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**F I L E D**  
Clerk of the Superior Court  
MAR 08 2017  
By: P. ASHWORTH, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

BRANDON FELCZER, individually, RYAN  
GOLDMAN, individually,  
RAMSEY HAWKINS, individually, and  
JOSEPH LANE CARCO, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

APPLE INC., a California corporation; and  
DOES 1 through 300, inclusive,

Defendants.

Case No. 37-2011-00102593 CU-OE-CTL

Assigned For All Purposes To:  
Hon. Eddie C. Sturgeon, Dept. 67

**STATEMENT OF DECISION ON BENCH  
TRIAL**

Bench Trial Date: December 8, 2016  
Complaint Filed: December 16, 2011

1 The trial of this matter began on October 18, 2016. On October 19, 2016, the Court ruled  
2 that the statutory meal and rest period claims, the direct final pay claims, and the derivative 203  
3 and 226 penalty claims for the relevant Retail subclasses would be tried to a jury.<sup>1</sup> The Court ruled  
4 that it would separately preside over a bench trial of the first year of the Retail UCL meal and rest  
5 break claims (running from December 16, 2007 through December 15, 2008) and of the Corporate  
6 UCL meal and rest break claims (running from December 16, 2007 through July 31, 2012).<sup>2</sup>  
7 Additionally, the Court presided over Plaintiff Ramsey Hawkins' Private Attorneys General Act  
8 ("PAGA") rest break claim, which ran from February 27, 2012 through July 31, 2012. The Court  
9 renders the following Statement of Decision.

10 **I. SUMMARY OF PROCEDURAL BACKGROUND**

11 **A. The Pleading**

12 On December 16, 2011, Plaintiff Brandon Felczer filed a class action lawsuit against Apple  
13 asserting claims for failure to provide meal periods, failure to provide rest breaks, failure to timely  
14 pay final wages upon termination of employment, issuance of paychecks with an out-of-state bank  
15 address,<sup>3</sup> derivative and direct waiting time penalties under Labor Code section 203, derivative  
16 wage statement penalties under Labor Code section 226, penalties under the Private Attorneys'

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18 <sup>1</sup> The relevant Retail subclasses and related claims tried to the jury were as follows:

- 19
- 20 • The Retail meal period subclass was comprised of all non-exempt, non-managerial Retail store
  - 21 employees and addressed meal period claims arising between December 16, 2008 and July 31, 2012.
  - 22 • The Retail rest period subclass was comprised of all non-exempt Retail Store employees (both
  - 23 managerial and non-managerial) and addressed rest period claims arising between December 16, 2008
  - 24 and July 31, 2012.
  - 25 • The Retail derivative wage statement penalty subclass was comprised of all Retail meal and rest period
  - 26 subclass members who worked between December 16, 2010 and July 31, 2012.
  - 27 • The Retail derivative final pay penalty subclass was comprised of all Retail meal and rest period subclass
  - 28 members who terminated their employment between December 16, 2008 and December 16, 2011.
  - The Retail direct final pay penalty subclass was comprised of all non-exempt Retail store employees
  - (both managerial and non-managerial) who ended their employment with Apple between December 16,
  - 2008 and December 16, 2011. However at trial Plaintiffs requested direct final pay penalties only on
  - behalf of non-exempt, non-managerial Retail employees.

<sup>2</sup> Named Plaintiff and Corporate subclass representative Joseph Carco ended his employment more than three years before this action was filed. He therefore lacked standing to prosecute statutory claims on behalf of the Corporate employees.

<sup>3</sup> Plaintiffs voluntarily dismissed this claim on October 16, 2013.

1 General Act (“PAGA”) for alleged failure to provide meal periods and rest breaks in accordance  
2 with California law, and violations of Business & Professions Code section 17200, et seq.

3 On January 3, 2012, Plaintiff Felczer filed a first amended complaint that removed his claim for rest  
4 break violations.

5 On March 8, 2013, Plaintiff Felczer filed a second amended complaint that, among other  
6 things, added his claim for alleged failure to provide rest breaks back into the lawsuit and added  
7 three new named Plaintiffs: Ramsey Hawkins, Ryan Goldman and Joseph Lane Carco.

8 On April 19, 2013, Plaintiffs filed a third amended complaint that, among other things,  
9 removed claims allegedly arising under Labor Code section 98.6.

10 On October 8, 2013, Plaintiffs filed the fourth amended (and operative) complaint asserting  
11 claims for failure to provide meal periods, failure to provide rest breaks, direct waiting time  
12 penalties for alleged failure to timely pay final wages upon termination of employment, derivative  
13 waiting time penalties for alleged failure to provide meal and rest breaks, derivative wage statement  
14 penalties for alleged failure to report meal and rest break premiums on wage statements, and PAGA  
15 penalties for: alleged failure to provide meal periods; alleged failure to provide rest breaks; and  
16 alleged violations of Labor Code section 232.5.

17 **B. Pre-Trial Motions**

18 In March 2016, the parties filed cross motions for summary adjudication. Plaintiffs moved  
19 for summary adjudication regarding their meal period claims and also moved for summary  
20 adjudication of Apple’s affirmative defense of waiver to Plaintiffs’ meal and rest period claims.  
21 Apple moved for summary adjudication regarding Plaintiffs’ direct final pay claims. On July 14,  
22 2016, the Court denied Plaintiffs’ motion for summary adjudication in its entirety, including  
23 upholding Apple’s right to claim the affirmative defense of waiver. The Court granted Apple’s  
24 motion for summary adjudication regarding Plaintiffs’ “job abandonment” direct final pay theory  
25 but denied Apple’s motion for summary adjudication regarding Plaintiffs’ “voluntary termination”  
26 and “payroll procedures document” direct final pay theories.

