-8. But the Supreme Court’s opinion includes no improper “factual” findings and carefully adheres to the facts stated in this

Court's order referring the question. *Compare Frlekin*, 8 Cal.5th at 1043-44, 1056 with *Frlekin*, 870 F.3d at 870-73; *see also* MJN Ex. B at 7-8, Ex. C at 4, 13-16 (addressing this argument, implicitly rejected by Supreme Court in denying rehearing).⁵

➤ Apple claims plaintiffs made a “concession” below that somehow defeats their summary judgment motion (Supp.Br. at 8-9), but Apple did not file the excerpts of record needed to prove this. In any event, even if credited, none of the supposedly “conceded” facts Apple mentions would be relevant to plaintiffs’ motion, for the same reasons already discussed above (Part II.B).

➤ Citing inapplicable class certification cases, Apple essentially contends the class certification order was overbroad because some class members supposedly “have no viable claim against Apple.”⁶ But the district court already considered these arguments at the certification stage and rejected them. ER 547:10-548:28,

⁵ Apple’s cited cases are inapposite. *Sullivan* involved a formal Rule 56(c) fact stipulation, and is therefore distinguishable. *Sullivan v. Oracle Corp.*, 51 Cal.4th 1191, 1195 (2011). *Lehman* confirms that this Court appropriately asked the state court to determine “the application of [state] law to” the facts presented. *Lehman Bros. v. Schein*, 416 U.S. 386, 391 (1974) (emphasis added). The Supreme Court did precisely that when it held the time “compensable,” as contemplated by this Court’s question as phrased. If Apple considered the question improper, it should have asked this Court or the Supreme Court to restate it. Apple did not, waiving the point. MJN Ex. C at 21.

⁶ Supp. Br. at 9 (citing *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Duran v. U.S. Bank Nat’l Assn.*, 59 Cal.4th 1 (2014); *Mies v. Sephora U.S.A., Inc.*, 234 Cal.App.4th 967 (2015)).

554:18-555:12. The certification order is not at issue in this appeal. The points Apple raises may be addressed at trial, as in *Ridgeway*, 946 F.3d at 1086, but they have nothing to do with plaintiffs’ motion or whether “time spent” undergoing searches is “compensable.”

III. CONCLUSION

Appellants respectfully ask the Court to reverse the judgment (ER 3), the order granting Apple’s motion (ER 4-22), and the costs award (ER 1-2), with directions to deny Apple’s motion, grant plaintiffs’ motion, and conduct further proceedings consistent with the Supreme Court’s opinion.

Dated: June 25, 2020

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

KRALOWEC LAW, P.C.
Kimberly A. Kralowec
Kathleen S. Rogers

McLAUGHLIN & STERN, LLP
Lee S. Shalov
Brett R. Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT T

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ANSWER TO REHEARING PETITION

Kimberly A. Kralowec
Kathleen S. Rogers
KRALOWEC LAW, P.C.
750 Battery Street, Suite 750
San Francisco, CA 94111
Telephone: (415) 546-6800

Lee S. Shalov
Brett R. Gallaway
McLAUGHLIN & STERN LLP
260 Madison Avenue, 18th Floor
New York, NY 10016
Telephone: (212) 448-1100

Attorneys for Plaintiffs-Appellants

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I. INTRODUCTION

Apple has filed a narrow rehearing petition targeting this Court's determination that Apple waived any "de minimis" defense by not asserting it in opposition to plaintiffs' summary judgment motion below.

For three reasons, the petition should be denied.

First, the petition depends on information stated in documents that Apple did not include in the excerpts of record. Without those materials, which Apple easily could have provided to the Court but did not, the petition cannot be considered, let alone granted. *Second*, the record fully supports the Court's determination that Apple waived the "de minimis" defense. The Court's opinion neither "overlooked" nor "misapprehended" anything material to the waiver holding. Fed. R. App. P. 40(a)(2). *Third*, even if the "de minimis" defense had not been waived, it would fail as a matter of law under the California Supreme Court's opinion in *Troester v. Starbucks Corp.*, 5 Cal.5th 829 (2018).

Apple has advanced no valid reason to grant rehearing. The petition merely serves to further delay vindication of the class members' right to compensation for all "hours worked." The petition should be denied and the case allowed to proceed to the damages phase without further delay. If the Court is inclined to consider modifying its opinion, the Court should not adopt Apple's proposed wording, which could improperly limit the proceedings on remand (as explained below).

II. REASONS WHY REHEARING SHOULD BE DENIED

The party seeking rehearing bears the burden of demonstrating, “with particularity,” that this Court “overlooked or misapprehended” a “point of law or fact” material to its opinion.¹ “A properly drawn petition for rehearing serves a very limited purpose,” *Armster v. U.S. District Court*, 806 F.2d 1347, 1356 (9th Cir. 1986), and “is not designed to give the parties a ‘second bite at the apple.’” *Goelz, supra*, §11:1. “In practice, rehearing is rarely granted.” *Id.*, §11:3.

Apple has not met its burden of establishing that the Court “overlooked or misapprehended” anything. Hence, the petition should be denied.

A. Apple Failed to Provide An Adequate Appellate Record, and Its Arguments Are Unsupported by Appropriate Record Cites

The first problem with Apple’s petition (Dkt. 91 (hereafter “Pet.”))² is that it relies on documents that Apple did not make part of this Court’s appellate record. Under the rules, Apple had every opportunity to provide this Court with any and all excerpts of record relevant to its appellate arguments and defenses. *E.g.*, 9th Cir. R. 30-1.7, 20-1.8(b). Yet Apple’s petition depends on matters that Apple failed to include in those excerpts, in violation of Circuit Rules 30-1.7 and 30-1.8(b). Apple’s petition is replete with citations to district court docket materials outside

¹ Fed. R. App. P. 40(a)(2); *see* *Goelz et al., Federal Ninth Circuit Civil Appellate Practice*, §11:1 (Rutter Group 2020).

² All references to “Dkt.” in this brief are to this Court’s appellate docket.

the excerpts, in violation of Circuit Rule 28-2.8. *See, e.g.*, Pet. at 3, 4-6, 15. The petition includes not one citation to appellants' four-volume excerpts of record (Dkt. 11-1 to 11-4) or the parties' supplemental excerpts of record (Dkt. 30, 83).³

This is not the first time Apple has violated these rules. Apple's supplemental brief, filed in June, suffered from the same deficiencies; the supplemental brief cited and relied primarily on district court materials not included in the excerpts of record. Dkt. 76 at, *e.g.*, 3-6. This was pointed out (Dkt. 82 at 5-6, 8), yet Apple still failed to supply the Court with the materials necessary to establish the validity of Apple's positions, let alone to adjudicate them.

These rule violations heavily burden the Court and should not be condoned. "An incredible amount of time is wasted when members of this court must wade through a voluminous district court record in a complex case" because a party "failed to provide proper excerpts of record." *Dela Rosa v. Scottsdale Mem. Health Sys., Inc.*, 136 F.3d 1241, 1244 (9th Cir. 1998); *see also In re O'Brien*, 312 F.3d 1135, 1137 (9th Cir. 2002) (appellate rules "were not whimsically created" but "serve a critical function in that they maximize ever more scarce judicial resources" (quoting *Dela Rosa*, 136 F.3d at 1244)).

³ Even when ER cites could have been provided, the petition cites the district court docket instead. *E.g.*, Pet. at 7 (citing district court's class certification order, which is in the appellate record at ER 544-58). This violates Circuit Rule 28-2.8 and creates unnecessary work for the Court, requiring it to "ferret out" the relevant pages. *Mitchel v. General Elec. Co.*, 689 F.2d 877, 878 (9th Cir. 1982).

The deficiencies are ample reason to summarily deny Apple’s petition. *O’Brien*, 312 F.3d at 1137 (refusing to consider appellate arguments due to party’s “failure to present a sufficient record”); *United States v. Rewald*, 889 F.2d 836, 861 n.24 (9th Cir. 1989) (“declin[ing] to consider the merits” of arguments based on “matters that are not in the record on appeal”); *Palmerin v. City of Riverside*, 794 F.2d 1409, 1414 (9th Cir. 1986) (party failed to include relevant documents in appellate record, so argument not considered); Circuit Advisory Comm. Note to 9th Cir. R. 28-2.8 (“Sanctions may be imposed for failure to comply with this rule, particularly with respect to record references.” (citing *Mitchel*, 689 F.2d 877)).

B. Apple Has Shown No Error in this Court’s Conclusion that Apple Waived the “De Minimis” Defense

Apple’s petition challenges this Court’s holding that “Apple failed to raise [the ‘de minimis’] argument before the district court in opposing Plaintiffs’ motion for summary judgment; the argument is therefore forfeited.” *Frlekin v. Apple, Inc.*, 973 F.3d 947, 2020 WL 5225699, *4 (9th Cir. 2020) (“*Frlekin III*”). However, the holding is correct and fully supported by the appellate record. The record shows that Apple’s opposition made no mention of any “de minimis” defense. ER 71-79 (portions of Apple’s opposition); ASER 632-57 (remaining portions of Apple’s opposition). Accordingly, the defense is waived, as the Court correctly concluded.

Apple claims that the “de minimis” defense was mentioned in earlier-filed

documents *other than* Apple's opposition to plaintiffs' motion. Pet. at 2-4, 6. But even if Apple had provided those documents to the Court in its excerpts of record and properly cited them, that would not cure the deficiencies in Apple's opposition to plaintiffs' motion. Apple was well aware of the potential "de minimis" defense (*see* ER 554:18-19), yet elected not to include the defense in its opposition, when it listed the reasons why the search time was supposedly non-compensable under California law. ER 72:15-77:28 (arguments A through E in Apple's opposition); *see* ASER 641:20-653:22. If "de minimis" were another reason, as Apple now contends (Pet. at 15), Apple should have, and easily could have, listed that reason among the others and presented briefing and argument on it below.

As explained by a respected commentator, "[a] partial opposition to a summary judgment motion may imply an abandonment of some ... defenses." Phillips et al., *Federal Civil Procedure Before Trial, California and Ninth Circuit Edition*, §14:331.5 (Rutter Group 2020) (citing *Jackson v. Federal Express*, 766 F.3d 189, 195-96 (2d Cir. 2014)). Certainly, a defendant may state an affirmative defense in its answer, or in other earlier filings, and later decide not to pursue the defense. That is what happened here.

The conclusion that Apple knowingly waived the "de minimis" defense is further reinforced by Apple's failure to mention it in Apple's main merits brief in this Court or to include all the documents relevant to the defense in its excerpts of

record. Dkt. 29, 30. Apple easily could have done both—if Apple considered the defense important or wished to preserve or pursue it any further.⁴

Well-established waiver principles fully support the Court’s conclusion that Apple “forfeited” the “de minimis” argument. For example, in *Davidson v. O’Reilly Auto Enterprises, LLC*, 968 F.3d 955 (9th Cir. 2020), cited in *Frlekin III*, the Court held that an argument in opposition to a summary judgment motion was waived because it was “not rais[ed]” “sufficiently for the trial court to rule on.” *Id.* at 966 (quoting *In re E.R. Fegert, Inc.*, 887 F.2d 955, 957 (9th Cir. 1989)). Similarly, in *Loomis v. Cornish*, 836 F.3d 991 (9th Cir. 2016), this Court expressly held that arguments not raised in opposition to summary judgment below “were waived” below. *Id.* at 997; *see also Samica Enters LLC v. Mail Boxes Etc., Inc.*, 460 Fed.Appx. 664, 666 (9th Cir. 2011) (“Arguments not raised in opposition to summary judgment or in the opening brief before this court are waived.”). Apple did not raise the “de minimis” defense “sufficiently for the trial court to rule on” in its opposition below, so the defense is waived. *Davidson*, 968 F.3d at 966.

⁴ It is unsurprising that Apple would choose not to pursue the defense in this Court. The main “evidence” Apple now mentions to support the defense is an expert report (Pet. at 9-10 (quoting brief discussing this report)), but the report was seriously flawed for reasons explained in plaintiffs’ motion to strike, filed below (ER 21:17-24 (referencing this motion and denying it as “moot”)). One problem with the report (among many others explained in plaintiffs’ motion) is it purports to address only the “wait time,” not the actual search time itself. Even Apple concedes this. Pet. at 9; Dkt. 76 at 5. Because of that problem, the report captured at most only a fraction of the compensable “hours worked.”

The law is also clear that the defense is “forfeited” for purposes of appeal. As this Court noted in *Davidson*, “we routinely “prevent[] parties from sandbagging their opponents [and the district court] with new arguments on appeal.”” *Davidson*, 968 F.3d at 966 (quoting *Dream Palace v. County of Maricopa*, 384 F.3d 990, 1005 (9th Cir. 2004) (alterations in original)); *see also USA Petroleum Co. v. Atlantic Richfield Co.*, 13 F.3d 1276, 1284 (9th Cir. 1994) (if “party opposing ... summary judgment” fails to “inform the trial judge of the reasons” to deny the motion, that party “cannot raise such reasons on appeal”).⁵

Citing the district court’s class certification order, Apple contends that the district court previously ruled that Apple could raise the “de minimis” defense in a so-called “second phase” of the litigation. Pet. at 6-8, 12. This, however, is incorrect. All the district court said is that “how long” the class members spent undergoing searches would be adjudicated later. ER 555:16-17. Nothing in the order states that Apple was absolved from having to continue to assert the defense at all relevant stages of the case, nor did the district court say that the defense may never be abandoned or waived by Apple through failure to assert it when required by law to do so, such as in opposition to plaintiffs’ summary judgment motion. It

⁵ *Accord BankAmerica Pension Plan v. McMath*, 206 F.3d 821, 826 (9th Cir. 2000) (party “abandoned the argument” by not raising it in opposition to summary judgment below); *Image Technical Service, Inc. v. Eastman Kodak Co.*, 903 F.2d 612, 615 n.1 (9th Cir. 1990) (refusing to consider argument that party “failed to raise” “in response” to summary judgment motion below).

was incumbent upon Apple to continue to assert the defense whenever Apple believed it applied, whether on liability or damages. Apple failed to do this.

Finally, Apple contends that *plaintiffs* were required to raise and address Apple's "de minimis" defense in their moving papers. Pet. at 8-9, 12. But Apple cites no authority to support that contention. As directed by the district court, plaintiffs sought summary judgment on the basis that *all* search time is compensable. ER 81:9-13. If Apple believed *some* search time was not compensable as a matter of law because certain searches were "de minimis," it was up to Apple to raise that argument as a reason to deny the motion. While Apple raised a lengthy list of other, similar arguments, Apple chose not to raise "de minimis" as a defense. ER 72-77; ASER 641-53. Had Apple done so, the matter could have been addressed in the briefing in this Court, and guidance also could have been sought in the California Supreme Court proceeding. In sum, this Court correctly held the defense was "forfeited." *Frlekin III*, 2020 WL 5225699 at *4.

Apple has consistently argued that if a "de minimis" defense applies, then some class members supposedly have "no viable claim against Apple whatsoever." Pet. at 15. Put another way, Apple asserts that "de minimis" is a defense to *liability*, not merely a matter of damages.⁶ *See also* Dkt. 76 at 5 (characterizing "de minimis" as a "liability" defense). Apple's position underscores why Apple

⁶ Plaintiffs do not concede that this is correct under California law.

was required to assert the defense in opposition to plaintiffs’ summary judgment motion—which was directed to Apple’s *liability* to the class and whether all time spent pursuant to Apple’s search policy was legally compensable.

C. Under *Troester*, “De Minimis” Is Not a Viable Defense in Any Event

Even if Apple could establish, through a proper appellate record and appropriate citations to that record, that the “de minimis” defense has not been waived, the undisputed facts demonstrate that the defense is inapplicable to this case as a matter of law under the California Supreme Court’s opinion in *Troester*.

As the Supreme Court held in *Troester*, the “de minimis” defense (to the extent it even exists under California law (*see* 5 Cal.5th at 843)) “is not applicable to ... regularly reoccurring activities,” including activities required by the employer “on a regular basis or as a regular feature of the job.” *Id.* at 847, 848. This Court has already recognized that Apple’s mandatory written search policy governs all employees and “applies day in and day out.” *Frlekin v. Apple, Inc.*, 870 F.3d 867, 870, 873 (9th Cir. 2017) (“*Frlekin I*”). The search time, even if brief in duration, is not the type of sporadic or “irregular” activity the “de minimis” defense is meant to embrace. *Troester*, 5 Cal.5th at 848; *see also Rodriguez v. Nike Retail Servs., Inc.*, 928 F.3d 810, 818 (9th Cir. 2019) (defense inapplicable when employees spend “measurable amounts” of time ““on a regular basis or as a regular feature of the job”” (quoting *Troester*)). For this reason alone, the “de

minimis” defense is inapplicable as a matter of law.

This Court’s recent analysis in *Rodriguez* provides a second, independent reason why the “de minimis” defense does not apply. Attempting to avoid liability, the *Rodriguez* defendant argued that under California law, as construed in *Troester*, any time less than 60 seconds is automatically “de minimis.” *Rodriguez*, 928 F.3d at 817. This Court flatly rejected that argument, explaining that it was directly opposed to the Supreme Court’s holdings and reasoning in *Troester*:

Not only would this interpretation read far too much into *Troester*’s passing mention of “minutes,” but it would also clash with *Troester*’s reasoning, which emphasized the requirement under California labor laws that “employee[s] must be paid for *all* hours worked or *any* work beyond eight hours a day.” 235 Cal.Rptr.3d 820, 421 P.3d at 1120 (quotations and alteration omitted).

Id. at 817 (emphasis added) (quoting *Troester*, 5 Cal.5th at 840). The Court drove the point home by saying: “We doubt that *Troester* would have been decided differently if the closing tasks at issue had taken only 59 seconds per day.” *Id.*

Parroting this argument, Apple contends (without proper appellate record support or citations) that the searches are “de minimis” because they usually take less than 60 seconds. Pet. at 9-10. But *Rodriguez* already considered and rejected that argument. Moreover, the argument conflicts with *Troester*’s favorable citation of *Linder v. Thrifty Oil Co.*, 23 Cal.4th 429 (2000). *Linder* was “a class action suit involving a 4 cents per gallon surcharge on gasoline customers,” which *Troester*

cited as a prime example of a case in which a “de minimis” defense would have “little value.” *Troester*, 5 Cal.5th at 846 (emphasis added). Four cents per gallon is equivalent to less than 15 seconds of search time per day (at a minimum wage of \$15 per hour)—well below the 60-second threshold that *Rodriguez* refused to adopt. 928 F.3d at 817. As *Troester* holds, to protect employees, California wage law “is indeed concerned with ‘small things,’” including “small amounts of time” other than “split-second absurdities.” *Troester*, 5 Cal.5th at 844, 845-46, 847.

Even crediting Apple’s unsupported assertions that the searches, on average, took about 30 seconds (Pet. at 9-10),⁷ that time is worth 12.5 cents of unpaid time per day (at \$15 per hour). That is *three times greater* than the amount at issue in *Linder*, the exemplar case cited in *Troester*. 5 Cal.5th at 846. It amounts to \$31.25 in unpaid wages per year for a full-time employee. *Troester* held that \$102.67 in unpaid wages over a 17-month period—that is, \$72.47 per year—was “enough to pay a utility bill, buy a week of groceries, or cover a month of bus fares,” and was “not de minimis at all to many ordinary people who work for hourly wages.”

⁷ Plaintiffs do not concede that the searches were as short as Apple claims. “Employees estimate that the time [usually] ranges from 5 to 20 minutes.” *Frlekin III*, 2020 WL 5225699 at *2. This amount of time is necessary not only due to wait times to find an available manager or security guard, but also because Apple required the managers and guards to perform a multi-step procedure to conduct the bag and device searches. *Id.*; see also *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1044 (2020) (“*Frlekin II*”) (describing the search procedure). It is difficult to imagine that this procedure could be completed in as few seconds as Apple claims.

5 Cal.5th at 847. The amounts at issue in this case, even accepting Apple’s characterizations, do not involve “split-second absurdities,” and they are simply not “trifling,” “minute” or “brief” enough to be deemed “de minimis” under California law. *Rodriguez*, 928 F.3d at 818; *Troester*, 5 Cal.5th at 845, 848.

Finally, *Troester* held that the “de minimis” defense does not apply when “technological advances ... enable employees to track and register their work time via smartphones, tablets, or other devices,” such as the iPhone. *Troester*, 5 Cal.5th at 846. It is undisputed that Apple, “one of the world’s largest global technology companies” (ER 560:17-18), had this capability. *See, e.g.*, ER 454:22-23 (employees clocked in and out “using a handheld EasyPay device (which at the time was an iPod touch with software applications, such as employee time management)”).⁸ It is up to the employer to “devise alternatives that would permit the tracking of small amounts of regularly occurring work time,” such as by having the employees clock out on their phones *after* the searches have been completed. *Troester*, 5 Cal.5th at 848.⁹ Apple could and should have implemented its

⁸ Many employee time management and tracking apps can be found in Apple’s own App Store. <https://www.apple.com/app-store/> The devices used to run these apps are “practical necessities of modern life” that people “compulsively carry ... with them all the time.” *Frlekin II*, 8 Cal.5th at 1055 (citations omitted).

⁹ If that were truly impracticable (which it was not for Apple, a leading “global technology company”), employees may be compensated using “reasonabl[e] estimate[s]” of the work time, such as through “surveys,” “time studies,” or by other means. 5 Cal.5th at 848; *Accord Rodriguez*, 928 F.3d at 817.

“available time tracking tools” to record and pay for all search time, which Apple knew was “regularly reoccurring,” “day in and day out,” in its own stores pursuant to its own mandatory written policy. *Id.* at 848; *Frlekin I*, 870 F.3d at 873.

For any or all of these three independent reasons, even if Apple had not waived the “de minimis” defense, it would fail on the merits under *Troester*.

D. Apple’s Proposed Re-Wording of the Court’s Opinion Should Not Be Adopted

If the Court is inclined to alter its opinion, the wording Apple proposes is inappropriate and should not be adopted. Apple asks the Court to state that the subsequent proceedings on remand shall be limited to “*individual* proceedings.” Pet. at 16 (emphasis added). Apple appears to intend to argue that non-“individual” methods of proof, such as representative testimony, expert testimony based on averages or estimates, or other accepted methods of aggregate classwide proof are precluded, and that only “individual” proceedings should be allowed.

To include such a statement in any amended opinion would contravene *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036 (2016), in which the United States Supreme Court endorsed the use of representative and sampling evidence in wage and hour class actions, especially when an employer “violated [its] statutory

Apple does not dispute that the search time can be estimated through such means; to the contrary, Apple claims its expert has already done exactly that. Pet. at 9-10; Dkt. 76 at 5. But estimates should not be necessary; Apple should have tracked the time every day, as it was worked, using the technology at its disposal.

duty to keep proper records,” as Apple did here.¹⁰ *Id.* at 1046-49. In *Ridgeway v. Wal-Mart Inc.*, 946 F.3d 1066 (9th Cir. 2020), this Court applied *Tyson Foods* and affirmed a \$54 million classwide judgment established using “representative evidence,” holding: “All that is required is enough representative evidence to draw a reasonable inference about unpaid hours worked.” *Id.* at 1086-89 (citing *Tyson Foods*, 136 S. Ct. at 1046-49). Along the same lines, *Troester* held that employee time, if the employer fails to track and record it, may be “reasonably estimate[d]” using “surveys,” “time studies,” or other forms of aggregate or representative evidence. *Troester*, 5 Cal.5th at 848, *quoted in Rodriguez*, 928 F.3d at 817.

Under these decisions, the law is clear that evidence of “hours worked” need not be “individual” for each class member, as proposed by Apple’s suggested rewording of the Court’s opinion. That wording should not be used.

In granting class certification, the district court did say that “[d]amages will be proven via an old-fashioned claims process” and “litigated one-by-one.” ER 556:14-15, 556:24-25. However, that was five years ago, before *Tyson Foods*, *Ridgeway* and *Troester* had been decided. On remand, plaintiffs intend to ask the

¹⁰ Apple violated California law by not keeping records of all search time, which the California Supreme Court held are “hours worked.” Lab. Code §1174(d); 8 Cal. Code Regs. §11070, ¶7(A)(5). The district court has already recognized that Apple may be subject to adverse evidentiary presumptions at the damages phase because “the absence of good records to document the compensable time involved [is] Apple’s fault.” ER 556:1-2.

district court to apply those decisions and revisit the propriety and efficiency of using representative and/or aggregate forms of proof in this case, as expressly approved in *Tyson Foods* and *Ridgeway* and as contemplated by *Troester*.

