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13 **UNITED STATES DISTRICT COURT**

14 **NORTHERN DISTRICT OF CALIFORNIA**

15 **SAN FRANCISCO DIVISION**

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

20 Plaintiffs,

21 vs.

22 APPLE, INC.,

23 Defendant.

Case No. 13cv03451-WHA (lead)  
Case No. 13cv04727-WHA (consolidated)

24 **NOTICE OF MOTION AND MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT AND  
APPROVAL OF PLAN OF ALLOCATION**

25 Date: July 7, 2022  
26 Time: 8:00 a.m.  
27 Dept.: 12 – 19<sup>th</sup> Floor  
28 Judge: Hon. William Alsup

**NOTICE OF MOTION AND MOTION FOR  
FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE THAT** on July 7, 2022, at 8:00 a.m., or as soon thereafter as the matter may be heard, plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Taylor Kalin, and Debra Speicher (“Plaintiffs”), will and hereby do move, pursuant to Federal Rule of Civil Procedure 23(e), for final approval of the class action settlement (the “Motion”), for which this court granted preliminary approval on December 28, 2021 (Dkt. 431), and request that the Court:

1. Finally approve the proposed class action settlement reflected in the Settlement Agreement (the “Settlement”) (Dkt. 416-2) and as amended pursuant to the Amendment to Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (“Amendment”), a copy of which is annexed as Exhibit 1 to the Joint Declaration of Lee S. Shalov and Kimberly A. Kralowec dated June 24, 2022 (the “Joint Declaration”);<sup>1</sup>

2. Enter a final approval order in the form attached to the Amendment as Exhibit 1; and

3. Enter judgment in the form attached to the Amendment as Exhibit 2.<sup>2</sup>

As discussed in the accompanying memorandum, Plaintiffs make this Motion on the grounds that the Settlement is fair, reasonable, and adequate; was negotiated at arm’s-length; is not collusive; and is in the best interests of the class; and on the further ground that the approved class administrator, Angeion Group (“Angeion”), provided notice to the class by U.S. mail and by email where email addresses were available, as directed by the Court and in a manner consistent with due process. Angeion also established a toll-free number and a website with links to documents relevant to the action. The notice provided was the best notice practicable under the circumstances in compliance with Rule 23(e) and due process.

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<sup>1</sup> All references to “Settlement” used herein are to the Settlement as amended pursuant to the Amendment.

<sup>2</sup> Contemporaneously herewith, the parties are seeking preliminary approval of a separate settlement agreement as it relates to the recently identified proposed Class of 105 Additional Employees who worked as non-exempt employees at an Apple retail store in California between August 3, 2015 and December 26, 2015, and who had not been previously identified as a New Class Member or provided with notice of the Settlement (the “Class of 105 Additional Employees”). The parties will seek final approval of this separate settlement agreement after notice is distributed to the Class of 105 Additional Employees and the Court holds a separate final fairness hearing to determine whether to finally approve that settlement agreement.

1 As of the date of this filing, no class members filed objections. Of the 799 New Class  
 2 Members, only 5 opted out (0.63%).<sup>3</sup> This \$30.5<sup>4</sup> million lump-sum settlement provides an average  
 3 net payment of \$1,328.06<sup>5</sup> per class member after Plaintiffs' requested attorneys' fees, costs, and  
 4 incentive awards, and without requiring the filing of claim forms, assuming the Court grants  
 5 Plaintiffs' Motion for Award of Attorneys' Fees and Litigation Costs (Dkt. 434) and Plaintiffs'  
 6 Motion for Awards for Class Representatives and for Named Plaintiff Amanda Frlekin (Dkt. 435).  
 7 The settlement fund is non-reversionary and the proposed *cy pres* recipient is California Alliance of  
 8 Boys & Girls Clubs, Inc., with the fund designated to be used in California for the Boys & Girls  
 9 Clubs' Workforce Readiness program/job training.

10 The Motion is based on this Notice of Motion and Motion; the Memorandum of Points and  
 11 Authorities; the Joint Declaration; the Declaration of Steve Platt of Angeion regarding notice  
 12 distribution, requests for exclusion, and final administration fees and expenses dated June 15, 2022  
 13 (Dkt. 444-1); the Supplemental Declaration of Steve Platt dated June 24, 2022; the previously filed  
 14 Motion for Preliminary Approval of Class Action Settlement (including the declarations and exhibits  
 15 submitted in connection with that motion) (Dkt. 416); the Declaration of Alex Erwin, Business  
 16 Systems Analyst of defendant Apple Inc.; the pleadings and papers filed in this case; and oral  
 17 argument and any additional material that may be elicited at the hearing on the Motion.

18  
 19  
 20  
 21 <sup>3</sup> In August 2015, Existing Class Members were afforded the opportunity to exclude  
 themselves from the class, which resulted in 407 opt-outs. *See* Dkt. 378.

22 <sup>4</sup> As further set forth in the Declaration of Alex Erwin in Support of Final Settlement Approval  
 dated June 23, 2022, after the Court granted preliminary approval of the Settlement, Apple learned  
 23 that it undercounted the total number of shifts worked by 203,557, bringing the total shifts worked  
 during the Class Period to 6,961,913. To ensure Participating Settlement Class Members receive  
 24 the same amount per shift as estimated in the notice issued to them, Apple has agreed to pay the  
 additional sum of \$569,959.60 to account for the undercounted shifts. *See* Joint Declaration, Ex. 1.  
 25 Apple has also agreed to increase the PAGA Settlement Amount by \$8,549.39 from \$448,500 to  
 \$457,049.39. *Id.* As a result, the Total Settlement Amount increased by \$578,508.99 from  
 26 \$29,900,000 to \$30,478,508.99. *Id.*

27 <sup>5</sup> As further set forth in the accompanying Memorandum of Points and Authorities, the average  
 net payment per class member is calculated based on the average number of shifts worked per  
 employee. Pursuant to the Amendment, Apple has agreed to pay an additional \$569,959.60 to  
 28 account for the undercounted shifts. *See* Joint Declaration, Ex. 1. As a result, the average net  
 payment per Settlement Class Member increased from \$1,286.96 to \$1,328.06.

1 Dated: June 24, 2022

2 Respectfully submitted,

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**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF  
MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**

**I. INTRODUCTION**

After nearly nine years of heavily contested litigation in this Court, the Ninth Circuit, and the California Supreme Court, Plaintiffs<sup>1</sup> are pleased to present to the Court for final approval the \$30.5<sup>2</sup> million non-reversionary Settlement reached for the benefit of the class, which, if approved, will be the largest reported settlement in a security search case in California history.<sup>3</sup> The Settlement provides a substantial and immediate recovery for the proposed Settlement Class Members. If approved, the Settlement Class Members are expected to receive an average *net* settlement payment of \$1,328.06 each<sup>4</sup>, which represents 161% of average estimated unpaid wages at contract wage rates,<sup>5</sup> or 91% with pre-judgment interest—or 409% to 230% at minimum wage rates—without any claims requirement and with no reversion of any sum to Apple.

<sup>1</sup> Unless otherwise defined, capitalized terms used herein shall have the same meaning as used in Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Preliminary Approval of Class Action Settlement ("Plaintiffs' Preliminary Approval Motion") (Dkt. 416).

<sup>2</sup> As discussed in Point II(f) and n. 7, while the original settlement sum was \$29.9 million, Apple has agreed to pay an additional \$569,959.60 to account for 203,557 shifts Apple undercounted, as well as an additional \$8,549.39 to ensure the PAGA Settlement Amount is not reduced for the LWDA or any class member, bringing the Total Settlement Amount to \$30,478,508.99. To this end, the parties entered into the Amendment to Stipulation Regarding Class and Private Attorneys General Act Settlement and Release dated June 24, 2022 (the "Amendment"), which is attached to the Joint Declaration of Lee S. Shalov and Kimberly A. Kralowec dated June 24, 2022 ("Joint Dec.") as Exhibit 1. References to "Settlement" or "Settlement Agreement" herein are to the Settlement as amended by the Amendment.

