

NOTICE OF PENDENCY OF CLASS ACTION SETTLEMENT

To all current and former non-exempt employees of Apple Inc. (“**Apple**”) who worked at an Apple retail store in California between July 25, 2009 and August 10, 2015 who were previously provided notice of the Action (defined below) in 2015 and who did not opt out of the class.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO MONEY IN CONNECTION WITH THE SETTLEMENT OF A CLASS ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the “**Settlement**”) has been reached between Apple and Plaintiffs Amanda Frlekin, Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Plaintiffs**”) in a class action pending in the United States District Court for the Northern District of California (the “**Court**”). Plaintiffs Aaron Gregoroff, Seth Dowling, Debra Speicher, and Taylor Kalin (“**Class Representatives**”) are pursuing the Action on behalf of themselves and individuals who worked as a non-exempt employee at an Apple retail store in California at any time between July 25, 2009 and December 26, 2015 (“**Settlement Class Members**”). The “**Class Period**” is July 25, 2009 to December 31, 2015. Plaintiffs Amanda Frlekin and Taylor Kalin are also pursuing the Action on behalf of themselves, the State of California, and all individuals who worked as a non-exempt employee at an Apple retail store in California at any time from July 25, 2012 to December 26, 2015 (the “**PAGA Settlement Class Members**”) seeking civil penalties pursuant to the Private Attorneys’ General Act of 2004, California Labor Code section 2698 *et seq.* (“**PAGA**”).

The Court has preliminarily approved the Settlement. The Court appointed McLaughlin & Stern LLP and Kralowec Law P.C. to serve as **Class Counsel** for the Settlement Class Members, and Lee Shalov of McLaughlin & Stern LLP to serve as **Lead Counsel** for the Settlement Class Members. In making this appointment and preliminarily approving the Settlement, the Court gave these Class Counsel firms the authority to represent and bind the Plaintiffs and Settlement Class Members regarding the Settlement, subject to the Court’s final approval of the Settlement.

You have received this notice because you previously were provided notice of the Action in 2015 and did not opt out of the class. This notice is designed to provide you with a brief description of the Action, inform you of the terms of the proposed Settlement, and discuss your rights in connection with the Settlement, including how you can object to the Settlement.

B. WHAT IS THIS LAWSUIT ABOUT?

The Action involves the two consolidated class and PAGA lawsuits entitled *Amanda Frlekin, et al. v. Apple Inc.*, Case No. 13-cv-03451-WHA, and *Taylor Kalin v. Apple Inc.*, Case No. 13-cv-04727-WHA (the “**Action**”), pending before the Court.

Plaintiffs brought the Action seeking compensation on behalf of hourly-paid, non-exempt Apple employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology at one or more of Apple’s retail stores in the State of California. Based on these allegations, Class Representatives assert claims for: (a) failure to pay minimum and overtime wages in violation of California Labor Code sections 204, 226.7, 510, 1194, 1194.2, and 1198 and the applicable Industrial Welfare Commission Wage Order; (b) unfair competition in violation of California Business & Professions Code sections 17200, *et seq.*; (c) failure to provide accurate wage statements in violation of California Labor Code

section 226; (d) failure to pay all wages due on termination in violation of California Labor Code sections 201, 202, 203, and 204; and (e) attorneys' fees and costs incurred in pursuing the Action.

Separately, Plaintiffs Amanda Frlekin and Taylor Kalin allege a claim for civil penalties under PAGA based on the allegation that Apple did not compensate hourly-paid, non-exempt employees for time spent waiting for and participating in bag checks and checks of their personally-owned Apple technology.

The Action was commenced in 2015 and has been heavily litigated. In February 2020, the California Supreme Court held that Apple "must compensate those employees to whom the [bag and technology search] policy applies for the time spent waiting for and undergoing [bag and technology] searches." *Frlekin v. Apple Inc.*, 8 Cal.5th 1038, 1057 (2020). In April 2021, the district court held that "[a]t all material times Apple was liable to compensate the class members for time spent standing in line and waiting to have their bags checked." Dkt. 407. However, the district court further ordered that "[t]here will be a damages claims process on an individual-by-individual basis, after notice to potential class members," and "a trial schedule for all or groups of claimants will be set along with evidentiary disclosure and expert deadlines for each trial." *Id.*

Plaintiffs contend that the Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

Apple denies that Settlement Class Members and PAGA Settlement Class Members are entitled to compensation for the conduct alleged in the Action.