This Court suggested that the district court, on remand, might consider options “such as” “requiring sworn claim forms” (*Frlekin III*, 2020 WL 5225699 at *4), but the Court did not mandate such proof, and plaintiffs respectfully submit that under *Tyson Foods*, *Ridgeway*, and *Troester*, that is but one of many possible alternative ways to proceed. Other means of proof might turn out to be more appropriate or efficient from a judicial economy standpoint. Moreover, the district court has yet to consider the full impact of Apple’s failure to record all “hours worked,” as required by California law. *See supra* footnote 10 (citing record and authorities). Evidentiary presumptions against Apple may impact how the damages proof should best proceed. The Court is respectfully asked to decline Apple’s invitation to put language in its opinion that might preclude any of the accepted methods of proof in class action litigation.

III. CONCLUSION

For the reasons stated above, Apple has not met its burden of establishing that it is entitled to rehearing on any point addressed in the Court’s opinion. The Court is respectfully asked to deny Apple’s rehearing petition.

Dated: October 9, 2020

Respectfully submitted,

By: /s/ Kimberly A. Kralowec

KRALOWEC LAW, P.C.

Kimberly A. Kralowec

Kathleen S. Rogers

McLAUGHLIN & STERN

Lee S. Shalov

Brett R. Gallaway

Attorneys for Plaintiffs-Appellants

EXHIBIT U

Class Member ID:

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

To all current and former non-exempt employees of Apple Inc. (“**Apple**”) who worked at an Apple retail store in California between July 25, 2009 and August 10, 2015 who were previously provided notice of the Action (defined below) in 2015 and who did not opt out of the class.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the “**Settlement**”) has been reached between Apple and Plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Plaintiffs**”) in a class action pending in the United States District Court for the Northern District of California (the “**Court**”). Plaintiffs Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Class Representatives**”) are pursuing the Action on behalf of themselves and individuals who worked as a non-exempt employee at an Apple retail store in California at any time between July 25, 2009 and December 26, 2015 (“**Settlement Class Members**”). The “**Class Period**” is July 25, 2009 to December 31, 2015. Plaintiffs Amanda Frlekin and Taylor Kalin are also pursuing the Action on behalf of themselves, the State of California, and all individuals who worked as a non-exempt employee at an Apple retail store in California at any time from July 25, 2012 to December 26, 2015 (the “**PAGA Settlement Class Members**”) seeking civil penalties pursuant to the Private Attorneys’ General Act of 2004, California Labor Code section 2698 *et seq.* (“**PAGA**”).

The Court has preliminarily approved the Settlement. The Court appointed McLaughlin & Stern LLP and Kralowec Law P.C. to serve as **Class Counsel** for the Settlement Class Members, and Lee Shalov of McLaughlin & Stern LLP to serve as **Lead Counsel** for the Settlement Class Members. In making this appointment and preliminarily approving the Settlement, the Court gave these Class Counsel firms the authority to represent and bind the Plaintiffs and Settlement Class Members regarding the Settlement, subject to the Court’s final approval of the Settlement.

You have received this notice because you previously were provided notice of the Action in 2015 and did not opt out of the class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights in connection with the Settlement, including how you can object to the Settlement.

B. WHAT IS THIS LAWSUIT ABOUT?

The Action involves the two consolidated class and PAGA lawsuits entitled *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No. 13-cv-04727-WHA (the “**Action**”), pending before the Court.

Plaintiffs brought the Action seeking compensation on behalf of hourly-paid, non-exempt Apple employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology at one or more of Apple’s retail stores in the State of California. Based on these allegations, Class Representatives assert claims for: (a) failure to pay minimum and overtime wages in violation of California Labor Code sections 204, 226.7, 510, 1194, 1194.2, and 1198 and the applicable Industrial Welfare Commission Wage Order; (b) unfair competition in violation of California Business & Professions

Class Member ID:

Code sections 17200, *et seq.*; (c) failure to provide accurate wage statements in violation of California Labor Code section 226; (d) failure to pay all wages due on termination in violation of California Labor Code sections 201, 202, 203, and 204; and (e) attorneys' fees and costs incurred in pursuing the Action.

Separately, Plaintiffs Amanda Frlekin and Taylor Kalin allege a claim for civil penalties under PAGA based on the allegation that Apple did not compensate hourly-paid, non-exempt employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology.

The Action was commenced in 2015 and has been heavily litigated. In February 2020, the California Supreme Court held that Apple "must compensate those employees to whom the [bag and technology search] policy applies for the time spent waiting for and undergoing [bag and technology] searches." *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1057 (2020). In April 2021, the district court held that "[a]t all material times Apple was liable to compensate the class members for time spent standing in line and waiting to have their bags checked." Dkt. 407. However, the district court further ordered that "[t]here will be a damages claims process on an individual-by-individual basis, after notice to potential class members," and "a trial schedule for all or groups of claimants will be set along with evidentiary disclosure and expert deadlines for each trial." *Id.*

Plaintiffs contend that the Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

Apple denies that Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

After lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Apple agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

The Settlement Class Members are comprised of 13,884 employees who were provided notice of the Action in 2015 and who did not opt out of the certified class at that time ("**Existing Class Members**"), and 799 additional employees referred to as **New Class Members**. The New Class Members consist of 16 individuals who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015, and 783 individuals who began working at an Apple retail store in California between August 11, 2015 and December 26, 2015. To settle all potential claims relating to Apple's former bag and technology check policy, which Apple contends it terminated on December 17, 2015, the Parties agreed to expand the scope of the class to include all non-exempt employees who worked at an Apple retail store in California through December 26, 2015 to ensure that the settlement captured all employees who may have been subject to Apple's former bag and technology check policy.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Action have merit or that Apple owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Apple denies any and all such liability.

C. SUMMARY OF THE SETTLEMENT PAYMENTS

1. **Total Settlement Amount:** Apple will pay \$29,900,000 as the Total Settlement Amount. The Total Settlement Amount is the total amount that Apple shall be obligated to pay under the Settlement, except

Class Member ID:

for the employer's share of payroll taxes on the wage component of the Individual Class Payments, which Apple shall pay in addition to the Total Settlement Amount. The Total Settlement Amount will include all amounts paid for the Class Representative Payments to Class Representatives; the Service Payment to Plaintiff Amanda Frlekin; the Attorneys' Fees; the Litigation Costs; the Settlement Administration Costs; the PAGA Settlement Amount to resolve the claim for civil penalties; and the Individual Class Payments to Participating Settlement Class Members.

2. **Class Representative Payments:** Class Representatives will seek approval from the Court for a payment of \$10,000 each for prosecuting the Action and for the Complete and General Release that they are providing to Apple as part of the Settlement. If awarded by the Court, the Class Representative Payments will be paid out of the Total Settlement Amount.
3. **Service Payment:** Plaintiff Amanda Frlekin will seek approval from the Court for a payment of \$10,000 for her time and effort in prosecuting the Action on behalf of the Settlement Class Members, PAGA Settlement Class Members, and the State of California, and for the Complete and General Release she is providing to Apple as part of the Settlement. If awarded by the Court, the Service Payment will be paid out of the Total Settlement Amount.
4. **Attorneys' Fees:** Class Counsel have spent over eight years prosecuting the Action on behalf of the Class. During this time, they have, among other tasks: (i) reviewed thousands of documents relating to Plaintiffs' claims and allegations; (ii) interviewed over 100 Apple employees regarding their experiences with bag and technology checks at Apple retail stores; (iii) taken and defended over thirty depositions of Apple representatives and employees; (iv) prepared multiple briefs and attended multiple hearings before the Court, the United States Court of Appeals for the Ninth Circuit and the California Supreme Court, (v) obtained the California Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in lengthy mediation sessions before three different mediators. In consideration for these efforts, Class Counsel intend to request one third of the Total Settlement Amount (\$9,966,666.67) as an award of attorneys' fees for the services the attorneys representing the Plaintiffs in the Action have rendered and will render to the Settlement Class Members and PAGA Settlement Class Members. The payment of the Attorneys' Fees from out of the Total Settlement Amount will constitute full and complete compensation for all legal fees of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC) and all work done through the completion of the Action, whatever date that may be.
5. **Litigation Costs:** Class Counsel will also request up to \$450,000 for the litigation costs all attorneys representing Plaintiffs in the Action have incurred and will incur in the investigation, litigation, and resolution of the Action. The payment of the Litigation Costs from out of the Total Settlement Amount will constitute full and complete compensation for all costs and expenses of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC).
6. **Settlement Administration Costs:** The reasonable costs of administering the Settlement, up to a maximum of \$89,500, will be paid out of the Total Settlement Amount, except that Apple shall bear the cost of providing notice to the 16 New Class Members who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015. The Court has appointed Angeion Group to act as an independent Settlement Administrator for purposes of administering this Settlement.
7. **PAGA Settlement Amount:** \$448,500 of the Total Settlement Amount has been allocated to PAGA civil penalties.

Class Member ID:

8. **Net Settlement Amount:** The Net Settlement Amount means the Total Settlement Amount minus deductions for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.
9. **Individual Class Payments:** Apple will pay the Net Settlement Amount to **Participating Settlement Class Members** Each Participating Settlement Class Member's share of the Net Settlement Amount (the "**Individual Class Payment**") will be based on the number of individual shifts each worked for Apple at an Apple retail store in California during the Class Period. Each Individual Class Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts worked for Apple at an Apple retail store in California during the Class Period by the total of all shifts worked by Participating Settlement Class Members for Apple at an Apple retail store in California during the Class Period, and multiplying this result by the Net Settlement Amount. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class Payments shall be subject to W-2 reporting and shall be subject to deductions for employee-side employment and payroll taxes. The interest and penalty components of the Individual Class Payments will be subject to IRS Form 1099 reporting, if required by law, and will not be subject to deductions for employment and payroll taxes.
10. The Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, Settlement Administration Costs, PAGA Settlement Amount, and Individual Class Payments will be paid after the Court enters a Final Approval Order and the Judgment, all time for Settlement Class Members to appeal or challenge the Final Approval Order and the Judgment has lapsed, and the Final Approval Order and the Judgment remain enforceable (*i.e.*, the "**Effective Date**").
11. Any unclaimed funds resulting from Settlement Class Members' failure to cash Individual Class Payment checks and/or Individual PAGA Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("**Boys & Girls Clubs**"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employee-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employer-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall be returned to Apple.
12. If the Court does not grant final approval of the Settlement or if the Judgment does not become final and binding for any reason, then the Settlement will become null and void; if that occurs, neither Plaintiffs nor Apple will have further obligations under the Settlement, including any obligation by Apple to pay the Total Settlement Amount or any amounts that otherwise would have been owed under this Settlement. An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, PAGA Settlement Amount, or Settlement Administration Costs will not render the Settlement null and void.

D. HOW MUCH WILL I RECEIVE?

Apple's records indicate that during the Class Period (*i.e.*, between July 25, 2009 and December 31, 2015), you were employed in a non-exempt position at an Apple retail store in California, but you did not work any shifts during that period. Based on this information, it is estimated that your Individual Class Payment will be \$0, assuming the Court approves the Settlement. If you have any questions about this estimate, please contact the Settlement Administrator.

Class Member ID:

Apple's records also indicate that you are a PAGA Settlement Class Member because you worked as a non-exempt employee at an Apple retail store in California during some period between July 25, 2012 to December 31, 2015 (the "**PAGA Period**"), and that during that time, you worked a total of zero pay periods. Based on this information, it is estimated that you will receive \$0 as your *pro rata* share of the PAGA Settlement Amount, assuming the Court approves the Settlement. If you have any questions about this estimate, please contact the Settlement Administrator.

E. WHAT CLAIMS ARE RELEASED?

As a Participating Settlement Class Member, you will be unable to sue, continue to sue, or be a part of any other lawsuit against the Released Parties regarding the "Released Class Claims" in this Settlement. "**Released Parties**" means Apple and its subsidiaries, affiliates, and/or parent companies; the employee benefit plans sponsored or maintained by any of the foregoing; the respective successors and predecessors in interest of the foregoing; the officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, attorneys, and agents of the foregoing; and each of their past, present, and future officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers, and reinsurers.

Released Class Claims: Upon the Effective Date, Class Representatives – on behalf of themselves and Participating Settlement Class Members – will fully and irrevocably release the Released Parties from the **Class Claims** in exchange for the consideration provided by this Settlement.

"**Class Claims**" means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, for wages, benefits, and related penalties actually asserted or that could have been asserted in the Action by the Plaintiffs on behalf of themselves and/or the Settlement Class Members based on the facts alleged in Plaintiff Amanda Frlekin's November 12, 2013 notice letter to the Labor and Workforce Development Agency ("**LWDA**"), Plaintiff Taylor Kalin's October 1, 2013 notice letter to the LWDA, and/or the original, amended, and/or Consolidated Complaint in the *Frlekin* Action, and/or the complaint in the *Kalin* Action (all of which are posted on the settlement website at www.AppleBagCheckSettlement.com), including claims for: (i) failure to pay overtime and minimum wages pursuant to Labor Code §§ 204, 226.7, 510, 1194, 1194.2 and 1198 and the applicable Wage Order of the Industrial Welfare Commission; (ii) violation of California's Unfair Competition Law, California Business & Professions Code § 17200 et seq.; (iii) failure to provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable Wage Order of the Industrial Welfare Commission; and (iv) failure to timely pay wages upon termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys' fees and costs incurred to prosecute the Action on behalf of Settlement Class Members. "Class Claims" also includes all claims that Plaintiffs and/or Settlement Class Members may have against the Released Parties relating to: (a) the payment, taxation, and allocation of Attorneys' Fees and Litigation Costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Class Representatives' Class Representative Payments and Plaintiff Amanda Frlekin's Service Payment pursuant to the Settlement Agreement; and (c) the payment, taxation, and allocation of payments to Participating Settlement Class Members. Notwithstanding the foregoing, "Class Claims" does not include the claims for failure to reimburse business expenses pursuant to Labor Code § 2802 or the claims for failure to pay for time spent waiting to clock in and time spent checking out company devices asserted in Plaintiff Taylor Kalin's October 1, 2013 notice letter to the LWDA, which were never pursued in the Consolidated Complaint filed in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the federal Fair Labor Standards Act, which the Court already dismissed with prejudice as to the individual plaintiffs who brought the non-California claims.

The Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were asserted in the Action, identified above. "**1542 Waiver**" means an express waiver, to the fullest extent permitted by

Class Member ID:

law, of the provisions, rights, and benefits of California Civil Code section 1542, which states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Class Representatives and Participating Settlement Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims but, upon the Effective Date, Class Representatives and Participating Settlement Class Members shall be deemed to have – and by operation of the Final Approval Order and the Judgment shall have – fully, finally, and forever settled and released any and all of the Released Class Claims. It is the intent of the Parties that the Final Approval Order and the Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Class Representatives and Participating Settlement Class Members regarding the Released Class Claims. Indeed, the binding nature of the Settlement and the Released Class Claims shall have the same force and effect as if each Participating Settlement Class Member had executed the Settlement Agreement individually.

F. WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

1. **Participating in the Settlement:** You do not need to do anything to participate in this Settlement. and, if Final Approval is granted by the Court, be entitled to receive a pro rata share of the Net Settlement Amount. You are a Participating Settlement Class Member because you did not opt out of the class in 2015. As a Participating Settlement Class Member, you will be bound by the terms of the Settlement and the Judgment entered by the Court, you will be deemed to have released the Released Class Claims against the Released Parties described above, and you will be entitled to receive a pro rata share of the Net Settlement Amount.
2. **Objecting to the Settlement:** You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections to the proposed Settlement should: (a) contain your full name, address and last four digits of your social security number; (b) identify the case (by referring to the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check case, or some other descriptor that identifies the case) and state the basis for the objection; (c) be signed by you; and (d) be filed or postmarked on or before April 26, 2022 (the “**Response Deadline**”).

All written objections to final approval of the Settlement and Class Counsel’s requests for attorneys’ fees and costs, must similarly be submitted to the Court and must be filed or postmarked on or before July 5, 2022. The motions for attorneys’ fees, costs, Class Representative Payments and the Service Payment will be posted on the settlement website on or before approximately March 27, 2022. The motion for final approval of the Settlement will be posted on the settlement website on or before approximately May 30, 2022.

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G. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on July 7, 2022, at 8:00 a.m., in Courtroom 12 on the 19th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the PAGA Settlement Amount, and the Settlement Administration Costs.

The Final Approval Hearing may be postponed without further notice to Class Members. **It is not necessary for you to appear at this hearing.** If you have submitted an objection you may appear at the hearing and be heard. You may check the settlement website at www.AppleBagCheckSettlement.com or the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed.

H. GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at www.AppleBagCheckSettlement.com, contact the Settlement Administrator (see below contact information), contact Class Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Settlement Administrator:
Angeion Group, Inc.
1650 Arch Street, Suite 101
Philadelphia, PA 19103
Email: info@AppleBagCheckSettlement.com
Toll Free #: 1-844-844-3203

Class Counsel:

Lee Shalov
lshalov@mclaughlinstern.com
Brett Gallaway
bgallaway@mclaughlinstern.com
Jason Scott Giaimo
jgiaimo@mclaughlinstern.com
McLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, New York 10016
Tel: (212) 448-1100

Kimberly A. Kralowec
kkralowec@kraloweclaw.com
Kathleen Styles Rogers
krogers@kraloweclaw.com
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, California 94111
Tel: (415) 546-6800

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

Class Member ID:

Dated: January 11, 2022.

By Order of the Court

EXHIBIT V

Class Member ID:

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

To all current and former non-exempt employees of Apple Inc. (“**Apple**”) who worked at an Apple retail store in California between July 25, 2009 and August 10, 2015 who were previously provided notice of the Action (defined below) in 2015 and who did not opt out of the class.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the “**Settlement**”) has been reached between Apple and Plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Plaintiffs**”) in a class action pending in the United States District Court for the Northern District of California (the “**Court**”). Plaintiffs Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Class Representatives**”) are pursuing the Action on behalf of themselves and individuals who worked as a non-exempt employee at an Apple retail store in California at any time between July 25, 2009 and December 26, 2015 (“**Settlement Class Members**”). The “**Class Period**” is July 25, 2009 to December 31, 2015. Plaintiffs Amanda Frlekin and Taylor Kalin are also pursuing the Action on behalf of themselves, the State of California, and all individuals who worked as a non-exempt employee at an Apple retail store in California at any time from July 25, 2012 to December 26, 2015 (the “**PAGA Settlement Class Members**”) seeking civil penalties pursuant to the Private Attorneys’ General Act of 2004, California Labor Code section 2698 *et seq.* (“**PAGA**”).

The Court has preliminarily approved the Settlement. The Court appointed McLaughlin & Stern LLP and Kralowec Law P.C. to serve as **Class Counsel** for the Settlement Class Members, and Lee Shalov of McLaughlin & Stern LLP to serve as **Lead Counsel** for the Settlement Class Members. In making this appointment and preliminarily approving the Settlement, the Court gave these Class Counsel firms the authority to represent and bind the Plaintiffs and Settlement Class Members regarding the Settlement, subject to the Court’s final approval of the Settlement.

You have received this notice because you previously were provided notice of the Action in 2015 and did not opt out of the class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights in connection with the Settlement, including how you can object to the Settlement.

B. WHAT IS THIS LAWSUIT ABOUT?

The Action involves the two consolidated class and PAGA lawsuits entitled *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No. 13-cv-04727-WHA (the “**Action**”), pending before the Court.

Plaintiffs brought the Action seeking compensation on behalf of hourly-paid, non-exempt Apple employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology at one or more of Apple’s retail stores in the State of California. Based on these allegations, Class Representatives assert claims for: (a) failure to pay minimum and overtime wages in violation of California Labor Code sections 204, 226.7, 510, 1194, 1194.2, and 1198 and the applicable Industrial Welfare Commission Wage Order; (b) unfair competition in violation of California Business & Professions

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Code sections 17200, *et seq.*; (c) failure to provide accurate wage statements in violation of California Labor Code section 226; (d) failure to pay all wages due on termination in violation of California Labor Code sections 201, 202, 203, and 204; and (e) attorneys' fees and costs incurred in pursuing the Action.

Separately, Plaintiffs Amanda Frlekin and Taylor Kalin allege a claim for civil penalties under PAGA based on the allegation that Apple did not compensate hourly-paid, non-exempt employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology.

The Action was commenced in 2015 and has been heavily litigated. In February 2020, the California Supreme Court held that Apple "must compensate those employees to whom the [bag and technology search] policy applies for the time spent waiting for and undergoing [bag and technology] searches." *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1057 (2020). In April 2021, the district court held that "[a]t all material times Apple was liable to compensate the class members for time spent standing in line and waiting to have their bags checked." Dkt. 407. However, the district court further ordered that "[t]here will be a damages claims process on an individual-by-individual basis, after notice to potential class members," and "a trial schedule for all or groups of claimants will be set along with evidentiary disclosure and expert deadlines for each trial." *Id.*

Plaintiffs contend that the Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

Apple denies that Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

After lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Apple agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

The Settlement Class Members are comprised of 13,884 employees who were provided notice of the Action in 2015 and who did not opt out of the certified class at that time ("**Existing Class Members**"), and 799 additional employees referred to as **New Class Members**. The New Class Members consist of 16 individuals who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015, and 783 individuals who began working at an Apple retail store in California between August 11, 2015 and December 26, 2015. To settle all potential claims relating to Apple's former bag and technology check policy, which Apple contends it terminated on December 17, 2015, the Parties agreed to expand the scope of the class to include all non-exempt employees who worked at an Apple retail store in California through December 26, 2015 to ensure that the settlement captured all employees who may have been subject to Apple's former bag and technology check policy.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Action have merit or that Apple owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Apple denies any and all such liability.

C. SUMMARY OF THE SETTLEMENT PAYMENTS

1. **Total Settlement Amount:** Apple will pay \$29,900,000 as the Total Settlement Amount. The Total Settlement Amount is the total amount that Apple shall be obligated to pay under the Settlement, except

Class Member ID:

for the employer's share of payroll taxes on the wage component of the Individual Class Payments, which Apple shall pay in addition to the Total Settlement Amount. The Total Settlement Amount will include all amounts paid for the Class Representative Payments to Class Representatives; the Service Payment to Plaintiff Amanda Frlekin; the Attorneys' Fees; the Litigation Costs; the Settlement Administration Costs; the PAGA Settlement Amount to resolve the claim for civil penalties; and the Individual Class Payments to Participating Settlement Class Members.

2. **Class Representative Payments:** Class Representatives will seek approval from the Court for a payment of \$10,000 each for prosecuting the Action and for the Complete and General Release that they are providing to Apple as part of the Settlement. If awarded by the Court, the Class Representative Payments will be paid out of the Total Settlement Amount.
3. **Service Payment:** Plaintiff Amanda Frlekin will seek approval from the Court for a payment of \$10,000 for her time and effort in prosecuting the Action on behalf of the Settlement Class Members, PAGA Settlement Class Members, and the State of California, and for the Complete and General Release she is providing to Apple as part of the Settlement. If awarded by the Court, the Service Payment will be paid out of the Total Settlement Amount.
4. **Attorneys' Fees:** Class Counsel have spent over eight years prosecuting the Action on behalf of the Class. During this time, they have, among other tasks: (i) reviewed thousands of documents relating to Plaintiffs' claims and allegations; (ii) interviewed over 100 Apple employees regarding their experiences with bag and technology checks at Apple retail stores; (iii) taken and defended over thirty depositions of Apple representatives and employees; (iv) prepared multiple briefs and attended multiple hearings before the Court, the United States Court of Appeals for the Ninth Circuit and the California Supreme Court, (v) obtained the California Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in lengthy mediation sessions before three different mediators. In consideration for these efforts, Class Counsel intend to request one third of the Total Settlement Amount (\$9,966,666.67) as an award of attorneys' fees for the services the attorneys representing the Plaintiffs in the Action have rendered and will render to the Settlement Class Members and PAGA Settlement Class Members. The payment of the Attorneys' Fees from out of the Total Settlement Amount will constitute full and complete compensation for all legal fees of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC) and all work done through the completion of the Action, whatever date that may be.
5. **Litigation Costs:** Class Counsel will also request up to \$450,000 for the litigation costs all attorneys representing Plaintiffs in the Action have incurred and will incur in the investigation, litigation, and resolution of the Action. The payment of the Litigation Costs from out of the Total Settlement Amount will constitute full and complete compensation for all costs and expenses of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC).
6. **Settlement Administration Costs:** The reasonable costs of administering the Settlement, up to a maximum of \$89,500, will be paid out of the Total Settlement Amount, except that Apple shall bear the cost of providing notice to the 16 New Class Members who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015. The Court has appointed Angeion Group to act as an independent Settlement Administrator for purposes of administering this Settlement.
7. **PAGA Settlement Amount:** \$448,500 of the Total Settlement Amount has been allocated to PAGA civil penalties.

