No. S243805

IN THE SUPREME COURT
OF THE STATE 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

APPLICATION TO FILE AMICUS CURIAE BRIEF & PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION, SUPPORTING PLAINTIFFS AND APPELLANTS

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APPLICATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

TO THE HONORABLE CHIEF JUSTICE OF CALIFORNIA AND THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The California Correctional Peace Officers' Association ("CCPOA") hereby moves for permission to file this *amicus curiae* brief. We file in support of Petitioners/Appellants Amanda Frlekin *et al.*

INTEREST OF *AMICUS CURIAE*

Amicus CCPOA is a union representing over 28,000 employees working in public service as correctional officers and supervisors in all of California's state prisons.

Amicus is regularly involved in representing the interests of these employees in negotiations and disputes concerning their conditions of employment as defined in agreements, policies, and laws. This includes, *inter alia*, how much time spent by its members qualifies as time spent working under the relevant laws, regulations, and agreements. *Amicus* represents employees in a wide variety of challenging workplace environments, and relies on relevant laws to ensure that its members' rights are protected.

The Ninth Circuit's certified question in this case, in addition to the important specific textual question it raises, presents an opportunity for this Court to reaffirm its longstanding precedent holding that the Industrial Welfare Commission is a quasi-legislative body whose determinations

warrant extraordinary deference by reviewing courts. *Amicus* believes that such deference and respect for the employee-protective purposes of the Industrial Welfare Commission's Wage Orders will inure to the benefit of employees, employers, and all California citizens.

Therefore, *amicus* has submitted the below brief in the interest of addressing how the principles that Defendant/Respondent Apple, Inc. propounds will negatively impact workers in California if adopted by this Court.

Amicus therefore should be granted leave to file the accompanying amicus curiae brief to assist this Court in fully considering this matter.

No person other than counsel and amicus authored or made a monetary contribution intending to fund the preparation or submission of this brief.

Dated: July 9, 2018

MESSING ADAM & JASMINE, LLP

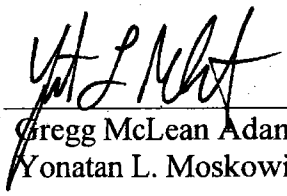
By 

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

FEDERAL CASES

TABLE OF AUTHORITIES
(Continued)

Page

REGULATIONS

MISCELLANEOUS

AMICUS CURIAE BRIEF

I.
INTRODUCTION

At the request of the Ninth Circuit, this Court has agreed to review whether the time Plaintiffs/Appellants spent waiting for and undergoing bag/electronic searches is compensable time as defined by the applicable Wage Order under either the "control" standard or the "suffered or permitted to work" standard.

Defendant/Respondent Apple, Inc. has urged this Court to focus exclusively on the choices of employees, and blames them for any additional time they must spend under their employer's control. But as Plaintiffs/Appellants have explained, the law requires this Court to holistically review the employment situation of the California employees at issue. When determining whether an employee is spending time "working" for an employer under either the "control" standard or the "suffered or permitted" to work standard, this Court rightly looks to the manner in which the employer designs and manages its workplace.

The employees in this case spend the time at issue *both* physically present at their workplace *and* subject to discipline if they do not follow orders before they leave their workplace. (*See* Reply Br. at p. 8.) That is

enough, under California law, to qualify this time as time spent under the "control" of their employer.[1]

Employers try to rationally balance marginal costs, marginal benefits, and risks before making any large decision, and one of the costs in this function is the salary costs of keeping employees working additional time. If this Court permits employers to pass along the costs in this case onto employees (*i.e.*, by forcing employees to spend uncompensated time under their employer's control), then other employers will be induced to make policy and employment decisions that outsource more and more of these costs onto employees.

The Industrial Welfare Commission's ("IWC") Wage Orders were drafted to avoid manipulation of hourly wage workers by employers who try to take advantage of their inherent power advantage. These Wage Orders are "intended to enable [workers] to provide at least minimally for themselves and their families and to accord them a modicum of dignity and self-respect." (*Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 952.) This Court is obliged to interpret the Wage Orders in a manner that furthers the IWC's ultimate employee-protection purposes. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1026-1027.)

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[1] *Amicus* supports, but this Brief does not address, Petitioners/Appellants' arguments concerning whether these employees are also "suffered and permitted to work" during the time at issue. (See Opening Br. at pp. 43-52 and Reply Br. at pp. 30-38.)