27 On August 29, 2016, Apple filed a motion for judgment on the pleadings regarding Plaintiffs’  
28 claims for PAGA penalties for alleged failure to provide meal periods and rest breaks based on

1 Plaintiffs Felczer's and Hawkins' failure to exhaust administrative remedies and lack of standing.  
2 The Court granted Apple's motion for judgment on the pleadings regarding Plaintiff Felczer's  
3 claims for PAGA penalties. The Court also granted Apple's motion for judgment on the pleadings  
4 regarding Plaintiff Hawkins' claim for PAGA penalties for alleged failure to provide meal periods  
5 because Plaintiff Hawkins lacked standing.<sup>4</sup> The Court denied Apple's motion for judgment on the  
6 pleadings regarding Plaintiff Hawkins' claim for PAGA penalties for alleged failure to provide rest  
7 periods.

8 On October 18, 2016, Plaintiffs narrowed their direct final pay claim to the theory that  
9 Apple paid final wages late because Apple's Payroll Department is located in Austin, Texas and is  
10 not formally staffed on weekends.

11 On October 18, 2016, and in response to Apple's motion to exclude all class member  
12 testimony from trial, Plaintiffs agreed that the following limiting instruction should apply to the  
13 trial (both the jury trial and the bench trial) of this case: (1) no class member whom Plaintiffs called  
14 to testify at trial was representative of the class; (2) each class member whom Plaintiffs called to  
15 testify at trial would testify only regarding his/her personal experiences; and (3) neither the jury nor  
16 the Court could rely on such testimony to find liability or damages as to the class (hereafter, the  
17 "witness admonition"). Plaintiffs requested, and over Apple's objection the Court granted, the same  
18 limiting instruction for all class member and opt-out witnesses whom Apple called to testify at trial.

19 On October 18 and 19, Apple argued that Plaintiffs had not, as required by the UCL,  
20 certified either a Retail or Corporate UCL subclass. Apple therefore moved to exclude evidence  
21 relating to any UCL claim from the trial of this case. The Court denied Apple's motion, concluding  
22 that Plaintiffs had inferentially certified Retail and Corporate UCL subclasses. The Court therefore  
23 ruled that a bench trial of the first year Retail and the Corporate, UCL claims would immediately  
24 follow the jury trial of the statutory Retail claims.

25 ///

26 \_\_\_\_\_  
27 <sup>4</sup> Plaintiffs conceded that the Manager View of Apple's meal period policy complied with California law throughout  
28 the relevant time period. Plaintiff Hawkins worked for Apple only as a non-exempt manager. Consequently, he  
lacked standing to prosecute Plaintiffs' meal period claims.

1           **C.     The Bench Trial Proceedings**

2           The bench trial regarding the first year of the Retail UCL meal and rest break claims, and  
3 the Corporate UCL meal and rest break claims, commenced on December 8, 2016 and concluded  
4 on December 19, 2016. The parties stipulated that the testimony of all witnesses who had testified  
5 during the jury trial of the Retail statutory meal and rest break claims, which covered the time  
6 period December 16, 2008 through July 31, 2012, could be applied for purposes of the bench trial  
7 of the first year of the Retail UCL meal and rest break claims, i.e., the Retail UCL meal and rest  
8 break claims arising from December 16, 2007 through December 15, 2008. (Hereafter the Retail  
9 UCL meal and rest break claims arising between December 16, 2007 and December 15, 2008 will  
10 be referred to as the “first year Retail UCL meal and rest claims”.) The parties further stipulated  
11 and agreed that all of the evidence that had been admitted during the jury trial of the Retail meal  
12 and rest break claims would also be admitted for purposes of the bench trial of the first year Retail  
13 UCL meal and rest claims. Pursuant to Plaintiffs’ pre-trial agreement, the Court issued the same  
14 witness admonition, i.e., (1) no class member whom Plaintiffs called to testify at trial was  
15 representative of the class; (2) each class member whom Plaintiffs called to testify at trial would  
16 testify only regarding his/her personal experiences; and (3) the Court could not rely on such  
17 testimony to find liability or damages as to the class. Plaintiffs requested, and over Apple’s  
18 objection the Court granted, the same limiting instruction for all class member and opt-out  
19 witnesses whom Apple called to testify at trial.

20           The following witnesses either testified or had their videotaped deposition testimony played  
21 in Plaintiffs’ case-in-chief regarding the first year Retail UCL meal and rest claims and the  
22 Corporate UCL claims:

23           1.     Colleen Christensen (by videotape deposition), who is a Retail UCL meal and rest  
24 break subclass member who worked as a Specialist at Apple’s UTC store from roughly December  
25 2007 to August 2008.

26           2.     Shirverlion (“Sam”) Worthen, who is a Corporate UCL meal and rest break subclass  
27 member and worked for several different teams in the AppleCare call center in Elk Grove,

28     ///

1 California, including the Tier 1 Wireless Support Team, the EDU group, and the Carpe Facto team,  
2 from December 2008 through July 31, 2012;

3 3. Gloria Hallman, who is a Corporate UCL meal and rest break subclass member and  
4 worked as a Tier 2 Wireless advisor in the AppleCare call center located in Elk Grove, California  
5 from 1998 to August 2011. Ms. Hallman was on a leave of absence and did not work for Apple  
6 from August 2011 through at least July 31, 2012;

7 4. Lane Carco, who is a named Plaintiff and the only Corporate UCL subclass  
8 representative, and who worked in the AOS Department as an Outbound Account Manager from at  
9 least December 16, 2007 through June 20, 2008;

10 5. Jessica Dellava, who is a Corporate UCL meal and rest break subclass member and  
11 worked as a Cashier, Prep Cook and Cook in the Caffe Mac located at the Elk Grove campus from  
12 September 2007 to May 2012;

13 6. Diep Luu, who is a Corporate UCL meal and rest break subclass member and  
14 worked as a System Administrator in the Data Center department located in Newark, CA, from  
15 1995 to 1998; and from approximately 2004 through at least July 31, 2012.

16 7. Nikki Donnelly, who is a Corporate UCL meal and rest break subclass member and  
17 who worked as a Business Systems Analyst, and sometimes worked from home, from May 2006 to  
18 November 2011.