Class Member ID:

8. **Net Settlement Amount:** The Net Settlement Amount means the Total Settlement Amount minus deductions for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.
9. **Individual Class Payments:** Apple will pay the Net Settlement Amount to **Participating Settlement Class Members** Each Participating Settlement Class Member's share of the Net Settlement Amount (the "**Individual Class Payment**") will be based on the number of individual shifts each worked for Apple at an Apple retail store in California during the Class Period. Each Individual Class Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts worked for Apple at an Apple retail store in California during the Class Period by the total of all shifts worked by Participating Settlement Class Members for Apple at an Apple retail store in California during the Class Period, and multiplying this result by the Net Settlement Amount. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class Payments shall be subject to W-2 reporting and shall be subject to deductions for employee-side employment and payroll taxes. The interest and penalty components of the Individual Class Payments will be subject to IRS Form 1099 reporting, if required by law, and will not be subject to deductions for employment and payroll taxes.
10. The Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, Settlement Administration Costs, PAGA Settlement Amount, and Individual Class Payments will be paid after the Court enters a Final Approval Order and the Judgment, all time for Settlement Class Members to appeal or challenge the Final Approval Order and the Judgment has lapsed, and the Final Approval Order and the Judgment remain enforceable (*i.e.*, the "**Effective Date**").
11. Any unclaimed funds resulting from Settlement Class Members' failure to cash Individual Class Payment checks and/or Individual PAGA Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("**Boys & Girls Clubs**"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employee-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employer-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall be returned to Apple.
12. If the Court does not grant final approval of the Settlement or if the Judgment does not become final and binding for any reason, then the Settlement will become null and void; if that occurs, neither Plaintiffs nor Apple will have further obligations under the Settlement, including any obligation by Apple to pay the Total Settlement Amount or any amounts that otherwise would have been owed under this Settlement. An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, PAGA Settlement Amount, or Settlement Administration Costs will not render the Settlement null and void.

D. HOW MUCH WILL I RECEIVE?

Apple's records indicate that during the Class Period (*i.e.*, between July 25, 2009 and December 31, 2015), you were employed in a non-exempt position at an Apple retail store in California, but you did not work any shifts during that period. Based on this information, it is estimated that your Individual Class Payment will be \$0, assuming the Court approves the Settlement. If you have any questions about this estimate, please contact the Settlement Administrator.

Class Member ID:

E. WHAT CLAIMS ARE RELEASED?

As a Participating Settlement Class Member, you will be unable to sue, continue to sue, or be a part of any other lawsuit against the Released Parties regarding the “Released Class Claims” in this Settlement. “**Released Parties**” means Apple and its subsidiaries, affiliates, and/or parent companies; the employee benefit plans sponsored or maintained by any of the foregoing; the respective successors and predecessors in interest of the foregoing; the officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, attorneys, and agents of the foregoing; and each of their past, present, and future officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers, and reinsurers.

Released Class Claims: Upon the Effective Date, Class Representatives – on behalf of themselves and Participating Settlement Class Members – will fully and irrevocably release the Released Parties from the **Class Claims** in exchange for the consideration provided by this Settlement.

“**Class Claims**” means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, for wages, benefits, and related penalties actually asserted or that could have been asserted in the Action by the Plaintiffs on behalf of themselves and/or the Settlement Class Members based on the facts alleged in Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the Labor and Workforce Development Agency (“**LWDA**”), Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, and/or the original, amended, and/or Consolidated Complaint in the *Frlekin* Action, and/or the complaint in the *Kalin* Action (all of which are posted on the settlement website at www.AppleBagCheckSettlement.com), including claims for: (i) failure to pay overtime and minimum wages pursuant to Labor Code §§ 204, 226.7, 510, 1194, 1194.2 and 1198 and the applicable Wage Order of the Industrial Welfare Commission; (ii) violation of California’s Unfair Competition Law, California Business & Professions Code § 17200 et seq.; (iii) failure to provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable Wage Order of the Industrial Welfare Commission; and (iv) failure to timely pay wages upon termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys’ fees and costs incurred to prosecute the Action on behalf of Settlement Class Members. “Class Claims” also includes all claims that Plaintiffs and/or Settlement Class Members may have against the Released Parties relating to: (a) the payment, taxation, and allocation of Attorneys’ Fees and Litigation Costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Class Representatives’ Class Representative Payments and Plaintiff Amanda Frlekin’s Service Payment pursuant to the Settlement Agreement; and (c) the payment, taxation, and allocation of payments to Participating Settlement Class Members. Notwithstanding the foregoing, “Class Claims” does not include the claims for failure to reimburse business expenses pursuant to Labor Code § 2802 or the claims for failure to pay for time spent waiting to clock in and time spent checking out company devices asserted in Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, which were never pursued in the Consolidated Complaint filed in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the federal Fair Labor Standards Act, which the Court already dismissed with prejudice as to the individual plaintiffs who brought the non-California claims.

The Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were asserted in the Action, identified above. “**1542 Waiver**” means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, which states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Class Representatives and Participating Settlement Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released

Class Member ID:

Class Claims but, upon the Effective Date, Class Representatives and Participating Settlement Class Members shall be deemed to have – and by operation of the Final Approval Order and the Judgment shall have – fully, finally, and forever settled and released any and all of the Released Class Claims. It is the intent of the Parties that the Final Approval Order and the Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Class Representatives and Participating Settlement Class Members regarding the Released Class Claims. Indeed, the binding nature of the Settlement and the Released Class Claims shall have the same force and effect as if each Participating Settlement Class Member had executed the Settlement Agreement individually.

F. WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

1. **Participating in the Settlement:** You do not need to do anything to participate in this Settlement. and, if Final Approval is granted by the Court, be entitled to receive a pro rata share of the Net Settlement Amount. You are a Participating Settlement Class Member because you did not opt out of the class in 2015. As a Participating Settlement Class Member, you will be bound by the terms of the Settlement and the Judgment entered by the Court, you will be deemed to have released the Released Class Claims against the Released Parties described above, and you will be entitled to receive a pro rata share of the Net Settlement Amount.
2. **Objecting to the Settlement:** You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections to the proposed Settlement should: (a) contain your full name, address and last four digits of your social security number; (b) identify the case (by referring to the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check case, or some other descriptor that identifies the case) and state the basis for the objection; (c) be signed by you; and (d) be filed or postmarked on or before April 26, 2022 (the “**Response Deadline**”).

All written objections to final approval of the Settlement and Class Counsel’s requests for attorneys’ fees and costs, must similarly be submitted to the Court and must be filed or postmarked on or before July 5, 2022. The motions for attorneys’ fees, costs, Class Representative Payments and the Service Payment will be posted on the settlement website on or before approximately March 27, 2022. The motion for final approval of the Settlement will be posted on the settlement website on or before approximately May 30, 2022.

G. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on July 7, 2022, at 8:00 a.m., in Courtroom 12 on the 19th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court

Class Member ID:

will also be asked to approve the requests for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the PAGA Settlement Amount, and the Settlement Administration Costs.

The Final Approval Hearing may be postponed without further notice to Class Members. **It is not necessary for you to appear at this hearing.** If you have submitted an objection you may appear at the hearing and be heard. You may check the settlement website at www.AppleBagCheckSettlement.com or the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed.

H. GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at www.AppleBagCheckSettlement.com, contact the Settlement Administrator (see below contact information), contact Class Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Settlement Administrator:

Angeion Group, Inc.
1650 Arch Street, Suite 101
Philadelphia, PA 19103
Email: info@AppleBagCheckSettlement.com
Toll Free #: 1-844-844-3203

Class Counsel:

Lee Shalov
lshalov@mclaughlinstern.com
Brett Gallaway
bgallaway@mclaughlinstern.com
Jason Scott Gaiimo
jgaiimo@mclaughlinstern.com
McLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, New York 10016
Tel: (212) 448-1100

Kimberly A. Kralowec
kkralowec@kraloweclaw.com
Kathleen Styles Rogers
krogers@kraloweclaw.com
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, California 94111
Tel: (415) 546-6800

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**

Dated: January 11, 2022.

By Order of the Court

EXHIBIT W

Class Member ID:

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

To all current and former non-exempt employees of Apple Inc. (“**Apple**”) who worked at an Apple retail store in California between July 25, 2009 and August 10, 2015 who were previously provided notice of the Action (defined below) in 2015 and who did not opt out of the class.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the “**Settlement**”) has been reached between Apple and Plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Plaintiffs**”) in a class action pending in the United States District Court for the Northern District of California (the “**Court**”). Plaintiffs Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Class Representatives**”) are pursuing the Action on behalf of themselves and individuals who worked as a non-exempt employee at an Apple retail store in California at any time between July 25, 2009 and December 26, 2015 (“**Settlement Class Members**”). The “**Class Period**” is July 25, 2009 to December 31, 2015. Plaintiffs Amanda Frlekin and Taylor Kalin are also pursuing the Action on behalf of themselves, the State of California, and all individuals who worked as a non-exempt employee at an Apple retail store in California at any time from July 25, 2012 to December 26, 2015 (the “**PAGA Settlement Class Members**”) seeking civil penalties pursuant to the Private Attorneys’ General Act of 2004, California Labor Code section 2698 *et seq.* (“**PAGA**”).

The Court has preliminarily approved the Settlement. The Court appointed McLaughlin & Stern LLP and Kralowec Law P.C. to serve as **Class Counsel** for the Settlement Class Members, and Lee Shalov of McLaughlin & Stern LLP to serve as **Lead Counsel** for the Settlement Class Members. In making this appointment and preliminarily approving the Settlement, the Court gave these Class Counsel firms the authority to represent and bind the Plaintiffs and Settlement Class Members regarding the Settlement, subject to the Court’s final approval of the Settlement.

You have received this notice because you previously were provided notice of the Action in 2015 and did not opt out of the class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights in connection with the Settlement, including how you can object to the Settlement.

B. WHAT IS THIS LAWSUIT ABOUT?

The Action involves the two consolidated class and PAGA lawsuits entitled *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No. 13-cv-04727-WHA (the “**Action**”), pending before the Court.

Plaintiffs brought the Action seeking compensation on behalf of hourly-paid, non-exempt Apple employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology at one or more of Apple’s retail stores in the State of California. Based on these allegations, Class Representatives assert claims for: (a) failure to pay minimum and overtime wages in violation of California Labor Code sections 204, 226.7, 510, 1194, 1194.2, and 1198 and the applicable Industrial Welfare Commission Wage Order; (b) unfair competition in violation of California Business & Professions Code sections 17200, *et seq.*; (c) failure to provide accurate wage statements in violation of California Labor Code

Class Member ID:

section 226; (d) failure to pay all wages due on termination in violation of California Labor Code sections 201, 202, 203, and 204; and (e) attorneys' fees and costs incurred in pursuing the Action.

Separately, Plaintiffs Amanda Frlekin and Taylor Kalin allege a claim for civil penalties under PAGA based on the allegation that Apple did not compensate hourly-paid, non-exempt employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology.

The Action was commenced in 2015 and has been heavily litigated. In February 2020, the California Supreme Court held that Apple "must compensate those employees to whom the [bag and technology search] policy applies for the time spent waiting for and undergoing [bag and technology] searches." *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1057 (2020). In April 2021, the district court held that "[a]t all material times Apple was liable to compensate the class members for time spent standing in line and waiting to have their bags checked." Dkt. 407. However, the district court further ordered that "[t]here will be a damages claims process on an individual-by-individual basis, after notice to potential class members," and "a trial schedule for all or groups of claimants will be set along with evidentiary disclosure and expert deadlines for each trial." *Id.*

Plaintiffs contend that the Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

Apple denies that Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

After lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Apple agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

The Settlement Class Members are comprised of 13,884 employees who were provided notice of the Action in 2015 and who did not opt out of the certified class at that time ("**Existing Class Members**"), and 799 additional employees referred to as **New Class Members**. The New Class Members consist of 16 individuals who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015, and 783 individuals who began working at an Apple retail store in California between August 11, 2015 and December 26, 2015. To settle all potential claims relating to Apple's former bag and technology check policy, which Apple contends it terminated on December 17, 2015, the Parties agreed to expand the scope of the class to include all non-exempt employees who worked at an Apple retail store in California through December 26, 2015 to ensure that the settlement captured all employees who may have been subject to Apple's former bag and technology check policy.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Action have merit or that Apple owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Apple denies any and all such liability.

C. SUMMARY OF THE SETTLEMENT PAYMENTS

1. **Total Settlement Amount:** Apple will pay \$29,900,000 as the Total Settlement Amount. The Total Settlement Amount is the total amount that Apple shall be obligated to pay under the Settlement, except for the employer's share of payroll taxes on the wage component of the Individual Class Payments, which Apple shall pay in addition to the Total Settlement Amount. The Total Settlement Amount will include all amounts paid for the Class Representative Payments to Class Representatives; the Service Payment to Plaintiff Amanda Frlekin; the Attorneys' Fees; the Litigation Costs; the Settlement Administration Costs;

Class Member ID:

the PAGA Settlement Amount to resolve the claim for civil penalties; and the Individual Class Payments to Participating Settlement Class Members.

2. **Class Representative Payments:** Class Representatives will seek approval from the Court for a payment of \$10,000 each for prosecuting the Action and for the Complete and General Release that they are providing to Apple as part of the Settlement. If awarded by the Court, the Class Representative Payments will be paid out of the Total Settlement Amount.
3. **Service Payment:** Plaintiff Amanda Frlekin will seek approval from the Court for a payment of \$10,000 for her time and effort in prosecuting the Action on behalf of the Settlement Class Members, PAGA Settlement Class Members, and the State of California, and for the Complete and General Release she is providing to Apple as part of the Settlement. If awarded by the Court, the Service Payment will be paid out of the Total Settlement Amount.
4. **Attorneys' Fees:** Class Counsel have spent over eight years prosecuting the Action on behalf of the Class. During this time, they have, among other tasks: (i) reviewed thousands of documents relating to Plaintiffs' claims and allegations; (ii) interviewed over 100 Apple employees regarding their experiences with bag and technology checks at Apple retail stores; (iii) taken and defended over thirty depositions of Apple representatives and employees; (iv) prepared multiple briefs and attended multiple hearings before the Court, the United States Court of Appeals for the Ninth Circuit and the California Supreme Court, (v) obtained the California Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in lengthy mediation sessions before three different mediators. In consideration for these efforts, Class Counsel intend to request one third of the Total Settlement Amount (\$9,966,666.67) as an award of attorneys' fees for the services the attorneys representing the Plaintiffs in the Action have rendered and will render to the Settlement Class Members and PAGA Settlement Class Members. The payment of the Attorneys' Fees from out of the Total Settlement Amount will constitute full and complete compensation for all legal fees of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC) and all work done through the completion of the Action, whatever date that may be.
5. **Litigation Costs:** Class Counsel will also request up to \$450,000 for the litigation costs all attorneys representing Plaintiffs in the Action have incurred and will incur in the investigation, litigation, and resolution of the Action. The payment of the Litigation Costs from out of the Total Settlement Amount will constitute full and complete compensation for all costs and expenses of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC).
6. **Settlement Administration Costs:** The reasonable costs of administering the Settlement, up to a maximum of \$89,500, will be paid out of the Total Settlement Amount, except that Apple shall bear the cost of providing notice to the 16 New Class Members who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015. The Court has appointed Angeion Group to act as an independent Settlement Administrator for purposes of administering this Settlement.
7. **PAGA Settlement Amount:** \$448,500 of the Total Settlement Amount has been allocated to PAGA civil penalties.
8. **Net Settlement Amount:** The Net Settlement Amount means the Total Settlement Amount minus deductions for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.

Class Member ID:

9. **Individual Class Payments:** Apple will pay the Net Settlement Amount to **Participating Settlement Class Members** Each Participating Settlement Class Member's share of the Net Settlement Amount (the "**Individual Class Payment**") will be based on the number of individual shifts each worked for Apple at an Apple retail store in California during the Class Period. Each Individual Class Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts worked for Apple at an Apple retail store in California during the Class Period by the total of all shifts worked by Participating Settlement Class Members for Apple at an Apple retail store in California during the Class Period, and multiplying this result by the Net Settlement Amount. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class Payments shall be subject to W-2 reporting and shall be subject to deductions for employee-side employment and payroll taxes. The interest and penalty components of the Individual Class Payments will be subject to IRS Form 1099 reporting, if required by law, and will not be subject to deductions for employment and payroll taxes.
10. The Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, Settlement Administration Costs, PAGA Settlement Amount, and Individual Class Payments will be paid after the Court enters a Final Approval Order and the Judgment, all time for Settlement Class Members to appeal or challenge the Final Approval Order and the Judgment has lapsed, and the Final Approval Order and the Judgment remain enforceable (*i.e.*, the "**Effective Date**").
11. Any unclaimed funds resulting from Settlement Class Members' failure to cash Individual Class Payment checks and/or Individual PAGA Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("**Boys & Girls Clubs**"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employee-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employer-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall be returned to Apple.
12. If the Court does not grant final approval of the Settlement or if the Judgment does not become final and binding for any reason, then the Settlement will become null and void; if that occurs, neither Plaintiffs nor Apple will have further obligations under the Settlement, including any obligation by Apple to pay the Total Settlement Amount or any amounts that otherwise would have been owed under this Settlement. An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, PAGA Settlement Amount, or Settlement Administration Costs will not render the Settlement null and void.

D. HOW MUCH WILL I RECEIVE?

Apple's records indicate that during the Class Period (*i.e.*, between July 25, 2009 and December 31, 2015), you worked a total of ___ shifts in a non-exempt position at an Apple retail store in California. Based on this information, it is estimated that your Individual Class Payment will be approximately \$___, assuming the Net Settlement Amount is \$18,895,333.33, after the deductions described above. Assuming the Court approves the Settlement, you do not need to do anything to receive a payment.

Apple's records also indicate that you are a PAGA Settlement Class Member because you worked as a non-exempt employee at an Apple retail store in California during some period between July 25, 2012 to December 31, 2015 (the "PAGA Period"), and that during that time, you worked a total of ___ pay periods. Based on this information, it is estimated that you will receive an additional \$___

Class Member ID:

as your *pro rata* share of the PAGA Settlement Amount. Assuming the Court approves the Settlement, you do not need to do anything to receive a payment.

E. WHAT CLAIMS ARE RELEASED?

As a Participating Settlement Class Member, you will be unable to sue, continue to sue, or be a part of any other lawsuit against the Released Parties regarding the “Released Class Claims” in this Settlement. “**Released Parties**” means Apple and its subsidiaries, affiliates, and/or parent companies; the employee benefit plans sponsored or maintained by any of the foregoing; the respective successors and predecessors in interest of the foregoing; the officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, attorneys, and agents of the foregoing; and each of their past, present, and future officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers, and reinsurers.

Released Class Claims: Upon the Effective Date, Class Representatives – on behalf of themselves and Participating Settlement Class Members – will fully and irrevocably release the Released Parties from the **Class Claims** in exchange for the consideration provided by this Settlement.

“**Class Claims**” means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, for wages, benefits, and related penalties actually asserted or that could have been asserted in the Action by the Plaintiffs on behalf of themselves and/or the Settlement Class Members based on the facts alleged in Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the Labor and Workforce Development Agency (“**LWDA**”), Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, and/or the original, amended, and/or Consolidated Complaint in the *Frlekin* Action, and/or the complaint in the *Kalin* Action (all of which are posted on the settlement website at www.AppleBagCheckSettlement.com), including claims for: (i) failure to pay overtime and minimum wages pursuant to Labor Code §§ 204, 226.7, 510, 1194, 1194.2 and 1198 and the applicable Wage Order of the Industrial Welfare Commission; (ii) violation of California’s Unfair Competition Law, California Business & Professions Code § 17200 et seq.; (iii) failure to provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable Wage Order of the Industrial Welfare Commission; and (iv) failure to timely pay wages upon termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys’ fees and costs incurred to prosecute the Action on behalf of Settlement Class Members. “Class Claims” also includes all claims that Plaintiffs and/or Settlement Class Members may have against the Released Parties relating to: (a) the payment, taxation, and allocation of Attorneys’ Fees and Litigation Costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Class Representatives’ Class Representative Payments and Plaintiff Amanda Frlekin’s Service Payment pursuant to the Settlement Agreement; and (c) the payment, taxation, and allocation of payments to Participating Settlement Class Members. Notwithstanding the foregoing, “Class Claims” does not include the claims for failure to reimburse business expenses pursuant to Labor Code § 2802 or the claims for failure to pay for time spent waiting to clock in and time spent checking out company devices asserted in Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, which were never pursued in the Consolidated Complaint filed in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the federal Fair Labor Standards Act, which the Court already dismissed with prejudice as to the individual plaintiffs who brought the non-California claims.

The Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were asserted in the Action, identified above. “**1542 Waiver**” means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, which states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

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Class Representatives and Participating Settlement Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims but, upon the Effective Date, Class Representatives and Participating Settlement Class Members shall be deemed to have – and by operation of the Final Approval Order and the Judgment shall have – fully, finally, and forever settled and released any and all of the Released Class Claims. It is the intent of the Parties that the Final Approval Order and the Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Class Representatives and Participating Settlement Class Members regarding the Released Class Claims. Indeed, the binding nature of the Settlement and the Released Class Claims shall have the same force and effect as if each Participating Settlement Class Member had executed the Settlement Agreement individually.

F. WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

1. **Participating in the Settlement:** You do not need to do anything to participate in this Settlement. and, if Final Approval is granted by the Court, be entitled to receive a pro rata share of the Net Settlement Amount. You are a Participating Settlement Class Member because you did not opt out of the class in 2015. As a Participating Settlement Class Member, you will be bound by the terms of the Settlement and the Judgment entered by the Court, you will be deemed to have released the Released Class Claims against the Released Parties described above, and you will be entitled to receive a pro rata share of the Net Settlement Amount.
2. **Objecting to the Settlement:** You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections to the proposed Settlement should: (a) contain your full name, address and last four digits of your social security number; (b) identify the case (by referring to the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check case, or some other descriptor that identifies the case) and state the basis for the objection; (c) be signed by you; and (d) be filed or postmarked on or before April 26, 2022 (the “**Response Deadline**”).

All written objections to final approval of the Settlement and Class Counsel’s requests for attorneys’ fees and costs, must similarly be submitted to the Court and must be filed or postmarked on or before July 5, 2022. The motions for attorneys’ fees, costs, Class Representative Payments and the Service Payment will be posted on the settlement website on or before approximately March 27, 2022. The motion for final approval of the Settlement will be posted on the settlement website on or before approximately May 30, 2022.

G. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on July 7, 2022, at 8:00 a.m., in Courtroom 12 on the 19th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will

Class Member ID:

also be asked to approve the requests for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the PAGA Settlement Amount, and the Settlement Administration Costs.

The Final Approval Hearing may be postponed without further notice to Class Members. **It is not necessary for you to appear at this hearing.** If you have submitted an objection you may appear at the hearing and be heard. You may check the settlement website at www.AppleBagCheckSettlement.com or the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed.

H. GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at www.AppleBagCheckSettlement.com, contact the Settlement Administrator (see below contact information), contact Class Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Settlement Administrator:

Angeion Group, Inc.
1650 Arch Street, Suite 101
Philadelphia, PA 19103
Email: info@AppleBagCheckSettlement.com
Toll Free #: 1-844-844-3203

Class Counsel:

Lee Shalov
lshalov@mclaughlinstern.com
Brett Gallaway
bgallaway@mclaughlinstern.com
Jason Scott Giaimo
jgiaimo@mclaughlinstern.com
McLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, New York 10016
Tel: (212) 448-1100

Kimberly A. Kralowec
kkralowec@kraloweclaw.com
Kathleen Styles Rogers
krogers@kraloweclaw.com
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, California 94111
Tel: (415) 546-6800

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**

Dated: January 11, 2022.

