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APPLE INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

APPLE INC.,

Defendant.

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

**STIPULATION REGARDING CLASS
AND PRIVATE ATTORNEYS
GENERAL ACT SETTLEMENT AND
RELEASE FOR 105 ADDITIONAL
EMPLOYEES**

IT IS HEREBY STIPULATED by Plaintiffs Seth Dowling, Aaron Gregoroff, Taylor Kalin, and Debra Speicher, on behalf of themselves and the Class of 105 Additional Employees (as defined below), and Plaintiffs Amanda Frlekin and Taylor Kalin on behalf of themselves, the State of California, and the Class of 105 Additional PAGA Employees (as defined below), on the one hand, and Defendant Apple Inc., on the other hand, subject to the approval of the Court, that the Action (as defined below) is hereby compromised and settled pursuant to the following terms and conditions.

RECITALS

WHEREAS, on or about November 11, 2021, Plaintiffs and Apple formed the Stipulation Regarding Class and Private Attorneys General Act Settlement and Release (hereafter “November 2021 Settlement Agreement”) (Dkt. 416-2);

WHEREAS, on December 28, 2021, the Court granted Plaintiffs’ motion for preliminary approval of the November 2021 Settlement Agreement (Dkt. 431);

WHEREAS, in connection with the notice process that went forward after the Court granted preliminary approval of the November 2021 Settlement Agreement, Apple concluded that there were 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 for purposes of the November 2021 Settlement Agreement; and (iii) consequently were not sent Notice of the November 2021 Settlement Agreement;

WHEREAS, Apple concluded that these 105 employees collectively worked 10,781 shifts at a California retail location during the Class Period for the November 2021 Settlement Agreement (and more specifically, between August 3, 2015 and December 31, 2015);

WHEREAS, the Parties wish to provide relief for the 105 additional employees without delaying relief to the Settlement Class Members under the November 2021 Settlement Agreement, without compromising the interests of those Settlement Class Members in any respect, and without affecting the terms of the November 2021 Settlement Agreement;

1 WHEREAS, the Parties have agreed to offer resolution of the Class Claims and PAGA
2 Claims of these 105 individuals pursuant to the terms of this Separate Stipulation Regarding Class
3 and PAGA Settlement and Release for Class of 105 Additional Employees (“Separate Settlement
4 Agreement”); and

5 WHEREAS, Class Counsel have agreed not to request any additional fees or costs from out
6 of the sums to be paid by Apple pursuant to this Separate Settlement Agreement, and Plaintiffs have
7 agreed not to request any additional compensation for their services from out of the sums to be paid
8 by Apple pursuant to this Separate Settlement Agreement;

9 NOW, THEREFORE, the Parties hereby agree, subject to the approval of the Court:

10 1. To offer to settle the claims of Class of 105 Additional Employees and the Class of
11 105 Additional PAGA Employees without affecting or delaying the final approval and
12 implementation of the November 2021 Settlement Agreement; and

13 2. To offer to settle the claims of the Class of 105 Additional Employees and the Class
14 of 105 Additional PAGA Employees based on the same net shift valuation of \$2.80 per shift that
15 was provided in the November 2021 Settlement Agreement; and

16 3. To offer that settlement pursuant to the following terms:

17 **1. DEFINITIONS.**

18 Unless otherwise defined, capitalized terms used in this Separate Settlement Agreement shall
19 have the meanings set forth below:

20 1.1 “**Action**” means the two consolidated class and PAGA lawsuits entitled *Amanda*
21 *Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No.
22 13-cv-04727-WHA, pending before the Court.

23 1.2 “**Additional Employee List**” means information regarding the Class of 105
24 Additional Employees that Defendant will compile in good faith from its records and provide to the
25 Settlement Administrator. The Additional Employee List shall be provided in a confidential
26 Microsoft Excel spreadsheet and shall include, for each member of the Class of 105 Additional
27 Employees: their full name, last known address, last known telephone number and social security
28 number; the work email address for those members of the Class of 105 Additional Employees who

are currently employed by Defendant and the personal email address (if available) for those members of the Class of 105 Additional Employees who are no longer employed by Defendant; whether they are currently employed by Defendant; the number of shifts worked for Defendant in California during the Class Period; and the number of pay periods worked for Defendant in California during the PAGA Period.

1.3 **“Class of 105 Additional Employees”** means the 105 individuals who transferred into a position as a non-exempt employee at an Apple retail store in California between August 3, 2015 and December 26, 2015 and to whom a notice of the November 2021 Settlement Agreement was not mailed. The Parties agree that the members of the Class of 105 Additional Employees will become parties to the Action only if they do not timely opt out of the Settlement Agreement by the Response Deadline.

1.4 **“Class of 105 Additional PAGA Employees”** includes all members of the “Class of 105 Additional Employees,” all of whom were employed by Defendant in a non-exempt position at an Apple retail store in the State of California during some or all of the PAGA Period.

1.5 **“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 Class of 105 Additional Employees based on the facts alleged in Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the 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 (ECF Nos. 1, 75, 223 (Ex. A)¹), and/or the original and/or amended complaint in the *Kalin* Action (ECF Nos. 1 and 13 in the *Kalin* Action), 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

¹ Citations to “ECF” refer to the Court’s docket in the *Frlekin* Action (as defined below) unless otherwise indicated.

1 provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable
 2 Wage Order of the Industrial Welfare Commission; (iv) failure to timely pay wages upon
 3 termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys' fees and costs
 4 incurred to prosecute the Action on behalf of the Class of 105 Additional Employees.
 5 Notwithstanding the foregoing, "Class Claims" does not include the claims for failure to reimburse
 6 business expenses pursuant to Labor Code § 2802 or the claims for failure to pay for time spent
 7 waiting in line to clock in and time spent checking out company devices asserted in Plaintiff Taylor
 8 Kalin's October 1, 2013 notice letter to the LWDA, which were never pursued in the Consolidated
 9 Complaint filed in this Action, or claims for violation of Massachusetts, New York, or Ohio law, or
 10 the federal Fair Labor Standards Act ("FLSA"), which the Court already dismissed with prejudice.
 11 (ECF No. 214.)

12 1.6 **"Class Counsel"** means McLaughlin & Stern LLP and Kralowec Law, P.C.

13 1.7 **"Class Period"** means the period from July 25, 2009 through and including
 14 December 31, 2015.

15 1.8 **"Class Representatives"** means Seth Dowling, Aaron Gregoroff, Taylor Kalin, and
 16 Debra Speicher.

17 1.9 **"Court"** means the United States District Court for the Northern District of
 18 California, the Honorable William Alsup, presiding.

19 1.10 **"Defendant"** means Apple Inc.

20 1.11 **"Defense Counsel"** means Julie Dunne and Matthew Riley of DLA Piper LLP (US).