<sup>3</sup> Contemporaneously herewith, the parties are seeking preliminary approval of a separate settlement agreement as it relates to a recently-identified proposed Class of 105 Additional Employees who worked as non-exempt employees at an Apple retail store in California between August 3, 2015 and December 26, 2015, and who had not been previously identified as a New Class Member or provided notice of the Settlement. As set forth in that motion, Apple has agreed to pay additional sums to such individuals to ensure they receive the same net value of each shift as all other Settlement Class Members.

<sup>4</sup> As a result of Apple's agreement to add \$578,508.99 to the Settlement sum, the average net estimated payment per Settlement Class Member increased from \$1,286.96 to \$1,328.06. Specifically, the average net payment per class member is calculated based on the average number of shifts worked per employee. Plaintiffs' original calculation of the average net payment of \$1,286.96 per class member was based on a total of 6,758,356 shifts worked by Class Members during the Class Period, based on records provided by Apple. Subsequent to the Court's decision granting preliminary approval of the Settlement (Dkt. 431) (the "Preliminary Approval Order"), Apple learned that it undercounted the total number of shifts worked by 203,557, bringing the total shift count to 6,961,913.

<sup>5</sup> Assuming 5 minutes of unpaid security search time per day.



1 This is a significant, non-reversionary settlement reached after nearly a decade of hard-  
2 fought litigation, including comprehensive discovery, Plaintiffs’ successful motion for class  
3 certification, the parties’ cross-motions for summary judgment, and Plaintiffs’ appeals to the Ninth  
4 Circuit Court of Appeals and the California Supreme Court. Indeed, from the inception of this  
5 action, Plaintiffs vigorously pursued their claims against Apple for failure to pay them and others  
6 for time spent undergoing required security searches. *See* Dkt. 431 at p. 7 (“Both sides have dueled  
7 for a long time.”). In doing so, Plaintiffs achieved a monumental decision from the California  
8 Supreme Court that Plaintiffs and other Apple employees “must be paid” for all time spent waiting  
9 for and undergoing Checks. *Frlekin v. Apple, Inc.*, 8 Cal.5th 1038, 1056 (2020).

10 The Settlement is a culmination of those efforts, and was reached only after extensive arms’-  
11 length negotiations, including three full-day mediation sessions and a mediator’s proposal conveyed  
12 at the conclusion of the third session. Undoubtedly, the Settlement was the result of serious, well-  
13 informed and non-collusive negotiations. Dkt. 431 at p. 7 (“the proposal suggests serious, non-  
14 collusive negotiation.”). And the \$30.5 million Settlement is an outstanding result in view of the  
15 potential hurdles to recovering monetary relief had the case proceeded through trial. As the Court  
16 recognized in the Preliminary Approval Order, “this case remains reasonably complex” and would  
17 require “one or more damages trials” during which class members would be subject to cross-  
18 examination regarding the estimated bag checks they suffered. *Id.* The parties also had considerable  
19 disagreements regarding whether minimum wage rates or regular hourly wage rates should apply,  
20 the applicability of Apple’s purported *de minimis* defense and “good faith” defense, and the  
21 availability of liquidated damages under California Labor Code 1194.2. *See id.* In light of these  
22 obstacles, the Settlement is even more impressive. The absence of objections to the Settlement and  
23 the limited number of requests for exclusion from New Class Members further confirms that the  
24 Settlement will provide substantial benefits to the class.

25 For these and other reasons discussed below, Plaintiffs and Class Counsel believe that this  
26 Settlement is eminently fair, adequate, and reasonable. Accordingly, Plaintiffs respectfully request  
27 that the Court grant final approval of the Settlement.

1 **II. SUMMARY OF THE SETTLEMENT TERMS**

2 Plaintiffs presume the Court's familiarity with the litigation and rely upon the summary of  
3 the litigation in Plaintiffs' Preliminary Approval Motion (Dkt. 416), including the Joint Declaration  
4 of Lee S. Shalov and Kimberly A. Kralowec in support (Dkt. 416-1), which are expressly  
5 incorporated by reference herein. For the Court's ease of reference, however, Plaintiffs briefly  
6 summarize the pertinent terms of the Settlement.

7 **A. The Settlement Consideration**

8 Pursuant to the terms of the Settlement Agreement, Apple agreed to pay \$29.9 million to  
9 settle the claims alleged in this litigation. *See* Settlement at § 3.4.1. As further discussed in Point  
10 II(f), *infra*, after the Preliminary Approval Order, Apple learned that it undercounted the total shifts  
11 worked by Class Members by 203,557 shifts. To ensure all Settlement Class Members receive the  
12 estimated net settlement payment reflected in the notice distributed to each, Apple has agreed to pay  
13 an additional \$569,959.60 to account for these shifts. *See* Joint Dec., Ex. 1. Apple has also agreed  
14 to pay an additional \$8,549.39 to the PAGA Settlement Amount to ensure the PAGA Settlement  
15 Amount is not reduced for the LWDA or any class members. *Id.* As such, the total Settlement  
16 amount is \$30,478,508.99. *Id.* Apple has also agreed to separately pay the employer's share of the  
17 payroll taxes owed on the wage portion of the settlement fund. *See* Settlement at § 3.6.2. Based on  
18 the increased total Settlement amount, this is valued at approximately \$798,000, for a total settlement  
19 value of approximately \$31,275,000. *See* Dkt. 416-1 ¶ 36 & n.6 (explaining this valuation). The  
20 Settlement is non-reversionary; that is, no portion of the \$30.5 million fund will ever revert back to  
21 Apple. Settlement at § 1.46. Significantly, no Settlement Class Members will be required to submit  
22 a claim form. *Id.* at §§ 1.16, 1.32 & 3.4.1.7. As the Court previously recognized, this is "another  
23 substantial plus" of the Settlement. Dkt. 431, p. 5. Instead, if the Settlement is approved, checks  
24 will be mailed directly to the Participating Settlement Class Members in the amount of their pro rata  
25 share of the Settlement fund, net of any Court-approved deductions. *See* Settlement at §§ 3.6.8,  
26 3.4.1.7.

27 The Net Settlement Amount to be distributed directly to the Settlement Class Members is

1 estimated at approximately 19,657,419.99. *Id.* at § 1.22.<sup>6</sup> Assuming no further opt-outs, average  
 2 Settlement Class Member payments are expected to be \$1,328.06, representing 161% of estimated  
 3 average wages owed for unpaid Check time, assuming an average unpaid Check of 5 minutes per  
 4 day). If estimated pre-judgment interest is included, the average net settlement payment is 91% of  
 5 average wages plus interest. If minimum wage rates are used, the average net settlement payment  
 6 equals 409% of estimated average unpaid wages, or 230% of estimated average unpaid wages  
 7 inclusive of pre-judgment interest. The calculation of these estimates is further discussed in Point  
 8 II(F).

9 The following sums, if approved by the Court, will be deducted from the Total Settlement  
 10 Amount to arrive at the Net Settlement Amount: (1) \$89,500 to Angeion Group, Inc. (“Angeion”),  
 11 the Settlement Administrator, for administration services including issuance of notice of the  
 12 Settlement, distribution of checks, and related administration costs (Settlement at §§ 1.42, 3.3); (2)  
 13 service awards of \$10,000 to each of the five named Plaintiffs in recognition of their time and effort  
 14 in prosecuting the Action (*id.* at § 3.4.1.1, 3.4.1.2); (3) attorneys’ fees of up to one third of the  
 15 original Total Settlement Amount (or \$9,966,666.67), in recognition of the extraordinary results  
 16 achieved by Class Counsel, to be allocated among all firms who represented the Plaintiffs in the  
 17 litigation (*id.* at § 3.4.1.3); (4) out-of-pocket litigation costs of \$372,134.84, to be allocated among  
 18 all firms who represented the Plaintiffs in the litigation and who incurred out-of-pocket litigation  
 19 costs (*id.* at § 3.4.1.4); (5) an allocation of \$457,049.39 (1.5% of the Total Settlement Amount, as  
 20 amended) to the PAGA claim, with 75% of that sum (\$342,787.04) to the LWDA and 25% of that  
 21 sum (\$114,262.35) to the eligible class members (the proposed “PAGA Settlement Class Members”)  
 22 (*id.* at §§ 3.4.1.6, 3.4.6.1, 3.4.6.2).