By Order of the Court

EXHIBIT X

Class Member ID:

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

To all current and former non-exempt employees of Apple Inc. (“**Apple**”) who worked at an Apple retail store in California between July 25, 2009 and August 10, 2015 who were previously provided notice of the Action (defined below) in 2015 and who did not opt out of the class.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the “**Settlement**”) has been reached between Apple and Plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Plaintiffs**”) in a class action pending in the United States District Court for the Northern District of California (the “**Court**”). Plaintiffs Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Class Representatives**”) are pursuing the Action on behalf of themselves and individuals who worked as a non-exempt employee at an Apple retail store in California at any time between July 25, 2009 and December 26, 2015 (“**Settlement Class Members**”). The “**Class Period**” is July 25, 2009 to December 31, 2015. Plaintiffs Amanda Frlekin and Taylor Kalin are also pursuing the Action on behalf of themselves, the State of California, and all individuals who worked as a non-exempt employee at an Apple retail store in California at any time from July 25, 2012 to December 26, 2015 (the “**PAGA Settlement Class Members**”) seeking civil penalties pursuant to the Private Attorneys’ General Act of 2004, California Labor Code section 2698 *et seq.* (“**PAGA**”).

The Court has preliminarily approved the Settlement. The Court appointed McLaughlin & Stern LLP and Kralowec Law P.C. to serve as **Class Counsel** for the Settlement Class Members, and Lee Shalov of McLaughlin & Stern LLP to serve as **Lead Counsel** for the Settlement Class Members. In making this appointment and preliminarily approving the Settlement, the Court gave these Class Counsel firms the authority to represent and bind the Plaintiffs and Settlement Class Members regarding the Settlement, subject to the Court’s final approval of the Settlement.

You have received this notice because you previously were provided notice of the Action in 2015 and did not opt out of the class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights in connection with the Settlement, including how you can object to the Settlement.

B. WHAT IS THIS LAWSUIT ABOUT?

The Action involves the two consolidated class and PAGA lawsuits entitled *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No. 13-cv-04727-WHA (the “**Action**”), pending before the Court.

Plaintiffs brought the Action seeking compensation on behalf of hourly-paid, non-exempt Apple employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology at one or more of Apple’s retail stores in the State of California. Based on these allegations, Class Representatives assert claims for: (a) failure to pay minimum and overtime wages in violation of California Labor Code sections 204, 226.7, 510, 1194, 1194.2, and 1198 and the applicable Industrial Welfare Commission Wage Order; (b) unfair competition in violation of California Business & Professions Code sections 17200, *et seq.*; (c) failure to provide accurate wage statements in violation of California Labor Code

Class Member ID:

section 226; (d) failure to pay all wages due on termination in violation of California Labor Code sections 201, 202, 203, and 204; and (e) attorneys' fees and costs incurred in pursuing the Action.

Separately, Plaintiffs Amanda Frlekin and Taylor Kalin allege a claim for civil penalties under PAGA based on the allegation that Apple did not compensate hourly-paid, non-exempt employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology.

The Action was commenced in 2015 and has been heavily litigated. In February 2020, the California Supreme Court held that Apple "must compensate those employees to whom the [bag and technology search] policy applies for the time spent waiting for and undergoing [bag and technology] searches." *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1057 (2020). In April 2021, the district court held that "[a]t all material times Apple was liable to compensate the class members for time spent standing in line and waiting to have their bags checked." Dkt. 407. However, the district court further ordered that "[t]here will be a damages claims process on an individual-by-individual basis, after notice to potential class members," and "a trial schedule for all or groups of claimants will be set along with evidentiary disclosure and expert deadlines for each trial." *Id.*

Plaintiffs contend that the Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

Apple denies that Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

After lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Apple agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

The Settlement Class Members are comprised of 13,884 employees who were provided notice of the Action in 2015 and who did not opt out of the certified class at that time ("**Existing Class Members**"), and 799 additional employees referred to as **New Class Members**. The New Class Members consist of 16 individuals who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015, and 783 individuals who began working at an Apple retail store in California between August 11, 2015 and December 26, 2015. To settle all potential claims relating to Apple's former bag and technology check policy, which Apple contends it terminated on December 17, 2015, the Parties agreed to expand the scope of the class to include all non-exempt employees who worked at an Apple retail store in California through December 26, 2015 to ensure that the settlement captured all employees who may have been subject to Apple's former bag and technology check policy.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Action have merit or that Apple owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Apple denies any and all such liability.

C. SUMMARY OF THE SETTLEMENT PAYMENTS

1. **Total Settlement Amount:** Apple will pay \$29,900,000 as the Total Settlement Amount. The Total Settlement Amount is the total amount that Apple shall be obligated to pay under the Settlement, except for the employer's share of payroll taxes on the wage component of the Individual Class Payments, which Apple shall pay in addition to the Total Settlement Amount. The Total Settlement Amount will include all amounts paid for the Class Representative Payments to Class Representatives; the Service Payment to Plaintiff Amanda Frlekin; the Attorneys' Fees; the Litigation Costs; the Settlement Administration Costs;

Class Member ID:

the PAGA Settlement Amount to resolve the claim for civil penalties; and the Individual Class Payments to Participating Settlement Class Members.

2. **Class Representative Payments:** Class Representatives will seek approval from the Court for a payment of \$10,000 each for prosecuting the Action and for the Complete and General Release that they are providing to Apple as part of the Settlement. If awarded by the Court, the Class Representative Payments will be paid out of the Total Settlement Amount.
3. **Service Payment:** Plaintiff Amanda Frlekin will seek approval from the Court for a payment of \$10,000 for her time and effort in prosecuting the Action on behalf of the Settlement Class Members, PAGA Settlement Class Members, and the State of California, and for the Complete and General Release she is providing to Apple as part of the Settlement. If awarded by the Court, the Service Payment will be paid out of the Total Settlement Amount.
4. **Attorneys' Fees:** Class Counsel have spent over eight years prosecuting the Action on behalf of the Class. During this time, they have, among other tasks: (i) reviewed thousands of documents relating to Plaintiffs' claims and allegations; (ii) interviewed over 100 Apple employees regarding their experiences with bag and technology checks at Apple retail stores; (iii) taken and defended over thirty depositions of Apple representatives and employees; (iv) prepared multiple briefs and attended multiple hearings before the Court, the United States Court of Appeals for the Ninth Circuit and the California Supreme Court, (v) obtained the California Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in lengthy mediation sessions before three different mediators. In consideration for these efforts, Class Counsel intend to request one third of the Total Settlement Amount (\$9,966,666.67) as an award of attorneys' fees for the services the attorneys representing the Plaintiffs in the Action have rendered and will render to the Settlement Class Members and PAGA Settlement Class Members. The payment of the Attorneys' Fees from out of the Total Settlement Amount will constitute full and complete compensation for all legal fees of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC) and all work done through the completion of the Action, whatever date that may be.
5. **Litigation Costs:** Class Counsel will also request up to \$450,000 for the litigation costs all attorneys representing Plaintiffs in the Action have incurred and will incur in the investigation, litigation, and resolution of the Action. The payment of the Litigation Costs from out of the Total Settlement Amount will constitute full and complete compensation for all costs and expenses of all attorneys representing Plaintiffs in the Action (including McLaughlin & Stern LLP, Kralowec Law, P.C., the Law Offices of Louis Ginsberg, P.C., the Blanchard Law Group, APC, Peter R. Dion-Kindem, P.C., and the Holmes Law Group, APC).
6. **Settlement Administration Costs:** The reasonable costs of administering the Settlement, up to a maximum of \$89,500, will be paid out of the Total Settlement Amount, except that Apple shall bear the cost of providing notice to the 16 New Class Members who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015. The Court has appointed Angeion Group to act as an independent Settlement Administrator for purposes of administering this Settlement.
7. **PAGA Settlement Amount:** \$448,500 of the Total Settlement Amount has been allocated to PAGA civil penalties.
8. **Net Settlement Amount:** The Net Settlement Amount means the Total Settlement Amount minus deductions for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.

Class Member ID:

9. **Individual Class Payments:** Apple will pay the Net Settlement Amount to **Participating Settlement Class Members** Each Participating Settlement Class Member's share of the Net Settlement Amount (the "**Individual Class Payment**") will be based on the number of individual shifts each worked for Apple at an Apple retail store in California during the Class Period. Each Individual Class Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts worked for Apple at an Apple retail store in California during the Class Period by the total of all shifts worked by Participating Settlement Class Members for Apple at an Apple retail store in California during the Class Period, and multiplying this result by the Net Settlement Amount. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class Payments shall be subject to W-2 reporting and shall be subject to deductions for employee-side employment and payroll taxes. The interest and penalty components of the Individual Class Payments will be subject to IRS Form 1099 reporting, if required by law, and will not be subject to deductions for employment and payroll taxes.
10. The Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, Settlement Administration Costs, PAGA Settlement Amount, and Individual Class Payments will be paid after the Court enters a Final Approval Order and the Judgment, all time for Settlement Class Members to appeal or challenge the Final Approval Order and the Judgment has lapsed, and the Final Approval Order and the Judgment remain enforceable (*i.e.*, the "**Effective Date**").
11. Any unclaimed funds resulting from Settlement Class Members' failure to cash Individual Class Payment checks and/or Individual PAGA Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("**Boys & Girls Clubs**"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employee-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employer-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall be returned to Apple.
12. If the Court does not grant final approval of the Settlement or if the Judgment does not become final and binding for any reason, then the Settlement will become null and void; if that occurs, neither Plaintiffs nor Apple will have further obligations under the Settlement, including any obligation by Apple to pay the Total Settlement Amount or any amounts that otherwise would have been owed under this Settlement. An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, PAGA Settlement Amount, or Settlement Administration Costs will not render the Settlement null and void.

D. HOW MUCH WILL I RECEIVE?

Apple's records indicate that during the Class Period (*i.e.*, between July 25, 2009 and December 31, 2015), you worked a total of __ shifts in a non-exempt position at an Apple retail store in California. Based on this information, it is estimated that your Individual Class Payment will be approximately \$__, assuming the Net Settlement Amount is \$18,895,333.33, after the deductions described above. Assuming the Court approves the Settlement, you do not need to do anything to receive a payment.

Class Member ID:

E. WHAT CLAIMS ARE RELEASED?

As a Participating Settlement Class Member, you will be unable to sue, continue to sue, or be a part of any other lawsuit against the Released Parties regarding the “Released Class Claims” in this Settlement. “**Released Parties**” means Apple and its subsidiaries, affiliates, and/or parent companies; the employee benefit plans sponsored or maintained by any of the foregoing; the respective successors and predecessors in interest of the foregoing; the officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, attorneys, and agents of the foregoing; and each of their past, present, and future officers, directors, shareholders, employees, agents, principals, representatives, accountants, auditors, consultants, insurers, and reinsurers.

Released Class Claims: Upon the Effective Date, Class Representatives – on behalf of themselves and Participating Settlement Class Members – will fully and irrevocably release the Released Parties from the **Class Claims** in exchange for the consideration provided by this Settlement.

“**Class Claims**” means any and all claims, rights, demands, liabilities, and causes of action of every nature and description, whether known or unknown, for wages, benefits, and related penalties actually asserted or that could have been asserted in the Action by the Plaintiffs on behalf of themselves and/or the Settlement Class Members based on the facts alleged in Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the Labor and Workforce Development Agency (“**LWDA**”), Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, and/or the original, amended, and/or Consolidated Complaint in the *Frlekin* Action, and/or the complaint in the *Kalin* Action (all of which are posted on the settlement website at www.AppleBagCheckSettlement.com), including claims for: (i) failure to pay overtime and minimum wages pursuant to Labor Code §§ 204, 226.7, 510, 1194, 1194.2 and 1198 and the applicable Wage Order of the Industrial Welfare Commission; (ii) violation of California’s Unfair Competition Law, California Business & Professions Code § 17200 et seq.; (iii) failure to provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable Wage Order of the Industrial Welfare Commission; and (iv) failure to timely pay wages upon termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys’ fees and costs incurred to prosecute the Action on behalf of Settlement Class Members. “Class Claims” also includes all claims that Plaintiffs and/or Settlement Class Members may have against the Released Parties relating to: (a) the payment, taxation, and allocation of Attorneys’ Fees and Litigation Costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Class Representatives’ Class Representative Payments and Plaintiff Amanda Frlekin’s Service Payment pursuant to the Settlement Agreement; and (c) the payment, taxation, and allocation of payments to Participating Settlement Class Members. Notwithstanding the foregoing, “Class Claims” does not include the claims for failure to reimburse business expenses pursuant to Labor Code § 2802 or the claims for failure to pay for time spent waiting to clock in and time spent checking out company devices asserted in Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, which were never pursued in the Consolidated Complaint filed in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the federal Fair Labor Standards Act, which the Court already dismissed with prejudice as to the individual plaintiffs who brought the non-California claims.

The Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were asserted in the Action, identified above. “**1542 Waiver**” means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, which states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Class Representatives and Participating Settlement Class Members may discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released Class Claims but, upon the Effective Date, Class Representatives and Participating Settlement Class Members

Class Member ID:

shall be deemed to have – and by operation of the Final Approval Order and the Judgment shall have – fully, finally, and forever settled and released any and all of the Released Class Claims. It is the intent of the Parties that the Final Approval Order and the Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Class Representatives and Participating Settlement Class Members regarding the Released Class Claims. Indeed, the binding nature of the Settlement and the Released Class Claims shall have the same force and effect as if each Participating Settlement Class Member had executed the Settlement Agreement individually.

F. WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

1. **Participating in the Settlement:** You do not need to do anything to participate in this Settlement. and, if Final Approval is granted by the Court, be entitled to receive a pro rata share of the Net Settlement Amount. You are a Participating Settlement Class Member because you did not opt out of the class in 2015. As a Participating Settlement Class Member, you will be bound by the terms of the Settlement and the Judgment entered by the Court, you will be deemed to have released the Released Class Claims against the Released Parties described above, and you will be entitled to receive a pro rata share of the Net Settlement Amount.
2. **Objecting to the Settlement:** You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers must be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. All written objections to the proposed Settlement should: (a) contain your full name, address and last four digits of your social security number; (b) identify the case (by referring to the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check case, or some other descriptor that identifies the case) and state the basis for the objection; (c) be signed by you; and (d) be filed or postmarked on or before April 26, 2022 (the “**Response Deadline**”).

All written objections to final approval of the Settlement and Class Counsel’s requests for attorneys’ fees and costs, must similarly be submitted to the Court and must be filed or postmarked on or before July 5, 2022. The motions for attorneys’ fees, costs, Class Representative Payments and the Service Payment will be posted on the settlement website on or before approximately March 27, 2022. The motion for final approval of the Settlement will be posted on the settlement website on or before approximately May 30, 2022.

G. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on July 7, 2022, at 8:00 a.m., in Courtroom 12 on the 19th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Payments, the Service Payment, the Attorneys’ Fees, the Litigation Costs, the PAGA Settlement Amount, and the Settlement Administration Costs.

Class Member ID:

The Final Approval Hearing may be postponed without further notice to Class Members. **It is not necessary for you to appear at this hearing.** If you have submitted an objection you may appear at the hearing and be heard. You may check the settlement website at www.AppleBagCheckSettlement.com or the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed.

H. GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at www.AppleBagCheckSettlement.com, contact the Settlement Administrator (see below contact information), contact Class Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Settlement Administrator:

Angeion Group, Inc.
1650 Arch Street, Suite 101
Philadelphia, PA 19103
Email: info@AppleBagCheckSettlement.com
Toll Free #: 1-844-844-3203

Class Counsel:

Lee Shalov
lshalov@mclaughlinstern.com
Brett Gallaway
bgallaway@mclaughlinstern.com
Jason Scott Giaimo
jgiaimo@mclaughlinstern.com
McLAUGHLIN & STERN, LLP
260 Madison Avenue
New York, New York 10016
Tel: (212) 448-1100

Kimberly A. Kralowec
kkralowec@kralowecclaw.com
Kathleen Styles Rogers
krogers@kralowecclaw.com
KRALOWEC LAW, P.C.
750 Battery Street, Suite 700
San Francisco, California 94111
Tel: (415) 546-6800

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**

Dated: January 11, 2022.

By Order of the Court

EXHIBIT Y

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FILED
Clerk of the Superior Court

DEC 12 2014

By: J. Browder, Deputy

**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO, CENTRAL DIVISION**

ADAM HOHNBAUM, ILLYA HAASE,
ROMEO OSORIO, AMANDA JUNE RADER,
and SANTANA ALVARADO and ROES 1
through 500, Inclusive on behalf of themselves
and all others similarly situated, and on behalf
of the general public,

Plaintiffs,

v.

BRINKER RESTAURANT CORPORATION,
BRINKER INTERNATIONAL, INC. and
BRINKER INTERNATIONAL PAYROLL
COMPANY, LP a Delaware Corporation; and
DOES 1 through 500, Inclusive

Defendants.

CASE NO.: GIC834348

CLASS ACTION

~~PROPOSED~~ ORDER AND JUDGMENT
GRANTING PLAINTIFFS' MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AND MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, CLASS REPRESENTATIVE
SERVICE PAYMENTS, AND CLAIMS
ADMINISTRATION EXPENSES

1 difficulties, plaintiffs' counsel estimates a 40-60 percent chance of prevailing at trial. *Ibid.*
2 Even if plaintiffs prevailed at trial, they faced a substantial delay in receiving any recovery in
3 the event that Brinker appealed.

4 The class members will receive significant monetary and other benefits. The average
5 settlement payment is \$301.98. Hurst Decl. ¶ 14. Over 23,000 class members will receive
6 between \$250 and \$1,000, and more than 8,000 class members will receive more than \$1,000.
7 *Ibid.* The maximum payment is \$5,650. *Ibid.* This lawsuit has provided additional benefits.
8 In 2012, Brinker revised its rest break and meal period policies and instituted a new
9 timekeeping system. Hurst Decl. ¶ 33; Lorens Decl. ¶ 22. As a result of these changes, in the
10 last two years the class received an estimated benefit of more than \$3.5 million for rest breaks
11 alone. Hurst Decl. ¶ 34; Hurst Decl. Ex. 8 [Taylor Decl.] ¶ 7; Lorens Decl. ¶¶ 22-23. In light
12 of these benefits, it is not surprising that only six individuals requested to be excluded, and that
13 31 percent of the class submitted claims forms, compared to an average of 10-15 percent for
14 wage and hour class actions. Lorens Decl. ¶ 24. Under all the circumstances, the \$56,500,000
15 settlement appears reasonable.

16
17 *Attorneys' Fees*

18 Plaintiffs are requesting \$22,600,000 and costs of \$1,000,000. The generally accepted
19 method for determining reasonable attorneys' fees in this context is the lodestar-multiplier
20 approach. See *Serrano v. Priest* (1977) 20 Cal.3d 25, 48-49; *Wershba v. Apple Computer, Inc.*
21 (2001) 91 Cal.App.4th 224, 254. Plaintiffs were represented by various counsel at trial. Hurst
22 & Hurst expended 11,664.8 hours at hourly rates ranging from \$195 to \$850, resulting in a
23 lodestar of \$7,274,540. Hurst Decl. ¶ 21. They also incurred more than \$320,224.88 in costs.
24 *Id.* at ¶ 28. Cadena Churchill spent 2,541.35 hours on the case at rates ranging from \$175 to
25 \$725 per hour, resulting in a lodestar of \$1,208,638.25. Cadena Decl. ¶ 10. That firm also
26 incurred over \$83,573.26 in costs. *Ibid.* The Turley Law Firm devoted 13,743 hours to the
27 case at rates ranging from \$130 to \$750 per hour, resulting in a lodestar of \$7,245,439. Turley
28 Decl. ¶ 42, 55. Turley also incurred \$198,509 in costs. *Id.* at ¶ 56. Lorens and Associates

1 spent 10,895.80 hours on the case at hourly rates ranging from \$195 to \$850, resulting in a
2 lodestar of \$8,640,642.50. Lorens Decl. ¶ 29. Cohelan Khoury & Singer worked a total of
3 3,775.4 hours with hourly rates between \$250 and \$850, resulting in a lodestar of
4 \$2,630,388.50. Singer Decl. ¶¶ 20, 22 & Ex. 2. The firm incurred costs of \$221,974.13. *Id.* at
5 ¶ 40.

6 Plaintiffs were assisted on appeal by Schubert Jonckheer & Kolbe LLP, Altshuler
7 Berzon LLP, The Furth Firm LLP, and the Kralowec Law Group. Collectively, Appellate
8 Counsel claimed fees of \$1,947,946 and \$39,474.71 in costs, which will be paid exclusively
9 from the fees awarded to class counsel. Hurst Decl. ¶ 27.

10 All told, class counsel incurred \$28,947,594 in fees and more than \$1,047,145.91 in
11 costs. Ridley Decl. ¶ 52. They have continued to incur costs post-preliminary approval in
12 connection with the claims process by, among other things, staffing a call center. Hurst Decl. ¶
13 28. Plaintiffs have agreed to cap their fees at \$22,600,000. This amount is less than the fees
14 actually incurred and effectively constitutes a negative multiplier. If the amount of fees and
15 costs requested is cross-checked as a percentage of the total settlement fund, they would
16 amount to 41.8 percent. See *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19,
17 45. This amount is in line with the 20 to 50 percent awarded in similar cases. *Martin v.*
18 *AmeriPride Services, Inc.* (S.D. Cal., June 9, 2011, 08CV440-MMA JMA) 2011 WL 2313604,
19 at *8. The fees are justified by the unusual amount of time this case has been litigated, the
20 novel issues presented (which resulted in a landmark Supreme Court case, *Brinker Restaurant*
21 *Corp. v. Superior Court* (2012) 53 Cal.4th 1004), the extraordinary lengths counsel undertook
22 to ensure class members participated in the settlement, and the fact that counsel handled the
23 case on a contingency basis. The Court concludes the requested fees and costs are reasonable.

24

25 *Incentive Payments to the Class Representatives*

26 Incentive payments to class representatives "must not be disproportionate to the amount
27 of time and energy expended in pursuit of the lawsuit." *Cellphone Termination Fee Cases*
28 (2010) 186 Cal.App.4th 1380, 1395. The court must also consider the "risk to the class

1 \$8.97. *Id.* at ¶ 3. The Court notes that this is below California minimum wage. It hardly needs
2 to be stated that Hanson's position fails to consider the nature of the work being performed by
3 class counsel. For the reasons already stated, the Court finds the amount of fees requested to be
4 reasonable.

5 Without affecting the finality of this Order in any way, and pursuant to Code of Civil
6 Procedure §664.6 and Cal. Rules of Court 3.769(h), the Court retains jurisdiction of all matters
7 relating to the interpretation, administration, implementation, effectuation and enforcement of
8 this order and the Settlement. ~~Nothing in this Order shall preclude any action to enforce the
9 Parties' obligations pursuant to the Settlement Agreement or pursuant to this Order, including
10 the requirement that Defendant make payments to participating Class Members in accordance
11 with the Settlement.~~

KB

12 Having fully considered Plaintiffs' Motion for Final Approval of Class Action
13 Settlement and Plaintiffs' Motion for Award of Attorneys' Fees, Costs, Class Representative
14 Service Payments, and the one objection thereto, and good cause existing therefor, THE
15 COURT HEREBY ADJUDGES AND DECREES THAT JUDGMENT BE ENTERED,
16 PURSUANT TO THE TERMS OF THIS ORDER AND JUDGMENT.

17 Plaintiffs are directed to serve notice on all parties within 2 court days of this ruling.

18
19 **IT IS SO ORDERED.**

20
21 DATED: 12/12/14

KATHERINE A. BACAL

HONORABLE KATHERINE A. BACAL
JUDGE OF THE SUPERIOR COURT

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EXHIBIT Z

No. S234969

Supreme Court
OF THE
State of California

DOUGLAS TROESTER,
Plaintiff, Appellant and Petitioner,

v.

STARBUCKS CORPORATION,
Defendant and Respondent.

On a Certified Question from The United States
Court of Appeals for the Ninth Circuit
Case No. 14-55530

**Application for Leave to File and Brief of Amici
Curiae Consumer Attorneys of California and
California Employment Lawyers Association
in Support of Plaintiff and Appellant**

Kimberly A. Kralowec (Bar No. 163158)
THE KRALOWEC LAW GROUP
44 Montgomery Street, Suite 1210
San Francisco, CA 94104
Telephone: (415) 546-6800

Ari J. Stiller (Bar No. 294676)
KINGSLEY & KINGSLEY
16133 Ventura Boulevard, Suite 1200
Encino, CA 91436
Telephone: (818) 990-8300

Attorneys for Amicus Curiae
Consumer Attorneys of California

Attorneys for Amicus Curiae
California Employment Lawyers Association
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**APPLICATION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE
CONSUMER ATTORNEYS OF CALIFORNIA AND
CALIFORNIA EMPLOYMENT LAWYERS ASSOCIATION**

Pursuant to California Rule of Court 8.520(f), Consumer Attorneys of California (“CAOC”) and California Employment Lawyers Association (“CELA”) respectfully request leave to file the attached amici curiae brief in support of plaintiff, appellant and petitioner Douglas Troester.