19 8. Renee Conmy, who is Apple's Senior Director of Employee Relations for Apple's  
20 Corporate Division and Apple's person most qualified regarding meal and rest break policies for  
21 Apple's Corporate non-exempt employees between December 16, 2007 and July 31, 2012; and

22 9. Dr. Robert Fountain, Plaintiffs' expert witness for counting meal period events, for  
23 estimating damages for meal period events, and for counting rest break shifts.

24 The following witnesses either testified in Apple's case-in-chief or had their deposition  
25 testimony submitted for the Court's review:

26 1. Rupesh Pawar, who is an opt-out and worked as a Caffe Mac Lead Cook and  
27 manager at the Vallco Parkway campus in Cupertino, California from January 2011 through at least  
28 July 31, 2012;

1           2.     Maria Ruiz, who is an opt-out and worked as a receptionist for Apple in office  
2 buildings throughout Cupertino, California from December 16, 2007 through at least July 31, 2012;

3           3.     Todd Plank, who is a Senior Area Manager over AppleCare Partner Relations for the  
4 Americas and worked as a Team Manager and Project Manager for the AppleCare team from  
5 September 2, 2008 through at least July 31, 2012.

6           4.     Scott Cunningham, who is a Senior Manager and worked as an AOS Manager at the  
7 Elk Grove, California campus from 2007 to 2008;

8           5.     Tom Humphreys, who is a Manager - Returns Operations Shipping and worked as a  
9 Warehouse Manager at the Elk Grove, California warehouse beginning in 2011 through at least July  
10 31, 2012;

11          6.     John Garber, who is an Area Manager in the AppleCare Contact Centers and worked  
12 as an AppleCare Manager at the Elk Grove, California campus from 2004 to mid-2010;

13          7.     Mark Stinson, who is an IS&T Senior Manager and worked as an IS&T Manager at  
14 the Elk Grove, California campus from July 6, 2010 through at least July 31, 2012;

15          8.     David McGee, who is an ASC Regional Manager and worked as an ASC Manager at  
16 partner retail stores throughout Northern California from 2006 through at least July 31, 2012;

17          9.     Kyle Hamblin, who is an opt-out and worked as an ASC representative at partner  
18 Best Buy retail locations throughout Southern California from November 2008 through at least July  
19 31, 2012;

20          10.    Renee Conmy, Apple's person most qualified regarding Apple's meal and rest  
21 period policies for Corporate employees;

22          11.    Lisa Carlson (by deposition transcript), who is a Corporate UCL meal and rest  
23 break subclass member who worked in the AOS department at the Elk Grove, California campus  
24 and worked for Apple from December 1, 2003 through at least July 31, 2012;<sup>5</sup>

25          12.    Monique McGuire (by deposition transcript), who is a Corporate UCL meal and rest  
26 break subclass member who worked as an Agreement Administration Advisor in the AppleCare

27 \_\_\_\_\_  
28 <sup>5</sup> Apple requested that Plaintiffs produce Corporate UCL class members Lisa Carlson, Monique McGuire, Michael Ruiz, John Glover and Sterling Hurd to testify at trial. Plaintiffs were unable to produce those witnesses for live testimony. The parties agreed to instead present the testimony of these witnesses through their deposition testimony.

1 department at the Elk Grove, California campus from September 2011 through at least July 31,  
2 2012;

3 13. Michael Ruiz (by deposition transcript) who is a Corporate UCL meal and rest break  
4 subclass member and worked in the AppleCare department at the Elk Grove, California campus and  
5 from his home from May 26, 2009 through at least July 31, 2012;

6 14. Jon Glover (by deposition transcript), who is a Corporate UCL meal and rest break  
7 subclass member and worked in OS Support in the AppleCare department from his home from  
8 May 21, 2012 through at least July 31, 2012; and

9 15. Sterling Hurd (by deposition transcript), who is a Corporate UCL meal and rest  
10 break subclass member and worked in the Internal Tools and iAds departments at the Cupertino,  
11 California campus from May 3, 2010 through at least July 31, 2012.

12 Apple also admitted evidence that 45 Retail UCL rest break subclass members who worked  
13 in 29 different Retail stores and held numerous different Retail Store positions took the correct  
14 number of rest breaks 99% or 100% of the time when they worked shifts of more than 3.5 and less  
15 than 4 hours, more than 6 but less than 8 hours, and/or more than 10 but less than 12 hours. Apple  
16 further admitted evidence that 13 Corporate UCL rest break subclass members who worked in 19  
17 different Corporate departments took the correct number of rest breaks 100% of the time when they  
18 worked shifts of more than 3.5 and less than 4 hours, more than 6 but less than 8 hours, and/or more  
19 than 10 but less than 12 hours.

20 **II. STATEMENT OF FACTS**

21 **A. Overview Of Apple's Retail And Corporate Operations**

22 From December 16, 2007 through July 31, 2012, Apple had both a Retail Division and a  
23 Corporate Division. Apple Retail stores were generally divided into three main sections: the Back  
24 of House, where employees received and stocked inventory; the Red Zone, where employees made  
25 sales to customers; and the Family Room, where employees met with customers on either an  
26 appointment or walk-in basis to repair Apple products and provide product training. Plaintiffs  
27 submitted no evidence regarding how many Retail stores Apple operated and/or how many Retail

28 ///



1 UCL meal and rest break class members worked in Apple's Retail stores during the first year of the  
2 Retail UCL meal and rest break claims.

3 Apple's Corporate Division had more than 900 different departments between December  
4 16, 2007 and July 31, 2012. These departments varied significantly from: engineers who worked in  
5 hundreds of different software and hardware departments; to cashiers, prep cooks and cooks who  
6 worked in Apple-owned Caffe Macs; to Material Handlers and Shipping/Receiving employees who  
7 worked in Apple's Elk Grove warehouse; to receptionists who worked in the lobbies of Apple  
8 office buildings throughout Silicon Valley; to AppleCare, AOS and IS&T employees who worked  
9 in offices in Elk Grove or from home. Plaintiffs' expert, Dr. Fountain, testified that there were  
10 6,392 members of the Corporate UCL meal and rest break subclasses. (12/13/16 RT, p. 9395:16-  
11 9396:1.)