23 Class Counsel do not seek further attorneys’ fees from the additional \$578,508.99, which  
 24 Apple will add to the Settlement fund to account for the shifts it undercounted. Those funds will be  
 25

26 <sup>6</sup> The parties originally estimated the Net Settlement Amount to be \$18,895,333.33. As a  
 27 result of Apple’s agreement to add \$569,959.60 to the Settlement fund to account for the shifts it  
 28 undercounted and \$8,549.39 to the PAGA Settlement Amount (of which 25% will be distributed to  
 eligible class members), the estimated Net Settlement Amount to be distributed to Settlement Class  
 Members inclusive of the PAGA component is \$19,648,871.05.

1 used solely to increase proportionately the settlement shares of Settlement Class Members whose  
2 shifts originally were undercounted by Apple.

3 **B. Releases**

4 If the Settlement is finally approved, the Class Representatives and the Participating  
5 Settlement Class Members will release the Released Parties from all Class Claims, while Plaintiffs  
6 Kalin and Frlekin, the PAGA Settlement Class Members, and the State of California will release the  
7 Released Parties from the PAGA Claims. *See id.* at §§ 3.4.2, 3.4.3. “Class Claims” and “PAGA  
8 Claims” are narrowly defined and limited to claims arising out of the facts alleged in the Action—  
9 that is, claims arising out of Apple’s failure to pay for all time worked pursuant to the Check policy.  
10 *See id.* at §§ 1.3, 1.27. The five named Plaintiffs have also agreed to a general release. *Id.* at § 3.4.4.  
11 As the Court noted in the Preliminary Approval Order, “the release appears reasonable, tailored to  
12 the claims pursued in the consolidated complaint in this action and excluding state claims dismissed  
13 with prejudice, or claims pursued in named plaintiff Taylor Kalin’s notice letter that didn’t enter into  
14 the consolidated complaint.” Dkt. 431 at p. 7.

15 **C. Notice**

16 As further discussed in the Declaration of Steve Platt dated June 15, 2022 (Dkt. 444-1) (“Platt  
17 Dec.”) and in Point IV, *infra*, notice of the Settlement was effectuated by Angeion in accordance  
18 with the Preliminary Approval Order and the Settlement. Specifically, within 15 calendar days of  
19 the issuance of the Preliminary Approval Order, Apple provided Angeion with an “Employee List”  
20 including employee shift data and last known contact information for the Settlement Class Members.  
21 *See Platt Dec.* at ¶ 4. Upon the receipt of the Employee List, Angeion prepared the individual class  
22 notices with shifts worked during the class period and expected payout from the Settlement, and  
23 conducted a national change of address search and a skip trace for the most recent mailing addresses  
24 of all former employee Settlement Class Members. *Id.* at ¶ 19. Thereafter, Angeion caused the  
25 Existing Class Member Notice of Settlement to be mailed to all 13,884 Existing Class Member  
26 addresses included on the Employee List, via USPS first-class mail, postage prepaid. *Id.* at ¶ 20.  
27 Angeion also caused the New Class Member Notice of Settlement and Opt-Out Form to be mailed  
28

1 to all 799 New Class Member addresses included on the Employee List, via USPS first-class mail,  
2 postage prepaid. *Id.* at ¶ 21. Notices returned as undeliverable by the USPS without a forwarding  
3 address were processed through address verification searches and re-mailed to the updated addresses  
4 located through this process. *Id.* at ¶ 22. Notices returned as undeliverable by the USPS with a  
5 forwarding address were re-mailed to the forwarding address identified by the USPS. *Id.* Of the  
6 14,683 Notices mailed, 14,338 were successfully delivered, and only 345 were not successfully  
7 delivered. *Id.* at ¶ 23.

8 Prior to distributing notice via email, Angeion performed an extensive analysis of the class  
9 data records that contain an email address. *Id.* at ¶ 9. The email addresses were subjected to an  
10 email cleansing and an email validation process whereby each email address was verified by  
11 contacting the Internet Service Provider to determine if the email address exists. *Id.* Thereafter,  
12 Angeion caused the distribution of the Notice via email to the valid email addresses included on the  
13 Employee List for the Settlement Class Members. *Id.* at ¶¶ 14-15. Approximately one week later,  
14 Angeion re-transmitted email notice to the Settlement Class Members. *Id.* at ¶¶ 16-17. Of the 6,432  
15 New and Existing Class Member valid email addresses contained in the Class Member List, 6,356  
16 (98.8%) were successfully delivered. *Id.* at ¶ 18.

17 In addition to mailing and emailing Notices, Angeion also established a toll-free number and  
18 a website with links to documents relevant to the Action. *Id.* at ¶¶ 24-27. Additionally, Class  
19 Counsel and Apple maintained a link to the settlement website on their respective websites. *See*  
20 Dkt. 443, 444, & 445.

#### 21 **D. Allocation**

22 Settlement Class Members' shares (referred to in the Settlement Agreement as the  
23 "Individual Class Payments") will be calculated pro rata based on the number of shifts they worked  
24 at an Apple retail store in California during the Class Period (July 25, 2009 through December 31,  
25 2015),<sup>7</sup> as reflected in Apple's Employee List., and as stated on each Settlement Class Member's  
26 individual class notice (except for Class Members whose shift counts have subsequently been  
27

28 <sup>7</sup> Pursuant to the Preliminary Approval Order, the damages period was extended by 14 days  
from December 17, 2015 to December 31, 2015. *See* Dkt. 431 at 4.

1 revised upwards after Apple’s investigation of shift data). *Id.* at §§ 1.16, 3.4.1.7. This is consistent  
2 with judicially approved individual settlement class member payments in other bag check and  
3 security check class settlements. *See, e.g., Lao v. H&M Hennes & Morvitz, LP*, 16-cv-00333, Dkt.  
4 Nos. 158, 167 (N.D. Cal. 2016); *Greer v. Dick’s Sporting Goods*, 15-cv-01063, Dkt. Nos. 73, 89  
5 (C.D. Cal. 2015); *Tellez v. Ulta Salon, Cosmetics & Fragrance Inc.*, 18-cv-02480, Dkt. Nos. 32, 41  
6 (S.D. Cal. 2018); *Mejia v. Walgreen Co.*, 19-cv-00218, Dkt. Nos. 21, 30 (E.D. Cal. 2019); *Chavez*  
7 *v. Converse Inc.*, 15-cv3746, Dkt. Nos. 210, 219 (N.D. Cal. 2015). In addition, PAGA Settlement  
8 Class Members will also receive a share of the \$114,262.35 PAGA allocation (25% of the total  
9 PAGA allocation), calculated pro rata based on the number of pay periods they worked during the  
10 PAGA Period (July 25, 2012 through Dec. 31, 2015), as reflected in Apple’s business records. *Id.*  
11 at §§ 1.32, 3.4.1.6.2.

12 If the Settlement is approved, the Settlement Class Members will not be required to submit  
13 a claim in order to receive a share of the Settlement. *See id.* at §§ 1.16, 1.32 & 3.4.1.8. Instead, they  
14 will simply be mailed a check for their pro rata share of the Net Settlement Amount. *See id.* at §  
15 3.6.3.

#### 16 **E. The Settlement Class & New Class Members Identified**

17 Pursuant to the Court’s Order preliminarily approving the Settlement, the Settlement Class  
18 consists of the 13,884 employees certified in 2015 (which excludes the 407 opt-outs), plus the 799  
19 New Class Members whose bags were checked between December 17, 2015 and December 31,  
20 2015. Dkt. 431 at p. 4. Of the 799 New Class Members, only 5 opted out. *See Platt Dec.* at ¶ 33.