After lengthy settlement negotiations with the assistance of multiple independent mediators, Plaintiffs and Apple agreed to settle the Action. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainties to each side of continued litigation.

The Settlement Class Members are comprised of 13,884 employees who were provided notice of the Action in 2015 and who did not opt out of the certified class at that time ("**Existing Class Members**"), and 799 additional employees referred to as **New Class Members**. The New Class Members consist of 16 individuals who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015, and 783 individuals who began working at an Apple retail store in California between August 11, 2015 and December 26, 2015. To settle all potential claims relating to Apple's former bag and technology check policy, which Apple contends it terminated on December 17, 2015, the Parties agreed to expand the scope of the class to include all non-exempt employees who worked at an Apple retail store in California through December 26, 2015 to ensure that the settlement captured all employees who may have been subject to Apple's former bag and technology check policy.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Action have merit or that Apple owes compensation to Plaintiffs or Settlement Class Members for the conduct alleged in the Action. On the contrary, Apple denies any and all such liability.

C. SUMMARY OF THE SETTLEMENT PAYMENTS

1. **Total Settlement Amount:** Apple will pay \$29,900,000 as the Total Settlement Amount. The Total Settlement Amount is the total amount that Apple shall be obligated to pay under the Settlement, except for the employer's share of payroll taxes on the wage component of the Individual Class Payments, which Apple shall pay in addition to the Total Settlement Amount. The Total Settlement Amount will include all amounts paid for the Class Representative Payments to Class Representatives; the Service Payment to Plaintiff Amanda Frlekin; the Attorneys' Fees; the Litigation Costs; the Settlement Administration Costs;

the PAGA Settlement Amount to resolve the claim for civil penalties; and the Individual Class Payments to Participating Settlement Class Members.

2. **Class Representative Payments:** Class Representatives will seek approval from the Court for a payment of \$10,000 each for prosecuting the Action and for the Complete and General Release that they are providing to Apple as part of the Settlement. If awarded by the Court, the Class Representative Payments will be paid out of the Total Settlement Amount.
3. **Service Payment:** Plaintiff Amanda Frlekin will seek approval from the Court for a payment of \$10,000 for her time and effort in prosecuting the Action on behalf of the Settlement Class Members, PAGA Settlement Class Members, and the State of California, and for the Complete and General Release she is providing to Apple as part of the Settlement. If awarded by the Court, the Service Payment will be paid out of the Total Settlement Amount.
4. **Attorneys' Fees:** Class Counsel have spent over eight years prosecuting the Action on behalf of the Class. During this time, they have, among other tasks: (i) reviewed thousands of documents relating to Plaintiffs' claims and allegations; (ii) interviewed over 100 Apple employees regarding their experiences with bag and technology checks at Apple retail stores; (iii) taken and defended over thirty depositions of Apple representatives and employees; (iv) prepared multiple briefs and attended multiple hearings before the Court, the United States Court of Appeals for the Ninth Circuit and the California Supreme Court, (v) obtained the California Supreme Court opinion cited above for the benefit of the Class; and (vi) engaged in lengthy mediation sessions before three different mediators. In consideration for these efforts, Class Counsel intend to request one third of the Total Settlement Amount (\$9,966,666.67) as an award of attorneys' fees for the services the attorneys representing the Plaintiffs in the Action have rendered and will render to the Settlement Class Members and PAGA Settlement Class Members. The payment of the Attorneys' Fees from out of the Total Settlement Amount will constitute full and complete compensation for all legal fees of all attorneys representing Plaintiffs in the Action (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 the Holmes Law Group, APC) and all work done through the completion of the Action, whatever date that may be.
5. **Litigation Costs:** Class Counsel will also request up to \$450,000 for the litigation costs all attorneys representing Plaintiffs in the Action have incurred and will incur in the investigation, litigation, and resolution of the Action. The payment of the Litigation Costs from out of the Total Settlement Amount will constitute full and complete compensation for all costs and expenses of all attorneys representing Plaintiffs in the Action (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 the Holmes Law Group, APC).
6. **Settlement Administration Costs:** The reasonable costs of administering the Settlement, up to a maximum of \$89,500, will be paid out of the Total Settlement Amount, except that Apple shall bear the cost of providing notice to the 16 New Class Members who began working at an Apple retail store in California between August 3, 2015 and August 10, 2015 but to whom notice was inadvertently not sent in 2015. The Court has appointed Angeion Group to act as an independent Settlement Administrator for purposes of administering this Settlement.
7. **PAGA Settlement Amount:** \$448,500 of the Total Settlement Amount has been allocated to PAGA civil penalties.
8. **Net Settlement Amount:** The Net Settlement Amount means the Total Settlement Amount minus deductions for the Class Representative Payments, the Service Payment, the Attorneys' Fees, the Litigation Costs, the Settlement Administration Costs, and the PAGA Settlement Amount.