12 **B. Apple's Meal And Rest Period Policies**

13 Apple posted meal and rest policies applicable to all Retail and Corporate employees on an  
14 internal intranet site called HRWeb. The meal and rest period policies posted on HR Web from  
15 December 16, 2007 through July 31, 2012 had two views: a Manager View, which only exempt and  
16 non-exempt managers could access, and an Employee View, which all employees could access. The  
17 Manager View of the policy posted from December 16, 2007 through December 15, 2008 provided  
18 in relevant part:

- 19
- 20 • "All nonexempt employees who work five or more hours in a day must take at least one  
21 30-minute meal period."
  - 22 • "This meal period must be taken within the first five hours of the shift."
  - 23 • "The employee cannot work more than five hours at any time during a work shift  
24 without a meal period."
  - 25 • "Any nonexempt employee who works more than 10 hours in a day is entitled to a  
26 second 30-minute meal period."
  - 27 • "Apple provides a 10-minute rest period for every four hours for all nonexempt  
28 employees."

- 1           • “To the extent possible, rest periods should be scheduled in the middle of each four-  
2           hour work period of the employee’s work schedule.”

3           The Employee View of the policy posted from December 16, 2007 through December 15,  
4 2008 provided in relevant part:

- 5           • “All nonexempt employees who work five or more hours in a day must take at least one  
6           30-minute meal period.”
- 7           • “Any nonexempt employee who works more than 10 hours in a day is entitled to a  
8           second 30-minute meal period.”
- 9           • “Apple provides a 10-minute rest period for every four hours for all nonexempt  
10          employees.”
- 11          • “To the extent possible, rest periods should be scheduled in the middle of each four-  
12          hour work period of the employee’s work schedule.”
- 13          • “Employees are expected to schedule rest periods at their discretion, unless instructed  
14          otherwise by a supervisor.”
- 15          • “If you have questions regarding Apple’s Meal and Rest Period policy, contact your  
16          manager or Human Resources Representative.”
- 17          • “Please direct any input concerning website issues or questions regarding HR programs,  
18          policies and procedures to HR Helpline.”

19          Apple posted similar Manager View and Employee View versions of the meal and rest  
20          period policies on HRWeb, adding in February 2010 that no employee could skip rest breaks due  
21          to business needs, through July 31, 2012. (Exhibits 1088 (Apple 515-523), 1045, 1046.)

22           **C.      Additional Communications Regarding Meal And Rest Periods**

23           Substantial evidence established that Apple trained its Retail and Corporate  
24          employees regarding its meal and rest period policies at the time of hire. Apple provided several  
25          additional communications regarding its meal and rest period policies, including:

- 26           • Apple posted the state-mandated Wage Order in its Retail stores and in its Corporate  
27          departments throughout the relevant time periods.

- 1 • Apple posted additional policies, including meal and rest period articles and scheduling  
2 guidelines, on its Retail intranet sites.
- 3 • Apple distributed quarterly reminders to its Retail and Corporate managers regarding  
4 the Company's meal and rest period policies.
- 5 • Retail and Corporate managers testified that they reminded their teams about the  
6 Company's meal and rest period policies on a regular basis, including during Daily  
7 Downloads (for Retail employees) and/or department meetings (for Corporate  
8 employees).

9 **D. Meal and Rest Period Verifications**

10 Apple's timekeeping system queried employees about meal and rest break compliance.  
11 (Exhibit 1004.) At the end of each workday, Apple Retail store employees received a prompt  
12 stating, "I took all meal periods and was given an opportunity to take all rest breaks for which I  
13 was eligible. I have informed HR in writing if any of the above is incorrect." Apple Corporate  
14 employees received this same timekeeping prompt at the end of each pay period.

15 **E. Revision of Apple's Meal and Rest Period Policies**

16 On August 1, 2012, Apple revised its meal and rest break policy to, among other things: (1)  
17 state in both the Manager View and the Employee View that first meal periods must be taken by the  
18 end of the fifth hour of work and second meal periods must be taken by the end of the tenth hour of  
19 work; and (2) explain how many rest breaks are due when employees work 3.5 to 6 hours, more  
20 than 6 and up to 10 hours, and more than 10 and up to 14 hours. (Exhibit 1044.) Plaintiffs concede  
21 that Apple's revised meal and rest period policies comply with California law and therefore closed  
22 the class period for their meal and rest breaks claims as of July 31, 2012.

23 Apple's persons most qualified regarding the Company's meal and rest period policies for  
24 both Retail and Corporate employees explained that the revisions to Apple's meal and rest  
25 period policies were prompted by the California Supreme Court's decision in *Brinker v.*  
26 *Superior Court*. They further testified that the change in language did not represent a change in  
27 practice. More specifically, Apple's policy was always to provide first meal periods within the first  
28 five hours of work and to not allow an employee to work more than five hours at any time during a

1 work shift without a meal period, and Apple's practice was to schedule employees for shifts that  
2 provided the correct number of rest breaks.

3 **F. Absence of Complaints About Meal and Rest Breaks**

4 Apple provided its Retail and Corporate employees multiple platforms through which they  
5 could provide feedback regarding their working conditions, including meal and rest periods. Apple  
6 provided an HR Helpline where employees could call with questions or complaints about any  
7 Human Resources issue, including meal periods and rest breaks. Additionally, Apple provided a  
8 Business Conduct Helpline where employees could report violations of any company policy or raise  
9 concerns about their working conditions, including meal or rest periods in an anonymous manner.  
10 Apple invited Retail store employees to provide anonymous feedback regarding their working  
11 conditions three times a year through a tool called Net Promoter for Our People ("NPP"). Plaintiffs  
12 submitted no evidence that any Retail UCL meal or rest break subclass member submitted any  
13 comments or complaints regarding meal or rest breaks through any of these channels between  
14 December 16, 2007 and December 15, 2008. Likewise, Plaintiffs submitted no evidence that any  
15 Corporate non-exempt employee made any comments or complaints regarding meal or rest breaks  
16 through any of these available channels between December 16, 2007 and July 31, 2012. In fact,  
17 none of the Corporate witnesses who testified at trial stated that they had complained about meal or  
18 rest periods in any manner during their employment with Apple.