21 After the Court’s Preliminary Approval Order, Apple learned of 105 individuals who worked  
22 as non-exempt employees at an Apple retail store in California between August 3, 2015 and  
23 December 26, 2015, and who had not been previously identified as a New Class Member and who  
24 were not given notice of the Settlement (the “Class of 105 Additional Employees”). *See Declaration*  
25 *of Alex Erwin (“Erwin Dec.”)* at ¶ 10. The Class of 105 Additional Employees worked a total of  
26 10,781 shifts. *Id.* The parties have entered into a separate settlement agreement pertaining to these  
27 105 individuals to ensure that they receive the same net payment per shift as all other Settlement  
28

1 Class Members and receive adequate notice of the settlement and a right to object and opt-out of  
2 that separate settlement agreement. The separate settlement agreement was also formed in order to  
3 avoid any prejudice to the existing Participating Settlement Class Members, such as delay in final  
4 approval of their Settlement and, if final approval is granted, delay in payment of their Settlement  
5 shares—payments for which they have been waiting for many years and to which none of them have  
6 objected. To this end, contemporaneously herewith, the parties are seeking preliminary approval of  
7 this separate settlement agreement with the proposed Class of 105 Additional Employees, to run on  
8 a separate preliminary and final approval track.

9 Not including the separate proposed Class of 105 Additional Employees, there are 14,678  
10 Settlement Class Members (*i.e.*, 13,884 employees certified in 2015 less the 407 opt-outs, plus 799  
11 New Class Members less the 5 opt-outs). This includes all Apple California retail employees who  
12 began employment between July 25, 2009 and December 26, 2015 (other than the Class of 105  
13 Additional Employees), while the damages period extends between July 25, 2009 and December 31,  
14 2015. Dkt. 431 at p. 4.

15 **F. Apple’s Shift Count Investigation and the Impact on Settlement Class Payments**

16 As further set forth in the accompanying Erwin Dec., in February and March 2022, after the  
17 Preliminary Approval Order was entered and notice of the Settlement was distributed, Angeion  
18 informed Apple that four class members had disputed the accuracy of the number of shifts reported  
19 on their notice of settlement. *See* Erwin Dec., at ¶ 3. Apple investigated these disputes and  
20 confirmed that Apple had undercounted the number of shifts these four class members had worked,  
21 and that the Employee List it had provided to Angeion included inaccurate shift data as to those class  
22 members. *Id.* Apple conducted a further investigation to determine whether it had missed shifts  
23 worked by other class members, and ultimately determined that during the period between  
24 November 3, 2012 and December 31, 2015, when Apple used the Kronos system to record hours  
25 and shifts worked, Apple undercounted class member shifts worked by 137,159 and overcounted  
26 shifts worked by 3,192. *Id.* at ¶¶ 4-6.

27 In mid-May 2022, one additional class member disputed the accuracy of the number of shifts  
28

1 reported on his notice of settlement. *Id.* at ¶ 7. Apple investigated this dispute and confirmed that  
2 it had undercounted the number of shifts this class member had worked and that the Employee List  
3 it had provided to Angeion included inaccurate shift data for this class member. *Id.* This class  
4 member's hours and shifts were recorded by Apple in part using their Time and Attendance ("T&A")  
5 system, which was in place from July 25, 2009 until November 2, 2012. *Id.* at ¶ 8. Apple then  
6 conducted a further investigation of its T&A system to determine whether additional shifts were  
7 undercounted in the T&A system. *Id.* Through this analysis, Apple concluded that the total number  
8 of undercounted shifts during the period the T&A system was in place was 66,398, and the total  
9 number of overcounted shifts during this period was 304. *Id.* at ¶¶ 8-9.

10 To ensure Class Members are paid for the full number of shifts Apple has identified, and that  
11 Class Members are paid for all shifts referenced in their notices of settlement, Apple has agreed to  
12 add the 137,159 new Kronos shifts and to honor the originally-quoted but overcounted 3,192 shifts.  
13 *See* Joint Dec, Ex. 1. Likewise, to ensure Class Members are paid for the full number of shifts Apple  
14 has identified, and that Class Members are paid for all shifts referenced in their notices of settlement,  
15 Apple has agreed to add the 66,398 new T&A shifts and to honor the originally-quoted but  
16 overcounted 304 shifts. *See id.* Apple has agreed that it will provide Angeion with an updated  
17 Employee List in which the errors Apple identified are corrected. *Id.*

18 Because the total number of shifts at issue is higher than the parties originally understood to  
19 be correct, and because Apple has agreed to add funds to the Settlement to account for these  
20 undercounted shifts, the average net settlement payment is *higher* than originally anticipated.<sup>8</sup>

21 Pursuant to the Settlement, each Participating Class Member will receive from the Net  
22 Settlement Amount, his or her Individual Class Payment, calculated on a *pro rata* basis based on the  
23 number of shifts each Participating Settlement Class Member worked at an Apple retail store in  
24 California during the Class Period. *See* Settlement at § 1.16. Specifically, each Individual Class  
25 Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts  
26 worked by the total of all shifts worked by all Participating Settlement Class Members during the  
27

28 <sup>8</sup> Specifically, the average net settlement payment increased from \$1,286.96 to \$1,328.06.



1 Class Period (including all shifts Apple originally overcounted), and multiplying this result by the  
2 Net Settlement Amount. *See id.* at § 3.4.1.7.

3 **III. THIS SETTLEMENT MEETS THE STANDARDS GOVERNING JUDICIAL**  
4 **APPROVAL OF CLASS ACTION SETTLEMENTS**

5 It is well-established in the Ninth Circuit that “voluntary conciliation and settlement are the  
6 preferred means of dispute resolution,” particularly where class action litigation is involved. *See*  
7 *Officers for Justice v. Civil Service Commission*, 688 F.2d 615, 625 (9th Cir. 1982); *see also Class*  
8 *Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting the “strong judicial policy  
9 that favors settlements, particularly where complex class action litigation is concerned.”). In  
10 determining if a class settlement warrants final approval under Federal Rule of Civil Procedure 23,  
11 the district court must find that the settlement is “fair, reasonable, and adequate” considering  
12 whether: (i) the class representatives and class counsel have adequately represented the class; (ii)  
13 the proposal was negotiated at arms’-length; (iii) the relief provided for the class is adequate; and  
14 (iv) the proposal treats class members equitably relative to each other. *See Fed. R. Civ. P.*  
15 *23(e)(2)(A)-(D)*; *see also Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 963 (9th Cir. 2003);  
16 *Blair v. Rent-A-Center, Inc.* 2020 WL 408970, at \*2 (N.D. Cal. Jan. 24, 2020) (Alsup, J.) (identifying  
17 various factors courts look at in determining whether a settlement is fair, reasonable, and adequate).  
18 The Court should also balance the continuing risks of litigation against the benefits afforded to the  
19 class and the immediacy and certainty of a substantial recovery. *In re Mego Fin. Corp. Sec. Litig.*,  
20 213 F.3d 454, 458 (9th Cir. 2000); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D 523,  
21 526 (C.D. Cal. 2004). When, as here, a proposed class settlement is negotiated at arms’-length and  
22 presented for court approval, there is an initial presumption of fairness. *See Newberg and Conte,*  
23 *Newberg on Class Actions* (4th ed. 2002), § 11:41, p. 90.

24 As the Ninth Circuit has explained, a decision “to approve or reject a settlement is committed  
25 to the sound discretion of the trial judge because he is exposed to the litigants, and their strategies,  
26 positions, and proof.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 458. The function of final  
27 approval is merely to “reach a reasoned judgment that the agreement is not the product of fraud or  
28 overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a

1 whole, is fair, reasonable, and adequate to all concerned.” *Officers for Justice*, 688 F.2d at 625; see  
2 also *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (the question is “not whether  
3 the final product could be prettier, smarter or snazzier, but whether it is fair, adequate and free from  
4 collusion.”). As such, courts have taken a liberal approach towards approval of class action  
5 settlements. Indeed, “[i]n most situations, unless the settlement is clearly inadequate, its acceptance  
6 and approval are preferable to lengthy and expensive litigation with uncertain results.” *Nat’l Rural*  
7 *Telecomms.*, 221 F.R.D. at 526.