Therefore, the Court should hold that Petitioners/Appellants spend compensable "hours worked" when they are subject to Apple's mandatory bag and electronic searches before they can leave their workplace.

II.
THE CONTROL STANDARD HAS TRADITIONALLY INCORPORATED ANALYSES OF WHERE THE EMPLOYEE WAS AND WHETHER THE EMPLOYEE WAS COMPELLED UNDER THREAT OF SANCTION

Employers "control" their employees by using a complex combination of pressure tactics, the appreciation of which requires an analysis of the totality of the employment circumstances.

In performing this task, this Court's decisions have always reflected the common sense understanding of the IWC's Wage Order's language, while taking into account the broad employee-protective purposes of the Wage Orders. (See, e.g., *Dynamex*, *supra*, 4 Cal.5th at p. 953.) Employees' location and their exposure to discipline for their acts or omissions have been, and continue to be, significant factors in any analysis determining whether such employees are "controlled" for the purposes of the IWC's Wage Orders.

That is not to say that employees cannot be "controlled" while off location or while on location and not subject to discipline. However, Apple has identified no case law supporting their claim that an employee is not "controlled" by their employer under the Wage Order definition of "hours worked" if that employee is *both* detained on their employer's property *and*

subject to discipline by their employer for their acts and omissions during that time.

Compelled physical presence and the ability to discipline for disobedience are not merely factors Plaintiffs have identified because they happen to be relevant to this case. They are fundamentally factors relevant to any attempt to identify a distinction between a free and a compelled experience.

A. The Location of Employees Matters to both Employees and Employers

Despite the changing nature of work, employers continue to retain significant control over their employees when those employees are physically present on the real property of their employers.

Apple's brief purports to argue that an employee's location is not relevant to the "control" standard. But instead Apple argues a much different point: It claims that an employee who is *voluntarily* on their employer's property is not "controlled". (Ans. Br. at pp. 35-37.) Apple argues that the "dispositive distinction" between this case and *Mendiola v. CPS Security Solutions, Inc.* (2015) 60 Cal.4th 822 (in which employees were "controlled" because they were required to be on their employer's property) is that those employees "could not choose to avoid" their employer's restriction that they remain on the worksite. (Ans. Br. at p. 35.)

Apple therefore does not contest Petitioners/Appellants' claim that employees who *are* required to remain on their employer's property are "controlled" under the language of the Wage Order. (Op. Br. at p. 39.) Fighting on Apple's preferred ground, Plaintiffs/Appellants have nevertheless persuasively and adequately explained why the employees in this case are, in fact, required to remain on company property. (Op. Br. at pp. 40-43.)

But taking a step back, it is important to note that Apple identifies no case that overlooked or downplayed the importance of an employee being physically present. Despite all of the technological advances of the past decades, we are still physical beings, and our physical presence still matters. After all, one of the most fundamental, liberty-protecting rights in our constitution is the right of *habeas corpus*, a right that requires the actual presentation of the body of someone claiming that they are being physically detained contrary to law.[2]

There are, admittedly, employment situations where physical presence at a workplace is not *always* enough to justify a presumption that a person is working. But, fortunately, the IWC is a sophisticated quasi-

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[2] "*Habeas corpus ad subjiciendum*: A writ directed to the person detaining another, and commanding him to produce the body of the prisoner, (or person detained,) with the day and cause of his caption and detention, *ad faciendum, subjiciendum et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf." (Black's Law Dictionary (Revised 4th Ed. 1968).)

legislative body. It knows how to handle situations in which an employee's physical presence at the work site does not automatically correlate with what we, as a society, believe should constitute "hours worked." (*Isner v. Falkenberg/Gilliam & Associates, Inc.* (2008) 160 Cal.App.4th 1393, 1401 [resident nonprofit housing manager]; *Brewer v. Patel* (1993) 20 Cal.App.4th 1017, 1020 [resident hotel manager].)

In Wage Order 5, for example, the IWC set out the general "control" and "suffer[s] or permit[s] to work" standards, and then explicitly defined an exception. Hours worked for "an employee who is required to reside on the employment premises" only includes "time spent carrying out assigned duties." (Wage Order 5-01, Cal. Code Regs., tit. 8, § 11050, subds. 2(K).)

Courts interpret absences in IWC Wage Orders according to the statutory interpretation canon of *expressio unius*. (*Augustus v. ABM Sec. Servs., Inc.* (2016) 2 Cal.5th 257, 266, as modified on denial of reh'g (Mar. 15, 2017).) Petitioners/Appellants (who are covered by the general language of Wage Order 4) are not covered by an exception similar to that found for hotel managers in Wage Order 5. Logically, then, the relevant "control" and "suffer[s] or permit[s] to work" standards in Wage Order 4 do not turn exclusively on whether time spent "on the employment premises" is spent "carrying out assigned duties." (*Compare* Wage Order 4-01, Cal. Code Regs., tit. 8, § 11040, subd. 2(K) *with* Wage Order 5-01, Cal. Code Regs., tit. 8, § 11050, subd. 2(K).) Therefore, the employee's physical

presence remains an important factor for employees laboring as hourly workers in physical brick-and-mortar stores such as Apple's.[3]

B. The Employer's Ability to Discipline Matters to both Employees and Employers

The ability to discipline is an important complement to other factors (like corporeal presence at the worksite) that are relevant to a determination of whether time is spent under the "control" of an employer. (See *Morrillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 586-587; see also *Curry v. Equilon Enterprises, LLC* (2018) 23 Cal.App.5th 289, 301-304, answer for petition for review filed (June 22, 2018, Case No. S249179) [finding that purported employer did not control employee in part because only lessee, and not purported employer, had the ability to discipline employee].)

The Code of Federal Regulations and California law both define one of the quintessential characteristics of "management" as "disciplining employees." (29 C.F.R. § 541.102 [describing job responsibilities that tend to qualify a worker as "exempt"]; *Batze v. Safeway, Inc.* (2017) 10 Cal.App.5th 440, 452, 469, 478, as modified on denial of reh'g (May 3,

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[3] That is not to say that people who work from home are not controlled by their employers, merely that the IWC's definition of "control" for traditionally employed individuals will rely heavily on whether the employees were or were not physically within Defendant's retail stores. (See, e.g., *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 53 [treating the fact that employer required plaintiffs to remain at work even when there were no vehicles to repair as an important factor].)

2017), review denied (July 19, 2017) [considering a person's power to discipline other employees when determining whether an employee was exempt or not].)

A commonsense understanding of the term "control" follows the familiar analogy of carrots and sticks – both are inducements to an agent to behave in a manner that the principal exercising the control desires from the agent.

Apple has *chosen* which activities by its employees constitutes punishable conduct, and to the extent those decisions comply with other laws, they are free to do so. But when it promulgates policies and practices that a) discipline its employees for disobeying certain instructions, and b) monitor whether such instructions are obeyed, it takes on an increased likelihood that it is obliged to compensate these employees for that time under the IWC's Wage Orders.

Apple and its *amicus* Washington Legal Foundation are concerned that, if this Court sides with Petitioners, there can be no rational limit to what constitutes controlled time. (Ans. Br. at pp. 57-59; Br. of *Amicus* Washington Legal Forum at pp. 5-13.) They argue that under Petitioners/Respondents' theory, Apple and all other employers in the state could be subjected to lawsuits claiming that they are required to compensate employees for time spent sleeping instead of staying out late

with friends merely because the employer institutes a policy requiring its employees to remain awake during work hours.

Absolutely not.

In the philosophical realm of Jean-Jacques Rousseau, people may be "everywhere in chains" in the manner Apple and its *amicus* identify. But in the legal realm, the courts of this state have proved adept at preventing these kinds of unlimited and perpetual causation theories from undoing common sense limits. (See, e.g., *State Dept. of State Hospitals v. Superior Court* (2015) 61 Cal.4th 339, 353 [holding that second part of "proximate cause" analysis "focuses on public policy considerations"].)

As a preliminary matter, the Court need not consider whether "ability to discipline" alone is sufficient, because in this case the employees were subject to discipline while being detained at their workplace. And this factor, although critically important, is but one of a number of factors that are relevant to the "control" test.

When considering this 'disciplinary' factor, the scope of a particular employer's ability to discipline its employees is, again, *completely* in the control of the employer. If an employer wanted to discipline its employees for failing to eat a hearty breakfast consisting of a particular proportion of whole grains and plant-based protein, then that employer exerts more control over their employees' time spent eating before a shift than an

employer who merely would discipline an employee who showed up without sufficient energy to perform adequately.

Likewise, an employer who disciplines an employee who fails to stay awake and alert during work exerts almost no control over an employee's nighttime activities, while an employer would exert more control if it monitored and disciplined an employee who failed to sleep an uninterrupted eight and a half hours, in their own bed, with their cell phone plugged in outside of their bedroom, ending between one and two hours before their shift begins. The same goes for an employer who monitors and distinguishes between activities by, for example, permitting employees to stay up late playing chess or watching soccer but disciplines them if they stay up late listening to music or socializing with friends.

In sum, this Court should model for lower courts how to conduct a searching review of the employer's policies and regulations. Apple maintains significant authority to monitor and identify individual employees who do not comply with the policy and to discipline them. Therefore, this Court should hold that the *employer's choice* to maintain such power over employees is a choice that forces their employees to remain under its "control" and therefore one for which it must compensate them under the plain meaning of the Wage Order.

Again, it is of critical importance that *Apple* selected this policy for its own benefit. Apple was not required to select this policy, and could have

chosen to design its goods, its packaging, or its stores' exits to include antitheft screening-technology or antitheft architecture that would not require its employees to remain under its control during its bag/electronic check time.

III.
APPLE'S POSITION IS CONTRARY TO THIS COURT'S DOCTRINE ENSURING THAT LAWS PASSED TO BENEFIT EMPLOYEES ARE INTERPRETED TO ACTUALLY BENEFIT EMPLOYEES

Apple argues that it can choose to set the comfort level of its employees at the absolute legal minimum, *and* can then choose to set up its business practices to force its employees to bear the burden of procuring personal comfort for themselves. (See Ans. Br. at pp. 34, 36-37.)

If Apple is correct, there would be nothing stopping it from, for example, lowering its thermostats of employee-only areas to the lowest legal level (saving on heating costs), and then requiring employees who 'choose' to bring warmer clothes to work (for their own personal comfort) to spend additional uncompensated time subject to the control of their employer at the end of their shifts.

Apple would get to spend less money on heating, and would pass along the burden onto employees who have to spend additional but uncompensated time under the control of their employer because they 'chose' to bring bulky clothing to work (which can, *arguendo*, hide

expensive electronics more easily). Apple gets the benefit of both keeping employment costs the same *and* paying less overhead.

Or Apple could require employees who choose to bring food from home to join a rotation for who has to clean the break room off-the-clock, saving Apple from paying cleaning staff. Employees are, after all, 'choosing' not to purchase food at the food court next to the Apple Store.

This may be sound management consulting, but it is not in compliance with the spirit or the letter of Wage Order 4.

Apple's briefing has tried to focus this Court exclusively on the "choices" its employees make before they show up to work, and completely glosses over the fact that it, too, has made choices relating to how it sets up its business practices. (See *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 22 ["[A]n employer may not unreasonably design a workspace to further a preference for standing or to deny a seat that might otherwise be reasonably suited for the contemplated tasks."") Apple's stores are unique. Indeed, the company sought and received a trademark for its stores' design. (See RJN, p. 2 [U.S. Trademark No. 4277914 (2013)].) It has been widely reported that Apple has benefitted from the uniqueness of its stores.[4]

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[4] For example, the Washington Post reported: "The other factor that helped to guarantee Apple's success seems to be that the brand envisioned its stores as much more than, well, stores. . . . Apple designed their stores based not on product divisions, but what they called 'solutions.' A large part of the store was dedicated to letting people try out and learn about products, as well as ask questions at the Genius Bar, an idea similar to a

Apple faced almost innumerable options when it decided how to design its stores and packaging, and Apple is a company whose fiduciary responsibility is to maximize its return to its shareholders. Therefore, it should come as no surprise that of those innumerable options, it chooses to pursue those that pass along costs to the extent it can. (Contra *Kilby*, *supra*, 63 Cal.4th at p. 22 [rejecting rule permitting employer to push costs onto employees by "arbitrarily defin[ing] certain tasks as 'standing' ones, undermining the protective purpose of the wage order"].) Companies face trade-offs all of the time, and any time they can privatize the benefits and socialize the costs, it is only logical to try to get away with it.

But the IWC's Wage Orders are to be interpreted in a manner that ensures that employees are not taken advantage of by employers just because it is logical for them to consider such manipulation. (*Dynamex*, *supra*, 4 Cal.5th at p. 953; *Kilby*, *supra*, 63 Cal.4th at p. 22.) Assuming the most strong example of a use that is purely for personal comfort: it is nevertheless the case that *the company has made a choice* to burden its sales employees when they choose to bring Apple products to work (to, for example, check on the baseball score or set up dinner plans) during their

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concierge service at a nice hotel. . . . 'I'm not even sure "store" is the right word anymore,' Tim Cook, who took over Apple after Jobs, said in 2013. 'They've taken on a role much broader than that. They are the face of Apple for almost all of our customers.'" (Ana Swanson, *How the Apple store took over the world*, The Washington Post (July 21, 2015), available at https://www.washingtonpost.com/news/wonk/wp/2015/07/21/the-unlikely-success-story-of-the-apple-retail-store/).)

breaks, while using public transportation, or while walking to and from their street parking.

A. Apple's Doublespeak About the Centrality of Phones to the Lives of Its Employees

In this case, Apple's claims that it can burden employees who use its portable electronics for mere 'convenience' is hypocritical to say the least.

Apple's products are valuable, both to the company and to its consumers. Four years ago, the United States Supreme Court explained "The term 'cell phone' is itself a misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." (*Riley v. California* (2014) 134 S.Ct. 2473, 2489.) "According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower." (*Id.* at p. 2490.) Especially for the tech-savvy younger workforce that is employed in Apple's retail stores, "Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception." (*Ibid.*)

Apple's entire *reason d'etre* is to sell useful personal electronics to individuals.[5] (See Op. Br. at pp. 40-41.)

Just last month, the United States Supreme Court weighed in again, holding that individuals had a privacy interest in the location data their cell phones had transmitted to the cell phone provider. (*Carpenter v. United States* (June 22, 2018, No. 16-402) 585 U.S. __ [2018 WL 3073916] (Slip Op. at p. 12.) In that case, the Court addressed the value of cell phones to individuals trying to live a modern life:

> Unlike the bugged container in [*United States v. Knotts* (1983) 460 U.S. 276] or the car in [*United States v. Jones* (2012) 565 U.S. 400], a cell phone—almost a "feature of human anatomy," *Riley*, 573 U. S., at ___ (slip op., at 9)—tracks nearly exactly the movements of its owner. While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time. A cell phone faithfully follows its owner beyond public thoroughfares and into private residences, doctor's offices, political headquarters, and other potentially revealing locales. See *id.*, at ___ (slip op., at 19) (noting that "nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower")[.]

(Slip Op. at 10.)

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[5] In a press release two months ago, Apple proudly claimed that it "revolutionized personal technology with the introduction of the Macintosh in 1984. Today, Apple leads the world in innovation with iPhone, iPad, Mac, Apple Watch and Apple TV. Apple's four software platforms — iOS, macOS, watchOS and tvOS — provide seamless experiences across all Apple devices and empower people with breakthrough services including the App Store, Apple Music, Apple Pay and iCloud." (Apple, *Press Release: Apple Reports Second Quarter Results* May 1, 2018), available at https://www.apple.com/newsroom/2018/05/apple-reports-second-quarter-results.)

Apple chose to participate as an amicus in that case. (See RJN, p. 2 [Brief for Technology Companies in Support of Neither Party, *Carpenter v. United States* (June 22, 2018, No. 16-402), at p. 2])

In its briefing before the United States Supreme Court in that case, Apple signed onto the following statements:

- "These devices and services not only confer immense value on users and society, but in many instances are considered *practical necessities* of modern life." (*Id.* at p. 10 [emphasis added].)
- "As all these examples suggest, to withdraw from the digital arena would be to *deny oneself participation in 'a revolution of historic proportions,'* giving up access to 'full dimensions and vast potential to alter how we think, express ourselves, and define who we want to be.' [citation omitted] Forgoing the use of networked devices would *'render[] modern life ... exceptionally difficult.'* [citations omitted] And it would 'constrain[] ... freedom in ways that *make it difficult to participate fully in society and the economy.*'" (*Id.* at p. 17 [emphasis added].)
- "Internet-connected devices such as smartphones 'are not just another technological convenience,' but are *necessary to participate in the modern world*, and 'hold for many Americans "the privacies of life." ' " (*Id.* at p. 11 (citing to *Riley, supra*, 134 S.Ct. 2473, 2494-2495] [emphasis added].)