19 **III. SUMMARY OF APPLICABLE LAW**

20 As Plaintiffs have raised unfair competition law ("UCL") claims under Business &  
21 Professions Code Section 17200, *et seq.*, resolution of their claims requires application of both the  
22 UCL laws and the underlying laws on which Plaintiffs premise their UCL claims.

23 **A. Relevant UCL Law**

24 Under Business & Professions Code section 17200, *et seq.*, a plaintiff must be injured  
25 by the alleged unfair competition about which they complain in order to have standing to prosecute  
26 a UCL claim. *Kwikset Corp. v. Super. Ct.*, 51 Cal. 4th 310, 320-321 (2011). Pursuant to section  
27 17203, a court may make "such orders or judgment ... as may be necessary to restore to any person  
28 in interest any money or property ... which may have been acquired by means of such unfair

1 competition.” Under the UCL, “[p]revailing plaintiffs are generally limited to injunctive relief and  
2 restitution.” *Cel-Tech Commc’ns Inc. v. L.A. Cellular Tel. Co.*, 20 Cal. 4th 163, 179 (1999). A  
3 plaintiff may not recover damages under the UCL. *See, e.g., Pineda v. Bank of Am., N.A.*, 50 Cal.  
4 4th 1389, 1402 n.14 (2010); *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 173  
5 (2000); *Cel-Tech*, 20 Cal. 4th at 179 (under the UCL “[p]laintiffs may not receive damages.”); *Bank*  
6 *of the West v. Super. Ct.*, 2 Cal. 4th 1254, 1266 (1992) (“damages are not available under section  
7 17203.”); *Kraus v. Trinity Mgmt. Servs., Inc.*, 23 Cal. 4th 116, 126 (2000), *superseded on other*  
8 *grounds by statute*, Cal. Bus. & Prof. Code § 17204, *as recognized in Arias v. Super. Ct.*, 46 Cal.  
9 4th 969 (2009).

10 Restitution is limited to either “money or property that defendant took directly from  
11 plaintiff” or “money or property in which [plaintiff] has a vested interest.” *Korea Supply Co. v.*  
12 *Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1149. Because restitution is limited to restoring funds in  
13 which a plaintiff has a vested ownership interest, the amount of restitution claimed must be  
14 quantifiable and measureable. *Cortez v. Purolator Air Filtration Prods. Co.*, *supra*, 23 Cal. 4th at  
15 178 (“restitutionary awards encompass quantifiable sums one person owes to another”); *Day v.*  
16 *AT&T*, 63 Cal. App. 4th 325, 339 (1998) (section 17203 “operates only to return to a person those  
17 measurable amounts which are wrongfully taken by means of an unfair business practice”)  
18 (emphasis in original); *Colgan v. Leatherman Tool Group, Inc.*, 135 Cal. App. 4th 663, 669 (2006).  
19 Estimated losses cannot support a claim for restitution under the UCL. *Colgan, supra*, 135 Cal.  
20 App. 4th at 672, 699-700; *Johnson v. GMRI*, 2007 WL 2009809, \*3 (E.D. Cal. 2007). A plaintiff  
21 must prove by substantial evidence that class members are entitled to restitution in a measurable  
22 and quantifiable amount. *Colgan, supra*, 135 Cal. App. 4th at 699-700.

### 23 B. Relevant Meal Period Law

24 Plaintiffs premise their UCL claims in part on Apple’s alleged failure to provide meal  
25 periods in accordance with California law. “An employer’s duty with respect to meal breaks . . . is  
26 an obligation to provide a meal period to its employees. The employer satisfies this obligation if it  
27 relieves its employees of all duty, relinquishes control over their activities and permits them a  
28 reasonable opportunity to take an uninterrupted 30-minute break, and does not impede or

1 discourage them from doing so.” *Brinker Rest. Corp. v. Sup. Ct.*, 53 Cal. 4th 1004, 1040 (2012). An  
2 employer has no obligation to ensure that employees do no work during meal periods. *Id.* at 1038.  
3 “Indeed, the obligation to ensure employees do no work may in some instances be inconsistent  
4 with the fundamental employer obligations associated with a meal break: to relieve the employee of  
5 all duty and relinquish any employer control over the employee and how he or she spends the  
6 time.” *Id.* at 1038-39 (citing *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 584-585 (2000)  
7 [explaining that voluntary work may occur while not subject to an employer’s control, and its  
8 cessation may require the reassertion of employer control].)

9 Similarly, “[t]he law is clear that an employer is not required to schedule meal periods in  
10 order to comply with their legal meal-period obligations.” *Driscoll v. Granite Rock Co.*, 6 Cal. App.  
11 5th 215, 224 (2016) (citing *Kenny v. Supercuts, Inc.*, 252 F.R.D. 641, 646 (N.D. Cal. 2008)). Once  
12 an employer informs its employees of their right to meal periods, no liability arises unless the  
13 employer refuses to allow the employee to take a meal period in accordance with California law.  
14 *Driscoll v. Granite Rock Co.*, *supra*, 6 Cal. App. 5th at 222.

15 “Proof an employer had knowledge of employees working through meal periods will not alone  
16 subject the employer to liability for premium pay; employees cannot manipulate the flexibility  
17 granted them by employers to use their breaks as they see fit to generate such liability.” *Brinker*, 53  
18 Cal. 4th at 1040.