8 Guidelines issued by this District also require Class Counsel to include in their motion for  
9 final approval of the settlement:

10 information about the number of undeliverable class notices and  
11 claim packets, the number of class members who submitted valid  
12 claims, the number of class members who elected to opt out of the  
13 class, and the number of class members who objected to or  
commented on the settlement. In addition, the motion for final  
approval should respond to any objections.

14 See Procedural Guidance for Class Action Settlements (updated November 1, 2018 and December  
15 5, 2018) at <https://www.cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements>.

16 Here, as further discussed below, the Settlement is fair, reasonable, and adequate, and is a  
17 highly favorable result for the class. Class Counsel and the Class Representatives have adequately  
18 represented the class, having vigorously litigated this action for nearly nine years against one of the  
19 largest technology companies in the world. To this end, Class Counsel and the Class Representatives  
20 overcame significant hurdles in ultimately prevailing on liability against Apple, leading to this  
21 significant Settlement. Additionally, the Settlement was negotiated at arms’-length over the course  
22 of three different mediations, each of which were overseen by an experienced and well-respected  
23 mediator. And the relief afforded to the class is more than adequate, providing an average *net*  
24 payment of \$1,328.06 each, which represents 161% of average estimated unpaid wages at contract  
25 wage rates, or 91% with pre-judgment interest—or 409% to 230% at minimum wage rates. What is  
26 more, the \$30.5 million recovery is not the only benefit to the class. Plaintiffs obtained a published,  
27 binding California Supreme Court opinion construing the “control” test for compensable “hours  
28

1 worked,” and doing so broadly in favor of protecting the class. Apple terminated its bag check  
 2 policy in December 2015. Dkt. 368. Still, this opinion will preclude Apple from re-imposing an  
 3 unpaid security search policy on any of its current and future retail store employees in California,  
 4 functioning as a *de facto* injunction of such conduct and eliminating any purported “good faith”  
 5 defense on Apple’s part. The value of this non-monetary benefit to Apple employees, including at  
 6 least some of the class members, can be reasonably quantified. The Supreme Court’s opinion  
 7 became final on May 13, 2020. During the 26-month period from that date through the estimated  
 8 date of final approval (July 7, 2022), Apple’s employees have either been paid or been spared over  
 9 \$4.7 million in average estimated unpaid search time.<sup>9</sup> Put another way, the binding opinion  
 10 represents an estimated \$2.2 million per year in unpaid wages (or uncontrolled personal time) to  
 11 Apple’s employees.

12 The proposal also treats class members equitably relative to each other based on an allocation  
 13 that is driven by the number of shifts each Settlement Class Member worked. Additionally, notice  
 14 of the Settlement was the best notice practicable under the circumstances. To this end, notice was  
 15 distributed by Angeion, an experienced settlement claims administrator, in accordance with the  
 16 Preliminary Approval Order, as further discussed in Part V, below.

17 For these reasons, as further discussed below, the Settlement warrants final approval.

18 **IV. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

19 A district court may approve a proposed class settlement only upon finding that it is fair,  
 20 reasonable, and adequate, taking into account: (1) the strength of the plaintiffs’ case; (2) the risk,  
 21 expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action  
 22 status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery  
 23 completed and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence  
 24

25 <sup>9</sup> This figure assumes that Apple employs 5,000 non-exempt retail sales employees (about one  
 26 third of the class size) in California at any one time. It also uses the class members’ average contract  
 27 rate, which does not account for wage increases since the end of the class period, which was six and  
 28 a half years ago. Assuming an average unpaid Check duration of 5 minutes, and an average contract  
 rate of \$20.89, a full-time Apple employee would accrue \$36.42 in unpaid search time per month.  
 Assuming 5,000 employees, that amounts to \$182,100 per month in unpaid search time. *See* Dkt.  
 416-1, ¶¶ 65-66 (explaining figures used to compute estimated average unpaid wages).

1 of a governmental participant; and (8) the reaction of the class members to the proposed settlement.  
2 *See Blair*, 2020 WL 408970, at \*2 (citing Fed. R. Civ. P. 23(e)). Each of these factors were  
3 addressed at length in Plaintiffs’ Motion for Preliminary Approval – which the Court considered and  
4 found “weigh in favor of the settlement” (Dkt. 431 at p. 8) – and are expressly incorporated herein.  
5 Pursuant to Rule 23(e)(2), the Court should also consider whether (i) the class representatives and  
6 class counsel have adequately represented the class; (ii) the proposal was negotiated at arms’-length;  
7 (iii) the relief provided for the class is adequate; and (iv) the proposal treats class members equitably  
8 relative to each other. *See* Fed. R. Civ. P. 23(e)(2)(A)-(D).

9 **A. The Class Representatives and Class Counsel Have Adequately Represented the Class**

10 Class Counsel and the Class Representatives overcame significant hurdles for the benefit of  
11 the class, ultimately culminating in the substantial \$30.5 million settlement. As an initial matter,  
12 during a critical hearing on February 20, 2014, the Court expressed considerable skepticism about  
13 the merits of the case, stating that “artful pleading” may have “left out critical facts that may ...  
14 eviscerate every single claim.” Dkt. 147 (Transcript of Proceedings, Feb. 20, 2014) at 46:5-8; *see*  
15 *also* Dkt. 132 at 25-26. Nonetheless, Plaintiffs were able to defeat Apple’s first motion for summary  
16 judgment. Dkt. 166. Thereafter, Plaintiffs successfully moved for class certification. Dkt. 297.  
17 Plaintiffs were likewise successful in defeating Apple’s Rule 23(f) petition challenging the class  
18 certification order. Dkt. 333. Class notice was completed in September 2015. Dkt. 378, ¶ 3. Only  
19 407 out of 14,291 class members (2.8%) opted out and no class member intervened. *Id.*; *see* Dkt.  
20 416-1, ¶ 13.

21 After class certification, the Court granted Apple’s second motion for summary judgment  
22 and denied Plaintiffs’ motion for summary judgment, concluding that the Checks were “voluntary”  
23 and therefore non-compensable because the employees could “choose” to leave their personal  
24 belongings at home, and for the alternative reason that the activity did not constitute “work.” Dkt.  
25 339. Through the substantial work and advocacy of Class Counsel, however, Plaintiffs achieved a  
26 complete victory before the California Supreme Court for the benefit of the class. Specifically, the  
27 Supreme Court held that all search-related time was compensable as a matter of law under the  
28

1 “control” test of Wage Order 7. *Frlekin*, 8 Cal.5th at 1045-57. The work, however, was not over.  
2 Apple petitioned for rehearing, and Class Counsel filed an extensive answer. On May 13, 2020, the  
3 Supreme Court summarily denied Apple’s petition. The next day, the Court advised the Ninth  
4 Circuit by letter that its opinion was final. U.S. Court of Appeals, Ninth Circuit, Case No. 15-17382,  
5 Dkt. 71; Dkt. 434-5.

6 On September 2, 2020, the Ninth Circuit held that Apple’s summary judgment motion should  
7 have been denied and that plaintiffs’ summary judgment motion should have been granted. *Frlekin*  
8 *v. Apple, Inc.*, 973 F.3d 947 (9th Cir. 2020). On April 14, 2021, in accordance with the Ninth  
9 Circuit’s second opinion, this Court vacated the judgment in Apple’s favor, denied Apple’s summary  
10 judgment motion, granted plaintiffs’ motion on liability, and vacated the \$34,859.12 costs award.  
11 Dkt. 407. Soon after the California Supreme Court decision, the parties agreed to participate in  
12 mediation. After lengthy and hard-fought negotiations, Apple agreed to pay \$29.9 million to settle  
13 the case (which, as discussed above, has been increased to approximately \$30.5 million).