21 1.12 **"Effective Date"** means the date by which this Separate Settlement is finally
 22 approved as provided herein and the Court's Supplemental Final Approval Order and Supplemental
 23 Judgment, including the Court's December 23, 2014, order dismissing with prejudice the claims
 24 arising under Massachusetts, New York, and Ohio law and under the FLSA (ECF No. 214), become
 25 binding and no longer subject to appeal. For purposes of this Separate Settlement Agreement, the
 26 Supplemental Final Approval Order and the Supplemental Judgment become binding and no longer
 27 subject to appeal upon the later of: (a) the day after the last day by which a notice of appeal of the
 28 Supplemental Final Approval Order and the Supplemental Judgment and/or of an order denying any

1 motion to intervene may be timely filed with the Ninth Circuit, and none is filed; (b) if such an
 2 appeal is filed, and the appeal is resolved through any order affirming the Supplemental Final
 3 Approval Order and the Supplemental Judgment, the day after the last day for filing a petition for
 4 writ of certiorari with the United States Supreme Court passes and no such petition is filed; (c) if a
 5 petition for writ of certiorari regarding the Ninth Circuit's decision affirming the Supplemental Final
 6 Approval Order and the Supplemental Judgment is filed, the day after the petition is denied with
 7 prejudice and/or no further review of the decision can be requested; or (d) if the petition for writ of
 8 certiorari is accepted, the day after the United States Supreme Court affirms the Supplemental Final
 9 Approval Order and the Supplemental Judgment. Any dispute regarding whether the Effective Date
 10 has occurred will be submitted to the Court for binding resolution. Nothing in this paragraph or in
 11 this Separate Settlement Agreement shall affect the determination of when the Effective Date occurs
 12 for purposes of the November 2021 Settlement Agreement.

13 1.13 **"Individual Class Payment"** means the share of the Net Settlement Amount paid to
 14 each Participating Settlement Class Member to resolve the Class Claims. The Individual Class
 15 Payment shall be paid to each Participating Settlement Class Member on a *pro rata* basis based on
 16 the number of shifts each worked for Defendant at an Apple retail store in California during the
 17 Class Period.

18 1.14 **"Individual PAGA Payment"** means the share of the PAGA Settlement Class
 19 Member Payment paid to each member of the Class of 105 Additional PAGA Employees to resolve
 20 the PAGA Claims. The Individual PAGA Payment shall be paid to each member of the Class of 105
 21 Additional PAGA Employees on a *pro rata* basis based on the number of pay periods each worked
 22 for Defendant at an Apple retail store in California during the PAGA Period.

23 1.15 **"Lead Counsel"** means Lee Shalov of McLaughlin & Stern LLP. Lead Counsel is
 24 authorized to act on behalf of the Class of 105 Additional Employees with respect to all acts required
 25 by, or which may be given pursuant to, this Separate Settlement Agreement or such other acts that
 26 are reasonably necessary to consummate the proposed settlement set forth in this Separate
 27 Settlement Agreement.

28 1.16 **"LWDA"** means the California Labor and Workforce Development Agency.

1.17 “**Net Settlement Amount**” means the Total Settlement Amount minus deductions for the PAGA Settlement Amount.

1.18 “**Notice of Objection**” means a written request by a member of the Class of 105 Additional Employees to object to this Separate Settlement, which must be completed and filed or mailed by the Response Deadline and in the manner set forth in this Separate Settlement Agreement.

1.19 “**Notices of Settlement**” means the Notices of Pendency of Class Action Settlement, including an Opt-Out Form, that will be mailed and emailed to the Class of 105 Additional Employees to apprise them of this Separate Settlement, which shall be substantially in the form attached hereto as **Exhibit A**.

1.20 “**PAGA**” means the Private Attorneys General Act of 2004, California Labor Code sections 2698 *et seq.*

1.21 “**PAGA Claims**” means any and all claims, rights, and demands of every nature and description, whether known or unknown, for civil penalties actually asserted or that could have been asserted in the Action by the Plaintiffs Amanda Frlekin and Taylor Kalin on behalf of themselves, the State of California, and/or Class of 105 Additional PAGA Employees based on the facts alleged in Plaintiff Taylor Kalin’s October 1, 2013 notice letter to the LWDA, Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the LWDA, and/or the original, amended, and/or Consolidated Complaint in the *Frlekin* Action (ECF Nos. 1, 75, 223 (Ex. A)), and/or the original and/or amended complaint in the *Kalin* Action (ECF Nos. 1 and 13 in the *Kalin* Action), including claims for civil penalties for alleged violations of Labor Code §§ 201-204, 226.7, 510, 512, 1194, 1194.2, and 1198 and the applicable Wage Order of the Industrial Welfare Commission, and for attorneys’ fees and costs incurred to prosecute the Action on behalf of the State of California and the Class of 105 Additional PAGA Employees. Notwithstanding the foregoing, “PAGA 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 in line 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 in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the FLSA, which the Court already dismissed with prejudice. (ECF No.

214.)

1.22 **“PAGA LWDA Payment”** means the seventy-five percent (75%) of the PAGA Settlement Amount that shall be paid to the LWDA. Assuming the Court approves the PAGA Settlement Amount of \$475.44, the PAGA LWDA Payment shall be \$356.58.

1.23 **“PAGA Period”** means the period from July 25, 2012 through and including December 31, 2015.

1.24 **“PAGA Settlement Amount”** means the portion of the Total Settlement Amount that is allocated to resolve the PAGA Claims. The PAGA Settlement Amount shall be Four Hundred Seventy-Five Dollars and Forty-Four Cents (\$475.44).

1.25 **“PAGA Settlement Class Member Payment”** means the twenty-five percent (25%) of the PAGA Settlement Amount that shall be paid to the Class of 105 Additional PAGA Employees. Assuming the Court approves the PAGA Settlement Amount of \$475.44, the PAGA Settlement Class Member Payment shall be \$118.86.

1.26 **“Participating Settlement Class Members”** means those members of the Class of 105 Additional Employees who do not submit a timely Request for Exclusion from (*i.e.*, opt-out of) this Separate Settlement.

1.27 **“Parties”** means Plaintiffs and Defendant.

1.28 **“Plaintiffs”** means Seth Dowling, Amanda Frlekin, Aaron Gregoroff, Taylor Kalin, and Debra Speicher.

1.29 **“Released Parties”** means: Defendant Apple Inc. 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.

“Request for Exclusion” means a written or online request by a member of the Class of 105 Additional Employees to exclude himself/herself from the class action aspects of this Separate Settlement Agreement, which must be completed and mailed to the Settlement Administrator by the

1 Response Deadline in the manner set forth in this Separate Settlement Agreement and the Notice of
2 Settlement.

3 1.30 **“Response Deadline”** means the date 105 calendar days after the Settlement
4 Administrator mails and emails the Notices of Settlement to the Class of 105 Additional Employees
5 and by which members of the Class of 105 Additional Employees must submit any objections they
6 may choose to make to this Separate Settlement and by which the Class of 105 Additional
7 Employees must submit a Request for Exclusion from the class action aspects of this Separate
8 Settlement Agreement.

9 1.31 **“Separate Settlement”** or **“Separate Settlement Agreement”** means this
10 Stipulation Regarding Class and Private Attorneys General Act Settlement and Release relating to
11 the Class of 105 Additional Employees.

12 1.32 **“Settlement Administration Costs”** means the amount the Settlement
13 Administrator incurs for administering this Separate Settlement Agreement. Apple shall pay the
14 Settlement Administration Costs in addition to the Total Settlement Amount.

15 1.33 **“Settlement Administrator”** means Angeion Group.

16 1.34 **“Settlement Fund Account”** means the bank account established pursuant to the
17 terms of this Separate Settlement Agreement, from which all monies payable under the terms of this
18 Separate Settlement Agreement shall be paid, as set forth herein.

19 1.35 **“Supplemental Final Approval Hearing”** means the hearing held to determine
20 whether the Court will enter the Supplemental Final Approval Order regarding this Separate
21 Settlement Agreement.

