

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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

v.

APPLE, INC., a California  
corporation,  
*Defendant-Appellee.*

No. 15-17382

D.C. Nos.

3:13-cv-03451-WHA

3:13-cv-03775-WHA

3:13-cv-04727-WHA

OPINION

Appeal from the United States District Court  
for the Northern District of California  
William Alsup, District Judge, Presiding

Argued and Submitted July 11, 2017  
Submission Withdrawn August 16, 2017  
Resubmitted August 26, 2020  
San Francisco, California

Filed September 2, 2020

Before: Susan P. Graber and Michelle T. Friedland, Circuit Judges, and Consuelo B. Marshall,\* District Judge.

Opinion by Judge Marshall

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**SUMMARY\*\***

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**Labor Law**

The panel reversed the district court’s grant of summary judgment in favor of defendant Apple, Inc., in a wage-and-hour class action brought by employees who sought compensation under California law for time spent waiting for and undergoing exit searches.

Upon the panel’s certification of a question of California law, the California Supreme Court concluded that time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience by employees was compensable as “hours worked” within the meaning of California Industrial Welfare Commission Wage Order 7.

The panel reversed the district court’s grant of Apple’s motion for summary judgment and remanded with instructions to (1) grant plaintiffs’ motion for summary

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\* The Honorable Consuelo B. Marshall, United States District Judge for the Central District of California, sitting by designation.

\*\* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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judgment on the issue of whether time spent by class members waiting for and undergoing exit searches pursuant to Apple's "Employee Package and Bag Searches" policy is compensable as "hours worked" under California law, and (2) determine the remedy to be afforded to individual class members.

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### COUNSEL

Kimberly A. Kralowec (argued) and Kathleen S. Rogers, The Kralowec Law Group, San Francisco, California; Lee S. Shalov and Brett R. Gallaway, McLaughlin & Stern LLP, New York, New York; for Plaintiffs-Appellants.

Julie A. Dunne (argued), Littler Mendelson P.C., San Diego, California; Richard H. Rahm, Littler Mendelson P.C., San Francisco, California; Theodore J. Boutrous Jr., Joshua S. Lipshutz, Bradley J. Hamburger, and Lauren M. Blas, Gibson Dunn & Crutcher LLP, Los Angeles, California; for Defendant-Appellee.

Michael D. Singer and Janine R. Menhennet, Cohelan Khoury & Singer, San Diego, California, for Amicus Curiae California Employment Lawyers Association.

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### OPINION

MARSHALL, District Judge:

Plaintiffs Amanda Frlekin, Taylor Kalin, Aaron Gregoroff, Seth Dowling, and Debra Speicher brought this wage-and-hour class action on behalf of current and former non-exempt employees who have worked in Defendant

Apple, Inc.'s retail stores in California since July 25, 2009. Plaintiffs seek compensation for time spent waiting for and undergoing exit searches pursuant to Apple's "Employee Package and Bag Searches" policy (the "Policy"), which states:

### **Employee Package and Bag Searches**

All personal packages and bags must be checked by a manager or security before leaving the store.

### **General Overview**

All employees, including managers and Market Support employees, are subject to personal package and bag searches. Personal technology must be verified against your Personal Technology Card (see section in this document) during all bag searches.

Failure to comply with this policy may lead to disciplinary action, up to and including termination.

### **Do**

- Find a manager or member of the security team (where applicable) to search your bags and packages before leaving the store.

**Do Not**

- Do not leave the store prior to having your personal package or back [sic] searched by a member of management or the security team (where applicable).
- Do not have personal packages shipped to the store. In the event that a personal package is in the store, for any reason, a member of management or security (where applicable) must search that package prior to it leaving the store premises.

Apple also provides guidelines to Apple store managers and security team members conducting the searches pursuant to the Policy, which state:

All Apple employees, including Campus employees, are subject to personal package [sic] checks upon exiting the store for any reason (break, lunch, end of shift). It [sic] is the employee's responsibility to ensure all personal packages are checked by [sic] the manager-on-duty prior to exiting the store.

When checking employee packages, follow these guidelines:

- Ask the employee to open every bag, brief case, back pack, purse, etc.
- Ask the employee to remove any type of item that Apple may sell. Be sure

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