14 Additional significant hurdles remained if the case proceeded to trial. On the issue of the  
15 base amount of unpaid wages owed for the Check time, Apple repeatedly claimed that the amount  
16 of time spent undergoing Checks was *de minimis* and that the time is therefore non-compensable  
17 under California law. Apple also repeatedly argued that the unpaid wages should be calculated using  
18 the minimum wage rates in effect at the time of the Checks, rather than the contract rates. These  
19 arguments, if accepted, would significantly reduce, if not eliminate, the Class Members’ claim for  
20 base unpaid wages and interest. The average minimum wage during the relevant period (\$8.26) is  
21 less than 40% of the estimated average contract rate (\$20.89). Even assuming the Class Members  
22 overcame these hurdles, the derivative claims for waiting time and wage statement penalties under  
23 Labor Code sections 203 and 226(e), and for liquidated damages under Labor Code section 1194.2,  
24 would be subject to even more potential defenses. Throughout the litigation, Apple has contended  
25 that waiting time and wage statement penalties both require proof that the employer’s conduct was  
26 “willful” and in order to recover these penalties, the Class Members must have suffered a separate  
27 “injury” beyond their lost wages. Apple made clear its intention to argue that it believed in “good  
28

1 faith” that the Check time was not compensable under California law, which, according to Apple,  
2 represented a complete defense to the Class Members’ claims for waiting time and wage statement  
3 penalties, as well as liquidated damages. Any or all of these defenses might have wholly eliminated  
4 Class Members’ ability to recover these forms of relief, which represent the lion’s share of their  
5 projected maximum potential damages.

6 Additionally, as the Court recognized in granting preliminary approval of the Settlement,  
7 despite Plaintiffs prevailing on liability, “this case remains reasonably complex” and would require  
8 “one or more damages trials” during which class members would be subject to cross-examination  
9 regarding the estimated bag checks they suffered. Dkt. 431 at 7. In light of these potential  
10 impediments to recovery, and in recognition of the significant victories obtained by Class Counsel  
11 in the litigation, including a determination that Apple is liable to Class Members for the time spent  
12 undergoing Checks, Class Counsel negotiated the Settlement, which provides immediate and  
13 substantial relief to the class. Class Counsel and the Class Representatives have more than  
14 adequately represented the class.

15 **B. The Settlement Was Negotiated at Arms’-Length**

16 The Settlement was reached only after the parties engaged in three full-day mediation  
17 sessions before two well-respected mediators. Specifically, the Parties first engaged in a Settlement  
18 Conference before Magistrate Judge Joseph C. Spero on October 1, 2015 (Dkt. 312), followed by  
19 two full-day mediation sessions with Hon. Jay C. Gandhi (Ret.) of JAMS on October 20, 2020 and  
20 December 12, 2020, and a full-day mediation session with Hon. Edward A. Infante (Ret.) of JAMS  
21 on May 6, 2021. In fact, the Settlement amount resulted from a mediator’s proposal made by Judge  
22 Infante at the conclusion of the Parties’ last mediation session. As the Court aptly noted, “the  
23 proposal suggests serious, non-collusive negotiation.” Dkt. 431 at p. 7. Indeed, that the Settlement  
24 was a result of extensive, supervised mediation efforts further supports a finding that the Settlement  
25 is the product of serious, informed, and non-collusive negotiations. *See In re LendingClub Securities*  
26 *Litig.*, 2018 WL 1367336, at \*4 (N.D. Cal. Mar. 16, 2018) (Alsup, J.).

1           **C. The Relief for the Class is Adequate**

2           The Settlement provides substantial relief for the class. If approved, the \$30.5 million  
 3 Settlement will be the largest bag check settlement in California history and compares extremely  
 4 favorably to other bag check/security check cases, both in terms of the total dollar value and the  
 5 average amount of recovery per class member. *See Lao v. H&M Hennes & Morvitz, LP*, 16-cv-  
 6 00333, Dkt. Nos. 163, 167 (N.D. Cal. 2016) (\$3.8 million settlement approved on behalf of  
 7 approximately 13,500 class members, representing 9.6% of total possible recovery and average  
 8 \$164.17 per class member); *Chavez v Converse Inc.*, 15-cv-3746, Dkt. Nos. 217, 219 (N.D. Cal.  
 9 2015) (\$1.875 million settlement approved on behalf of approximately 1,500 class members,  
 10 representing 7.6% of total possible recovery and average \$363.63 per class member); *Greer v. Dick's*  
 11 *Sporting Goods*, 15-cv-01063, Dkt. Nos. 81, 89 (C.D. Cal. 2015) (\$2.9 million settlement approved  
 12 on behalf of approximately 10,700 class members, with an average payment per class member of  
 13 \$155).

14           The Net Settlement Amount to be distributed to the Settlement Class Members is estimated  
 15 at approximately \$19,534,608.70, exclusive of the portion of the proposed PAGA allocation that  
 16 would be distributed to PAGA Settlement Class Members. Including that figure, the total net figure  
 17 to be distributed to eligible class members is \$19,648,871.05. Moreover, Apple will pay  
 18 approximately \$798,000 to cover the employer's share of the payroll taxes owed on the wage portion  
 19 of the settlement fund, bringing the grand total payment by Apple to over \$31,250,000. Settlement  
 20 at § 3.6.2; Dkt. 416-1 ¶ 36 & n. 6.

21           Average *net* settlement payments are expected to be \$1,328.06 each, which represents 161%  
 22 of average estimated unpaid wages at contract wage rates assuming 5 minutes of unpaid Check time  
 23 per day, which, as the Court noted, favors the Class Members. Dkt. 431 at p. 5. When including  
 24 pre-judgment interest, the average net settlement payments represent 91% of average estimated  
 25 unpaid wages at contract wage rates. Using the lower minimum wage rates, the average net  
 26 settlement payments represent 409% of average estimated unpaid wages, and 230% of average  
 27 estimated unpaid wages when including estimated pre-judgment interest. *See id.*

1 A Class Member who worked the average number of shifts during the class period (474.31  
 2 shifts) would be entitled to recover \$825.65 in base unpaid wages at the average contract rate of  
 3 \$20.89, exclusive of liquidated damages, assuming one Check per shift with an average duration of  
 4 5 minutes. With prejudgment simple interest at 10% per annum from February 1, 2014<sup>10</sup> through  
 5 November 1, 2021, this Class Member would be entitled to \$1,465.81 in base wages plus interest  
 6 (which would be lower if the actual average contract rate of pay were used instead of the average  
 7 *final* contract rate of pay). Using average *minimum wage* rates, the average Class Member's  
 8 projected base unpaid wages plus interest would drop to \$576.81. While the Class Members would  
 9 also be entitled to seek penalties and liquidated damages, Apple's potential defenses to those  
 10 remedies are stronger and more numerous than Apple's defenses to Class Member claims for base  
 11 unpaid wages. *See, e.g., Vikram v. First Student Mgmt., LLC*, 2019 WL 1084169, at \*5 (N.D. Cal.  
 12 Mar. 7, 2019) (recognizing the serious risk that the class would not be entitled to wage statement  
 13 penalties, stating that "there is a substantial risk of no recovery to any Plaintiff on the penalty claims,  
 14 which are worth the vast majority of the full verdict value of the non-PAGA claims."). Absent  
 15 approval of the Settlement, the average Class Member could seek an estimated additional sum of  
 16 \$626.70 in waiting time penalties; \$4,000 in wage statement penalties; and \$324.90 in liquidated  
 17 damages, for a total sum, inclusive of interest and payable at average hourly rates, of \$6,417.41.  
 18 Thus, the Settlement would afford approximately 20.7% of the average Class Member's *maximum*  
 19 potential recovery. *Id.* As set forth in the Supplemental Declaration of Steve Platt dated June 24,  
 20 2022 ("Platt Supp. Dec."), 7,432 Settlement Class Members are expected to receive between \$.01  
 21 and \$999.99, while 7,126 Settlement Class Members are expected to receive between \$1,000.00 and  
 22 \$4,999.99. Platt Supp. Dec. ¶ 5.

