

MAR 19 2018

Jorge Navarrete Clerk

No. S243805

IN THE SUPREME COURT OF CALIFORNIA

Deputy

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 MOTION FOR JUDICIAL NOTICE;
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
THEREOF; DECLARATION OF THEODORE J. BOUTROUS, JR.;
[PROPOSED] ORDER**

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Attorneys for Defendant and Respondent Apple Inc.

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Attorneys for Defendant and Respondent Apple Inc.

MOTION FOR JUDICIAL NOTICE

Pursuant to Evidence Code sections 452, 453 and 459, as well as Rule 8.520(g), and Rule 8.252(a) of the California Rules of Court, Defendant and Respondent Apple, Inc. respectfully asks this Court to take judicial notice of the following document, which is cited in Apple's Answer Brief on the Merits and is relevant to the certified question before the Court.

Exhibit A: Declaration of Carol Monkowski in Support of Defendant Apple, Inc.'s Opposition to Plaintiffs' Motion for Summary Judgment (N.D.Cal. Oct. 15, 2015, No. 3:13-cv-03451-WHA), Dkt. 325-9.

This document is an appropriate subject of judicial notice and complies with the criteria for judicial notice under the California Rules of Court:

(1) It is relevant to whether the bag checks at issue in this case are compensable under California Industrial Welfare Commission Wage Order No. 7's definition of "hours worked" (Cal. Rules of Court, rule 8.252, subd. (a)(2)(A));

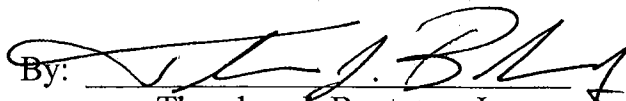
(2) It was presented to and considered by the district court as evidence in support of Apple's opposition to Plaintiffs' motion for summary judgment (Cal. Rules of Court, rule 8.252, subd. (a)(2)(B)); and

(3) It does not relate to proceedings occurring after the judgment that is the subject of this certified-question appeal (Cal. Rules of Court, rule 8.252, subd. (a)(2)(D)).

Dated: March 19, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 
Theodore J. Boutrous, Jr.

Attorneys for Defendant and Respondent
Apple Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

This action presents the question whether “time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages or bags voluntarily brought to work purely for personal convenience by employees [is] compensable as ‘hours worked’ within the meaning of California Industrial Welfare Commission Wage Order No. 7.” Exhibit A is a true and correct copy of a declaration made by Carol Monkowski, Apple’s Vice President of Retail Strategy, which was filed in this case when it was before the U.S. District Court for the Northern District of California. (See Boutrous Decl. ¶ 2.)

Ms. Monkowski’s declaration is a proper subject of judicial notice. Official records of the federal courts, including the U.S. District Court for the Northern District of California, are subject to judicial notice pursuant to Evidence Code section 452, subdivision (d)(2), which permits courts to take notice of “[r]ecords of . . . any court of record of the United States.”

Ms. Monkowski’s declaration is also relevant to the issues in this appeal. It explains that “Apple does not employ individuals in its retail stores for the purpose of submitting to bag or technology checks.” That statement, which confirms that submitting to bag checks is not one of the reasons individuals are employed by Apple, is relevant to Apple’s discussion of whether time spent in voluntary bag checks is “work” within

the meaning of the “suffered or permitted” prong of the “hours worked” definition in Wage Order No. 7.


Finally, Ms. Monkowski’s declaration does not relate to proceedings occurring after the judgment that is the subject of this certified-question appeal.

For the foregoing reasons, Apple respectfully asks the Court to grant its motion for judicial notice.

Dated: March 19, 2018

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 
Theodore J. Boutrous, Jr.

Attorneys for Defendant and Respondent
Apple Inc.

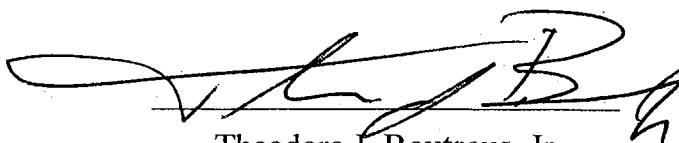
DECLARATION OF THEODORE J. BOUTROUS, JR.

I, Theodore J. Boutrous, Jr., declare as follows:

1. I am an attorney duly licensed to practice law in the State of California and am a partner in the law firm of Gibson, Dunn & Crutcher LLP. I am counsel of record for Defendant and Respondent Apple, Inc. I have personal knowledge of the facts stated herein unless indicated otherwise, and if called as a witness, I could and would testify competently thereto. I make this declaration in support of Apple's motion for judicial notice.