22 1.36 **“Supplemental Final Approval Order”** means the Court’s entry of an order finally
23 approving this Separate Settlement Agreement, which must confirm that Class Representatives and
24 Class Counsel remain adequate to represent the Class of 105 Additional Employees regarding final
25 approval of this Separate Settlement Agreement even if the November 2021 Settlement Agreement
26 has become Effective by the time Class Representatives and Class Counsel seek final approval of
27 this Separate Settlement and which shall substantially reflect the material terms of the form attached
28 hereto as **Exhibit B**.

1.37 “**Supplemental Judgment**” means the Court’s entry of supplemental judgment pursuant to Federal Rule of Civil Procedure 54 based on the Supplemental Final Approval Order, which shall substantially reflect the material terms of the form attached hereto as **Exhibit C**.

1.38 “**Supplemental Preliminary Approval Order**” means the Court’s entry of an order preliminarily approving this Separate Settlement Agreement, which must confirm that Class Representatives and Class Counsel remain adequate to represent the Class of 105 Additional Employees regarding preliminary and final approval of this Separate Settlement Agreement even if the November 2021 Settlement Agreement has become Effective by the time Class Representatives and Class Counsel seek preliminary or final approval of this Separate Settlement and which shall otherwise substantially reflect the material terms of the form attached hereto as **Exhibit D**.

1.39 “**Total Settlement Amount**” means Thirty-Two Thousand One Hundred Seventy One Dollars and Fifty-Eight Cents (\$32,171.58), which is the total, non-reversionary amount that Defendant shall be obligated to pay under this Separate Settlement Agreement, except for the cost of administering this Separate Settlement Agreement and the employer’s share of state and federal payroll taxes on the wage component of the Individual Class Payments, which Defendant shall pay in addition to the Total Settlement Amount. The Total Settlement Amount is comprised of: \$30,186.80 for the 10,781 additional shifts paid at \$2.80 per shift; \$475.44 for the PAGA Settlement Amount; and \$1,509.34 in interest for the delay in payment pursuant to this Separate Settlement Agreement versus under the November 2021 Settlement.

1.40 “**Void Date**” means the date by which any checks issued to Participating Settlement Class Members and the Class of 105 Additional PAGA Employees shall become void and which shall be the 181st day after original mailing. If a check is re-mailed or re-issued for any reason, the check shall be valid for 180 days from the mailing of the original check, or for 30 days after mailing of the re-mailed or re-issued check, whichever date is later.

2. **PROCEDURAL HISTORY.**

2.1 The Parties incorporate the Procedural History set forth in the November 2021 Settlement Agreement (Dkt. 416-2, ¶¶2.1 through 2.8) as though fully set forth herein.

3. **SETTLEMENT TERMS.**

1 3.1 **Appointment Of Class Representatives.** For purposes of this Separate Settlement
 2 agreement, the Parties stipulate and agree that Plaintiffs Seth Dowling, Aaron Gregoroff, Taylor
 3 Kalin, and Debra Speicher shall also be appointed as representatives of the Class of 105 Additional
 4 Employees and Participating Settlement Class Members. The Parties agree the Class
 5 Representatives have standing and are adequate to represent the Class of 105 Additional Employees
 6 for preliminary approval, final approval and administration of this Separate Settlement Agreement
 7 because the Class Representatives negotiated this Separate Settlement Agreement, and the
 8 November 2021 Settlement Agreement upon which it is based, before the November 2021
 9 Settlement Agreement was finally approved or became effective.

10 3.2 **Appointment Of Class Counsel And Lead Counsel.** For purposes of this Separate
 11 Settlement Agreement, the Parties stipulate and agree that McLaughlin & Stern LLP and Kralowec
 12 Law, P.C. shall be appointed to serve as Class Counsel for the Class of 105 Additional Employees,
 13 and ultimately, Participating Settlement Class Members, and that Lee Shalov of McLaughlin &
 14 Stern LLP shall also be appointed to serve as Lead Counsel for the Class of 105 Additional
 15 Employees, and ultimately, Participating Settlement Class Members. The Parties agree Class
 16 Counsel have standing and are adequate to represent the Class of 105 Additional Employees for
 17 preliminary approval, final approval and administration of this Separate Settlement Agreement
 18 because Class Counsel negotiated this Separate Settlement Agreement, and the November 2021
 19 Settlement Agreement upon which it is based, before the November 2021 Settlement Agreement
 20 was finally approved or became effective.

21 3.3 **Appointment Of Settlement Administrator.** For the purposes of this Separate
 22 Settlement Agreement, the Parties stipulate and agree, subject to approval of the Court, that Angeion
 23 Group shall serve as the Settlement Administrator. The Settlement Administrator shall be
 24 responsible for: establishing a toll-free telephone number; establishing a website which will have
 25 links to all of the documents specified in paragraph 3.3 of the November 2021 Settlement
 26 Agreement; any order granting final approval of the 2021 Settlement Agreement and any judgment
 27 entered pursuant to the 2021 Settlement Agreement; the Notices of Settlement, this Separate
 28 Settlement Agreement, and motions for approval of this Separate Settlement; establishing a Post

1 Office Box for receipt of the Class of 105 Additional Employees' communications; preparing,
2 printing, and mailing the Notices of Settlement to the Class of 105 Additional Employees; emailing
3 the Notices of Settlement to the work email address for members of the Class of 105 Additional
4 Employees who are currently employed by Defendant and to the personal email address (if any) for
5 members of the Class of 105 Additional Employees who are no longer employed by Defendant;
6 establishing a means for the Class of 105 Additional Employees to submit an Exclusion Request
7 online; receiving and reviewing Requests for Exclusion, if any, submitted by members of the Class
8 of 105 Additional Employees; providing weekly status reports to Defense Counsel and Class
9 Counsel, which shall include the status of mailings to the Class of 105 Additional Employees
10 (including the total number of returned, undelivered, and re-mailed Notices of Settlement) and the
11 total number of any responses, Notices of Objections, and Requests for Exclusion received from the
12 Class of 105 Additional Employees (including the total number of Notices of Objection and
13 Requests for Exclusion that are deficient, late, or otherwise invalid); providing a due diligence
14 declaration for submission to the Court prior to the Supplemental Final Approval Hearing; mailing
15 the PAGA LWDA Payment to the LWDA, the Individual PAGA Payments to PAGA Settlement
16 Class Members, and the Individual Class Payments to Participating Settlement Class Members;
17 printing and providing IRS Form W-2 and 1099 statements to Participating Settlement Class
18 Members and the Class of 105 Additional PAGA Employees to whom payments are made pursuant
19 to this Separate Settlement Agreement as required under applicable law; providing a due diligence
20 declaration for submission to the Court upon the completion of the administration of this Separate
21 Settlement Agreement; and for such other tasks as the Parties mutually agree. The Settlement
22 Administrator shall keep the Parties timely apprised of the performance of all Settlement
23 Administrator responsibilities. Any legally mandated tax reports, tax forms, tax filings, or other tax
24 documents required by administration of this Separate Settlement Agreement shall be prepared by
25 the Settlement Administrator. Any expenses incurred in connection with such preparation shall be
26 a Settlement Administration Cost. The Parties agree to cooperate in the settlement administration
27 process and to make all reasonable efforts to
28 control and minimize Settlement Administration Costs. The Parties each represent that they do not

1 have any financial interest in the Settlement Administrator.