23 The results achieved are exceptional and fully support approval of the Settlement. *See, e.g.,*  
 24 *Karl v. Zimmer Blomet Holdings, Inc.*, 2022 WL 658970, at \*2 (N.D. Cal. Mar. 4, 2022) (Alsup, J.)  
 25 (approving settlement representing 6.9% of defendant's total exposure); *Carlin v. DairyAmerica,*  
 26 *Inc.*, 380 F. Supp. 3d 998, 1020-21 (E.D. Cal. 2019) (approving settlement where the class would

27 \_\_\_\_\_  
 28 <sup>10</sup> This date is approximately 460 shifts before December 2015, when Apple discontinued the  
 Check policy, and represents an average starting point for interest.



1 recover 48% to 80% of estimate *gross* damages and 31% to 51% of estimated *net* damages); *In re*  
2 *Anthem, Inc. Data Breach Litigation*, 2018 WL 3960068, at \*10 (N.D. Cal. Aug. 17, 2018)  
3 (approving settlement where the settlement fund represented 14.5% of the projected recovery that  
4 class members would be entitled to if they prevailed); *In re Critical Path, Inc.*, 2002 WL 32627559,  
5 at \*5-6 (N.D. Cal. June 18, 2002) (Alsup, J.) (approving settlement representing 8.5% of estimated  
6 damages); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d at 459 (finding a settlement amount of one-  
7 sixth of the potential recovery to be fair and reasonable).

8 In addition to the monetary recovery, Plaintiffs obtained a published, binding California  
9 Supreme Court opinion construing the “control” test for compensable “hours worked,” and doing so  
10 broadly in favor of protecting the class. Apple discontinued its bag check policy in December 2015.  
11 Dkt. 368. Still, this opinion will preclude Apple from re-imposing an unpaid security search policy  
12 on any current or future retail store employees in California, functioning as a *de facto* injunction of  
13 such conduct and eliminating any purported “good faith” defense on Apple’s part. Plaintiffs estimate  
14 that Apple’s employees have either been paid or been spared over \$4.7 million in average estimated  
15 unpaid search time as a result of the successful prosecution of this action. *See* Dkt. 434 at 16; *see*  
16 *also* Dkt. 416-1, ¶¶ 65-66 (explaining figures used to compute estimated average unpaid wages).

17 **D. The Proposed Settlement Treats Class Members Equitably Relative to Each Other**

18 The Settlement treats each Class Member equitably relative to each other as each Settlement  
19 Class Member will receive payment calculated pro rata based on the number of shifts he or she  
20 worked at an Apple retail store in California during the Class Period (July 25, 2009 through  
21 December 31, 2015). *See* Settlement at § 1.16. Specifically, each Participating Class Member will  
22 receive, from the Net Settlement Amount, his or her Individual Class Payment, calculated on a *pro*  
23 *rata* basis based on the number of shifts each Participating Settlement Class Member worked at an  
24 Apple retail store in California during the Class Period, calculated by dividing a Participating  
25 Settlement Class Member’s individual shifts worked by the total of all shifts worked by all  
26 Participating Settlement Class Members during the Class Period (including all original overcounted  
27 shifts), and multiplying this result by the Net Settlement Amount. *See id.* at §§ 1.16, 3.4.1.7. The  
28

1 number of shifts worked by each Class Member for the purposes of calculating Individual Class  
2 Payments is based on Apple's business records as reflected in its Employee List, and as subsequently  
3 corrected for undercounted shifts. *Id.* at §§ 1.16, 3.4.1.7. This is consistent with judicially approved  
4 individual settlement class member payments in other bag check and security check class  
5 settlements. *See, e.g., Lao v. H&M Hennes & Morvitz*, LP, 16-cv-00333, Dkt. Nos. 158, 167 (N.D.  
6 Cal. 2016); *Greer v. Dick's Sporting Goods*, 15-cv-01063, Dkt. Nos. 73, 89 (C.D. Cal. 2015); *Tellez*  
7 *v. Ulta Salon, Cosmetics & Fragrance Inc.*, 18-cv-02480, Dkt. Nos. 32, 41 (S.D. Cal. 2018); *Mejia*  
8 *v. Walgreen Co.*, 19-cv-00218, Dkt. Nos. 21, 30 (E.D. Cal. 2019); *Chavez v. Converse Inc.*, 15-  
9 cv3746, Dkt. Nos. 210, 219 (N.D. Cal. 2015).

10 In addition, PAGA Settlement Class Members will also receive a share of the \$114,262.35  
11 PAGA allocation (25% of the total PAGA allocation), calculated pro rata based on the number of  
12 pay periods they worked during the PAGA Period (July 25, 2012 through December 31, 2015), as  
13 reflected in Apple's business records. Settlement at §§ 1.32, 3.4.1.6.2.

14 Within ten calendar days following the date by which the Settlement is finally approved and  
15 the Court's final approval order and the Judgment become binding and no longer subject to appeal  
16 (*i.e.*, the Effective Date), Apple shall fund the Settlement by transferring \$30.5 million to Angeion,  
17 along with Apple's share of payroll taxes on the wage component of the Individual Class Payments  
18 (valued at \$798,000). *See id.* at § 3.6.2. The Settlement Class Members' shares of the Net Settlement  
19 Amount and the LWDA's share of the PAGA allocation will then be distributed by check within  
20 thirty calendar days of the Effective Date. *See id.* at §§ 3.6.6-3.6.8. The Settlement Class Members  
21 will have 180 days after mailing to cash their checks (*id.* at § 3.6.8), with reminder notices to be sent  
22 90 days after the mailing date to any Settlement Class Members who have not cashed their checks  
23 (*id.* at § 3.6.9).

#### 24 **E. The Reaction of the Class Favors Approval**

25 In evaluating the fairness, reasonableness, and adequacy of a settlement, courts also consider  
26 the reaction of the class. *See Torrissi v. Tuscon Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir. 1993);  
27 *Reyes v. Bakery and Confectionery Union and Industry International Pension Fund*, 281 F. Supp.

1 3d 833, 848 (N.D. Cal. 2017) (“class members’ positive reaction to a settlement weighs in favor of  
2 settlement approval”); *Arnold v. Fitflop USA, LLC*, 2014 WL 1670133, at \*8 (S.D. Cal. Apr. 28,  
3 2014) (the reaction of the class to the proposed settlement “presents the most compelling argument  
4 favoring settlement.”). Indeed, “the absence of a large number of objections to a proposed class  
5 action settlement raises a strong presumption that the terms of a proposed class settlement are  
6 favorable to the class members.” *Reyes*, 281 F. Supp. 3d at 848) (internal quotations omitted); *see*  
7 *also Hanlon*, 150 F.3d at 1027 (“the fact that the overwhelming majority of the class willingly  
8 approved the offer and stayed in the class presents at least some objective positive commentary as  
9 to its fairness.”).

10 Here, the reaction of the class favors approval. The Settlement Notice advised the class of  
11 the terms of the Settlement, the plan of allocation, and counsels’ request for an award of attorneys’  
12 fees and expenses, as well as the procedure and deadline for filing objections (and for New Class  
13 Members, opting out of the class). *See* Dkt. 416-2. 13,884 Notice Packages were mailed to Class  
14 Members. *See* Platt Dec. ¶ 20. As of the date of this filing, not a single Class Member has filed an  
15 objection to the Settlement, the plan of allocation, counsels’ request for an award of attorneys’ fees  
16 and expenses, and service awards to the class representatives and named plaintiff Amanda Frlekin.  
17 Moreover, of the 799 New Class Members, only 5 opted-out (*i.e.*, less than 1%). *See* Platt Dec., ¶  
18 33. Accordingly, this factor weighs in favor of final approval of the Settlement.