CELA is a statewide organization of over 1,100 California attorneys who devote the major portion of their practices to representing employees in a wide range of employment cases, including wage and hour class action lawsuits similar to Troester. CELA has taken a leading role in advancing and protecting the rights of California employees by, among other things, submitting amicus briefs and letters on issues affecting employee rights in wage and hour cases.

CELA has appeared as *amicus curiae* in many cases before this Court, including *Ayala v. Antelope Valley Newspapers, Inc.* (2014) 59 Cal.4th 522; *Duran v. U.S. Bank Nat. Assn.* (2014) 59 Cal.4th 1; *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004; and *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094.

Founded in 1962, CAOC is a voluntary non-profit membership organization of over 3,000 associated consumer attorneys practicing in California. Its members predominantly represent individuals subjected to a variety of illegal business practices, including wage and hour violations. CAOC’s members have taken a leading role in advancing and protecting the rights of consumers, employees and injured victims in both the civil justice system and the Legislature. CAOC has participated as *amicus curiae* in precedent-setting decisions involving employee rights under California law, including both *Duran* and *Brinker*.

CAOC and CELA’s members, and their clients, have an abiding interest in the correct development and interpretation of California’s worker-protection laws,

including the requirement that employers pay for “any” and “all” time worked. The proposed joint amici curiae brief of CELA and CAOC will assist the Court in three ways. First, it will discuss authorities not cited in the briefing to date, all of which recognize that express statutory provisions, such as those in the Labor Code and Wage Orders, take precedence over the “maxim of jurisprudence” regarding “trifles,” on which Starbucks and its amici rely. Second, the proposed brief will provide a detailed discussion of the adoption history of California’s Wage Order and Labor Code provisions requiring employers to record and pay for “any” and “all” employee time worked. Finally, the proposed brief will add new analysis of California authorities demonstrating that a “de minimis” rule does not comport with the employee-protective purpose of the California Labor Code and Wage Orders.

Pursuant to Rule of Court 8.520(f)(4), CAOC and CELA affirm that no party or counsel for a party to this appeal authored any part of this amicus brief. No person other than the amici curiae, their members, and their counsel made any monetary contribution to the preparation or submission of this brief.

For the reasons stated above, CAOC and CELA respectfully submit that their proposed brief may be of assistance to the Court in deciding the matter, and therefore request the Court’s leave to file it.

Dated: May 30, 2017 Respectfully submitted,

By: 
THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Attorneys for Amicus Curiae
Consumer Attorneys of California

KINGSLEY & KINGSLEY
Ari J. Stiller
Attorneys for Amicus Curiae
California Employment Lawyers Association

I. INTRODUCTION

Under California law, employers are required to track, record, and pay for “*any*” and “*all*” “hours worked” by their employees.¹ This includes “*all the time*” during which the employees are “suffered or permitted” to work or are under employer “control.”² Federal law has a less protective definition of “hours worked,” as well as a weaker timekeeping requirement, under which time considered “de minimis” need not be recorded or paid.³ But California has never adopted these weaker standards for recording time or compensating employees, and California’s Labor Code and Wage Orders contain no analog to the federal “de minimis” defense. Such a defense simply does not exist under California’s more protective provisions.

Starbucks and its supporting amici cite a “maxim of jurisprudence” from the Civil Code concerning “trifles.”⁴ According to Starbucks and its amici, this “maxim” supports a judicial modification of the “*any*” and “*all*” requirement. However, California’s “maxims of jurisprudence” cannot be applied to impair express statutory rights. Any reliance on the “trifles” maxim is therefore misplaced.

Adopting a “de minimis” defense in California would contravene not only the text of the Labor Code and Wage Orders, but also their adoption history, which dates back more than a century. The adoption history demonstrates that neither the IWC nor the Legislature ever contemplated that the requirement to track, record and pay for “*any*” and “*all*” time worked would be relaxed through a “de minimis”

¹ Lab. Code §§510(a), 1174(d); Industrial Welfare Commission (“IWC”) Wage Order 5-2001, 8 Cal. Code Regs. §11050, ¶¶2(K), 3(A)(1), 4(A)-(B), 7(A)(3) (emphasis added). Undesignated statutory references are to the Labor Code.

² Wage Order 5-2001, *supra*, ¶2(K) (emphasis added). This brief focuses on Wage Order 5-2001, and its predecessors, because that is the Order applicable to the restaurant employees in this case. The other industry Orders are in accord.

³ 29 C.F.R. §§778.223, 785.47; *see* 29 U.S.C. §203(o) (Portal-to-Portal Act).

⁴ Civ. Code §3533.

defense. To the contrary, over the past seventy years, both the IWC and the Legislature have had numerous opportunities to relax the requirement by conforming it to federal law, yet they consistently refused to do so.

In short, when the IWC and Legislature decreed that “*any*” and “*all*” time worked must be tracked, recorded and paid, they meant what they said.

Finally, even if the Labor Code and Wage Orders leave room for judicial adoption of a “de minimis” defense (they do not), such a defense would contravene other essential principles of California employee-protection law. California courts have consistently declined to elevate employer convenience, burden or “practicality”—the rationales behind the federal “de minimis” defense—over employees’ statutory rights, including the right to full payment for time worked. Our courts have also broadly interpreted California’s “control” test as capturing small increments of time, which the federal “de minimis” defense would disregard. All of this further confirms that a “de minimis” defense is incompatible with California’s more expansive worker-protection laws.

As will be seen, California has long provided employees with stronger protections than federal law, and the requirements to track, record and pay for “*any*” and “*all*” time worked are no exception. The Court should not weaken these protections by adopting the federal “de minimis” defense. The answer to the Ninth Circuit’s certified question should be an unequivocal *no*.

II. DISCUSSION

A. The “Maxims of Jurisprudence” Cannot Vitate the Protective Minimum Standards of the Labor Code and Wage Orders

One of Starbucks’ primary contentions is that Civil Code section 3533, concerning “trifles,” takes precedence over every statutory enactment in the Labor Code and Wage Orders. *E.g.*, Respondent’s Answer Brief on the Merits (“ABM”)

at 17-19.⁵ According to Starbucks’ view, section 3533 effectively modifies each such provision, regardless of the provision’s plain language or the employee-protection purposes undergirding the provision. *See id.*

That is not how the maxims of jurisprudence operate under California law.

As this Court held long ago, the maxims of jurisprudence cannot vitiate other express statutory rights. *See, e.g., People v. One 1940 Ford V-8 Coupe*, 36 Cal.2d 471, 476 (1950) (a statute’s “express terms may not be nullified or defeated by a maxim” (citing *Lass v. Eliassen*, 94 Cal.App. 175, 179 (1928); *Moore Grocery Co. v. Los Angeles Nut House*, 90 Cal.App. 792, 795 (1928)); *Roe v. Superior Court*, 243 Cal.App.4th 138, 148 (2015) (the maxims “are not immutable principles that dictate how a statute is to be interpreted”); *Davcon, Inc. v. Roberts & Morgan*, 110 Cal.App.4th 1355, 1365 (2003) (refusing to apply a maxim in a manner inconsistent with “a statutory right”); *Lass*, 94 Cal.App. at 179 (“no maxim ... can be applied to defeat the express terms of a statute”).

As the introductory “maxim” acknowledges, the maxims “do not qualify” other statutory enactments, but serve only as “an aid in their just application.” Civ. Code §3509. As a result, this Court has recognized that the maxims are not “inflexible legal principle[s]” by which every other “statutory law” is necessarily modified. *Bickel v. City of Piedmont*, 16 Cal.4th 1040, 1048 n.4 (1997).⁶

Regardless of the maxims, where statutory construction is concerned, the Court’s central “objective” “is to ascertain and effectuate the underlying legislative

⁵ *See also* Amicus Curiae Brief of Chamber of Commerce of the United States at 10 (hereafter “Chamber Amicus Brief”); Amicus Curiae Brief of Association of Southern California Defense Counsel at 21 (hereafter “Defense Counsel Amicus Brief”).

⁶ *Superseded by statute on other grounds as stated in DeBerard Properties, Ltd. v. Lim*, 20 Cal.4th 659, 668 (1999). *See also* Civ. Code §4 (a statute is “to be liberally construed with a view to effect its objects and to promote justice”).

intent.” *Moore v. California State Bd. of Accountancy*, 2 Cal.4th 999, 1012 (1992). That “fundamental rule” “overrides ... any maxim of jurisprudence, if application of the ... maxim would frustrate the intent underlying the statute.” *Id.* (citing Civ. Code §3509 and numerous decisions) (emphasis added); *see also In re Joseph B.*, 34 Cal.3d 952, 957 (1984) (the maxims “shall always ‘be subordinated to the primary rule that the intent shall prevail ...’” (quoting *Estate of Banerjee*, 21 Cal.3d 527, 539 (1978)); *Irwin v. City of Manhattan Beach*, 65 Cal.2d 13, 21 (1966) (the maxims are not “inflexible rule[s],” and the Court’s “quest after legislative purpose” “remains paramount”); *J. Paul Getty Museum v. County of Los Angeles*, 148 Cal.App.3d 600, 605 (1983) (maxims inapplicable to plain statutory language or “where application of the maxim would frustrate legislative intent” (citing *Williams v. Los Angeles Metropolitan Transit Auth.*, 68 Cal.2d 599, 603 (1968))).

The “trifles” maxim of section 3533 is no exception to these rules. Courts have routinely declined to apply it when its application would be inconsistent with a statute (or other vested legal rights), or would frustrate the Legislature’s purpose in enacting the statute. *E.g.*, *In re Garcia*, 58 Cal.4th 440, 458 (2014) (rejecting “de minimis” argument where express statutory language resolved question); *Knoke v. Swan*, 2 Cal.2d 630, 631 (1935) (refusing to apply “trifles” maxim to vitiate requirements of Revenue and Taxation Code; invalidating tax sale because of 2-cent discrepancy); *Walker v. Emerson*, 89 Cal. 456, 458-59 (1891) (maxim does not apply to trespass to land claimed to be “de minimis”); *Costerisan v. Tejon Ranch Co.*, 255 Cal.App.2d 57, 61 (1967) (refusing to apply maxim to questions of “permanent right[s]”); *see also* Petitioner’s Reply Brief on the Merits at 9-11 (citing additional cases).

Here, as explained below, the applicable statutes and Wage Orders expressly require employers to pay for “*any*” and “*all*” time worked. “The case is not one, therefore, for the application of equitable doctrines, but rather one for the construction of an act of the Legislature.” *Lass*, 94 Cal.App. at 179; *see J. Paul*

Getty Museum, 148 Cal.App.3d at 606 (given evidence of “legislative intent” and statute’s “express language,” “there is no need to resort to any maxim of statutory construction to discern the intent and scope of the [statute]”).

As also explained below, the Wage Orders and Labor Code are highly specific enactments that post-date the maxims (adopted in 1872) by several decades. The maxims therefore must yield to the long-established rule that “later enactments supersede earlier ones, and more specific provisions take precedence over more general ones.” *State Dept. of Public Health v. Superior Court*, 60 Cal.4th 940, 960 (2015) (citations omitted).

Notably, neither Starbucks nor its supporting amici have cited any California appellate decision applying the “trifles” maxim to relax an employer’s obligation to pay for “all” time worked. The latter requirement is a fundamental employee-protection rule that has been part of the Wage Orders for many years. If the “trifles” maxim modified it, the maxim would have been addressed in a case by this time. It has never been used in that context, and should not be now.

Instead, this Court’s interpretation of the Wage Orders and Labor Code should be guided—as it has always been—by the underlying employee-protection purpose of those enactments. *Augustus v. ABM Security Servs., Inc.*, 2 Cal.5th 257, 262 (2016); *Peabody v. Time Warner Cable, Inc.*, 59 Cal.4th 662, 667 (2014) (“[s]tatutes governing conditions of employment are to be construed broadly in favor of protecting employees”); *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1026-27 (2012) (same); *Murphy v. Kenneth Cole Productions, Inc.*, 40 Cal.4th 1094, 1103 (2007) (same).

B. As the Regulatory and Legislative History Shows, California Workers Must Be Paid for “Any” and “All Hours Worked,” Not Some Lesser Subset of Hours Worked

The current Wage Orders and Labor Code require employers to record and pay for “*any*” and “*all*” employee time worked. Labor Code §510; Wage Order 5-

2001, 8 Cal. Code Regs. §11050, ¶¶2(K), 3(A)(1), 4(A)-(B), 7(A)(3) (emphasis added). The enactment history of these provisions demonstrates that neither the IWC nor the Legislature ever contemplated that any “trifles” maxim would weaken that unambiguous requirement. To the contrary, the Wage Orders and Labor Code are explicit that California employers may not record—or pay for—anything less than “*any*” and “*all*” “hours worked.”

In California, the requirement to track and pay for “*all*” time worked dates back to the earliest Wage Orders. Once, in the early 1940s, the California and federal definitions of “hours worked” were the same. But when Congress and the federal courts began to curtail employee protections in the mid-1940s, California did not. Every time the IWC had an opportunity to follow federal regulators’ lead in narrowing employee protections, the IWC conspicuously chose a different path.

In particular, when federal regulators codified a “de minimis” defense by relaxing the federal recording requirement in 1955, the IWC did not follow suit. Instead, less than two years later, it issued new Wage Orders that continued to require employers to both record and pay for “*all*” time worked. The IWC reconfirmed these rules in every subsequent set of Wage Orders, including the 1998 Orders, which purported to eliminate daily overtime. In 1999, when the California Legislature stepped in, that body reconfirmed that in this state, “*any* work” over eight hours per day must be recorded and paid. Lab. Code §510.

Since the earliest Wage Orders, a central purpose of California’s overtime laws has been to ensure employer compliance with maximum hours limits, which exist for the health and safety of workers as well as the public. For that reason, among others, the Wage Orders require that “*all*” time comprising the initial eight hours be recorded (and paid). This plain language, illuminated by the enactment history, leaves no room for employers to choose to disregard working time that they may consider “trifles.” Recording and paying for “*all*” time worked is not only a fundamental employee-protection principle, but is also essential to ensure that

California's overtime regulations actually function to limit maximum working hours.

1. Regulatory History Leading to Current Wage Order Language

In the first Wage Order ever adopted, the IWC imposed maximum daily and weekly working hours, applicable to all employees, whether paid on a weekly, hourly, or piece-rate basis. Wage Order 1, ¶¶1, 3 (Fruit and Vegetable Canning Industry) (Feb. 14, 1916, eff. Apr. 14, 1916). Work in excess of the daily or weekly maximum was allowed in cases of “emergency,” but only at a higher rate of pay than the minimums established in the Order. *Id.* ¶4.

To enable enforcement and proper payment of all earned wages, including “emergency” overtime, employers were required to “keep a record of the work done and *the time worked.*” *Id.* ¶6 (emphasis added).

The overtime provision was included “[f]or the purpose of limiting the hours of labor.” By 1918, “[w]ork after twelve hours was practically prohibited by the requirement of double time rates.” Fourth Report of the Industrial Welfare Commission 10 (Cal. State Printing Office 1924); *see also* Fifth Report of the Industrial Welfare Commission 11 (Cal. State Printing Office 1927) (“A penalty was placed on long hours of work by requiring the payment of [overtime wages].”).⁷

⁷ *Accord* Statement as to the Basis for Order 5-80, ¶3 (Sept. 7, 1979) (“The Commission relies on the imposition of a premium or penalty pay for overtime work to regulate maximum hours consistent with the health and welfare of employees”); Statement as to the Basis for Amendments to Section 3 of IWC Order 5-80 Affecting the Health Care Industry at 2 (Jan. 17, 1986) (“the Commission reasserted its previous position that overtime pay is a means of limiting hours of work,” and that reducing overtime hours “encourage[s] employers to schedule long hours”); *Industrial Welfare Commission v. Superior Court*, 27 Cal.3d 690, 713 (1980) (citing Statement as to the Basis for 1980 Wage Orders, §3, “Hours and Days of Work”); *Monzon v. Schaefer Ambulance Service, Inc.*, 224 Cal.App.3d 16, 37 (1990) (“The

None of these provisions could have been enforced absent the requirement for employer records of “the time worked.” *See* Wage Order 1, *supra*, ¶6. In fact, the uncodified act establishing the IWC in 1913 contemplated employer recordkeeping for enforcement purposes. The 1913 act required employers to “furnish to the commission, at its request, any and all reports or information which the commission may require to carry out the purposes of this act” Stats. 1913, ch. 324, §3(b)(1), *cited in* *Martinez v. Combs*, 49 Cal.4th 35, 54 (2010).

By 1931, this provision had been amended to require employers to maintain records of “the *hours worked daily*” by each employee. *Id.* §3(a) (as amended). This requirement remains in force today. Lab. Code §1174(d).⁸

Meanwhile, in the first industry order governing hotels and restaurants (the predecessor to Wage Order 5-2001), the IWC adopted the same enforcement structure as in its earliest industry orders. In Wage Order 12 (Hotels and Restaurants) (July 19, 1919, eff. Sept. 17, 1919), the IWC established a weekly minimum wage for full-time employees; an hourly minimum wage for part-time employees; and maximum daily and weekly hours of work for all employees. *Id.* ¶¶1, 3. Work in excess of the maximums was allowed, but only if overtime wages were paid. *Id.* ¶6(f). For purposes of tracking and enforcement, the Order required employers to maintain records of “*the hours worked* and the amounts earned” by all employees. *Id.* ¶7 (emphasis added).

These same basic requirements and structure were readopted in amended Orders issued in 1920 and 1923. *See* Wage Order 12 Amended (Hotels and

avowed purpose of the imposition of premium wages is to discourage the employer from working the employee excessive hours.”).

⁸ The requirement was codified in 1937 as Labor Code section 1174, which continues to state that employers must maintain “payroll records showing the *hours worked daily* by” all employees. Lab. Code §1174(d). Failure to comply with the recordkeeping requirement is a misdemeanor. *Id.* §1175(d).

Restaurants) (Jun. 1, 1920, eff. Jul. 31, 1920); Wage Order 12 Amended (Hotels and Restaurants) (Jun. 8, 1923, eff. Sept. 13, 1923).

Twenty-two years after the IWC's first Wage Order, Congress enacted the federal Fair Labor Standards Act of 1938, Pub. L. No. 718, 52 Stat. 1060 (Jun. 25, 1938) ("FLSA" or "the Act"), thereby regulating hours and working conditions at the federal level for the first time. *See Martinez*, 49 Cal.4th at 53 ("[California] did not follow a federal model, as Congress would not enact the FLSA until 1938" (footnote and citation omitted)).

The FLSA limited the length of the "workweek" to a specified number of hours, and for time "in excess of" of the maximum, overtime pay was required. FLSA, §7(a). The Act compelled employers to keep records of the "wages, *hours*, and other conditions and practices of employment maintained by [them]." *Id.* §11(c) (emphasis added). Four months later, the U.S. Department of Labor clarified that employers must record the "[*h*]ours worked *each workday* and each workweek." 29 C.F.R. §516.1(d), 3 Fed. Reg. 2533 (Oct. 22, 1938) (emphasis added); *see* 29 C.F.R. §516.2(a)(7) (current version). The terms "workday" and "workweek" were, as of that time, undefined. *See Integrity Staffing Solutions, Inc. v. Busk*, 135 S.Ct. 513, 516 (2014).

In July 1939, the Wage and Hour Division of the U.S. Department of Labor issued Interpretative Bulletin No. 13, defining "hours worked" as follows:

As a general rule, *hours worked* will include all time during which an employee is required to be on duty or to be on the employer's premises or to be at a prescribed work place, and all time during which an employee is suffered or permitted to work whether or not he is required to do so.

U.S. Department of Labor, Wage and Hour Division, Office of the Administrator, Interpretative Bulletin No. 13 (July 1939) (emphasis added), *quoted in Bowers v. Remington Rand*, 64 F.Supp. 620, 625 (S.D. Ill. 1946); *Mortenson v. Western Light & Tel. Co.*, 42 F.Supp. 319, 321 (S.D. Iowa 1941).

For its part, the IWC was keenly aware of the federal activity in the area of wage and hour regulation, which previously had been left to the states. In 1943, the IWC issued a “New Series” of Wage Orders (known as the “NS” series), which contained definitions for the first time. *E.g.*, Wage Order 5NS ¶2 (Hotels and Restaurants) (Apr. 14, 1943, eff. Jun. 28, 1943). The definition of “[h]ours employed” mirrored that of Interpretative Bulletin No. 13:

“*Hours employed*” includes *all time* during which:

1. An employee is required to be on the employer’s premises ready to work, or to be on duty, or to be at a prescribed work place.
2. An employee is suffered or permitted to work, whether or not required to do so.

Id. ¶2(f) (emphasis added).

Order 5NS continued to impose a weekly minimum wage for full-time employees; an hourly minimum wage for part-time employees; and maximum daily and weekly hours of work for all employees, above which overtime must be paid. *Id.* ¶¶3(a), 4. The recordkeeping requirement incorporated the newly-defined term “Hours employed,” requiring employers to keep “an accurate record” of “Hours employed, which shall show the beginning and ending of hours employed by the employee each work day, which shall be recorded at the time the employee begins and ends employment.” *Id.* ¶8(a)(7) (emphasis added).

In 1944 and 1946, the U.S. Supreme Court handed down two opinions construing the FLSA, *Tennessee Coal, Iron & R. Co. v. Muscoda Local No. 123*, 321 U.S. 590 (1944) and *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946), both of which addressed the scope of the “workweek” for purposes of overtime pay. The opinions held that time preliminary and postliminary to periods of productive labor (such as “time spent walking from timeclocks to work benches”) should count as part of the “workweek” under the FLSA. *See Integrity Staffing*, 135 S.Ct. at 516.

Anderson also suggested that “a de minimis rule” was not “preclude[d]” if “the minimum walking time is such as to be negligible.” 328 U.S. at 692.

In 1947, Congress “swift[ly]” responded to these decisions by enacting the Portal-to-Portal Act. *Integrity Staffing*, 135 S.Ct. at 516-17. The Portal-to-Portal Act reflects Congress’ intent to contract the definition of “hours worked.” *Id.* The Act now excludes various categories of time from the definition, which would otherwise have been considered compensable “work” under *Tennessee Coal* and *Anderson*. See, e.g., 29 U.S.C. §§203(o) (curtailing definition of “hours worked” for purposes of minimum and overtime wages), 251(a) (expressing intent to limit employer liability for payment of wages to employees), 252(c) (limiting “compensable” activities to those “engaged in during” specified “portion[s] of the day”), 254(a) (list of “activities not compensable” under federal law).

The IWC’s reaction was just as swift. “In response” to the Portal-to-Portal Act, the IWC changed its definition of “hours worked” in a “Revised” (or “R”) series of Orders issued in 1947. *Martinez*, 49 Cal.4th at 59-60; see *Morillion v. Royal Packing Co.*, 22 Cal.4th 575, 591 (2000); e.g., Wage Order 5R (Feb. 8, 1947, eff. Jun. 1, 1947). The object of this revision was to expand employee protections in California beyond those of federal law, and to make California law even more protective. *Martinez*, 49 Cal.4th at 59-60 (IWC’s 1947 amendments were “[i]n response to” the enactment of the federal Portal-to-Portal Act, which dramatically weakened protections of federal law).

Wage Order 5R adopted a new definition of “*hours worked*,” which remains in force today. Under the new definition, “hours worked” no longer depends on whether the employee was “required to be on the employer’s premises ready to work, or to be on duty, or to be at a prescribed work place.”⁹ Instead, the IWC adopted a simpler, yet broader and more protective, definition, hinging on a single

⁹ Wage Order 5NS, *supra*, ¶2(f)(1).

factor, namely, employer “control”: “***Hours worked***’ means ***the time*** during which an employee is subject to the control of an employer” Wage Order 5R, *supra*, ¶2(h) (emphasis added). The definition continued to also state that “***hours worked***” “includes ***all the time*** the employee is suffered or permitted to work, whether or not required to do so.” *Id.* (emphasis added).