- "[M]any people now use the Internet and Internet-connected devices and applications to facilitate all aspects of their lives—from personal communications to shopping to tracking their health and managing their homes." (*Id.* at p. 13)
- "Transmitting personal data to the companies that provide digital products and services is an unavoidable condition of using technologies that people find beneficial and useful, and *forgoing the use of those technologies for many is not an option.* See, e.g., OECD, Bridging the Digital Divide (collecting articles on "[t]he risks] … of being disconnected" due to "gaps in access to information and communication technology")." (*Id.* at p. 13 [emphasis added].)

And yet, in this case, Apple tells its own employees to tough it out, accept that you will be subject to search if you bring an iPhone or Apple Watch to work, and that your "personal convenience" is frivolous.

According to Apple, in its stores without lockers, its employees must either leave their electronics in their car or at home to avoid the security search policy. (See Ans. Br. at p. 10.) An employee working in, for example, a San Francisco store that didn't have a locker would therefore

either have to leave their phone at home (and go without Apple Maps[6] or a municipal transportation app) or leave their phone in their car (and risk losing it in one of the 30,000+ auto break-ins that occurred throughout the city in 2017).[7]

Apple's position everywhere except in defending against this lawsuit is that use of Apple's products for personal convenience is an important and essential part of participating fully in modern life. This is an eminently reasonable position, and clearly demonstrates that there is a structural lag between what the law says employers must provide to employees and what we, as a modern society, believe is necessary to be a fully functioning and participating citizen who happens to be paid hourly.

The IWC's broad, employee-protecting policy requires this Court to interpret the words in its Wage Orders in a manner that ensures that employers are not able to take advantage of this lag by squeezing uncompensated hours worked out of hourly employees at a whim.

Such a race to the bottom harms everyone. The entire purpose of the minimum wage is to prevent such a race to the bottom, and demonstrate

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[6] The App's list of features include "Transit" and "Navigation". (See APPLE, *Maps take a whole new turn* (2018), available at https://www.apple.com/ios/maps/.)

[7] Joaquin Palomino et al., *Breaking down San Francisco's car break-in epidemic*, S.F. Chronicle (March 16, 2018) available at https://projects.sfchronicle.com/2018/sf-car-breakins/.

clearly that the IWC has found such exploitation of structural advantages to be against public policy.

Therefore, these are the exact kinds of structural exploitations that the IWC, all California employees, and even all California employers rely on this Court to prevent.

IV.
CONCLUSION

This Court should hold that the time Petitioners/Appellants spent waiting for bag and electronic checks in this case is compensable under the "control" standard, because the IWC's relevant Wage Order includes in that definition the time spent on employer's premises under threat of sanction. This is true regardless of whether or not that time is being spent only by employees who have "chosen" to bring bags or electronics to work.

DATED: July 9, 2018

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CERTIFICATE OF COMPLIANCE PURSUANT TO CALIFORNIA RULES OF COURT RULE 8.504(d)(1)

Pursuant to California Rules of Court Rule 8.504(d)(1), I certify that according to Microsoft Word the attached brief is proportionally spaced, has a typeface of 13 points and contains 4,316 words.

DATED: July 9, 2018

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PROOF OF SERVICE

Amanda Frlekin, et al. v. Apple, Inc.
Case No. S243805

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 235 Montgomery St., Suite 828, San Francisco, CA 94104.

On July 9, 2018, I served true copies of the following document(s) described as:

APPLICATION TO FILE AMICUS CURIAE BRIEF & PROPOSED BRIEF OF AMICUS CURIAE CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION, SUPPORTING PLAINTIFFS AND APPELLANTS

MOTION FOR JUDICIAL NOTICE BY AMICUS CURIAE CALIFORNIA CORRECTIONAL PEACE OFFICERS' ASSOCIATION; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF YONATAN L. MOSKOWITZ

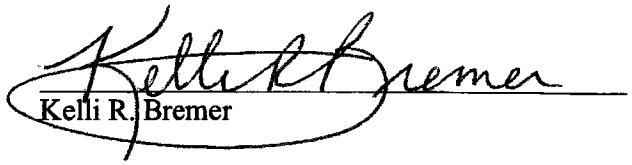
on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with the practice of Messing Adam & Jasmine LLP for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 9, 2018 at San Francisco, California.



Kelli R. Bremer

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Amanda Frlekin, et al. v. Apple, Inc.
Case No. S243805

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Case No. 13-03451 WHA (Lead)
No. C 13-04727 WHA (Consolidated)

Court of Appeal
for the Ninth Circuit
THE JAMES R. BROWNING COURTHOUSE
95 7th Street,
San Francisco, CA 94103

Appeal No. 15-17382