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Class Counsel

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

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

Plaintiffs,

vs.

APPLE, INC.,

Defendant.

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

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
STIPULATION REGARDING CLASS
AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
RELEASE FOR CLASS OF 105
ADDITIONAL EMPLOYEES**

Date: August 11, 2022
Time: 8:00 a.m.
Dept.: 12 – 19th Floor
Judge: Hon. William Alsup

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

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on August 11, 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 preliminary approval of the proposed class action settlement on behalf of 105 additional employees and request that the Court:

1. Preliminarily approve the proposed Stipulation Regarding Class and Private Attorneys General Act Settlement and Release for Class of 105 Additional Employees (the “Separate Settlement Agreement”) (attached to the Joint Declaration of Lee S. Shalov and Kimberly A. Kralowec in Support of Plaintiffs’ Motion for Preliminary Approval of Stipulation dated June 29, 2022 as Exhibit 1);¹

2. Approve the parties’ proposed notice of the Separate Settlement Agreement in the form attached to the Separate Settlement Agreement as Exhibit A;

3. Authorize distribution of the parties’ proposed notice of the Separate Settlement Agreement to the 105 additional individuals (hereinafter, the “Class of 105 Additional Employees”) who, after having transferred into a California location between August 3, 2015 and December 26, 2015: (i) had worked as a non-exempt employee at an Apple retail store in California during this time period; (ii) had not been identified as a Settlement Class Member; and (iii) consequently were not sent Notice of the Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (the “November 2021 Settlement Agreement”);

4. Set deadlines for the Class of 105 Additional Employees to submit any objections to the Separate Settlement Agreement and for the 105 Additional Employees to opt out of the Separate Settlement Agreement;

5. Certify a settlement class of the 105 Additional Employees;

¹ Unless otherwise defined, capitalized terms used herein shall have the same meaning as used in the Separate Settlement Agreement.

1 6. Confirm that Class Counsel and Class Representatives have standing and are
 2 adequate to seek preliminary and final approval of the Separate Settlement Agreement, given that
 3 they negotiated the Separate Settlement Agreement, and the November 2021 Settlement Agreement
 4 on which the Separate Settlement Agreement is based, prior to the Effective Date of the November
 5 2021 Settlement Agreement; and

6 7. Schedule a final fairness hearing for final approval of the Separate Settlement
 7 Agreement.

8 Plaintiffs make this motion on the same grounds as their motion for preliminary approval of
 9 the November 2021 Settlement Agreement (Dkt. 416), which the Court granted pursuant to its Order
 10 dated December 28, 2021 (Dkt. 431) (the “Preliminary Approval Order”). More specifically, in
 11 connection with the notice process that went forward after the issuance of the Preliminary Approval
 12 Order, Apple discovered the 105 Additional Employees, who collectively worked 10,781 shifts at a
 13 California retail location between August 3, 2015 and December 31, 2015. To ensure the Class of
 14 105 Additional Employees receive relief for the shifts they worked during the Class Period and
 15 without delaying relief to the Settlement Class Members covered by the November 2021 Settlement
 16 Agreement or otherwise compromising the interests of those Settlement Class Members in any
 17 respect, the Parties entered into the Separate Settlement Agreement. Except as modified by the
 18 Separate Settlement Agreement, the settlement of the claims of the Class of 105 Additional
 19 Employees is pursuant to the same terms as in the November 2021 Settlement Agreement.

20 Specifically, subject to Court approval, to resolve the claims of the Class of 105 Additional
 21 Employees, Apple shall pay \$30,186.80, which is equal to \$2.80 per shift for the 10,781 shifts
 22 worked by the Class of 105 Additional Employees during the Class Period according to Apple’s
 23 records. The valuation of \$2.80 per shift is based on the *net* per-shift amount Apple agreed to pay
 24 pursuant to the November 2021 Settlement Agreement (based on the Net Settlement Amount after
 25 Attorneys’ Fees, Litigation Costs, Settlement Administration Costs, the PAGA Settlement Amount,
 26 Class Representative Payments and the Service Award requested in Plaintiffs’ motion for
 27 preliminary approval of the November 2021 Settlement Agreement were deducted from the Total
 28

1 Settlement Amount). In addition, to avoid prejudice to the Class of 105 Additional Employees, who
2 should have been included in the Employee List provided to the Settlement Administrator in
3 connection with the November 2021 Settlement Agreement, Apple shall pay six months' simple
4 interest at the rate of 10% per annum, for a total of \$1,509.34 in interest. Additionally, Apple will
5 pay \$475.44 to resolve the PAGA Claims pursued by Plaintiffs Kalin and Frlekin on behalf of the
6 Class of 105 Additional PAGA Employees. The Total Settlement Amount for the Separate
7 Settlement Agreement is therefore \$32,171.58.

8 Moreover, to ensure the Class of 105 Additional Employees are provided an opportunity to
9 object to or request exclusion from the Separate Settlement Agreement, the Class of 105 Additional
10 Employees will receive notice of the Separate Settlement Agreement in substantially the same
11 manner that the Settlement Class Members received notice of the November 2021 Settlement
12 Agreement. Notice and administration costs shall be separately paid by Apple.

13 The parties also request that the Court certify, for settlement purposes only, a class comprised
14 of the 105 Additional Employees for the same reasons the parties requested the Court modify the
15 previously-certified class definition to embrace the New Class Members (*see* Dkt. 416 at pp. 14-15),
16 and for the reasons the Court granted that request as set forth in the Preliminary Approval Order
17 (Dkt. 431 at p. 4). The parties further request that the Court find, for settlement purposes only, that
18 Class Counsel and Class Representatives have standing and are adequate to pursue preliminary and
19 final approval of this Separate Settlement Agreement on behalf of the Class of 105 Additional
20 Employees because Class Counsel and Class Representatives negotiated the Separate Settlement
21 Agreement on behalf of the Class of 105 Additional Employees, and the November 2021 Settlement
22 Agreement on which the Separate Settlement Agreement is based, before the November 2021
23 Settlement Agreement became effective. More specifically, the Class of 105 Additional Employees
24 satisfy the criteria for Rule 23 certification because they are so numerous that joinder of all of them
25 is impracticable, there are common questions of law or fact common to the 105 Additional
26 Employees, the claims of the Class Representatives are typical of the claims of the 105 Additional
27 Employees, the Class Representatives will fairly and adequately protect the interests of the 105

Additional Employees, the questions of law or fact common to the 105 Additional Employees predominate any questions affecting only individual 105 Additional Employees, and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. *See* Fed. R. Civ. P. 23.

For all of the same reasons set forth in Plaintiffs' motion for preliminary approval of the November 2021 Settlement Agreement (Dkt. 416), and for all of the reasons set forth in the Preliminary Approval Order (Dkt. 431), the Separate Settlement Agreement is fair, reasonable and adequate, and notice should be provided to the 105 Additional Employees.

Dated: June 29, 2022

Respectfully submitted,

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