The new definition of “hours worked” was integral to several other provisions of Wage Order 5R. Notably, in this Order, the IWC abandoned the concept of minimum ***weekly*** pay, which dated back to its earliest Orders. Instead, Order 5R imposed a minimum ***hourly*** wage for all employees. *Id.* ¶4(a). The minimum wage provision was amended to explicitly state, for the first time, that compensation must be paid for “***all hours worked.***” *Id.* (emphasis added). Maximum daily working hours continued in place, along with mandatory overtime pay if the maximum was exceeded. *Id.* ¶3(b).

The recordkeeping provision in Order 5R also hinged on the new definition of “hours worked.” It required employers to “keep” an “accurate” “[t]ime record showing actual time employment begins and ends each day, and ***hours worked daily.***” *Id.* ¶6(a)(3) (emphasis added).¹⁰

The IWC chose not to adopt any “de minimis” language similar to that mentioned in *Anderson*. Instead, the 1947 Orders required, more broadly than federal law, that “***all***” “***hours worked daily***” be recorded, tracked, and paid. Wage Order 5R, ¶¶3(b), 4(a), 6(a)(3) (emphasis added).

For this reason, Starbucks and its amici’s heavy reliance on *Anderson* is misplaced.¹¹ *Anderson* construed a narrower definition of “hours worked,” one that

¹⁰ The italicized language comports with Labor Code section 1174, which had been codified in 1937, and remains unchanged today.

¹¹ See ABM at 15; Defense Counsel Amicus Brief at 14; Amicus Curiae Brief of California Retailers Association at 5; Chamber Amicus Brief at 9.

the IWC purposely abandoned in 1947, and knowingly replaced with the broader, more protective definition stated in Wage Order 5R, which remains in force today. The IWC has never reverted to the pre-1947 definition at issue in *Anderson*. Rather, as will be seen, the IWC has modified “hours worked” only twice over the past sixty years, and then only for particularly defined, narrow groups of employees.

In 1950, the Department of Labor incorporated the less expansive federal definition of “hours worked” into the Code of Federal Regulations. 29 C.F.R. §778.7(f), 15 Fed. Reg. 631 (Feb. 4, 1950); *see* 29 C.F.R. §778.223 (current version). The C.F.R. definition remained curtailed by the Portal-to-Portal Act, which expressly excluded various time and tasks from the definition. *E.g.*, 29 U.S.C. §§203(o), 252(c), 254(a).

In 1952, the IWC adopted its next series of Orders. *E.g.*, Wage Order 5-52 (May 15, 1952, eff. Aug. 1952). Although the C.F.R. had just been amended to incorporate a narrower definition of “hours worked,” the IWC chose to readopt, unchanged, its broader and more protective definition. *Id.* ¶2(h). The minimum wage provision of Order 5-52 continued to require payment for “***all hours worked.***” *Id.* 4(a). And the overtime language was revised so that it, too, unambiguously required payment for “***all hours worked***” above the daily and weekly maximums. *Id.* ¶3(a)(1). Finally, the recording language required employers to “keep” “accurate” records of “***total hours worked*** each day.” *Id.* ¶7(a)(3) (emphasis added).

All four of these aspects of Order 5-52 continue in force, unchanged, today. Wage Order 5-2001, 8 Cal. Code Regs. §11050, ¶¶2(K), 3(A)(1), 4(A)-(B), 7(A)(3) (imposing same definition of “***hours worked***”; requiring minimum and overtime wages for “***all hours worked***”; and requiring employers to keep records of “***total daily hours worked***” (emphasis added)); *see also* Lab. Code §1174(d) (requiring records of “***the hours worked daily***”).

The next development of note occurred in 1955. The Department of Labor modified its recording requirement by adopting a new provision entitled “Recording

working time.” 29 C.F.R. §785.4, 20 Fed. Reg. 9967 (Dec. 24, 1955). That provision stated: “*In recording working time* under the act, insubstantial or insignificant periods of time beyond the scheduled working hours, which cannot as a practical administrative matter be precisely recorded for payroll purposes, may be disregarded. The courts have held that such trifles are de minimis.” *Id.* §785.4(b) (citing *Anderson*, 328 U.S. 680) (emphasis added).¹² The provision went on to explain how this new language would be construed and applied to federal wage claims. *See id.*

In its next Wage Orders, issued less than two years later, in 1957, the IWC declined to adopt this federal “de minimis” provision, even though it just had been added to the C.F.R. *E.g.*, Wage Order 5-57 (May 30, 1957, eff. Nov. 15, 1957). Instead, the IWC readopted the same definition of “*hours worked*” from 1947; the same requirement to pay minimum and overtime wages for “*all*” hours worked (which dated back to 1947 and 1952); and the same requirement to record “*total daily hours worked.*” *Id.* ¶¶2(h), 3(a)(3), 4(a), 7(a)(3) (emphasis added).

Nor did the Legislature relax Labor Code section 1174(d), requiring employers to keep records of “*the hours worked daily.*”¹³

Over the next thirty-two years, the IWC amended its Wage Orders five more times, but it never modified any of these requirements, and it never added any “de minimis” language like that inserted into the C.F.R. in 1955. *See* Wage Order 5-63, ¶¶2(h), 3(a)(3)(A), 4(a), 7(a)(3) (Apr. 18, 1963, eff. Aug. 20, 1963); Wage Order 5-67, ¶¶2(h), 3(a), 4(a), 7(a)(3) (Sept. 26, 1967, eff. Feb. 1, 1968); Wage Order 5-76,

¹² The language adopted in 1955 appears in the current regulations at 29 C.F.R. §785.47, except that the citations appearing in footnotes in 1955 were subsequently moved into the text. *See* 26 Fed. Reg. 195 (Jan. 11, 1961).

¹³ Compare *Bartholomew v. Heyman Properties*, 132 Cal.App.2d Supp. 889, 894 (1955) (quoting §1174(d) in effect in 1955) with *People v. Hutchings*, 69 Cal.App.3d Supp. 33, 35 n.1 (1977) (quoting §1174(d) in effect in 1977).

¶¶2(G), 3(A), 4(A), 7(A)(3) (Jul. 27, 1976, eff. Oct. 18, 1976); Wage Order 5-80, ¶¶2(H), 3(A), 4(A), 7(A)(3) (Sept. 7, 1979, eff. Jan. 1, 1980); Wage Order 5-89, ¶¶2(H), 3(A), 4(A), 7(A)(3) (Sept. 23, 1988, eff. July 1, 1989).

One amendment to Wage Order 5-76 is notable. While retaining the basic definition of “hours worked,” Order 5-76 added a new clause applicable to a small subset of employees:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so, and in the case of an employee who is required to reside on the employment premises, that time spent carrying out assigned duties shall be counted as hours worked.

Wage Order 5-76, *supra*, ¶2(G) (emphasis added).

As the IWC later explained, the change was intended to “amplify” and “clarify” the definition only for “employees who are required to reside at their place of employment.” Statement as to the Basis for Wage Order 5-89, ¶2 (Sept. 23, 1988).¹⁴ However, “[t]he IWC **received no compelling evidence, and concluded there was no rationale, to warrant making any other change in the provisions of this section.**” *Id.* (emphasis added). The prior, unqualified definition of “hours worked” therefore continued to apply to all employees outside the narrow, specified group. Wage Order 5-76, *supra*, ¶2(G).

If the IWC had intended to modify the definition of “hours worked” for any employees outside this limited group, it would have done so in 1976.

Meanwhile, in 1984, the Ninth Circuit handed down its opinion in *Lindow v. United States*, 738 F.2d 1057 (9th Cir. 1984), on which Starbucks and its amici heavily rely in this case. In *Lindow*, the Ninth Circuit applied the federal “de

¹⁴ *Accord* Statement as to the Basis for Wage Order 5-80, ¶2 (Sept. 7, 1979).

minimis” defense to an FLSA overtime claim brought by employees working in Oregon. *Id.* at 1062-63 (citing 29 C.F.R. §785.47; *Anderson*, 328 U.S. at 692).

A few years later, in 1988, an employer asked the DLSE whether the same “de minimis” defense applies to California wage claims. *See* DLSE Op. Ltr. 1988.05.16 at 1. Without considering the text of any Wage Orders, and without citing “any California cases on point,” the DLSE opined that it “would adopt the test of the *Lindow* court with respect to *de minimis* time for purposes of compensation”—even though the IWC itself had never done so, nor had the Legislature ever amended section 1174(d). *Id.* at 2.

The IWC wasted no time signaling its disagreement with the DLSE’s opinion, and with *Lindow*. Within months, it had adopted the 1989 series of Orders, in which it reenacted the same broad definition of “*hours worked*,” the same requirement to pay minimum and overtime wages for “*all hours worked*,” and the same requirement to record (and pay for) “*total daily hours worked*.” Wage Order 5-89, *supra*, ¶¶2(H), 3(A), 4(A), 7(A)(3) (emphasis added).

Notably, the IWC once again declined to adopt any “de minimis” provision similar to that of the C.F.R. *See id.*

Four years later, in 1993, the IWC made its only other change to the “hours worked” provision since the 1979 amendment discussed above. A new sentence, affecting only a subset of employees—those working in “the health care industry”—stated that “hours worked” is to be “interpreted in accordance with the provisions of the Fair Labor Standards Act.” 1993 Amendments to Sections 2, 3, and 11 of IWC Order 5-89, ¶2(H) (Jun. 29, 1993, eff. Aug. 31, 1993).¹⁵

¹⁵ Order 4-89 was similarly amended, but the others orders were unchanged. 1993 Amendments to Sections 2, 3, and 11 of IWC Order 4-89 (Jun. 29, 1993, eff. Aug. 31, 1993); *see* Wage Order 4-2001, 8 Cal. Code Regs. §11040, ¶2(K).

For all other employees, however, the prior definition of “*hours worked*” continued to apply. *See id.* Moreover, the provisions requiring minimum and overtime wages for “*all hours worked*” were unchanged, as was the provision requiring records of “*total daily hours worked.*” *See id.* (emphasis added).

As the 1993 amendment shows, “where the IWC intended the FLSA to apply to wage orders, it has specifically so stated.” *Morillion*, 22 Cal.4th at 592 (citing this amendment to Wage Order 4); *see also Martinez*, 49 Cal.4th at 67 (same).¹⁶ This Court will not “incorporate a federal standard concerning what time is compensable” into California law “[a]bsent *convincing* evidence of the IWC’s intent” *Mendiola*, 60 Cal.4th at 846 (quoting *Morillion*, 22 Cal.4th at 592) (emphasis in original).

The DLSE disregarded this principle, as well as the IWC’s narrow 1993 amendments, when it issued two more opinion letters in the 1990s. In those letters, heavily cited by Starbucks and its amici, the DLSE said that it “has an established policy that time which is *de minimis* need not be counted toward the employer’s obligation to pay” wages. DLSE Op. Ltr. 1995.02.03 at 2 (citing *Lindow*); DLSE Op. Ltr. 1994.02.03 at 4 (“the Division has adopted the *de minimis* rule relied upon by the federal courts” (citing *Lindow* and *Anderson*)).

But the IWC itself has never adopted an “established policy” to treat any working time as “*de minimis.*” In Order after Order, it has said instead that nothing

¹⁶ *Accord Mendiola v. CPS Security Solutions, Inc.*, 60 Cal.4th 833, 847 n.17 (2015) (“Wage Order 4 itself demonstrates that the IWC knows how to expressly incorporate federal law and regulations when it desires to do so.”). Another compelling example is the 1943 “NS” Orders, discussed above, in which the IWC explicitly adopted language from the Department of Labor’s Interpretative Bulletin No. 13. By later revising the language, the IWC expressed its intention to depart from the previously-adopted federal standard, which it is fully empowered to do. *Morillion*, 22 Cal.4th at 592 (“state law may provide employees greater protection than the FLSA”).

less than “***all hours worked***”—including “***all time***” an employee is engaged in work or under employer “control”—must be tracked, recorded and paid.

In 1998, the DLSE went a step further, but again without any textual support from the Wage Orders. It copied the C.F.R.’s “de minimis” language dated 1955, and pasted that language, verbatim, into its *Enforcement Manual*. See DLSE, *Enforcement Policies and Interpretations Manual* §44.2 (Oct. 1998) (quoting 29 C.F.R. §785.4(b)).¹⁷ The only change was the addition of a cite to *Lindow*. *Id.*¹⁸

This provision of the *Manual* has become the main source of authority for a purported “de minimis” rule in California, and it was the only California authority cited by the district court below. *Troester v. Starbucks Corp.*, 2014 WL 1004098, *3 (C.D. Cal. Mar. 7, 2014). However, nothing in the *Manual* or the DLSE letters changes the fact that the IWC consistently declined to adopt the federal “de minimis” defense, every time it had an opportunity to do so.

The IWC could have adopted the defense in its Orders issued in 1947, 1952, 1957, 1963, 1967, 1976, 1989, or 1993, but it did not. Instead, in 1988, it adopted a new series of orders just months after the DLSE’s prior opinion letter on this topic, without including the federal “de minimis” standard. And, in 1993, when it *did* adopt the federal definition of “hours worked” (including the “de minimis” defense) for certain employees in the health care industry, it chose not to adopt that standard for anyone else. There is no evidence at all, let alone “***convincing*** evidence,” that the IWC intended to modify the definition of “hours worked,” or the requirement to

¹⁷ This Court had recently invalidated the DLSE’s prior *Manual* as an improper “underground regulation.” *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal.4th 557, 577 (1996). Hence, the DLSE’s *Manuals*, including the current *Manual*, are entitled to “no deference.” *Martinez*, 49 Cal.4th at 50 n.15.

¹⁸ The language is unchanged in the current *Manual*, except that it has been split into two subsections. See DLSE *Enforcement Policies and Interpretations Manual*, §§47.2.1, 47.2.1.1 (2002 Update).

pay for “**all** hours worked,” by adopting the federal standard for **anyone** other than health care workers. *Mendiola*, 60 Cal.4th at 846.

Under *Mendiola*, “[t]he relevant issue in deciding whether [a] federal standard has been implicitly incorporated [is] whether state law or the wage order contained an express exemption similar to that found in federal law.” 60 Cal.4th at 946 (citing *Morillion*, 22 Cal.4th at 590). There is no such “express exemption” in the Wage Orders’ definition of “hours worked,” and there never has been.

In fact, in *Mendiola*, this Court refused to hold that the IWC’s Wage Orders “implicitly incorporate[d]” another provision of the same part of the C.F.R. concerning “hours worked”—namely, 29 C.F.R. §785.22(a), concerning sleep time. *Mendiola*, 60 Cal.4th at 844-46. That provision, like the “de minimis” section cited in the DLSE letters and *Manual*, also dates back to 1955. *See* former 29 C.F.R. §785.3(e)(2), 20 Fed. Reg. 9965 (Dec. 24, 1955). Yet, there is “no indication, much less convincing evidence,” that the IWC ever intended to incorporate **either** federal standard into California law. *Mendiola*, 60 Cal.4th at 846.

For unknown reasons, the DLSE overlooked all of this in 1988, and again in the 1990s, when it issued its letters and its new *Manual* provision. Neither the DLSE’s letters, nor its *Manual*, should be afforded any persuasive value on the “de minimis” question. They contradict the Wage Orders’ text and contravene the IWC’s clear contrary intentions, repeatedly expressed since 1947. *See California School of Culinary Arts v. Lujan*, 112 Cal.App.4th 16, 27 (2003) (affording no deference to DLSE interpretation where “no amendment has been made to the wage order” to adopt such an interpretation and where DLSE’s construction of the order was “not supported by ... the early records of IWC”).

In fact, even when the IWC chose to relax employee protections in other ways, it did **not** relax the requirement to pay for “**all**” time worked.

In 1997, the IWC issued five new Wage Orders, including Wage Order 5-98 (Apr. 11, 1997, eff. Jan. 1, 1998). The definition of “**hours worked**” was unchanged, as was the requirement to pay minimum wages for “**all hours worked**,” and the requirement to maintain records of “**total daily hours worked.**” *Id.* ¶¶2(H), 4(A), 7(A)(3) (emphasis added). However, the new Orders eliminated daily overtime by requiring payment of premium wages only for “**all hours worked** over 40 hours in the work week.” *Id.* ¶3(A); *see Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1037 (2012).

Under the new Orders, daily overtime hours would fall within the scope of “**all hours worked**,” which must be compensated at no less than minimum wage, although premium wages would not be owed for that time. Wage Order 5-98, ¶4(A). In other words, even as it limited daily overtime, the IWC nevertheless continued to reconfirm the basic definition of “**hours worked**” and the concept—essential to proper operation of any maximum hours limitation—that “**all hours worked**” must be tracked, recorded and paid. *Id.* ¶¶2(H), 4(A), 7(A)(3).

As discussed in the next section, the California Legislature had more fundamental concerns with the IWC’s amended Orders, and quickly stepped in to restore daily overtime as a fixture of California employees’ legal protections. *See Eight-Hour-Day Restoration and Workplace Flexibility Act of 1999* (Assembly Bill No. 60 (1999-2000 Reg. Sess.)) (“AB 60”).

Thereafter, in the 2000 and 2001 series of Wage Orders, the IWC readopted all four protective provisions, dating back to 1947 and 1952, defining “**hours worked**” to include “**all time**” during which any work is “suffered or permitted”; requiring payment of minimum wages for “**all hours worked**”; requiring payment of overtime wages for “**all hours worked**” above the stated daily and weekly maximums; and requiring employers to track, record and pay for “**total daily hours worked.**” Wage Order 5-2000, ¶¶2(L), 3(A)(1), 4(A)-(B), 7(A)(3) (eff. Oct. 1,

2000); Wage Order 5-2001 (eff. Jan. 1, 2001), 8 Cal. Code Regs. §§11050, ¶¶2(K), 3(A)(1), 4(A)-(B), 7(A)(3).

As this history demonstrates, the IWC has consistently declined to weaken the protective requirements, dating back to the earliest wage orders, that employers must record and pay for “*all*” “hours worked.”

2. The Impact of AB 60, Leading to Current Labor Code Section 510

After the IWC adopted the 1998 series of Orders, eliminating daily overtime, the Legislature was “[t]roubled by this weakening of employee protections.” *Brinker*, 53 Cal.4th at 1037. It swiftly responded. *Id.* In May 1997, even before the new Orders went into effect, the IWC’s funding was cut off.¹⁹

Then, in 1998, AB 60 was introduced, and signed into law in 1999. AB 60 “wrote into the statute various guarantees that previously had been left to the IWC.” *Brinker*, 53 Cal.4th at 1037-38. One of those was Labor Code section 510, which “restored the eight-hour workday” and prevented the IWC from ever relaxing that protection again. *Johnson v. Arvin-Edison Water Storage Dist.*, 174 Cal.App.4th 729, 735 (2009).

As amended by AB 60, Labor Code section 510 states: “Eight hours of labor constitutes a day’s work. *Any work* in excess of eight hours in one workday and *any work* in excess of 40 hours in any one work week ... shall be compensated” at the overtime rate. Lab. Code §510(a) (emphasis added). As a result, California

¹⁹ State of California, Department of Industrial Relations, *Guide to the Records of the Industrial Welfare Commission Collection 1913-2004*, at 8 (Jan. 2006).

This should have been a strong signal to both the IWC and the DLSE that the Legislature disapproved such efforts to contract employee protections. Nevertheless, the DLSE issued its new *Manual*, incorporating the 1955 C.F.R.’s “de minimis” language, the very next year. *Manual*, *supra*, §44.2.

law now requires records and payment not just of “*all* hours worked,” but also “*any*” time worked. The words used, and the intention behind them, could not be plainer.

In uncodified section 2 of AB 60, the Legislature confirmed its commitment to the fundamental employee-protection principles supporting these requirements.

The Legislature declared that “[t]he eight-hour work day is the mainstay of protection for California’s working people, and has been for over 80 years,” “long before the federal government enacted overtime protections for workers.” AB 60, *supra*, §2(a), (b). The Legislature reconfirmed what the IWC had recognized almost a century before—namely, that one of the overtime laws’ core functions is to enforce the statutory limits on maximum working hours: “Numerous studies have linked long work hours to increased rates of accident and injury,” and “[f]amily life suffers when either or both parents are kept away from home for an extended period of time on a daily basis.” *Id.* §2(d), (e).²⁰ “Therefore, the Legislature affirms the importance of the eight-hour workday, declares that it should be protected, and reaffirms the state’s unwavering commitment to upholding the eight-hour workday as a fundamental protection for working people.” *Id.* §2(g).

To drive these points home, in another uncodified section of AB 60, the Legislature reinstated the IWC’s 1989 series of Orders, including Wage Order 5-89, as amended in 1993. AB 60, *supra*, §21. Each reinstated Order required employers to pay minimum and overtime wages for “*all hours worked*”; retained the same broad definition of “*hours worked*,” except for narrow groups of specified employees; and continued to require employers to track and record “*total daily hours worked*.” *E.g.*, Wage Order 5-89, as amended in 1993, ¶¶2(H), 3(A), 4(A), 7(A)(3).

²⁰ See *supra* footnote 7 and accompanying text.

Finally, as mentioned above, when the IWC adopted its new series of Orders in 2000 and 2001, as AB 60 directed,²¹ it reinstated these provisions yet again, and they remain in force now. Wage Order 5-2001 (eff. Jan. 1, 2001), 8 Cal. Code Regs. §§11050, ¶¶2(K), 3(A)(1), 4(A)-(B), 7(A)(3).

All of this regulatory and legislative history, dating back a full century to the IWC’s first Wage Orders, refutes every argument Starbucks and its amici make in support of incorporating a federal “de minimis” defense into California law. Federal regulators, unlike the IWC, were operating in an environment in which Congress had signaled, in the Portal-to-Portal Act, its intention to curtail the definition of compensable “hours worked.” The California Legislature, in contrast, has consistently signaled the opposite, as has the IWC itself.

One of Starbucks’ amici supporters contends that California law “contemplates that compensation be measured by ‘hours,’” rather than by other increments. Defense Counsel Amicus Brief, *supra*, at 28. However, the plain text of section 510 belies this by requiring compensation for “*any work*,” regardless of increment, as does the definition of “hours worked,” which includes “*all time*.”

Another amicus makes a similar argument, asserting that “California law does not use the term ‘all time,’” but instead “‘speak[s] in terms of ‘all hours.’” Chamber Amicus Brief at 15. This is incorrect. As discussed in detail above, since 1947, the Wage Orders have required compensation for “all hours worked,” which is expressly defined to include “*all the time*” an employee is suffered or permitted to work, regardless of increment. Compare Wage Order 5R, ¶¶2(h), 4(a) with Wage Order 5-2001, 8 Cal. Code Regs. §11050, ¶¶2(K), 3(A)(1), 4(A)-(B).

Starbucks and its amici uniformly contend that “de minimis” is not a federal standard, but instead derives from California law, citing the maxim of jurisprudence

²¹ See Lab. Code §517, added by AB 60, *supra*, §11 (directing IWC to adopt new orders “consistent with this chapter” by specified dates).

concerning “trifles.”²² The detailed history discussed above, however, demonstrates that federal decisions and regulations were the first to adopt such a rule to modify “hours worked,” and that California has never done so. Even the DLSE opinion letters and *Manual* acknowledge that the concept of “de minimis” time was a creature of federal law. *E.g.*, DLSE Op. Ltr. 1994.02.03 at 4 (referring to “de minimis” as a “rule relied upon by the federal courts”).

Because the Wage Orders and Labor Code have no analog to it, the federal standard should not be incorporated by “inference.” *See Mendiola*, 60 Cal.4th at 946 (citing *Morillion*, 22 Cal.4th at 590). Instead, the Court is respectfully asked to confirm what the Wage Orders and Labor Code already say: in California, “*any*” and “*all*” time worked must be tracked, recorded, and paid.

C. The Federal “De Minimis” Defense Should Not Be Adopted Because it Cannot Be Squared With Other Fundamental Principles of California Law

Not only does the legislative history show no intent, by either the IWC or the Legislature, to incorporate a “de minimis” defense into the Wage Orders or Labor Code, but the “de minimis” defense also fails to comport with fundamental principles of California law.

First, a “de minimis” defense would shift onto the employee the employer’s normal burden to record, track, and pay for hours worked. Federal courts embrace this shift in the name of “practicality,” where the time to be paid is small and difficult to record. By contrast, California courts have repeatedly stated that the Labor Code’s employee-protective policies abhor burdening employees for an employer’s failure to comply with statutory obligations. California courts have embraced “practicality” exceptions only to the extent they cause no reduction in

²² *See supra* footnote 5 and accompanying text.