### 19 C. Relevant Rest Break Law

20 California employers must authorize and permit their employees to take a 10-minute rest  
21 break when they work 3.5 hours. Further, an employer must authorize and permit its employees to  
22 take a 10-minute rest break for every four hours worked “or major fraction thereof.” The California  
23 Supreme Court confirmed in *Brinker* that “major fraction thereof” means more than two hours. The  
24 California Supreme Court therefore held in *Brinker* that an employee who works 3.5 to 6 six hours  
25 is entitled to one rest break, an employee who works more than 6 and up to 10 hours is entitled  
26 to two rest breaks, and an employee who works more than 10 and up to 14 hours is entitled to three  
27 rest breaks. *Brinker, supra*, 53 Cal. 4<sup>th</sup> at 1029.

28 ///

1 **IV. CONCLUSIONS OF LAW**

2 The Court finds that the first year Retail UCL meal and rest period claims have no merit.  
3 Plaintiffs confirmed that the policies at issue for the first year Retail UCL meal and rest period  
4 claims were the same HRWeb policies that were at issue in the jury trial of the Retail statutory  
5 meal and rest period claims. (12/8/16 RT, p. 8232:13-21 (“The Court will see the same HRWeb  
6 policies that were deficient regarding meal and rest periods are at issue in this phase of the trial. We  
7 have one other version of the HRWeb policy that was in place during the fourth year; it has the  
8 same deficiencies as the other. The only difference is the time period in which it was effective. So  
9 you will see the same type of deficient HRWeb meal and rest period policies as you saw in the  
10 three-year portion of this case.”) The Court concludes that Apple’s meal and rest period policies  
11 authorized and permitted the correct number of meal and rest periods. The Court concludes that  
12 Apple’s scheduling practices did not cause class members to miss the opportunity to take first meal  
13 periods by the start of the sixth hour of work or second meal periods by the start of the eleventh  
14 hour of work. Apple’s policy expressly instructed managers to schedule the first meal period within  
15 the first five hours of work and prohibited employees from working more than five hours “at any  
16 point during a work shift” without a meal period. Apple managers consistently testified that they  
17 scheduled first meal periods within the first five hours. Evidence at trial also confirmed that Apple  
18 had no uniform scheduling tool in its retail stores, with stores using Excel spreadsheets, Numbers  
19 spreadsheets, Concierge, Scheduler and various other homegrown tools. The only evidence  
20 explaining why Retail class members sometimes recorded meal periods after the start of the sixth  
21 was class member testimony. However, pursuant to the witness admonition, the Court may not  
22 decide either liability or damages based on that evidence. Moreover, class member testimony  
23 provided no evidence of a uniform scheduling practice that caused all of its non-exempt employees  
24 to take meal periods late. Instead, witnesses provided a number of explanations for late meal  
25 periods, including that they lost track of time, were not hungry, wanted to eat later with family or  
26 friends, or voluntarily chose not to conduct a warm hand-off and to instead complete particular  
27 transactions. Moreover, as further laid out below, the equities regarding the first year Retail UCL  
28 meal period claim weigh in Apple’s favor.

1           The Court also concludes the Corporate UCL meal and rest period claims have no merit. In  
2 their opening statement, Plaintiffs confirmed that the meal and rest period policies at issue for the  
3 Corporate UCL subclass are the same HRWeb meal and rest period policies that were at issue for  
4 the Retail jury trial. (12/8/16 RT, p. 8232:22 -8233:2 (“You also will hear from corporate  
5 employees, and you will see that the same policy that applied to retail employees applied to  
6 corporate employees and the same deficiencies and resulted in the problems, that is, late and missed  
7 meal periods, missed second and first and third rest periods.”) The Court concludes that Apple’s  
8 meal and rest period policies authorized and permitted the correct number of meal and rest periods.  
9 Moreover, the Court concludes that Apple’s scheduling practices authorized and permitted timely  
10 first and second meal periods. Again, Apple’s meal period policy required meal periods to be  
11 scheduled on time and numerous Corporate managers confirmed they scheduled meal periods in  
12 accordance with the policy. Evidence at trial also confirmed Apple had no uniform scheduling tool  
13 for its more than 900 Corporate departments, with some groups using electronic schedules, some  
14 using paper schedules, some just shouting out “break” verbally to all workers in the area, and some  
15 having no schedules at all – leaving it completely to the discretion of the employee. The only  
16 evidence explaining why some meal periods were taken after the start of the sixth hour of work was  
17 class member testimony. But again, pursuant to the witness admonition, the Court may not make  
18 liability or damage determinations based on such testimony. In any event, class members provided  
19 no single or uniform explanation for why some meal periods were recorded after the start of the  
20 sixth hour work. Finally, as further laid out further, the equities regarding the Corporate UCL meal  
21 period claims weigh in Apple’s favor.

22           **A.     The First Year Retail UCL Missed Meal Period Claims**

23           The question presented by the Retail UCL meal period subclass’ “missed” meal period  
24 claims is whether Apple engaged in an unlawful business practice by operating under uniform,  
25 company-wide policies that failed to authorize and permit the subclass of all non-exempt, non-  
26 managerial Retail store employees who worked between December 16, 2007 and December 15,  
27 2008 to take a first, 30-minute meal period when they worked more than five hours and/or a second  
28 meal period when they worked more than 10 hours. The answer to these questions is clearly no. In



1 their opening statement, Plaintiffs confirmed that the policies at issue for the first year Retail UCL  
2 meal period claims were the HRWeb same policies that were at issue in the jury trial of the Retail  
3 statutory meal period claims. (12/8/16 RT, p. 8232:13-21.) The Court concludes that Apple's meal  
4 period policies authorized and permitted its Retail non-exempt, non-managerial employees who  
5 worked more than five hours to take a first meal period and those who worked more than 10 hours  
6 to take a second meal period. All versions of Apple's meal period policies in effect between  
7 December 16, 2007 and December 15, 2008 expressly stated that employees who worked more than  
8 five hours were entitled to at least one 30-minute meal period, and employees who worked more  
9 than 10 hours were entitled to a second 30-minute meal period.

10 **B. The First Year Retail UCL Late Meal Period Policy Claims**

11 The question presented by the Retail UCL meal period subclass' "late" meal period policy  
12 claims is whether Apple engaged in an unlawful business practice by operating under uniform,  
13 company-wide policies that failed to authorize and permit the subclass of all non-exempt, non-  
14 managerial Retail store employees who worked between December 16, 2007 and December 15,  
15 2008 to take a first meal period by the start of the sixth hour of work and/or a second meal period  
16 by the start of the eleventh hour of work. Again, in their opening statement, Plaintiffs confirmed  
17 that the policies at issue for the first year Retail UCL meal period claims were the same HRWeb  
18 policies that were at issue in the jury trial of Plaintiffs' statutory meal period claims. (12/8/16 RT,  
19 p. 8232:13-21.) The Court concludes that Apple's meal period policies provided for timely meal  
20 periods. The Manager's View of the HR Web meal period policy expressly stated, "[the first] meal  
21 period must be taken within the first five hours of the shift," and/or "[t]he employee cannot work  
22 more than five hours at any time during a work shift without a meal period."

23 **C. The First Year Retail UCL Late Meal Period Scheduling Practices Claims**

24 The question presented by the Retail UCL's "late" meal period scheduling practices  
25 claims is whether Apple engaged in an unlawful business practice by consistently applying a  
26 uniform scheduling practice in its California Retail stores that resulted in the subclass of all non-  
27 exempt, non-managerial employees who worked between December 16, 2007 and December 15,  
28 2008 missing the opportunity to take a first meal period by the start of the sixth hour of work and/or

1 a second meal period by the start of the eleventh hour of work. As noted above, the Court concludes  
2 Apple did not do so.

3  
4 **1. All Relevant Evidence Confirms Apple's Practice Was To  
Schedule Timely Meal Periods.**

5 The only evidence of a "uniform" scheduling practice is Apple's meal period policy. That  
6 policy informed managers that first meal periods "must be taken within the first five hours of the  
7 shift" and no employee may "work more than five hours at any time during a work shift without a  
8 meal period." Thus, the policy established a lawful scheduling practice.

9 Apple's California Retail stores did not use a uniform scheduling tool. Apple provided its  
10 Retail stores with a Kronos scheduling tool, and that tool was configured to schedule meal periods  
11 within the first five hours of a shift. (11/1/16 RT, p. 2351:17-2352:12 [Robert Hearn].) However,  
12 numerous witnesses testified that the tool did not generate useable schedules. Consequently, stores  
13 developed and used a variety of different scheduling tools, including Excel spreadsheets, Numbers  
14 spreadsheets, appointments scheduled in Concierge, a HUD scheduling tool, the Scheduler on  
15 iPads, etc.

16 Retail store managers who testified at trial (including named Plaintiff Hawkins) confirmed  
17 that their practice was to schedule meal periods within the first five hours of an employee's shift.  
18 (See, e.g., 11/22/16 RT, p. 6602:16-20 [Barbara Davis]; 11/15/16 RT, p. 5615:14- 25 [Karen  
19 Gillebaard]; 11/2/16 RT, p. 2519:18-2520:4 [Ramsey Hawkins]; 11/29/1 RT, p. 7231:157232:1  
20 [Steve Jones]; 11/29/16 RT, p. 7103:24-7104:6 [Chris Lamb]; 11/29/16 RT 7338:15-23 [Ryan  
21 Lauterjing]; 11/21/16 RT, p. 6422:6-18, 6430:18-6431:20 [Nancy Martinez]; 12/5/16 RT, p.  
22 7965:21-7966:6 [Megan Melcher]; 11/28/16 RT, p. 6884:22-25 [Paul Voigt]; 11/22/16 RT, p.  
23 6713:9-22 [Jody Yorkey].)<sup>6</sup> Numerous class members and opt-outs corroborated this practice. (See,  
24 e.g., 11/29/16 RT, p. 7145:2-12 [Matt Baxter]; 11/30/16 RT, p. 7564:5-19 [Peter Brown]; 11/22/16  
25 RT, p. 6646:23-25 [Alex Corbin]; 10/25/16 RT, p. 1152:25-28 [Ben Dixon]; 12/5/16 RT, p. 7927:6-  
26 14 [Matt Dunlap]; 10/25/16 RT, p. 1197:3-16 [Jesse Meyers]; 10/26/16 RT, p. 1308:19-  
27 1309:9 [Monica Pease]; 10/27/16 RT, p. 1640:8-19 [Christopher Pentz]; 11/17/16 RT, p. 6079:7-12

28 <sup>6</sup> A chart of the cited testimony is attached as "Exhibit A."

1 [Richard Precop]; 11/1/16 RT, p. 2266:25-2267:11 [Michelle Sosnowski]; 11/17/16 RT, p. 6025:4-  
2 17 [Greg Wassman].)<sup>7</sup>

3 Plaintiffs offered no evidence that Apple's Retail stores scheduled their employees to work  
4 more than 10 hours, much less that the stores uniformly applied a scheduling practice that resulted  
5 in the subclass of all Retail non-exempt, non-managerial employees to miss the opportunity to  
6 commence their second meal periods by the start of the eleventh hour of work.