2 3.4 **Consideration.**

3 3.4.1 Total Settlement Amount. Provided that the Court approves this Separate
4 Settlement Agreement and the Effective Date occurs, Defendant will transmit to the Settlement
5 Administrator the Total Settlement Amount. The Total Settlement Amount represents the maximum
6 monetary payment Defendant shall be required to make for this Separate Settlement Agreement,
7 except for the employer's share of payroll taxes on the wage component of the Individual Class
8 Payments and the cost of administration of this Separate Settlement Agreement, which Defendant
9 shall pay in addition to the Total Settlement Amount. The Total Settlement Amount shall be used
10 to pay the PAGA LWDA Payment, all Individual PAGA Payments, and all Individual Class
11 Payments.

12 3.4.1.1 PAGA Settlement Amount. The Parties agree that Defendant shall
13 pay Four Hundred Seventy-Five Dollars and Forty-Four Cents (\$475.44) – the PAGA Settlement
14 Amount – to resolve the PAGA Claims, which shall be paid only from the Total Settlement Amount.
15 In the event the Court awards less than the full PAGA Settlement Amount, the un-awarded amount
16 will be added to the Net Settlement Amount.

17 3.4.1.2 PAGA LWDA Payment. Seventy-five percent (75%) of the PAGA
18 Settlement Amount shall be paid to the LWDA to resolve the LWDA's PAGA Claims.

19 3.4.1.2.1 Individual PAGA Payments. Twenty-five percent
20 (25%) of the PAGA Settlement Amount shall be paid to the Class of 105 Additional PAGA
21 Employees to resolve their PAGA Claims. The Individual PAGA Payments will be allocated 100%
22 as penalties and will be subject to IRS Form 1099 reporting. Each Individual PAGA Payment will
23 be calculated by dividing the number of pay periods worked by each member of the Class of 105
24 Additional PAGA Employees at an Apple retail store in California during the PAGA Period by the
25 total number of all pay periods worked by members of the Class of 105 Additional PAGA
26 Employees at an Apple retail store in California during the PAGA Period, and multiplying this result
27 by the 25% portion of the PAGA Settlement Amount. The total number of pay periods worked by
28 individual members of the Class of 105 Additional PAGA Employees and the total number of pay

1 periods worked by all members of the Class of 105 Additional PAGA Employees shall be
 2 determined based on Defendant's business records.

3 3.4.1.3 Individual Class Payments. Defendant shall pay each Participating
 4 Settlement Class Member an Individual Class Payment. Each Individual Class Payment is made to
 5 resolve the Class Claims. The Individual Class Payments shall be payable from the Total Settlement
 6 Amount. Each Individual Class Payment shall be calculated by dividing a Participating Settlement
 7 Class Member's individual shifts worked for Defendant at an Apple retail store in California during
 8 the Class Period by the total of all shifts worked by all Participating Settlement Class Members for
 9 Defendant at an Apple retail store in California during the Class Period, and multiplying this result
 10 by the Net Settlement Amount. The total number of shifts worked by individual Settlement Class
 11 Members and the total number of shifts worked by all Settlement Class Members shall be
 12 determined based on Defendant's business records. The Individual Class Payments will be allocated
 13 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class
 14 Payments shall be subject to W-2 reporting and shall be subject to deductions for employment and
 15 payroll taxes. The interest and penalty components of the Individual Class Payments will be subject
 16 to IRS Form 1099 reporting and will not be subject to deductions for employment and payroll taxes.

17 3.4.2 Released Class Claims. Upon the Effective Date, Class Representatives – on
 18 behalf of themselves and Participating Settlement Class Members – fully and irrevocably release
 19 the Released Parties from the Class Claims, as defined in paragraph 1.5, in exchange for the
 20 consideration provided by this Separate Settlement Agreement (“Released Class Claims”). The
 21 Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were
 22 asserted in the Action. All Released Class Claims are released for the Class Period. Class
 23 Representatives and Participating Settlement Class Members may discover facts in addition to or
 24 different from those they now know or believe to be true with respect to the subject matter of the
 25 Released Class Claims but, upon the Effective Date, Class Representatives and Participating
 26 Settlement Class Members shall be deemed to have – and by operation of the Supplemental Final
 27 Approval Order and the Supplemental Judgment shall have – fully, finally, and forever settled and
 28 released any and all of the Released Class Claims. It is the intent of the Parties that the Supplemental

Final Approval Order and the Supplemental Judgment entered by the Court pursuant to this Separate Settlement Agreement shall have full *res judicata* effect and be final and binding upon Participating Settlement Class Members regarding the Released Class Claims. Class Representatives further agree not to appeal the Court's December 23, 2014, order dismissing with prejudice their claims under Massachusetts, New York, and Ohio law, and under the FLSA (ECF No. 214).

3.4.3 Released PAGA Claims. Upon the Effective Date, Plaintiffs Amanda Frlekin and Taylor Kalin – on behalf of themselves, the State of California, and the Class of 105 Additional PAGA Employees – fully and irrevocably release the Released Parties from the PAGA Claims, as defined in paragraph 1.21, in exchange for the consideration provided by this Settlement Agreement (“Released PAGA Claims”). The Released PAGA Claims include a 1542 Waiver but only as to the specific PAGA Claims that were asserted in the Action. All Released PAGA Claims are released for the PAGA Period. Plaintiffs Amanda Frlekin and Taylor Kalin, the State of California, and PAGA 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 PAGA Claims but, upon the Effective Date, they shall be deemed to have – and by operation of the Supplemental Final Approval Order and the Supplemental Judgment shall have – fully, finally, and forever settled and released any and all of the Released PAGA Claims. It is the intent of the Parties that the Supplemental Final Approval Order and the Supplemental Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Plaintiffs Amanda Frlekin and Taylor Kalin, the State of California, and the Class of 105 Additional PAGA Employees regarding the Released PAGA Claims.

3.5 Settlement Administration Procedures.

3.5.1 Settlement Approval And Implementation Procedures. The Parties agree to the following procedures for obtaining the Court's preliminary approval of this Separate Settlement Agreement, notifying the Class of 105 Additional Employees of this Separate Settlement Agreement, obtaining the Court's final approval of this Separate Settlement Agreement, and processing payments under this Separate Settlement Agreement.

3.5.2 Preliminary Approval. As soon as practicable after execution of this Separate

1 Settlement Agreement, Class Representatives will submit this Separate Settlement Agreement to the
 2 Court for preliminary approval. Class Representatives' submission will include this Settlement
 3 Agreement, including **Exhibits A-F**, and any motions, memoranda, and evidence as may be
 4 necessary for the Court to preliminarily determine that this Separate Settlement Agreement is fair,
 5 reasonable, and adequate. Defendant agrees not to oppose Class Representatives' motion for the
 6 Preliminary Approval Order unless the motion is inconsistent with the terms set forth in this Separate
 7 Settlement Agreement.

8 3.5.3 LWDA Notice. Pursuant to California Labor Code section 2699(*l*), Class
 9 Counsel will provide a copy of this Separate Settlement Agreement to the LWDA concurrently with
 10 the filing of the motion for preliminary approval of this Separate Settlement. Class Counsel will also
 11 file a declaration in support of the motion for preliminary approval confirming that they have
 12 submitted the Settlement Agreement to the LWDA in compliance with California Labor Code
 13 section 2699(*l*). The Parties intend to and believe that the notice pursuant to the procedures described
 14 in this paragraph complies with the requirements of PAGA, and the Parties will request that the
 15 Court adjudicate the validity of the notice to the LWDA in the motion for final approval of this
 16 Separate Settlement Agreement.

17 3.5.4 CAFA Notice. Pursuant to the Class Action Fairness Act of 2005 ("CAFA"),
 18 within ten (10) calendar days after the filing of the motion for preliminary approval, Defendant will
 19 provide notice of this Separate Settlement Agreement to the Attorney General of the United States
 20 and the appropriate State officials(s) pursuant to 28 U.S.C. § 1715. The Parties intend to and believe
 21 that the notice pursuant to the procedures described in this paragraph complies with the requirements
 22 of CAFA, and the Parties will request that the Court adjudicate the validity of the notice in the
 23 motion for final approval of this Separate Settlement Agreement.

24 3.5.5 Additional Employee List. No more than fifteen (15) calendar days after entry
 25 of the Preliminary Approval Order, Defendant shall provide the Settlement Administrator with the
 26 Additional Employee List for purposes of mailing and emailing the Notices of Settlement to the
 27 Class of 105 Additional Employees. Because employees' sensitive personal information is included
 28 in the Additional Employee List, the Settlement Administrator shall maintain the Additional

1 Employee List securely in accordance with the Information Security and Services Agreement
2 attached as **Exhibit E**. Access to the Additional Employee List shall be limited to only those
3 employees of the Settlement Administrator with a need to use the Additional Employee List for
4 administration of the Settlement.

5 3.5.6 Notice By First Class U.S. Mail and Email. Upon receipt of the Additional
6 Employee List, the Settlement Administrator will conduct a national change of address search and
7 a skip trace for the most current mailing address of all former employee members of the Class of
8 105 Additional Employees and will update such former employees' addresses as necessary. The
9 mailing address identified by the Settlement Administrator as the current mailing address shall be
10 presumed to be the best mailing address for each member of the Class of 105 Additional Employees.
11 Twenty-one (21) calendar days after receipt of the Additional Employee List, the Settlement
12 Administrator shall mail the Notice of Settlement attached as **Exhibit A** to all members of the Class
13 of 105 Additional Employee by First Class U.S. Mail. The exterior of the envelope shall state
14 "Important Class Action Notice" and shall state that it is "From the United States District Court,
15 Northern District of California, Honorable William Alsup, 450 Golden Gate Avenue, San Francisco,
16 CA 94102," with the return address directing service to the Settlement Administrator. The statement
17 shall be printed at a location on the envelope such that the Court's mailing address could not possibly
18 be mistaken for the *class member's* mailing address. Twenty-one (21) calendar days after receipt
19 of the Additional Employee List, the Settlement Administrator shall also email the Notice of
20 Settlement attached as **Exhibit A** to the Class of 105 Additional Employees, at the email address
21 for such individuals, if any, included in the Additional Employee List.

22 3.5.7 Undeliverable Notices. Any Notice of Settlement returned to the Settlement
23 Administrator as non-deliverable on or before thirty (30) calendar days before the Response
24 Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is
25 provided, the Settlement Administrator shall make reasonable efforts to obtain an updated mailing
26 address. If the Settlement Administrator identifies an updated mailing address, or if Class Counsel
27 or a member of the Class of 105 Additional Employees provides the Settlement Administrator with
28 an updated mailing address, the Settlement Administrator shall resend the Notice of Settlement to

1 that member of the Class of 105 Additional Employees within seven (7) calendar days after
 2 receiving the updated mailing address. The remailing of any Notice of Settlement shall not change
 3 or extend the Response Deadline. If Notice of Settlement for a member of the Class of 105
 4 Additional Employees is returned to the Settlement Administrator more than once as non-
 5 deliverable, then an additional Notice of Settlement shall not be re-mailed unless a member of the
 6 Class of 105 Additional Employees contacts the Settlement Administrator with an updated mailing
 7 address. If, for any reason, an individual's Notice of Settlement is non-deliverable, the Settlement
 8 Administrator will not mail that individual's Individual Class Payment or Individual PAGA
 9 Payment. Rather, the Settlement Administrator will hold such payment(s) until the Void Date, at
 10 which time the funds shall be delivered to the California Alliance of Boys & Girls Clubs, Inc.,
 11 pursuant to paragraph 3.6.8.

12 3.5.8 Notice Satisfies Due Process. Apple shall post the Notice of Settlement to its
 13 website and Class Counsel shall post the Notice of Settlement at their websites. The Parties believe
 14 that compliance with the notice procedures specified in this Separate Settlement Agreement
 15 constitutes due and sufficient notice to the Class of 105 Additional Individuals of this Separate
 16 Settlement and satisfies the requirements of due process. Nothing else shall be required of, or done
 17 by, the Parties, Class Counsel, Defense Counsel, or the Settlement Administrator to provide notice
 18 of this Separate Settlement. In the event the procedures in this Separate Settlement Agreement are
 19 followed and the intended recipient of a Notice of Settlement still does not receive the Notice of
 20 Settlement, the intended recipient shall remain a Participating Settlement Class Member and will be
 21 bound by all terms of this Separate Settlement Agreement and the Supplemental Final Approval
 22 Order and the Supplemental Judgment entered by the Court.

23 3.5.9 Requests For Exclusion.

24 3.5.9.1 Requests For Exclusion. The Notice of Settlement shall inform
 25 members of the Class of 105 Additional Employees that they may exclude themselves from the class
 26 action aspects of this Separate Settlement Agreement. Members of the Class of 105 Additional
 27 Employees who wish to exclude themselves from the class action aspects of this Separate Settlement
 28 Agreement must either submit a Request for Exclusion (which will be included in the Notice of

1 Settlement) to the Settlement Administrator, or opt out online, or submit their own Request for
2 Exclusion by the Response Deadline. If they choose to submit their own Request for Exclusion, the
3 request should: (i) contain the class member's full name, address, and last four digits of their social
4 security number; (ii) be signed; (iii) state that the class member wishes to exclude him/herself from
5 the Settlement of the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check
6 case, or some other descriptor that identifies the case; and (iv) be returned to the Settlement
7 Administrator by mail postmarked by the Response Deadline. The last four digits of a social security
8 number shall be used only to verify the identity of a class member and the omission of the last four
9 digits of a social security number will not be used as a basis to reject a request for exclusion. If any
10 written Request for Exclusion is not postmarked by the Response Deadline and returned to the
11 Settlement Administrator at the specified address, it will not be deemed a timely and valid Request
12 for Exclusion. The date of the postmark on the return mailing envelope shall be the exclusive means
13 used to determine whether a Request for Exclusion has been timely submitted. If any written or
14 online Request for Exclusion omits a required field (e.g., signature), the sender shall be given the
15 chance to correct his or her mistake. Any member of the Class of 105 Additional Employees who
16 submits a timely and valid Request for Exclusion will not be entitled to an Individual Class Payment
17 and will not be bound by the release of the Released Class Claims. Any member of the Class of 105
18 Additional Employees who submits a timely and valid Request for Exclusion will not have any right
19 to object to, appeal, or comment on this Separate Settlement Agreement. Any member of the Class
20 of 105 Additional Employees who does not submit a timely and valid Request for Exclusion on or
21 before the Response Deadline shall be deemed a Participating Settlement Class Member and will be
22 bound by all terms of this Separate Settlement Agreement and the Supplemental Final Approval
23 Order and the Supplemental Judgment entered in this Action. Under no circumstances will a member
24 of the Class of 105 Additional Employees who has submitted a timely and valid Request for
25 Exclusion be considered to have opted out of the PAGA aspects of this Separate Settlement
26 Agreement or the Released PAGA Claims. The Parties agree that members of the Class of 105
27 Additional Employees will become parties to this Action only if they do not timely opt out of this
28 Separate Settlement Agreement by the Response Deadline.

3.5.9.2 Report Of Requests For Exclusion. No later than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide: (a) Defense Counsel with a complete list of all members of the Class of 105 Additional Employees who have submitted timely and valid Requests for Exclusion, including their names and social security numbers; and (b) Class Counsel with a summary report that includes only the number of the members of the Class of 105 Additional Employees who have submitted timely and valid Requests for Exclusion.

3.5.10 Notices Of Objections. The Notices of Settlement shall state that members of the Class of 105 Additional Employees who wish to object to this Separate Settlement Agreement must file a written Notice of Objection with the Court by the Response Deadline. Any Notice of Objection filed by a member of the Class of 105 Additional Employees shall relate only to this Separate Settlement Agreement and not to the November 2021 Settlement Agreement. The Parties agree that this Separate Settlement Agreement shall have no effect on the November 2021 Settlement Agreement, which shall be independently enforced according to its own terms. Notices of Objection to this Separate Settlement Agreement 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. To be valid, the Notice of Objection must: (a) contain the full name, address and last four digits of the social security number of the Settlement Class Member; (b) state the case name and number, *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA), state the basis for the objection, and state whether the Settlement Class Member intends to appear at the Supplemental Final Approval Hearing; (c) be signed by the member of the Class of 105 Additional Employees; and (d) be filed or postmarked on or before the Response Deadline. Notices of Objections shall not be disqualified simply because the sender fails to complete one of the requirements (*e.g.*, stating whether or not he or she will attend the final approval hearing, or stating both the case name *and* number). The Parties shall accept an objection if the sender states either the case name *or* its number, or the descriptors used for opt-outs. An objecting class member must be informed of any omission within seven days and permitted to

fix it. If the Notice of Objection is not filed or postmarked by the Response Deadline, it will not be deemed a timely and valid Notice of Objection to this Settlement. Members of the Class of 105 Additional Employees who do not submit a timely and valid Notice of Objection shall be deemed to have waived any objections and shall be foreclosed from making any objections to this Separate Settlement Agreement. Members of the Class of 105 Additional Employees who submit a timely and valid Notice of Objection will have a right to appear at the Supplemental Final Approval Hearing to have their objections heard by the Court.

3.5.11 No Solicitation Of Exclusions Or Objections. The Parties agree to use their best efforts to carry out the terms of this Settlement. At no time shall any of the Parties or their counsel solicit, encourage, or assist Settlement Class Members to submit a Request for Exclusion from, or a Notice of Objection to, the Settlement or to appeal from the Court's Supplemental Final Approval Order and the Supplemental Judgment, including through the use of social media or electronic advertisement.

3.5.12 Settlement Administrator Declaration In Support Of Final Approval. No fewer than fourteen (14) calendar days after the Response Deadline, the Settlement Administrator shall provide the Parties with a statement detailing the actions taken by the Settlement Administrator to administer this Separate Settlement Agreement, along with all incurred and anticipated Settlement Administration Costs.

3.5.13 Supplemental Final Approval Hearing. No earlier than fourteen (14) calendar days after the Response Deadline and no later than thirty (30) calendar days after the Response Deadline, Class Representatives shall submit the motion for final approval of this Separate Settlement Agreement to the Court. Plaintiffs shall provide Defendant with a draft of their motion for final approval of this Separate Settlement Agreement at least one week before that motion is filed so that Defendant may confirm the brief is accurate as to the class and settlement data referenced in the motion, and that the motion does not disparage Defendant. The Court shall hold the Final Approval Hearing, where objections, if any, may be heard and the Court shall determine whether this Separate Settlement should be finally approved.

3.5.14 Entry Of Supplemental Final Approval Order And The Supplemental

Judgment. In support of their motion for final approval of this Separate Settlement Agreement, Class Representatives shall request that the Court enter a Supplemental Final Approval Order, substantially in the form of **Exhibit B**, and the Supplemental Judgment, substantially in the form of **Exhibit C**. After issuing the Supplemental Final Approval Order and entering the Supplemental Judgment, the Court shall retain jurisdiction over the Action to enforce and implement the terms of the Supplemental Final Approval Order and the Supplemental Judgment.

3.6 Funding And Allocation Of Settlement.

3.6.1 Settlement Accounting. On or before the Effective Date, the Settlement Administrator shall provide the Parties with an accounting of all anticipated payments from the Settlement Fund Account as specified in this Separate Settlement Agreement and approved by the Court, including: (a) the PAGA LWDA Payment; (b) the Individual PAGA Payments; and (c) the Individual Class Payments. The Settlement Administrator shall also provide the Parties with an accounting of: (a) the cost of administration; and (b) the employer's share of payroll taxes on the wage component of the Individual Class Payments.

3.6.2 Funding The Settlement. Within ten (10) calendar days following the Effective Date, Defendant shall fund this Separate Settlement Agreement by providing to the Settlement Administrator the Total Settlement Amount, the amount of the employer's share of payroll taxes on the wage component of the Individual Class Payments, and the Settlement Administration Costs. The Settlement Administrator shall deposit the funds in the Settlement Fund Account and will disburse the funds in the manner and at the times set forth in this Separate Settlement Agreement.

3.6.3 Payment Of Settlement Administration Costs. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator shall pay from the Settlement Fund Account the Settlement Administration Costs.

3.6.4 Payment Of PAGA LWDA Payment. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator shall issue from the Settlement Fund Account a check payable to the LWDA for the PAGA LWDA Payment (*i.e.*, the LWDA's 75% share of the PAGA Settlement Amount).

3.6.5 Payment Of Individual PAGA Payments. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator shall distribute from the Settlement Fund Account to each member of the Class of 105 Additional PAGA Employees their Individual PAGA Payment. Any Individual PAGA Payment that is returned to the Settlement Administrator as non-deliverable within thirty (30) calendar days of this original distribution shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts to obtain an updated mailing address. If, within 180 days of the original mailing of Individual PAGA Payments, either the Settlement Administrator identifies an updated mailing address, or Class Counsel or a member of the Class of 105 Additional Employees provides the Settlement Administrator with an updated mailing address, the Settlement Administrator shall re-send the appropriate Individual PAGA Payment within seven (7) calendar days after receiving the updated mailing address. Also, the Settlement Administrator shall re-issue any Individual PAGA Payments that are reported as lost or destroyed prior to the Void Date. Any Individual PAGA Payment that is re-mailed or re-issued pursuant to this paragraph shall be valid for one hundred eighty (180) days from the date the original Individual PAGA Payment was issued, or thirty (30) days from the re-mailed or re-issued Individual PAGA Payment, whichever is later. One hundred percent (100%) of each Individual PAGA Payment shall be allocated to miscellaneous income for which an IRS Form 1099 will be issued by the Settlement Administrator (and not Defendant), if required by law. The Settlement Administrator shall make no payroll tax deductions from the Individual PAGA Payments. The Parties make no representations as to the tax treatment or legal effect of the Individual PAGA Payments, and members of the Class of 105 Additional PAGA Employees are not relying on any statement or representation by the Parties in this regard. Member of the Class of 105 Additional PAGA Employees will be solely responsible for the payment of any taxes and penalties assessed on the Individual PAGA Payments.

3.6.6 Payment Of Individual Class Payments. Within thirty (30) calendar days following the Effective Date, the Settlement Administrator shall distribute from the Settlement Fund Account the Individual Class Payments to Participating Settlement Class Members. Any Individual Class Payment that is returned to the Settlement Administrator as non-deliverable within thirty (30)

calendar days of this original distribution shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts to obtain an updated mailing address. If, within 180 days of the original mailing of Individual Class Payments, either the Settlement Administrator identifies an updated mailing address, or Class Counsel or a Participating Settlement Class Member provides the Settlement Administrator with an updated mailing address, the Settlement Administrator shall re-send the appropriate Individual Class Payment within seven (7) calendar days after receiving the updated mailing address. Also, the Settlement Administrator shall re-issue any Individual Class Payments that are reported as lost or destroyed prior to the Void Date. Any Individual Class Payment that is re-mailed or re-issued pursuant to this paragraph shall be valid for one hundred eighty (180) days from the date the original Individual Class Payment was issued, or thirty (30) days from the re-mailed or re-issued Individual Class Payment, whichever is later. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The Settlement Administrator shall deduct employee-side payroll taxes from the wage component of the Individual Class Payments. The Settlement Administrator (and not Defendant) shall issue an IRS Form W-2 statement to Participating Settlement Class Members for the wage component of the Individual Class Payments. The Settlement Administrator shall make no payroll tax deductions from the interest or penalty components of the Individual Class Payments. The Settlement Administrator (and not Defendant) shall issue an IRS Form 1099 statement to each Participating Settlement Class Member for the interest and penalty components of the Individual Class Payments, if required by law. The Parties make no representations as to the tax treatment or legal effect of the Individual Class Payments, and Participating Settlement Class Members are not relying on any statement or representation by the Parties in this regard. Participating Settlement Class Members will be solely responsible for the payment of any taxes and penalties assessed on the Individual Class Payments.

3.6.7 Reminder Postcards. The Settlement Administrator shall mail the Reminder Postcard attached hereto as **Exhibit F** to all members of the Class of 105 Additional Employees who have not cashed their Individual PAGA Payment or Individual Class Payment within ninety (90) days following the original mailing of those payments. The Settlement Administrator shall mail

1 the Reminder Postcards within ninety-seven (97) days following the original mailing of the
 2 Individual PAGA Payments and Individual Class Payments.

3 3.6.8 Void Date For Uncashed Checks And Allocation Of Refunded Payroll Taxes.

4 Any checks issued to Participating Settlement Class Members or members of the Class of 105
 5 Additional PAGA Employees shall remain valid and negotiable for one hundred and eighty (180)
 6 calendar days from the date of their mailing and then shall become void on the 181st day after
 7 mailing, *i.e.*, the Void Date. Any re-mailed or re-issued check shall remain valid and negotiable for
 8 one hundred eighty (180) days from the date the original check was mailed, or thirty (30) days from
 9 the date the check is re-mailed, whichever date is later. Subject to the Court's approval, the Parties
 10 agree that any unclaimed funds resulting from the failure of members of the Class of 105 Additional
 11 Employees to cash Individual Class Payment checks and/or Individual PAGA Payment checks
 12 within one hundred eighty (180) days from the date the original check was mailed, or thirty (30)
 13 days from the date the check is re-mailed, whichever date is later, shall be transmitted by the
 14 Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("Boys & Girls
 15 Clubs"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce
 16 Readiness program/job training. The Settlement Administrator shall make this payment to the Boys
 17 & Girls Clubs within fourteen (14) calendar days of the last date that any Individual Class Payments
 18 or Individual PAGA Payments remain valid. The Parties further agree that any refunded employee-
 19 side payroll taxes corresponding to the wage component of any uncashed Individual Class Payments
 20 shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds
 21 designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job
 22 training, within fourteen (14) calendar days of the Settlement Administrator's receipt of the refunded
 23 employee-side payroll taxes. The Parties further agree that any refunded employer-side payroll taxes
 24 corresponding to the wage component of any uncashed Individual Class Payments shall be returned
 25 to Defendant within fourteen (14) calendar days of the Settlement Administrator's receipt of the
 26 refunded employer-side payroll taxes.

27 3.6.9 Post-Distribution Accounting. Within twenty-one (21) calendar days after the
 28 last date that any Individual Class Payments or Individual PAGA Payments remain valid (*i.e.*, 180

days after checks are issued or, if any checks are re-issued, 30 days after the issue date for all re-issued checks), the Parties shall file with the Court and post to the Settlement Administrator's website a post-distribution accounting setting forth: (a) the Total Settlement Amount; (b) the total number of members of the Class of 105 Additional Employees; (c) the total number of the members of the Class of 105 Additional Employees to whom a Notice of Settlement was sent and not returned as undeliverable; (d) the number and percentage of opt-outs; (e) the number and percentage of objections; (f) the average and median recovery per Participating Settlement Class Member; (g) the largest and smallest amounts paid to Participating Settlement Class Members; (h) the methods of notice and the method of payment to members of the Class of 105 Additional Employees; (i) the number and value of checks not cashed; and (j) the amounts distributed to the cy pres recipient; (k) the Settlement Administration Costs.

3.7 Miscellaneous.

3.7.1 No Effect On Employee Benefits. Amounts paid to Plaintiffs, Participating Settlement Class Members, and PAGA Settlement Class Members pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (*e.g.*, 401(k) plans or retirement plans) sponsored by Defendant.

3.7.2 Nullification Of Settlement Agreement. Unless the Parties agree otherwise pursuant to paragraph 3.7.6, in the event: (a) the Court does not enter the Supplemental Preliminary Approval Order as provided herein; (b) the Court does not enter the Supplemental Final Approval Order and the Supplemental Judgment as provided herein; or (c) the Separate Settlement Agreement does not become final for any other reason, this Separate Settlement Agreement shall be null and void and any order entered by the Court in furtherance of this Separate Settlement Agreement shall be treated as void from the beginning. In such case, any funds to be awarded under this Separate Settlement Agreement that have been deposited with the Settlement Administrator shall be returned to Defendant, the Parties shall be returned to their respective statuses as of the date and time immediately prior to the execution of this Separate Settlement Agreement, and the Parties shall proceed in all respects as if this Separate Settlement Agreement had not been executed, except that any Settlement Administration Costs already incurred by the Settlement Administrator shall be paid by

1 Defendant. In the event an appeal is filed by a member of the Class of 105 Additional Employees
2 from the Court's Supplemental Final Approval Order and the Supplemental Judgment or from an
3 order denying any motion to intervene, or any other appellate review is sought by a member of the
4 Class of 105 Additional Employees, the administration of this Separate Settlement Agreement shall
5 be stayed pending final resolution of the appeal and Defendant will not be required to fund this
6 Separate Settlement Agreement until and unless the Effective Date is reached.

7 3.7.3 Exhibits. The terms of this Separate Settlement Agreement include the terms
8 set forth in the **Exhibits A-F** attached, which are incorporated by this reference as though fully set
9 forth herein. All **Exhibits A-F** to this Separate Settlement Agreement are an integral part of this
10 settlement.

11 3.7.4 Headings. The descriptive headings of any paragraphs or sections of this
12 Separate Settlement Agreement are inserted for convenience only and do not constitute a part of this
13 Separate Settlement Agreement.

14 3.7.5 Interim Stay Of Proceedings. Subject to Court approval, the Parties agree to
15 stay all proceedings in the Action, except such proceedings related to the November 2021 Settlement
16 Agreement and proceedings necessary to implement and complete this Separate Settlement
17 Agreement, pending the Supplemental Final Approval Hearing to be conducted by the Court.

18 3.7.6 Amendment Or Modification. This Separate Settlement Agreement may be
19 amended or modified only by a written instrument signed by all Parties or their successors-in-
20 interest.