III. CONCLUSION

For the reasons stated above, the answer to the Ninth Circuit's certified question should be that neither the federal "de minimis" defense, nor any purported state-law "de minimis" defense, applies to claims for unpaid wages under California law.

Dated: May 30, 2017 Respectfully submitted,

By: 

THE KRALOWEC LAW GROUP
Kimberly A. Kralowec
Attorneys for Amicus Curiae
Consumer Attorneys of California

KINGSLEY & KINGSLEY
Ari J. Stiller
Attorneys for Amicus Curiae
California Employment Lawyers Association

CERTIFICATE OF COMPLIANCE WITH WORD COUNT LIMIT

The undersigned hereby certifies that the computer program used to generate this brief indicates that the text contains 12,363 words, including footnotes. *See* Cal. Rules of Court, rule 8.520(c)(1).

Dated: May 30, 2017


Kimberly A. Kralowec

EXHIBIT AA

1 AARON DAVID KAUFMANN, Bar No. 148580
 2 DAVID P. POGREL, Bar No. 203787
 3 ELIZABETH GROPMAN, Bar No. 294156
 4 LEONARD CARDER, LLP
 1330 Broadway, Suite 1450
 Oakland, CA 94612
 Tel: (510) 272-0169
 Fax: (510) 272-0174
 akaufmann@leonardcarder.com
 dpogrel@leonardcarder.com
 egropman@leonardcarder.com

8 Class Counsel

9 *Additional Counsel Listed on Following Page*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 11 **COUNTY OF ALAMEDA**

13 LAURA BARTONI, CAMERON FRANCIS,
 14 HEATHER MURRAY, and JEFFERSON
 15 TODD WILHOYTE, on behalf of themselves
 and all others similarly situated,

16 Plaintiffs,

17 v.

19 AMERICAN MEDICAL RESPONSE WEST,
 20 and DOES 1 through 50, inclusive,

21 Defendants.

Case No. RG08382130

CLASS ACTION

**DECLARATION OF RICHARD M. PEARL
 IN SUPPORT OF PLAINTIFFS' MOTION
 FOR REASONABLE ATTORNEYS' FEES
 AND COSTS**

Date: July 12, 2019
 Time: 11:00 a.m.
 Place: Dept. 21

Hon. Winifred Y. Smith

Action Filed: April 16, 2008

Endorsed
 ALAMEDA COUNTY
 APR 25 2019
 CLERK OF THE SUPERIOR COURT
 By *Molly Brandy* Deputy

1 *Additional Counsel for Plaintiffs*

2 TODD M. SCHNEIDER, Bar No. 158253
3 JOSHUA G. KONECKY, Bar No. 182897
4 LESLIE H. JOYNER, Bar No. 262705
5 SCHNEIDER WALLACE
6 COTTRELL KONECKY WOTKYNS LLP
7 2000 Powell Street, Suite 1400
8 Emeryville, California 94608
9 Telephone (415) 421-7100
10 Fax (415) 421-7105
11 TTY (415) 421-1665
12 tschneider@schneiderwallace.com
13 jkonecky@schneiderwallace.com
14 ljoyner@schneiderwallace.com

15 KIMBERLY A. KRALOWEC, Bar No. 163158
16 KATHLEEN STYLES ROGERS, Bar No. 122853
17 KRALOWEC LAW, P.C.
18 750 Battery Street, Suite 700
19 San Francisco, CA 94111
20 Tel: (415) 546-6800
21 Fax: (415) 546-6801
22 kkralowec@kraloweclaw.com
23 krogers@kraloweclaw.com

24 JANNAH V. MANANSALA, Bar No. 249376
25 PAUL K. PFEILSCHIEFTER, Bar No. 301463
26 WEINBERG, ROGER & ROSENFELD, P.C.
27 1001 Marina Village Parkway, Suite 20
28 Alameda, California 94501
Telephone (510) 337-1001
Fax (510) 337-1023
courtnotices@unioncounsel.net
jmanansala@unioncounsel.net
ppfeilschiefter@unioncounsel.net

1 I, RICHARD M. PEARL, hereby declare the following:

2 1. I am a member in good standing of the California State Bar. I am in private practice as
3 the principal of my own law firm, the Law Offices of Richard M. Pearl, in Berkeley, California. I
4 specialize in issues related to court-awarded attorneys' fees, including the representation of parties in fee
5 litigation and appeals, serving as an expert witness, and serving as a mediator and arbitrator in disputes
6 concerning attorneys' fees and related issues. In this case, I have been asked by the law firms of Leonard
7 Carder, LLP; Schneider Wallace Cottrell Konecky Wotkyns LLP; Kralowec Law, P.C., and Weinberg,
8 Roger & Rosenfeld, P.C. (collectively, "Class Counsel") to render my opinion on the reasonableness of
9 the hourly rates that they are requesting to be compensated for in this matter. I make this Declaration in
10 Support of Plaintiffs' Motion for Award of Reasonable Attorney's Fees.

11 2. Briefly summarized, my background is as follows: I am a 1969 graduate of Boalt Hall
12 School of Law, University of California, Berkeley, California. I took the California Bar Examination in
13 August 1969 and passed it in November of that year, but because I was working as an attorney in
14 Atlanta, Georgia for the Legal Aid Society of Atlanta (LASA), I was not admitted to the California Bar
15 until February 1970. I worked for LASA until the summer of 1971, when I then went to work in
16 California's Central Valley for California Rural Legal Assistance, Inc. (CRLA), a statewide legal
17 services program. From 1977 to 1982, I was CRLA's Director of Litigation, supervising more than fifty
18 attorneys. In 1982, I went into private practice, first in a small law firm, then as a sole practitioner.
19 Martindale Hubbell rates my law firm "AV." I also have been selected as a Northern California "Super
20 Lawyer" in Appellate Law for 2005, 2006, 2007, 2008, 2010, 2011, 2012, 2013, 2014, 2015, 2016,
21 2017, 2018, and 2019. A copy of my Resume is attached hereto as **Exhibit A**.

22 3. Since 1982, my practice has been a general civil litigation and appellate practice, with an
23 emphasis on cases and appeals involving court-awarded attorneys' fees. I have lectured and written
24 extensively on court-awarded attorneys' fees. I have been a member of the California State Bar's
25 Attorneys Fees Task Force and have testified before the State Bar Board of Governors and the California
26 Legislature on attorneys' fee issues. I am the author of California Attorney Fee Awards (3d ed Cal.
27 CEB 2010) and its 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, and 2019 Supplements. I also was
28 the author of California Attorney Fee Awards, 2d Ed. (Calif. Cont. Ed. of Bar 1994), and its 1995, 1996,

1 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, and 2008 Supplements. This
2 treatise has been cited by the California appellate courts on numerous occasions. *See, e.g., Graham v.*
3 *DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 576, 584; *Lolley v. Campbell* (2002) 28 Cal.4th 367, 373;
4 *Stratton v. Beck* (2018) 30 Cal.App.5th 901, 911; *Chacon v. Litke* (2010) 181 Cal.App.4th 1234, 1259;
5 *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 698, 700. I also authored the 1984,
6 1985, 1987, 1988, 1990, 1991, 1992, and 1993 Supplements to its predecessor, CEB's California
7 Attorney's Fees Award Practice. In addition, I authored a federal manual on attorneys' fees entitled
8 Attorneys' Fees: A Legal Services Practice Manual, published by the Legal Services Corporation. I
9 also co-authored the chapter on "Attorney Fees" in Volume 2 of CEB's Wrongful Employment
10 Termination Practice, 2d Ed. (1997).

11 4. More than 90% of my practice is devoted to issues involving court-awarded attorney's fees. I
12 have been counsel in over 200 attorneys' fee applications in state and federal courts, primarily
13 representing other attorneys. I also have briefed and argued more than 40 appeals, at least 30 of which
14 have involved attorneys' fees issues. I have successfully handled five cases in the California Supreme
15 Court involving court-awarded attorneys' fees: (1) *Maria P. v. Riles*, 43 Cal.3d 1281 (1987), which
16 upheld a C.C.P. section 1021.5 fee award based on a preliminary injunction obtained against the State
17 Superintendent of Education, despite the fact that the case ultimately was dismissed under C.C.P. section
18 583; (2) *Delaney v. Baker*, 20 Cal.4th 23 (1999), which held that heightened remedies, including
19 attorneys' fees, are available in suits against nursing homes under California's Elder Abuse Act; (3)
20 *Ketchum v. Moses*, 24 Cal.4th 1122 (2001), which held, *inter alia*, that contingent risk multipliers
21 remain available under California attorney fee law, despite the United States Supreme Court's contrary
22 ruling on federal law (note that in *Ketchum*, I was primary appellate counsel in the Court of Appeal and
23 "second chair" in the Supreme Court); (4) *Flannery v. Prentice*, 26 Cal.4th 572 (2001), which held that
24 in the absence of an agreement to the contrary, statutory attorneys' fees belong to the attorney whose
25 services they are based upon; and (5) *Graham v. DaimlerChrysler Corp.*, 34 Cal.4th 553 (2004), which I
26 handled, along with trial counsel, in both the Court of Appeal and Supreme Court. I also represented and
27 argued on behalf of *amicus curiae* in *Conservatorship of McQueen*, 59 Cal.4th 602 (2014), presenting
28 the argument relied upon by the Court. Along with the Western Center on Law and Poverty, I also

1 prepared and filed an *amicus curiae* brief in *Vasquez v. State of California*, 45 Cal.4th 243 (2009). I also
 2 have handled numerous other appeals, including: *Davis v. City & County of San Francisco*, 976 F.2d
 3 1536 (9th Cir. 1992); *Mangold v. CPUC*, 67 F.3d 1470 (9th Cir. 1995); *Velez v. Wynne*, 2007 U.S. App.
 4 LEXIS 2194 (9th Cir. 2007); *Camacho v. Bridgeport Financial, Inc.*, 523 F.3d 973 (9th Cir. 2008);
 5 *Center for Biological Diversity v. County of San Bernardino*, 185 Cal.App.4th 866 (2010);
 6 *Environmental Protection Information Center v. California Dept. of Forestry & Fire Protection et al*,
 7 190 Cal.App.4th 217 (2010); and *Heron Bay Home Owners Assn. v. City of San Leandro*, 19 Cal.App.5th
 8 376 (2018). For an expanded list of my appellate decisions, see Exhibit A.

9 5. I also have been retained by various governmental entities, including the California
 10 Attorney General's office and the California Department of Fair Employment and Housing, at my then
 11 current rates to consult with them regarding their affirmative attorney fee claims.

12 6. I am frequently called upon to opine about the reasonableness of attorneys' fees, and my
 13 declarations on that issue have been cited favorably by numerous state and federal courts. The
 14 following California appellate courts also have referenced my declaration testimony favorably:

- 15 • *Kerkeles v. City of San Jose*, 243 Cal.App.4th 88, 96, 105 (2015);
- 16 • *Habitat and Watershed Caretakers v. City of Santa Cruz*, 2015 Cal. App. Unpub. LEXIS
 17 7156, 2015 WL 5827045 (2015);
- 18 • *Laffitte v. Robert Half Int'l Inc.*, 231 Cal.App.4th 860 (2014), aff'd (2016) 1 Cal.5th 480;
- 19 • *In re Tobacco Cases I*, 216 Cal.App.4th 570 (2013);
- 20 • *Heritage Pacific Financial, LLC v. Monroy*, 215 Cal.App.4th 972 (2013);
- 21 • *Wilkinson v. South City Ford*, 2010 Cal. App. Unpub. LEXIS 8680, 2010 WL 4292631
 22 (2010);
- 23 • *Children's Hospital & Medical Center v. Bonta*, 97 Cal.App.4th 740 (2002);
- 24 • *Church of Scientology v. Wollersheim*, 42 Cal.App.4th 628 (1996).

25 7. The following federal courts have cited my declaration testimony favorably:

- 26 • *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017)

- 1 • *Antoninetti v. Chipotle Mexican Grill, Inc.*, No. 08-55867 (9th Cir. 2012), Order filed
2 Dec. 26, 2012, at 6;
- 3 • *Prison Legal News v. Schwarzenegger*, 608 F.3d 446, 455 (9th Cir. 2010) (the expert
4 declaration referred to is mine);
- 5 • *Notter v. City of Pleasant Hill*, 2017 U.S. Dist. LEXIS 197404, 2017 WL 5972698 (N.D.
6 Cal. 2017)
- 7 • *Villalpando v. Exel Direct, Inc.*, 2016 WL 1598663 (N.D. Cal. 2016);
- 8 • *State Compensation Insurance Fund v. Khan et al*, Case No. SACV 12-01072-CJC
9 (JCGx) (C.D. Cal.), Order Granting in Part and Denying in Part the Zaks Defendants'
10 Motion for Attorneys' Fees, filed July 6, 2016 (Dkt. No. 408);
- 11 • *In re Cathode Ray Tube Antitrust Litig.*, Master File No. 3:07-cv-5944 JST, MDL No.
12 1917 (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS 24951 (Report And Recommendation Of
13 Special Master Re Motions (1) To Approve Indirect Purchaser Plaintiffs' Settlements
14 With the Phillips, Panasonic, Hitachi, Toshiba, Samsung SDI, Technicolor, And
15 Technologies Displays Americas Defendants, and (2) For Award Of Attorneys' Fees,
16 Reimbursement Of Litigation Expenses, And Incentive Awards To Class Representative,
17 Dkt. 4351, dated January 28, 2016, adopted in relevant part, 2016 U.S. Dist. LEXIS
18 88665;
- 19 • *Gutierrez v. Wells Fargo Bank*, 2015 U.S. Dist. LEXIS 67298 (N.D. Cal. 2015);
- 20 • *Holman v. Experian Information Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D.
21 Cal. 2014);
- 22 • *In re TFT-LCD (Flat Panel) Antitrust Litig.*, No. M 07-1827 SI, MDL No. 1827 (N.D.
23 Cal.), Report and Recommendation of Special Master Re Motions for Attorneys' Fees
24 And Other Amounts By Indirect-Purchaser Class Plaintiffs And State Attorneys General,
25 Dkt. 7127, filed Nov. 9, 2012, adopted in relevant part, 2013 U.S. Dist. LEXIS 49885
26 (N.D. Cal. 2013) ("*TFT-LCD (Flat Panel) Report & Recommendation*");
- 27 • *Walsh v. Kindred Healthcare*, 2013 U.S. Dist. LEXIS 176319 (N.D. Cal. 2013);
- 28 • *A.D. v. California Highway Patrol*, 2009 U.S. Dist. LEXIS 110743, at *4 (N.D. Cal.
2009), rev'd on other grounds, 712 F.3d 446 (9th Cir. 2013), reaffirmed and additional
fees awarded on remand, 2013 U.S. Dist. LEXIS 169275 (N.D. Cal. 2013);
- *Hajro v. United States Citizenship & Immigration Service*, 900 F. Supp. 2d 1034, 1054
(N.D. Cal 2012);
- *Rosenfeld v. United States Dep't of Justice*, 904 F. Supp. 2d 988, 1002 (N.D. Cal. 2012);
- *Garcia v. Resurgent Capital Servs.*, 2012 U.S. Dist. LEXIS 123889 (N.D. Cal. 2012);
- *Stonebrae, L.P. v. Toll Bros., Inc.*, 2011 U.S. Dist. LEXIS 39832, at *9 (N.D. Cal. 2011)
(thorough discussion), aff'd 2013 U.S. App. LEXIS 6369 (9th Cir. 2013);
- *Armstrong v. Brown*, 2011 U.S. Dist. LEXIS 87428 (N.D. Cal. 2011);
- *Lira v. Cate*, 2010 WL 727979 (N.D. Cal. 2010);

- 1 • *Californians for Disability Rights, Inc. v. California Dep't of Transportation*, 2010 U.S. Dist. LEXIS 141030 (N.D. Cal. 2010);
- 2 • *Nat'l Federation of the Blind v. Target Corp.*, 2009 U.S. Dist. LEXIS 67139 (N.D. Cal. 2009);
- 3 • *Prison Legal News v. Schwarzenegger*, 561 F.Supp.2d 1095 (N.D. Cal. 2008) (an earlier motion);
- 4 • *Bancroft v. Trizechahn Corp.*, No. CV 02-2373 SVW (FMOx), Order Granting Plaintiffs Reasonable Attorneys' Fees and Costs In the Amount of \$168,886.76, Dkt. 278 (C.D. Cal. Aug. 14, 2006);
- 5 • *Willoughby v. DT Credit Corp.*, No. CV 05-05907 MMM (CWx), Order Awarding Attorneys' Fees After Remand, Dkt. 65 (C.D. Cal. July 17, 2006);
- 6 • *Oberfelder v. City of Petaluma*, 2002 U.S. Dist. LEXIS 8635 (N.D. Cal. 2002), *aff'd* 2003 U.S. App. LEXIS 11371 (9th Cir. 2003);

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11 8. Numerous California trial courts also have relied on my declaration or in person
12 testimony.

13 9. Through my writing and practice, I have become familiar with the non-contingent market
14 rates charged by attorneys in California and elsewhere. I have obtained this familiarity in several ways:
15 (1) by handling attorneys' fee litigation; (2) by discussing fees with other attorneys; (3) by obtaining
16 declarations regarding prevailing market rates in cases in which I represent attorneys seeking fees; and
17 (4) by reviewing attorneys' fee applications and awards in other cases, as well as surveys and articles on
18 attorney's fees in the legal newspapers and treatises.

19 10. In this case, I have consulted with the Class Counsel firms' attorneys regarding their fee
20 application for their work in this matter. I have become familiar with the nature of this case, its results,
21 and counsel's work. I have reviewed the Fifth Amended Complaint, the Court's Order of March 23,
22 2018, Granting Plaintiffs' Motion for Class Certification, the Court's Order of January 22, 2019,
23 Granting Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement, and the Court-
24 approved settlement notice in this case. I also have been made aware of the rates requested by Class
25 Counsel and their respective backgrounds and experience. In particular, I am aware that Class Counsel
26 request the following 2018 market-based rates for lawyers admitted to practice in the following years:
27
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LAW FIRM	BILLER	BAR ADMISSION DATE	RATE	BILLING YEAR (Last Year Working on Case)
<i>Leonard Carder / Hinton Alfert Sumner & Kaufmann</i>				
	Aaron Kaufmann	1990	\$860	
	David Pogrel	1999	\$710	
	Elizabeth Morris	2008	\$445	6 th year (2014)
	Elizabeth Gropman	2013	\$445	
	Paul Schwartz	2001	\$440	
<i>Schneider Wallace Cottrell Konecky Wotkyns</i>				
	Joshua Konecky	1996	\$835	
	Leslie Joyner	2009	\$525	
	Nathan Piller	2014	\$450	
	Clint Brayton	1997	\$675	15 th year (partner) (2012)
	Hank Willson	2004	\$475	5 th year (2009)
	Camillia Roberson	2005	\$450	4 th year (2008)
	Andrew Lee	2006	\$425	3 rd year (2009)

1		Lisa Bowman	2007	\$400	2 nd year (2009)
2					
3		Michael Thomas	2003	\$525	10 th year (2013)
4					
5		Jacob Gould	2014	\$350	1 st year (2014)
6					
7		<i>Kralowec Law, P.C.</i>			
8		Kimberly A. Kralowec	1992	\$810	
9		Kathleen Styles Rogers	1986	\$795	
10					
11		Elizabeth I. Newman	2008	\$500	6 th year (2014)
12					
13		Chad A. Saunders	2008	\$525	7 th year (2016)
14					
15		<i>Schubert Jonckheer & Kolbe LLP</i>			
16		Kimberly A. Kralowec	1992	\$600	18 th year (2010)
17					
18		Miranda P. Kolbe	2001	\$800	
19		<i>Weinberg Roger & Rosenfeld</i>			
20		Christian L. Raisner	1988	\$715	
21					
22		Roberta D. Perkins	1991	\$695	
23		Emily P. Rich	1993	\$700	
24		Theodore Franklin	1998	\$715	
25		Jannah V. Manansala	2007	\$495	
26					
27		Xochitl A. Lopez	2012	\$375	
28		Paul Pfeilschiefter	2014	\$325	

	Alexander Nazarov	2015	\$315	
	Thomas Gottheil	2015	\$315	
	Tiffany Crain Altamirano	2015	\$315	

Counsel’s Hourly Rates Are Reasonable

11. Under California law, Plaintiffs’ attorneys are entitled to their requested rates if those rates are “within the range of reasonable rates charged by and judicially awarded comparable attorneys for comparable work” in the applicable community. *Children’s Hosp. & Med. Ctr. v. Bonta*, 97 Cal.App.4th 740, 783 (2002). Based on the information regarding hourly rates that I have gathered, some of which is summarized below, I am of the opinion that the hourly rates requested by Plaintiffs’ attorneys are well within the range of non-contingent market rates charged for reasonably similar services by San Francisco Bay Area attorneys of reasonably similar qualifications and experience. The following data support my opinion:

Rates found reasonable in other Bay Area cases.