9. **Individual Class Payments:** Apple will pay the Net Settlement Amount to **Participating Settlement Class Members** Each Participating Settlement Class Member's share of the Net Settlement Amount (the "**Individual Class Payment**") will be based on the number of individual shifts each worked for Apple at an Apple retail store in California during the Class Period. Each Individual Class Payment shall be calculated by dividing a Participating Settlement Class Member's individual shifts worked for Apple at an Apple retail store in California during the Class Period by the total of all shifts worked by Participating Settlement Class Members for Apple at an Apple retail store in California during the Class Period, and multiplying this result by the Net Settlement Amount. The Individual Class Payments will be allocated 20% as wages, 20% as interest, and 60% as penalties. The wage component of the Individual Class Payments shall be subject to W-2 reporting and shall be subject to deductions for employee-side employment and payroll taxes. The interest and penalty components of the Individual Class Payments will be subject to IRS Form 1099 reporting, if required by law, and will not be subject to deductions for employment and payroll taxes.
10. The Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, Settlement Administration Costs, PAGA Settlement Amount, and Individual Class Payments will be paid after the Court enters a Final Approval Order and the Judgment, all time for Settlement Class Members to appeal or challenge the Final Approval Order and the Judgment has lapsed, and the Final Approval Order and the Judgment remain enforceable (*i.e.*, the "**Effective Date**").
11. Any unclaimed funds resulting from Settlement Class Members' failure to cash Individual Class Payment checks and/or Individual PAGA Payment checks by the Void Date shall be transmitted by the Settlement Administrator to the California Alliance of Boys & Girls Clubs, Inc. ("**Boys & Girls Clubs**"), with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employee-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall also be transmitted by the Settlement Administrator to the Boys & Girls Clubs, with the funds designated to be used in California for the Boys & Girls Clubs' Workforce Readiness program/job training. Any refunded employer-side payroll taxes corresponding to the wage component of any uncashed Individual Class Payment checks shall be returned to Apple.
12. If the Court does not grant final approval of the Settlement or if the Judgment does not become final and binding for any reason, then the Settlement will become null and void; if that occurs, neither Plaintiffs nor Apple will have further obligations under the Settlement, including any obligation by Apple to pay the Total Settlement Amount or any amounts that otherwise would have been owed under this Settlement. An award by the Court of a lesser amount than that sought by Plaintiffs and Class Counsel for the Class Representative Payments, Service Payment, Attorneys' Fees, Litigation Costs, PAGA Settlement Amount, or Settlement Administration Costs will not render the Settlement null and void.

D. HOW MUCH WILL I RECEIVE?

Apple's records indicate that during the Class Period (*i.e.*, between July 25, 2009 and December 31, 2015), you worked a total of __ shifts in a non-exempt position at an Apple retail store in California. Based on this information, it is estimated that your Individual Class Payment will be approximately \$__, assuming the Net Settlement Amount is \$18,895,333.33, after the deductions described above. Assuming the Court approves the Settlement, you do not need to do anything to receive a payment.

E. WHAT CLAIMS ARE RELEASED?

As a Participating Settlement Class Member, you will be unable to sue, continue to sue, or be a part of any other lawsuit against the Released Parties regarding the “Released Class Claims” in this Settlement. “**Released Parties**” means Apple 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.

Released Class Claims: Upon the Effective Date, Class Representatives – on behalf of themselves and Participating Settlement Class Members – will fully and irrevocably release the Released Parties from the **Class Claims** in exchange for the consideration provided by this Settlement.