19 **V. NOTICE TO THE CLASS WAS ADEQUATE**

20 Notice of a class action settlement “must be ‘reasonably calculated, under all circumstances,  
21 to apprise interested parties of the pendency of the action and afford them an opportunity to present  
22 their objections.’” *Blair*, 2020 WL 408970 at \*2 (quoting *Mullane v. Central Hanover Bank & Tr.*  
23 *Co.*, 339 U.S. 306, 314 (1950)). The notice must describe “‘the terms of the settlement in sufficient  
24 detail to alert those with adverse viewpoints to investigate and come forward and be heard.’” *Luna*  
25 *v. Marvell Tech Grp.*, 2018 WL 1900150, at \*2 (N.D. Cal. Apr. 20, 2018) (Alsup, J.) (quoting  
26 *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th Cir. 1980)). Notice by mail is  
27 sufficient to provide due process to known affected parties, so long as the notice is reasonably  
28

1 calculated to apprise interested parties of the pendency of the action and afford them an opportunity  
2 to present their objections. *See Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443, 452 (E.D.  
3 Cal. 2013).

4 The Court previously approved the parties' Notices in connection with the parties' motion  
5 for preliminary approval. Specifically, the parties distributed a Notice of Settlement for Existing  
6 Class Members who are PAGA Class Members who worked shifts during the Class Period (Dkt.  
7 444-1, Ex. A); a Notice of Settlement for Existing Class Members who are PAGA Class Members  
8 who worked no shifts during the Class Period<sup>11</sup> (Dkt. 444-1, Ex. B); a Notice of Settlement for  
9 Existing Class Members who are not PAGA Settlement Class Members and who worked shifts  
10 during the Class Period (Dkt. 444-1, Ex. C); a Notice of Settlement for Existing Class Members who  
11 are not PAGA Class Members and who worked no shifts during the Class Period (Dkt. 444-1, Ex.  
12 D); a Notice of Settlement for New Class Members who worked shifts during the Class Period (Dkt.  
13 444-1, Ex. E); and a Notice of Settlement for New Class Members who worked no shifts during the  
14 class period (Dkt. 444-1, Ex. F) (collectively, the "Notices"). The Notices advise class members of  
15 the essential terms of the Settlement, sets forth the procedure and deadline for submitting objections  
16 (and, for New Class Members, to request exclusion), identifies contacts for additional information,  
17 and provides specifics regarding the date, time, and place of the final fairness hearing. The Notices  
18 also include: (1) the estimated amount of the Settlement the class member can expect to receive; (2)  
19 a statement indicating that Plaintiffs' counsel intend to make an application for attorneys' fees and  
20 costs, and the maximum amount of attorneys' fees they will seek; (3) the name, telephone number,  
21 and address of Class Counsel who will be reasonably available to answer questions from class  
22 members; (4) a brief statement explaining the reasons why the parties are proposing the Settlement;  
23 (5) the plan of allocation; and (6) a website dedicated to the Settlement  
24 ([www.applebagchecksettlement.com](http://www.applebagchecksettlement.com)) with information and links to pertinent documents. The  
25 content of the Notice is sufficient to satisfy Rule 23(c)(2)(B). *See Churchill Vill., LLC v. Gen. Elec.*,  
26 361 F.3d 566, 575 (9th Cir. 2004) ("Notice is satisfactory if it 'generally describes the terms of the

27 \_\_\_\_\_  
28 <sup>11</sup> Some Settlement Class Members were employed by Apple during the Class Period, but worked no shifts during that Period because, for example, they were on vacation or on leave.

1 settlement in sufficient detail to alert those with adverse viewpoints to investigate and to come  
2 forward and be heard.”) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338, 1352 (9th  
3 Cir. 1980)). In addition, pursuant to the Court’s instructions in the Preliminary Approval Order  
4 (Dkt. 431 at 6), Angeion prepared an Opt-Out Form to accompany the Notices to the New Class  
5 Members. Platt Supp. Dec, at ¶ 4 & Exs. B & C.

6 As required by the Settlement, Apple provided Angeion with an “Employee List” within 15  
7 days of the Preliminary Approval Order, which included shift data for the Settlement Class Members  
8 during the class period, and last known contact information for the Settlement Class Members. *See*  
9 Platt Dec. at ¶ 4. Upon the receipt of the Employee List, Angeion prepared the individual class  
10 notices including shifts worked and estimated payment from the Settlement, and conducted a  
11 national change of address search and a skip trace for the most recent mailing addresses of all former  
12 employee Settlement Class Members. *Id.* at ¶ 19. On January 11, 2022, Angeion caused the tailored  
13 Existing Class Member Notice of Settlement to be mailed to all 13,884 Existing Class Member  
14 addresses included on the Employee List, via USPS first-class mail, postage prepaid. *Id.* at ¶ 20.  
15 Pursuant to the Preliminary Approval Order, the exterior of the envelope for mailing the Existing  
16 Class Member Notice of Settlement stated “Important Class Action Notice” and that it was “From  
17 the United States District Court, Northern District of California, Honorable William Alsup, 450  
18 Golden Gate Avenue, San Francisco, CA 94102” with the return address directing service to Class  
19 Counsel. *Id.*

20 Also on January 11, 2022, Angeion also caused the New Class Member Notice of Settlement  
21 and Opt Out Form to be mailed to all 799 New Class Member addresses included on the Employee  
22 List, via USPS first-class mail, postage prepaid. *Id.* at ¶ 21. Pursuant to the Preliminary Approval  
23 Order, the exterior of the envelope for mailing the Existing Class Member Notice of Settlement  
24 stated “Important Class Action Notice” and that it is “From the United States District Court,  
25 Northern District of California, Honorable William Alsup, 450 Golden Gate Avenue, San Francisco,  
26 CA 94102” with the return address directing service to Class Counsel. *Id.*

27 Also on January 11, 2022, Class Counsel and Apple complied with the Court’s Preliminary  
28

1 Approval Order (Dkt. 431 at 8:12-13) by causing notice of the settlement to be posted to their  
2 respective websites. Dkt. 443 ¶ 2; Dkt. 444 ¶ 2; Dkt. 445 ¶ 2.

3 As of June 5, 2022, the USPS has returned 593 of the Existing and New Class Member  
4 Notices (“Notices”) initially mailed as undeliverable. *Id.* at ¶ 22. Notices returned as undeliverable  
5 by the USPS without a forwarding address were processed through address verification searches and  
6 re-mailed to the updated addresses located through this process. *Id.* Notices returned as  
7 undeliverable by the USPS with a forwarding address were re-mailed to the forwarding address  
8 identified by the USPS. *Id.* As a result of the above-described efforts, a total of 248 Notices have  
9 been re-mailed. *Id.* Of the 14,683 Notices mailed, 14,338 were successfully delivered, and only 345  
10 were not successfully delivered (*i.e.*, over 96% were successfully delivered). *Id.* at ¶ 23.

11 Prior to distributing notice via email, Angeion performed an extensive analysis of the class  
12 data records that contain an email address. *Id.* at ¶ 9. The email addresses were subjected to an  
13 email cleansing and an email validation process whereby each email address was verified by  
14 contacting the Internet Service Provider to determine if the email address exists. *Id.* at ¶. On  
15 January 11, 2022, Angeion caused the distribution of the Notice via email to the valid email  
16 addresses included on the Employee List for the Settlement Class Members. *Id.* at ¶¶ 14-15. On  
17 January 18, 2022, Angeion re-transmitted email notice to the Settlement Class Members. *Id.* at ¶¶  
18 16-17. Of the 6,432 New and Existing Class Member valid email addresses contained in the Class  
19 Member List, 6,356 (98.8%) were successfully delivered. *Id.* at ¶ 18.

20 This is well-within the parameters in this Circuit. *See, e.g. Il Fornaio (America) Corporation*  
21 *v. Lazzari Fuel Company, LLC*, 2015 WL 2406966, at \*1-2 (N.D. Cal. May 20, 2015) (Alsup, J.)  
22 (approving notice where approximately 13% of the notices were undeliverable). Accordingly, notice  
23 to the class was adequate.

## 24 **VI. CONCLUSION**

25 Based on the foregoing, Plaintiffs respectfully request that the Court finally approve the  
26 Settlement, enter a final approval order in the form attached to the Settlement as Exhibit D, enter  
27 judgment substantially in the form attached to the Settlement as Exhibit E, together with such other  
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1 and further relief as the Court deems just and proper.

2  
3 Dated: June 24, 2022

Respectfully submitted,

4  
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