12. The following hourly rates have been found reasonable by various San Francisco Bay Area courts for reasonably comparable services:

2018 Rates

(1) In *Kaku v. City of Santa Clara*, Santa Clara Superior Court No. 17CV319862, Fee Order filed January 22, 2019, a voting rights action under the California Voting Rights Act, the court found the following 2018 hourly rates reasonable, before applying a 1.4 multiplier:

Firm	Graduation Year	2018 Rate
Goldstein, Borgen, Dardarian & Ho		
	1970	\$875
	1994	\$860
	2013	\$450
	2015	\$405
	2016	\$375
Law Clerk	--	\$295
Statistician & Senior Paralegal	--	\$300

Paralegal	--	\$250
Law Office of Robert Rubin		
	1978	\$975
	2013	\$615
Asian Law Alliance		
	1978	\$550
	2009	\$375

2017 Rates

(2) In *In re Anthem, Inc. Data Breach Litig.*, 2018 U.S. Dist. LEXIS 140137, at *121 (N.D. Cal. Aug. 17, 2018), a class action settlement resulting from a data breach, the court, as part of its lodestar cross-check, found the following 2017 rates reasonable:

Firm	Years of Experience	2018 Rate
Altshuler Berzon		
	23-25	\$820-\$860
	16-19	\$690-770
	5-7	\$405-460
Law Clerks	--	\$285
Paralegals	--	\$250
Gibbs Law Group		
	23-29	\$740-805
	10-17	\$575-685
	17 (Assoc.)	\$395
	1-9	\$275-\$525
	5-6 (Contract Atty)	\$350-\$375
	Paralegals	\$190-\$220
Lieff Cabraser		
	11-16	\$510-\$675
	2-6	\$370-\$455
	0-13 (Contract Atty)	\$415
	Paralegals	\$360
Finkelstein Thompson LLP		
	24-48	\$850
	17	\$600
	20 (Of Counsel)	\$850
	12 (Of Counsel)	\$475
	4	\$300

(3) In *Max Sound Corp. v. Google Inc.*, 2017 U.S. Dist. LEXIS 168541 (N.D. Cal. Sept. 25, 2017), a patent action dismissed by the court on defendants' motion, the court found the following hourly rates reasonable:

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<u>California Bar Admission Date</u>	<u>Rates Over 2-year Period</u>
1995	\$905
2000	\$650-950
2007	\$504-608
2012	\$336-575

(4) In *May v. San Mateo County*, N.D. Cal. No. 3:16-cv-00252-LB, Stipulation and Order re Settlement filed Nov. 10, 2017 [Doc. No. 218], an individual police misconduct action, the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
26	\$775
22	\$775
10	\$475
5	\$425
48	\$825
Paralegal	\$240

(5) In *In re National Collegiate Athletic Assn. Athletic Grant-In-Aid Antitrust Litigation*, 2017 U.S. Dist. LEXIS 201108 (N.D. Cal. Dec. 6, 2017), a class antitrust action, the court found the following hourly rates reasonable:

<u>Level</u>	<u>Rate</u>
Hagens Berman Sobol Shapiro LLP	
Senior Attorney	\$950
Other Partners	\$578-760
Associates	\$295-630
Pearson, Simon & Warshaw LLP	
Senior Attorneys	\$835-1,035
Other Partner	\$715-870
Of Counsel	\$450-900
Associates	\$350-635
Staff & Law Clerks	\$175-225
Pritzker Levine	
Partners	\$695

Of Counsel and Associates \$495-625

(6) In *Ridgeway v. Wal-Mart Stores, Inc.*, 269 F. Supp. 3d 975 (N.D. Cal. 2017), a wage and hour class action, the court issued a statutory fee award against Wal-Mart based on the following 2017 rates (plus a 2.0 multiplier), to partially offset a 25% common fund fee award payable by the class:

<u>Years of Experience</u>	<u>Rate</u>
46	\$900
40	\$890
38	\$870
36	\$850
34	\$830
20	\$730
37 (senior assoc.)	\$700
29 (senior assoc.)	\$670
19 (senior assoc.)	\$610
11	\$500
7	\$450-500
6	\$425
3	\$355
4	\$330
1	\$300
Senior Paralegal	\$225
Paralegal	\$195
Law Clerk	\$225

(7) In *Nitsch v. Dreamworks Animation SKG, Inc.*, N.D. Cal. No. 5:14-cv-04062-LHK, Order Granting in Part and Denying in Part Motion for Attorney’s Fees (Dkt. No. 402), an antitrust class action brought by former employees of the defendants, the court found the following hourly rates reasonable, before applying a 2.0 multiplier:

<u>Years of Experience</u>	<u>Rate</u>
44	\$1,200
35	\$950
28	\$870
21	\$735

1 (8) In *Huynh v. Hous. Auth. Of Santa Clara*, 2017 U.S. Dist. LEXIS 39138 (N.D. Cal. 2017),
 2 a tenant class action challenging the Housing Authority's policy regarding the accommodation of
 3 households with disabled family members, the court found the following hourly rates reasonable:

<u>Graduation Year</u>	<u>Rate</u>
Law Foundation of Silicon Valley:	
1990	\$800
2001	\$660
2004	\$635
2007	\$545
2008	\$545
2010	\$415
2014	\$325
2015	\$325
Fish & Richardson PC:	
1996	\$862.07
2002	\$700
2005	\$676.75
2011	\$530
2007	\$475
2014	\$362.54
2015	\$329.09
2016	\$330.11
Paralegals	\$236-275

19 (9) In *Cotter et al. v. Lyft, Inc.*, , N.D. Cal. No. 13-cv-04065- VC, Order Granting Final
 20 Approval of Settlement Agreement, filed March 16, 2017 (Dkt. No. 310), a class action against Lyft
 21 alleging Lyft underpaid its drivers by classifying them as independent contractors, the court approved
 22 the percentage-based fee award requested by plaintiffs based on the following hourly rates, plus a 3.18
 23 multiplier:

<u>Class</u>	<u>Rate</u>
1996	\$800
2010	\$500
2014	\$325
Paralegal	\$200

28 (10) In *Armstrong v. Brown*, N.D. Cal. No. 4:94-cv-02307-CW, Stipulated Order Confirming

1 Undisputed Attorneys’ Fees and Costs for the Third Quarter of 2017, filed December 19, 2017 (Dkt. No.
 2 2708), a prisoners’ rights class action, the court approved the following 2017 hourly rates for monitoring
 3 the injunction in that matter:

	Years of Experience	Rate
	37	\$950
	33	\$825
	20	\$780
	24 (Of Counsel)	\$700
	12 (Partner)	\$650
	9 (Associate)	\$490
	8	\$480
	7	\$470
	6	\$440
	Paralegals	\$240-325

2016 Rates

14 (11) In *California Building Industry Association v. City of San Jose et al.*, Santa Clara County
 15 Superior Court, No. 110CV167289, Order on Submitted Matter filed December 23, 2016, an action
 16 against the City of San Jose’s affordable housing ordinance, the court awarded fees to the Intervenors
 17 and found the following 2016 hourly rates reasonable:

<u>Year Admitted</u>	<u>Rate</u>
1980	\$810
1998	\$710

21 (12) In *Animation Workers Antitrust Litigation*, N.D. Cal. No. 14-CV-4062 LHK, Order
 22 Granting Plaintiffs’ Motion for Attorneys’ Fees, Expenses, and Service Awards for Settlements with
 23 Sony Pictures Imageworks, Inc., Sony Pictures Animation Inc., and Blue Sky Studios Inc., filed
 24 November 11, 2016, reported at 2016 U.S.Dist.LEXIS 156720, a class action alleging defendants
 25 violated the antitrust laws by restricting their employees’ ability to change employers, , in which the
 26 court found the following 2016 hourly rates reasonable:
 27
 28

1	<u>Years of Experience</u>	<u>Rate</u>
2	44	\$1,200
3	27	\$845
4	22	\$735
5	Paralegals	Up to \$290

(13) In *National Federation of the Blind of California v. Uber Technologies, Inc.*, N.D. Cal. No. 14-cv-04086 NC, Order Granting Final Approval and Attorneys' Fees, filed December 6, 2016 (Dkt. No. 139), a class action against Uber alleging that it violated federal antidiscrimination laws by allowing its drivers to refuse to accept service dogs, in which the court found the following 2016 hourly rates reasonable (before applying a 1.5 lodestar multiplier under California law):

10	<u>Class</u>	<u>Rate</u>
11	1980	\$900
12	1985	\$895
13	1997	\$740
14	2005	\$645
15	2010	\$475
16	2011	\$460
17	2014	\$355
18	Paralegals	\$275
19	Summer Associates	\$275-280
20	2	\$265

2015 Rates

(14) In *Guerrero v. California Department of Corrections and Rehabilitation*, 2016 U.S. Dist. LEXIS 78796 (N.D. Cal. 2016), *affirmed in relevant part*, (9th Cir. 2017) 2017 U.S.App.LEXIS 12450, an individual Title VII action against two state agencies that established unlawful discrimination against a Latino job applicant, the court found the following 2015 hourly rates reasonable:

24	<u>Years of Experience</u>	<u>Rate</u>
25	47	\$775
26	45	\$754*
27	29	\$753.50
28	18	\$654.50
	6	\$358*

1 5 \$325
 2 Paralegals \$150
 3 * (blended historical rate)

4 (13) In *Carnes v. Atria Senior Living, Inc.*, N.D. Cal. No. 14-cv-02727-VC, Order Granting
 5 Motion for Attorneys’ Fees, Costs, and Service Award, filed July 12, 2016 (Dkt. No. 115), a class action
 6 against a skilled nursing facility, the court found the following 2015 hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
30-35	\$750-775
23	\$700
18	\$575
13	\$550
12	\$650
7	\$550
6	\$450
5	\$350
4	\$450
2	\$265

16 (14) In *Civil Rights Education and Enforcement Center v. Ashford Hospitality Trust, Inc.* ,
 17 2016 U.S. Dist. LEXIS 37256 (N.D. Cal. March 22, 2016), an action challenging defendants’ hotels’
 18 failure to provide wheelchair accessible transportation, the Court found the following 2015 hourly rates
 19 reasonable:

<u>Years of Experience</u>	<u>Rates</u>
41	\$900
24	\$750
10	\$550
8	\$500
5	\$430
Paralegal	\$250

25 (15) In *Armstrong v. Brown*, N.D. Cal. No. 4:94-cv-02307-CW, Stipulated Order Confirming
 26 Undisputed Attorneys’ Fees and Costs for the Fourth Quarter of 2015, filed February 2, 2016 (Dkt. No.
 27 2576), a prisoners’ rights class action, the court approved the following 2015 hourly rates for monitoring
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1 the injunction in that matter:

<u>Years of Experience</u>	<u>Rate</u>
35	\$840
31	\$710
18	\$690
21 (Of Counsel)	\$590
9 (Partner)	\$525
9 (Associate)	\$490
8	\$480
7	\$470
6	\$440
Paralegals	\$220-290

10 (16) In *Alden v. Alden*, San Mateo County Superior Court No. CIV 524269, Order Granting
 11 Petitioner Katherine Alden’s Motion for Attorneys’ Fees and Costs, filed November 23, 2015, a fee
 12 award for appellate work under California C.C.P. § 527.6(r), the court found the following 2015 hourly
 13 rates paid by the client to be reasonable:

<u>Years of Experience</u>	<u>Rate</u>
49	\$1,045
42	\$1,035
41	\$990
22	\$875
10	\$600
3	\$500

19 (17) In *In re High Tech Employment Antitrust Litigation* (N.D. Cal. 2015) 2015 U.S. Dist.
 20 LEXIS 118052, filed September 2, 2015, a class employment practices action, the court found the
 21 following 2015 hourly rates reasonable (before applying a 2.2 multiplier):

<u>Level</u>	<u>Rates</u>
Partners	\$490-975
Associates	\$310-800
Paralegals, law clerks, and litigation support staff	\$190-430

26 (18) In *O’Bannon v. National Collegiate Athletic Assn.* (N.D. Cal. 2015) 2015 U.S. Dist.
 27 LEXIS 91514, filed July 13, 2015, *adopted in relevant part* (N.D. Cal. 2016) 2016 U.S. Dist. LEXIS
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1 44131 *affirmed* (9th Cir. 2018) 2018 U.S.App.LEXIS 17930, a group antitrust action, the court found
 2 the following hourly rates reasonable:

<u>Years of Experience</u>	<u>Rate</u>
45	\$985
37	935-895
15	610-510
14	600
7	490
3	370
Paralegals	300-320
Law Clerks	325

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10 (19) In *Wynn v. Chanos* (N.D. Cal. 2015) 2015 U.S.Dist. LEXIS 80062, filed June 19, 2015,
 11 an anti-SLAPP fee award, the court found the following hourly rates reasonable:

<u>Years of Experience</u>	<u>2015/2014 Rates</u>
40	\$1085/1035
35	750
20	920/875
6	710/645
4	640/570

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17 (20) In *Gutierrez v. Wells Fargo Bank, N.A* (N.D. Cal. 2015) 2015 U.S. Dist. LEXIS 67298,
 18 filed May 21, 2015, an unfair business practices class action, the court found the following hourly rates
 19 reasonable (before applying a 5.5 multiplier):

<u>Year of Bar Admission</u>	<u>Rate</u>
1972	\$975
1989	850
2001	625
2006	435
2009	435
3	370
Paralegals	300-320
Law Clerks	325

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Rate Information from Surveys

17. I also base my opinion on credible surveys of legal rates, including the following:

- In December 2015, Thomson Reuters published its “Legal Billing Report,” which surveys the rates approved for various law firms by the bankruptcy courts. (Under bankruptcy law, the rates sought must be the firm’s ordinary commercial rates.) A true and correct copy of an excerpt for the data listed for the West Regions is attached hereto as **Exhibit B**. It shows that Class Counsel’s rates are within the range of the rates found reasonable for other law firms.
- On January 5, 2015, the National Law Journal published an article about its then current rate survey entitled “Billing Rates Rise, Discounts Abound.” A true and correct copy of that article is attached hereto as **Exhibit C**. It contains the rates charged by numerous Bay Area law firms handling comparably complex litigation. Class Counsel’s rates are well in line with those rates.

Hourly Rates Charged by Other Law Firms

18. Counsel’s rates also are supported by the standard hourly non-contingent rates for comparable civil litigation stated in court filings, depositions, surveys, or other reliable sources by numerous California law firms or law firms with offices or practices in the Bay Area. These rates include, in alphabetical order:

Altshuler Berzon LLP

<u>2018 Rates</u>	<u>Graduation Year</u>	<u>Rate</u>
	1968-1983	\$940
	1985	920
	1989	900
	1991	885
	1992	875
	1994	835
	1998	795
	2000	740
	2001	725
	2008	540
	2009	515
	2010	485
	2012	435
	2013	415

1	Altshuler Berzon LLP		
2		2014	390
3		2015	365
4		Law Clerks	285
5		Paralegals	250
6	<u>2017 Rates:</u>	<u>Years of Experience/Level</u>	<u>Rate</u>
7		Senior Partners	\$930
8		Junior Partners (1991-2001)	875-690
9		Associates (2008-2013)	510-365
10	<u>2015 Rates:</u>	<u>Years of Experience/Level</u>	<u>Rate</u>
11		32	\$895
12		Junior Partners	825-630
13		Associates	450-340
14		Paralegals	250

10	Arnold Porter LLP		
11	<u>2015 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
12		40	\$1,085
13		20	920
14		6	710
15		4	640
16	<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
17		49	\$995
18		45	720
19		39	655

17	The Arns Law Firm LLP		
18	<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
19		37	\$950
20		Law Clerks	165

20	Bingham McCutchen (now Morgan, Lewis & Bockius)		
21	<u>2013 Rates:</u>	<u>Average Partner</u>	<u>\$795</u>
22		Highest Partner	1,080
23		Lowest Partner	220
24		Average Associate	450
25		Highest Associate	605
26		Lowest Associate	185

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Boies Schiller & Flexner LLP

<u>2017 Rates:</u>	<u>Bar Admittance or Law School Graduation</u>	<u>Rate:</u>
	1986	\$1,049
	2006	\$972
	1999-2002	\$830
	2004	\$760
	2006	\$680
	2007	\$714
	2009	\$800
<u>2016 Rates:</u>	<u>Bar Admittance</u>	<u>Rate</u>
	1988	\$960
	2000	830
	2001	880

Bramson, Plutzik, Mahler & Birkhaeuser, LLP

<u>2015 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$745
	34	745
	27	745
	30 (Associate)	675
	Paralegal	160

Chavez & Gertler

<u>2014 Rates</u>	<u>Years of Experience</u>	<u>Rate</u>
	35	\$775
	31	750
	33	695
	12	575
	5	395
	Legal Assistant	225

Covington Burling

<u>2015 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	30	\$805
	2	410
<u>2014 Rates:</u>	<u>Level</u>	<u>Rate</u>
	Average Partner	\$780
	Highest Partner	890
	Lowest Partner	605
	Average Associate	415
	Highest Associate	565
	Lowest Associate	320

Duane Morris LLP

<u>2016 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	43	\$880
	41	880
	26	720
	25	695

Feinberg, Jackson, Worthman & Wasow LLP

<u>2016 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	28	\$800

Fenwick & West

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$750
	35	750
	23	725
	19	695
	5	400
	3	350
	Paralegal	125

Gibson Dunn & Crutcher LLP

<u>2017 Rates (*rate</u>	<u>Bar Admittance or Law</u>	
<u>increased in</u>	<u>School Graduation</u>	
<u>September 2017)</u>		
	1987	*\$852/\$956
	1987	\$944
	1997	\$960
	2006	\$736
	2008	*\$592/\$696
	2013	*\$404/\$600
	2015	\$520
	2016	\$472
<u>Non-Attorney</u>		<u>\$216-\$335</u>

**Fenwick & West
Gibson Dunn cont'd**

<u>2016 Rates:</u>	<u>Bar Admittance</u>	<u>Rate</u>
	1987	\$852
	2010	540
	2013	404
<u>2015 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	37	\$1,125
	23	955
	3	575
<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	36	\$1,080
	22	910
	9 (Of Counsel)	740
	6	690
	2	485

Hausfeld LLP

<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	45	\$985
	37	935-895
	15	610-510
	14	600
	7	490
	3	370
	Paralegals	300-320
	Law Clerks	325

Jones Day

<u>2016 Rates:</u>	<u>Bar Admission Year</u>	<u>Rate</u>
	2001	\$900
	2014	450
<u>2015 Rates:</u>	<u>Bar Admission Year</u>	<u>Rate</u>
	2001	\$875
	2014	400

Keker & Van Nest, LLP

<u>2017 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	9	\$650
	5	525
	Other Partners	525-975
	Associates	340-500
	Paralegals/Support Staff	120-260

Kirkland & Ellis

Kirkland & Ellis

2017 Rates	Years of Experience	Rate
	20	\$1,165
	9	\$995
	8	\$965
	5	\$845
	4	\$845
	3	\$810
	2	\$555

Latham & Watkins

<u>2016 Rates:</u>	<u>Level</u>	<u>Rate</u>
	Average Partner	\$1,185.83
	Highest Partner	1,595
	Lowest Partner	915
	Average Associate	754.62
	Highest Associate	1,205
	Lowest Associate	395
<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
	Average Partner	\$990
	Highest Partner	1,100
	Lowest Partner	895
	Average Associate	605
	Highest Associate	725
	Lowest Associate	465

Lieff Cabraser Heimann & Bernstein, LLP

<u>2015 Rates:</u>	<u>Years of Bar Admission</u>	<u>Rate</u>
	1972	\$975
	1989	850
	2001	625
	2006	435
	2009	435
<u>2014 Rates:</u>	<u>Years of Bar Admission</u>	<u>Rate</u>
	1998	\$825
	2001	600
	2006	435
	2009	415
	2013	325
	Paralegal/Clerk	305
<u>2013 Rates:</u>		
	1975	\$925
	1998	800
	2001	525
	2003	490
	2006	415
	2009	395

Lieff Cabraser Heimann & Bernstein, LLP

2013	320
Paralegal/Clerk	285

Minami Tamaki LLP

<u>2015 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	39	\$795
<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
	38	\$1,025
	22	815
	17	790
	38 (Of Counsel)	650
	7	620
	6	605
	5	595
	4	535
	2	430
	Paralegal	250

Morrison & Foerster LLP

<u>2018 Rates</u>	<u>Years of Practice</u>	<u>Rate</u>
	40	\$1,050
	22	950
	11	875
	3	550
	Paralegal	325
<u>2017 Rates:</u>	<u>Bar Admission Date</u>	<u>Rate</u>
	2007	\$608
	2012	575
<u>2016 Rates:</u>	<u>Bar Admission Date</u>	<u>Rate</u>
	1975	\$1,025
	1999	975
	1993	975
<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
	Average Partner	\$865
	Highest Partner	1,195
	Lowest Partner	595
	Average Associate	525
	Highest Associate	725
	Lowest Associate	230

O'Melveny & Myers

<u>2016 Rates:</u>	<u>Bar Admission Date</u>	<u>Rate</u>
	1985	\$1,175
	2004	895
	2005	780

O'Melveny & Myers

1		2007	775
2		2010	725
3		2011	700
4		2012	655
5		2013	585
6		2014	515
7		2015	435
8	<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
9		Average Partner	\$715
10		Highest Partner	950
11		Lowest Partner	615

Orrick Herrington & Sutcliffe

9	<u>2014 Rates:</u>	<u>Level</u>	<u>Rate</u>
10		Average Partner	\$845
11		Highest Partner	1,095
12		Lowest Partner	715
13		Average Associate	560
14		Highest Associate	710
15		Lowest Associate	375

Paul Hastings LLP

14	<u>2016 Rates:</u>	<u>Bar Admission Date</u>	<u>Rate</u>
15		1973	\$1,175
16		1997	895
17		1990	750
18	<u>2014 Rates:</u>	<u>Level</u>	<u>Rate</u>
19		Average Partner	\$815
20		Highest Partner	900
21		Lowest Partner	750
22		Average Associate	540
23		Highest Associate	755
24		Lowest Associate	595

Pillsbury Winthrop Shaw Pittman LLP

22	<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
23		Average Partner	\$865
24		Highest Partner	1,070
25		Lowest Partner	615
26		Average Associate	520
27		Highest Associate	860
28		Lowest Associate	375

Quinn Emanuel Urquhart & Sullivan

27	<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
28		Average Partner	\$915

Quinn Emanuel Urquhart & Sullivan

1	Highest Partner	1,075
2	Lowest Partner	810
	Average Associate	410
3	Highest Associate	675
4	Lowest Associate	320

Reed Smith LLP

5	<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
6		37	\$830
		18	695
7		15	585
8		6	485
9		5	435

Rosen, Bien, Galvan & Grunfeld LLP

11	2019 Rates:	Class	Rates
12		Partners:	
13		1962	\$1,050
		1980	\$1,000
14		1981	\$940
		1984	\$860
15		1997	\$800
		2005	\$700
16		2008	\$640
17		Of Counsel:	
		1993	\$725
18		2003	\$700
		Senior Counsel:	
19		2008	\$610
20		2009	\$585
		Associates:	
21		2010	\$540
		2011	\$525
22		2013	\$460
		2015	\$440
23		2016	\$400
		2017	\$350
24		Senior Paralegals:	\$350
25		Litigation Support/Paralegal	\$225
26		Clerks:	
27		Law Students:	\$275
28		Word Processing:	\$85

1 **Rosen, Bien, Galvan & Grunfeld LLP**

2 Associates: 2009 \$535
 3 2010 \$525
 4 2011 \$500
 5 2013 \$440
 6 2015 \$410
 7 2016 \$375

8 Paralegals: \$340-240
 9 Litigation \$225

10 Support/Paralegal

11 Clerks:

12 Law Students: \$275

13 Word Processing: \$85

14 2017 Rates: Class/Level Rate

15 Partners

16 1962 \$1,000
 17 1980 950
 18 1981 900
 19 1984 825
 20 1997 780
 21 2005 650
 22 Of Counsel

23 1983 800
 24 1993 700
 25 2003 675

26 Associates

27 2008 575
 28 2009 515
 2010 500
 2011 490
 2013 425
 2015 400
 2016 375

Paralegals 325-240
 Litigation Support/Paralegal 225
 Clerks
 Law Students 275
 Word Processing 85

2016 Rates: Class/Level Rate

1962 \$995
 1980 900
 1985 800
 1997 740
 2008 545
 2009 490

1 **Rosen, Bien, Galvan & Grunfeld LLP**

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3 Certified Law Student 275

4 2015 Rates: Paralegal 275

5 Years of Experience/Level Rate

6 Partners

7 53 \$930

8 35 840

9 33 775

10 31 710

11 18 690

12 9 525

13 Of Counsel 590-610

14 Associates

15 9 490

16 8 \$480

17 7 470

18 6 440

19 5 420

20 4 400

21 3 380

22 Paralegals 250-295

23 Litigation Support/Paralegal 200-220

24 Clks

25 Law Students 275

26 Word Processing 85

27 2014 Rates: Years of Experience/Level Rate

28 Partners

52 \$900

34 800

30 675

17 650

Of Counsel 580

Associates

8 470

8 460

7 450

6 440

5 410

4 390

2 350

Paralegals 230-290

Litig. Support/Paralegal Clks 180-215

Law Students 260

Word Processing 80

Schneider Wallace Cottrell Brayton Konecky LLP

1	<u>2018 Rates:</u>	<u>Bar Date:</u>	<u>Rate:</u>
2	<u>Partners:</u>	1992-2000	\$835
3		1992	\$775
4	<u>Of Counsel/Assets</u>		
5		1977-1994	\$825
6		1998-1990	\$775
7		2008-2009	\$675-\$750
8		2013-2013	\$625-675
9		2017-2018	\$600

10	<u>2017 Rates:</u>	<u>Law School Grad. Year</u>	<u>Rate</u>
11		1993	\$835
12		1997	750
13		2009	650
14		Paralegals and Legal Assistants	300
15		Associates	350-700
16		Law Clerks/Paralegals	135-300

17	<u>2015 Rates:</u>	<u>Years of Experience/Level</u>	<u>Rate</u>
18		Partners – 14-23	\$750
19		Associates	350-700
20		Law Clerks/Paralegals	135-300

21	<u>2014 Rates:</u>	<u>Years of Experience</u>	<u>Rate</u>
22		Partners	
23		13-22	\$750
24		Associates/Of Counsel	575
25		20	535-345
26		37	295
27		10-13	650
28		0-3	350-475
29		Paralegals/Law Clerks	135-300

Sheppard, Mullin, Richter & Hampton

30	<u>2014 Rates:</u>	<u>Level</u>	<u>Rate</u>
31		Highest Partner	\$875
32		Lowest Partner	490
33		Average Partner	685
34		Highest Associate	535
35		Lowest Associate	275
36		Average Associate	415

Skadden, Arps, Slate, Meagher & Flom

37	<u>2013 Rates:</u>	<u>Level</u>	<u>Rate</u>
38		Average Partner	\$1,035
39		Highest Partner	1,150
40		Lowest Partner	845

Skadden, Arps, Slate, Meagher & Flom

Average Associate	620
Highest Associate	845
Lowest Associate	340

Wilson Sonsini Goodrich & Rosati PC

<u>2017 Rates:</u>	<u>Bar Admission Date</u>	<u>Rate</u>
	2000	\$950

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19. The hourly rates set forth above are those charged where full payment is expected promptly upon the rendition of the billing and without consideration of factors other than hours and rates. If any substantial part of the payment were to be contingent or deferred for any substantial period of time, for example, the fee arrangement would be adjusted accordingly to compensate the attorneys for those factors.

20. In my experience, fee awards are almost always determined based on current rates, *i.e.*, the attorney's rate at the time a motion for fees is made, rather than the historical rate at the time the work was performed. This is a common and accepted practice to compensate attorneys for the delay in being paid. *See Graham v. DaimlerChrysler* (2004) 34 Cal.4th 553, 583.

If called as a witness, I could and would competently testify from my personal knowledge to the facts stated herein.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 21st day of April, 2019 in Berkeley, California.


RICHARD M. PEARL