“**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 Settlement Class Members based on the facts alleged in Plaintiff Amanda Frlekin’s November 12, 2013 notice letter to the Labor and Workforce Development Agency (“**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, and/or the complaint in the *Kalin* Action (all of which are posted on the settlement website at www.AppleBagCheckSettlement.com), 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 provide and maintain accurate wage statements pursuant to Labor Code § 226 and the applicable Wage Order of the Industrial Welfare Commission; and (iv) failure to timely pay wages upon termination of employment pursuant to Labor Code §§ 201-204; and (v) attorneys’ fees and costs incurred to prosecute the Action on behalf of Settlement Class Members. “Class Claims” also includes all claims that Plaintiffs and/or Settlement Class Members may have against the Released Parties relating to: (a) the payment, taxation, and allocation of Attorneys’ Fees and Litigation Costs to Class Counsel pursuant to this Settlement Agreement; (b) the payment, taxation, and allocation of Class Representatives’ Class Representative Payments and Plaintiff Amanda Frlekin’s Service Payment pursuant to the Settlement Agreement; and (c) the payment, taxation, and allocation of payments to Participating Settlement Class Members. Notwithstanding the foregoing, “Class 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 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 filed in the Action, or claims for violation of Massachusetts, New York, or Ohio law, or the federal Fair Labor Standards Act, which the Court already dismissed with prejudice as to the individual plaintiffs who brought the non-California claims.

The Released Class Claims include a 1542 Waiver but only as to the specific Class Claims that were asserted in the Action, identified above. “**1542 Waiver**” means an express waiver, to the fullest extent permitted by law, of the provisions, rights, and benefits of California Civil Code section 1542, which states: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

Class Representatives and Participating 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 Class Claims but, upon the Effective Date, Class Representatives and Participating Settlement Class Members

shall be deemed to have – and by operation of the Final Approval Order and the Judgment shall have – fully, finally, and forever settled and released any and all of the Released Class Claims. It is the intent of the Parties that the Final Approval Order and the Judgment entered by the Court shall have full *res judicata* effect and be final and binding upon Class Representatives and Participating Settlement Class Members regarding the Released Class Claims. Indeed, the binding nature of the Settlement and the Released Class Claims shall have the same force and effect as if each Participating Settlement Class Member had executed the Settlement Agreement individually.

F. WHAT ARE MY RIGHTS AS A SETTLEMENT CLASS MEMBER?

1. **Participating in the Settlement:** You do not need to do anything to participate in this Settlement. and, if Final Approval is granted by the Court, be entitled to receive a pro rata share of the Net Settlement Amount. You are a Participating Settlement Class Member because you did not opt out of the class in 2015. As a Participating Settlement Class Member, you will be bound by the terms of the Settlement and the Judgment entered by the Court, you will be deemed to have released the Released Class Claims against the Released Parties described above, and you will be entitled to receive a pro rata share of the Net Settlement Amount.
2. **Objecting to the Settlement:** You can ask the Court to deny approval of the Settlement by filing an objection. You cannot ask the Court to order a different settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the Action will continue. If that is what you want to happen, you must object.

Any objection to the proposed Settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney.

All written objections and supporting papers 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. All written objections to the proposed Settlement should: (a) contain your full name, address and last four digits of your social security number; (b) identify the case (by referring to the *Frlekin v. Apple* case, or Case No. 13-cv-03451-WHA, or the Apple Bag Check case, or some other descriptor that identifies the case) and state the basis for the objection; (c) be signed by you; and (d) be filed or postmarked on or before April 26, 2022 (the “**Response Deadline**”).

All written objections to final approval of the Settlement and Class Counsel’s requests for attorneys’ fees and costs, must similarly be submitted to the Court and must be filed or postmarked on or before July 5, 2022. The motions for attorneys’ fees, costs, Class Representative Payments and the Service Payment will be posted on the settlement website on or before approximately March 27, 2022. The motion for final approval of the Settlement will be posted on the settlement website on or before approximately May 30, 2022.

G. FINAL SETTLEMENT APPROVAL HEARING

The Court will hold a Final Approval Hearing on July 7, 2022, at 8:00 a.m., in Courtroom 12 on the 19th Floor of the United States Courthouse located at 450 Golden Gate Avenue, San Francisco, California 94102, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve the requests for the Class Representative Payments, the Service Payment, the Attorneys’ Fees, the Litigation Costs, the PAGA Settlement Amount, and the Settlement Administration Costs.

The Final Approval Hearing may be postponed without further notice to Class Members. **It is not necessary for you to appear at this hearing.** If you have submitted an objection you may appear at the hearing and be heard. You may check the settlement website at www.AppleBagCheckSettlement.com or the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov> to confirm that the Final Approval Hearing date has not been changed.

H. GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement Agreement available at www.AppleBagCheckSettlement.com, contact the Settlement Administrator (see below contact information), contact Class Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Settlement Administrator:

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**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO
INQUIRE ABOUT THIS SETTLEMENT.**

Dated: January 11, 2022.

By Order of the Court

Class Member ID: