

JUN 19 2018

Jorge Navarrete Clerk

No. S243805

Deputy

IN THE SUPREME COURT OF CALIFORNIA

AMANDA FRLEKIN, ET AL.,

*Plaintiffs and Appellants,*

v.

APPLE, INC.,

*Defendant and Respondent.*

On a Certified Question from the  
United States Court of Appeals for the Ninth Circuit  
Case No. 15-17382

APPLE INC.'S RESPONSE TO  
PLAINTIFFS' MOTION TO AUGMENT THE RECORD

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*Attorneys for Defendant and Respondent Apple Inc.*

Although Apple Inc. does not oppose Plaintiffs' request that the Court consider certain documents filed in the district court, Apple writes to clarify, in response to Plaintiffs' apparent suggestion that Apple's request for judicial notice of the Monkowski Declaration was inappropriate because the declaration was "not include[d] in its supplemental excerpts of record and never mentioned in its briefs to the Ninth Circuit" (see Pltfs. Mot. to Augment at p. 3), that a motion to augment the record is unnecessary in appeals certified to this Court from the U.S. Court of Appeals for the Ninth Circuit.

Under Ninth Circuit Rule 10-2, "the complete record on appeal consists of: (a) the official transcript of oral proceedings before the district court . . . if there is one; and (b) the district court clerk's record of original pleadings, exhibits and other papers filed with the district court." Ninth Circuit Rule 30-1.1 subdivision (a) provides that the purpose of the excerpts of record is to "provide each member of the panel with those portions of the record necessary to reach a decision." Ninth Circuit Rule 30-1.5 in turn provides that "[t]he excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor." The plain import of these rules is that all district court filings are properly considered part of the record on appeal, not merely those included in the excerpts of record.

Because the Monkowski Declaration and the other documents submitted by Plaintiffs with their motion to augment the record are properly considered part of the record before the Ninth Circuit on appeal, no augmentation is necessary. Moreover, even without augmenting the record, this Court may properly take judicial notice of official records of the federal courts, including the U.S. District Court for the Northern District of California, pursuant to Evidence Code section 452, subdivision (d)(2), which permits this Court to take notice of “[r]ecords of . . . any court of record of the United States.”

Dated: June 19, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: Theodore J. Boutros / ab  
Theodore J. Boutros, Jr.

Attorneys for Defendant and Respondent  
Apple Inc.

**CERTIFICATE OF SERVICE**

I, Ariella Boeck, declare as follows:

I am employed in the County of San Francisco, State of California; I am over the age of eighteen years and am not a party to this action; my business address is 555 Mission Street, Suite 3000, San Francisco, California 94105, in said County and State. On June 19, 2018, I served the within:

**APPLE INC.'S RESPONSE TO PLAINTIFFS' MOTION TO AUGMENT THE RECORD**

to each of the persons named in the attached service list at the address(es) shown, in the manner described below.

- BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated on the attached service list for collection and mailing at my business location, on the date mentioned above, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing with the United States Postal Service. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in a sealed envelope with postage fully prepaid. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the proof of service.

## SERVICE LIST

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I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this certificate was executed on June 19, 2018 at San Francisco, California.

  
Ariella Boeck