21 3.7.7 Entire Agreement. This Separate Settlement Agreement and the attached
22 **Exhibits A-F** constitute the entire agreement among the Parties, and no oral or written
23 representations, warranties, or inducements have been made to any Party concerning this Separate
24 Settlement Agreement or its **Exhibits A-F** other than the representations, warranties, and covenants
25 contained and memorialized in this Separate Settlement Agreement and its **Exhibits A-F**.

26 3.7.8 Authorization To Enter Into This Separate Settlement Agreement. The person
27 signing this Separate Settlement Agreement on behalf of Defendant represents and warrants that he
28 is authorized to sign this Separate Settlement Agreement on behalf of Defendant. Class

Representatives represent and warrant that they are authorized to sign this Separate Settlement Agreement on behalf of themselves and the Class of 105 Additional Employees, and Plaintiffs Amanda Frlekin and Taylor Kalin represent and warrant that they are authorized to sign this Separate Settlement Agreement on behalf of themselves, the State of California, and the Class of 105 Additional PAGA Employees. Plaintiffs further represent and warrant that they have not assigned any claim covered by this Separate Settlement to a third party. The Parties and their counsel agree to cooperate with each other fully and to use their best efforts to effect the implementation of this Separate Settlement. Such cooperation includes, but is not limited to, execution of such other documents and the taking of such other actions as may be reasonably necessary to fulfill the terms of this Separate Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Separate Settlement or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

3.7.9 Binding On Successors And Assigns. This Separate Settlement Agreement shall be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

3.7.10 California Law Governs. All terms of this Separate Settlement Agreement and the **Exhibits A-F** hereto shall be governed by and interpreted according to the laws of the State of California.

3.7.11 This Settlement Is Fair, Reasonable, And Adequate. The Parties believe this Separate Settlement Agreement is a fair, reasonable, and adequate settlement of the Action and have arrived at this Separate Settlement Agreement as a result of the lengthy, extensive, arms-length negotiations resulting in the November 2021 Settlement Agreement, and taking into account all relevant factors, present and potential. This Separate Settlement Agreement shall not be construed in favor of or against any of the Parties by reason of their participation in the drafting of this Separate Settlement Agreement.

3.7.12 No Publicity. Plaintiffs and their counsel (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 Holmes Law Group, APC) agree not to publicize the fact, amount, or terms of this Separate Settlement in any way, including through social media, press releases, initiating contact with the press, responding to any press inquiries, or communicating with the press. However, following final approval of this Separate Settlement Agreement, Class Counsel (*i.e.*, McLaughlin & Stern LLP and Kralowec Law, P.C.) may: (a) post on their firms' websites a copy of any published decision regarding the Action; and (b) report in their attorney bios, on their firms' websites, and in declarations filed with courts to explain their qualification to serve as class counsel or to seek awards of attorneys' fees in future class actions, the following: "Plaintiffs v. Fortune 500 Silicon Valley Technology Company: secured \$___ settlement as class counsel in a class action on behalf of employees who went through security checks." Otherwise, Plaintiffs and their counsel shall keep this Separate Settlement and its terms confidential and may disclose the terms of the Separate Settlement only as necessary to communicate with members of the Class of 105 Additional Employees regarding their rights respecting this Separate Settlement Agreement and to obtain approval of and enforce this Separate Settlement Agreement.

3.7.13 Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Separate Settlement Agreement shall be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

TO PLAINTIFFS:

Lee Shalov
Brett Gallaway
Jason Scott Giaimo
McLaughlin & Stern, LLP
260 Madison Avenue
New York, New York 10016

Kimberly A. Kralowec
Kathleen Styles Rogers
Kralowec Law, P.C.
3132A 24th Street
San Francisco, California 94110

TO DEFENDANT:

Julie Dunne
Matthew Riley
DLA Piper LLP (US)
401 B Street, Suite 1700
San Diego, California 92101

3.7.14 Execution By Class of 105 Additional Employees. It is agreed that it is

1 impossible or impractical to have each Participating Settlement Class Member execute this Separate
2 Settlement Agreement. The Notices of Settlement will therefore advise all members of the Class of
3 105 Additional Employees of the binding nature of this Separate Settlement Agreement and the
4 Released Class Claims, which release shall have the same force and effect as if each Participating
5 Settlement Class Member had executed this Separate Settlement Agreement individually.

6 3.7.15 Counterparts. This Separate Settlement Agreement shall become effective
7 upon its execution by all of the undersigned. All signatories may execute this Separate Settlement
8 Agreement in counterparts, which shall have the same force and effect as if each had signed the
9 same instrument. Copies of the executed Settlement Agreement shall be effective for all purpose as
10 though the signatures contained therein were original signatures.

1 Dated: June ___, 2022

By: _____
Seth Dowling

2
3
4 Dated: June ___, 2022

By: _____
Amanda Frlekin

5
6 Dated: June ___, 2022

By: _____
Aaron Gregoroff

7
8
9 Dated: June ___, 2022

By: _____
Taylor Kalin

10
11
12 Dated: June ___, 2022

By: _____
Debra Speicher

13
14
15 Dated: June ___, 2022

APPLE INC.

16
17 By: _____
18 Kwang Kim
19 Employment Law Counsel

20 Dated: June ___, 2022

McLAUGHLIN & STERN, LLP

21 By: Lee Shalov
22 Lee Shalov
23 Lead Counsel and Class Counsel

24 Dated: June ___, 2022

KRALOWEC LAW, P.C.

25
26 By: Kimberly Kralowec
27 Kimberly A. Kralowec
28 Class Counsel

1 Dated: June ___, 2022

LAW OFFICES OF LOUIS GINSBERG, P.C.

2
3 By: _____

Louis Ginsberg
Attorneys for Plaintiffs Amanda Frlekin,
Aaron Gregoroff, Seth Dowling, and Debra
Speicher

4
5
6 Dated: June ___, 2022

THE BLANCHARD LAW GROUP, APC

7
8 By: _____

Lonnie C. Blanchard, III
Attorneys for Plaintiff Taylor Kalin

9
10 Dated: June ___, 2022

PETER R. DION-KINDEM, P.C.

11
12 By: _____

Peter R. Dion-Kindem
Attorneys for Plaintiff Taylor Kalin

13
14 Dated: June ___, 2022

THE HOLMES LAW GROUP, APC

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16 By: _____

Jeff Holmes
Attorneys for Plaintiff Taylor Kalin

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Seth Dowling

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22 Lee Shalov
23 Lead Counsel and Class Counsel

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KRALOWEC LAW, P.C.

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27 Kimberly A. Kralowec
28 Class Counsel

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APPLE INC.

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Scott Murray

Director, Commercial Litigation

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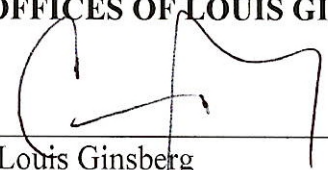
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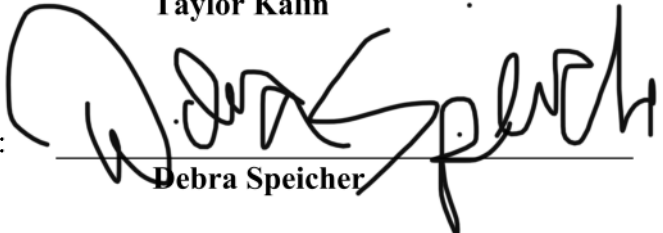
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