2. Attached as Exhibit A is a true and correct copy of the Declaration of Carol Monkowski in Support of Defendant Apple, Inc.'s Opposition to Plaintiffs' Motion for Summary Judgment, which was filed on October 15, 2015, using the CM/ECF system in *Frlekin v. Apple, Inc.*, No. 3:13-cv-03451-WHA, in the U.S. District Court for the Northern District of California, as docket entry number 325-9.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on this 15th day of March 2018 in Los Angeles, California.



Theodore J. Boutrous, Jr.

No. S243805

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

**[PROPOSED] ORDER GRANTING APPLE, INC.'S MOTION FOR
JUDICIAL NOTICE**

Pursuant to Evidence Code section 452, 453, and 459, Rule 8.520(g),
and Rule 8.252(a) of the California Rules of Court, Defendant and
Respondent Apple, Inc.'s motion for judicial notice is hereby granted.

Justice

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22 Attorneys for Defendant
23 APPLE INC.

24 UNITED STATES DISTRICT COURT
25 NORTHERN DISTRICT OF CALIFORNIA

26 AMANDA FRLEKIN, AARON
27 GREGOROFF, SETH DOWLING,
28 DEBRA SPEICHER; AND TAYLOR
KALIN,

Plaintiffs,

v.

APPLE INC.,

Defendant.

Case No. 13cv03451 WHA

**DECLARATION OF CAROL
MONKOWSKI IN SUPPORT OF
DEFENDANT APPLE INC.'S OPPOSITION
TO PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

Date: November 4, 2015
Time: 8:00 a.m.
Judge: Hon. William H. Alsup
Courtroom: 8

Consolidated Complaint Filed: February 2, 2015
Trial Date: January 26, 2016

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I, Carol Monkowski, declare as follows:

1. I am currently employed by Apple Inc. ("Apple"). I have worked for Apple for approximately 14 years, and have held various field and corporate roles. Since 2008, I have been part of the corporate-level team that oversees retail operations in the United States. I am currently the Vice President of Retail Strategy.

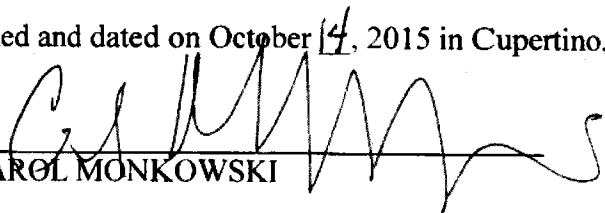
2. I have personal knowledge of the facts in this declaration or know them based on my review of records that Apple maintains in the regular course of its business operations. I could and would competently testify to the facts in this declaration if called to do so.

3. Apple has had numerous hourly, non-exempt positions in its retail stores in the United States, including (or previously including since 2009) Business Manager, Manager, Senior Manager, Expert, Genius, Genius Admin, Lead Genius, Specialist, Back-of-House Specialist, Business Specialist, Creative, Cashier, Events Coordinator, Family Room Specialist, Inventory Specialist, Lead Cashier, Lead Creative, Operations Specialist, Solution Engineer, Store Facilities Support, Studio Instructor, Trainer, and Visual Specialist.

4. Apple employs individuals in its retail stores, including in the positions listed in Paragraph 3, to facilitate the sale and service of Apple products. Apple does not employ individuals in its retail stores for the purpose of submitting to bag or technology checks.

5. Apple permits its employees to bring bags and personal Apple technology to work with them in Apple stores. Apple informs its employees that, if they choose to bring bags or personal Apple technology into the store, Apple has a right to inspect those items when they leave the store. This bag and technology check policy is intended to permit employees to bring bags or personal Apple technology into Apple stores for their personal convenience, while reserving Apple's right to search those personal items to ensure employees do not abuse the privilege by attempting to conceal stolen merchandise when they leave the store.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct. Signed and dated on October 14, 2015 in Cupertino, California.


CAROL MONKOWSKI

CERTIFICATE OF SERVICE

I, Sam Kunz, 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 March 19, 2018, I served the within:

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[PROPOSED] ORDER**

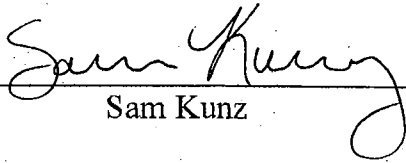
to each of the persons named in the attached service list at the address(es) shown, in the manner described below.

- 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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<p>Ari J. Stiller Kingsley & Kingsley, P.C. 16133 Ventura Boulevard Suite 1200 Encino, CA 94136 ari@kingsleykingsley.com</p>	<p>Attorney for Amicus Curiae Bet Tzedek Legal Services</p>

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 March 19, 2018 at San Francisco, California.



Sam Kunz