7 Finally, Apple Retail store managers testified that employees were expected to transfer  
8 customers to co-workers if a customer interaction coincided with a scheduled meal period (referred  
9 to by several witnesses as a warm hand-off). (*See, e.g.*, 11/22/16 RT, p. 6603:22-6604:20 [Barbara  
10 Davis]; 11/15/16 RT, 5558:2-5559:12 [Karen Gillebaard]; 11/29/16 RT, p. 7239:9-7240:12, p.  
11 7240:22-7241:5 [Steve Jones]; 11/29/16 RT, p. 7110:8-15, p. 7112:8-14 [Chris Lamb]; 11/29/16  
12 RT, p. 7319:7-7320:20 [Ryan Lauterjing]; 11/21/16 RT, p. 6422:19-6424:14, p. 6424:25-  
13 6427:19 [Nancy Martinez]; 12/5/16 RT, p. 7975:21-7978:5 [Megan Melcher].)<sup>8</sup> A number of  
14 witnesses confirmed that they were expected to and did in fact conduct warm hand-offs in order to  
15 take meal periods as scheduled. (*See, e.g.*, 11/30/16 RT, p. 7436:15-7437:3 [Maret Lewis];  
16 11/22/16 RT, p. 6653:18-6654:14 [Alex Corbin]; 11/7/16 RT, p. 3239:22-3240:10 [Timothy  
17 Roberts].)<sup>9</sup> Numerous witnesses also testified that Retail managers regularly walked the floor to  
18 remind employees to take their meal periods and/or to facilitate warm hand-offs.

19 **2. Plaintiffs' Evidence Was Not Relevant Or Credible.**

20 Plaintiffs submitted time records reflecting meal periods recorded after the start of the sixth  
21 hour of work. However, Plaintiffs offered no evidence that could uniformly, in one stroke, explain  
22 why the meal periods were recorded when they were. Notably, a substantial number of the "late"  
23 meal periods discussed at trial reflected instances where the meal period began a few minutes after  
24 the start of the sixth hour of work because the employee had voluntarily clocked in several minutes  
25 early for his/her shift. (*See, e.g.*, 10/27/16 RT, p. 1558:8-18 [Michael Torres]; 10/27/16 RT, p.  
26

27 <sup>7</sup> A chart of the cited testimony is attached as "Exhibit B."

28 <sup>8</sup> A chart of the cited testimony is attached as "Exhibit C."

<sup>9</sup> A chart of the cited testimony is attached as "Exhibit D."

1 1666:28-1671:27 [Christopher Pentz]; 12/5/16 RT, p. 7893:17-7894:12 [Jesus Sanchez]; 11/21/16  
2 RT, p. 6478:23-6479:2 [Nancy Martinez].)<sup>10</sup>

3 The only evidence Plaintiffs offered to explain why class members recorded meal periods  
4 when they did was class member testimony. However, based on the witness admonition, the Court  
5 may not rely on class member testimony to decide either liability or damages in this case.  
6 Moreover, class members testified that they delayed their meal periods for a variety of reasons (i.e.,  
7 they were not hungry at the time of their scheduled meal, they were engrossed in work and lost  
8 track of time, they chose to complete an interaction with a customer rather than hand the customer  
9 off to a co-worker, etc.). (See, e.g., 11/8/16 RT, p. 3443:15-3434:2, 11/15/16 RT, p. 5587:22-  
10 5588:12 (Brandon Felczer - not hungry and having too much fun); 3/11/16 Deposition Transcript of  
11 Stephen Mayzels, p. 27:3-11 (lost track of time); 11/3/16 RT, 2726:2-20 (Ryan Goldman - did not  
12 want to leave the work to co-workers).) This testimony confirms class members' own conduct and  
13 choices - not Apple's scheduling practices - caused them to begin meal periods after the start of the  
14 sixth hour of work.

15 Finally, while some class members testified they complained about "late" meal periods, they  
16 were actually testifying about taking meal periods later than scheduled, not necessarily after the  
17 start of the sixth hour. Bradley Brunet provides an apt example. He testified that he complained  
18 about "late" meal period 2-3 times per week. (11/3/16 RT, p. 2844:20-2845:22.) However, during  
19 the more than 15 months he worked in California, his time records showed he recorded only five  
20 meal periods after the start of the sixth hour of work. On cross examination, Mr. Brunet explained  
21 that the "late" meal periods about which he had regularly complained were meal periods that started  
22 later than scheduled but still within the first five hours of his shift. (11/3/16 RT, p. 2883:2-25.)  
23 Mr. Brunet confirmed his complaints were more that the "late" meal period caused his 60-minute  
24 meal period to be reduced to a 48-minute meal period, not that the late meal period occurred after  
25 he worked more than five hours. (11/3/16 RT, p. 2871:23-2872:11.)

26 \_\_\_\_\_  
27 <sup>10</sup> Class member Paul Haggar suggested meal periods that started just minutes after the start of the sixth hour of work  
28 should give rise to liability because, "if you win a race by a second, you still win the race by a second." (10/31/16 RT,  
p.2091:18-19.) The California Supreme Court concluded otherwise, "...employees cannot manipulate the flexibility  
granted them by employers to use their breaks as they see fit to generate such liability." *Brinker, supra*, 53 Cal.4<sup>th</sup> at  
1040.

1                   **3.     The Equities Of This Claim Weigh In Apple’s Favor.**

2                   Additional factors weigh against Plaintiffs’ equitable claims. In a number of instances,  
3 class-member claims implicated intra-class conflicts. Some non-manager class members testified  
4 manager class members caused them to take late meals. For example, named Plaintiff Brandon  
5 Felczer claimed that class member and non-exempt manager Tricia Kruger allowed him to work  
6 through a timely meal period, and that class member and non-exempt manager Shelley Reid  
7 discouraged him from reporting late meal periods. Additionally, class member Justin Smith blamed  
8 class member and non-exempt manager Danya Bonnet for missed or late breaks, and class member  
9 Christopher Pentz blamed non-exempt manager class member and non-exempt manager Kevin  
10 Capen for missed or late breaks. Moreover, several of Plaintiffs’ witnesses were substantially  
11 impeached. (*See, e.g.*, Chris Pentz (regarding his termination occurring on a Friday, not a Saturday),  
12 Michael Falcone (the manager who never read the Manager View of the policy).)

13                   For all of these reasons, the Court concludes it would be inequitable to hold Apple liable for  
14 Plaintiffs’ late meal period claims.

15                   **D.     The First Year Retail UCL Rest Break Claims**

16                   The question presented by the Retail UCL rest break subclass is whether Apple engaged in  
17 an unlawful business practice by operating under uniform, company-wide policies that failed to  
18 authorize and permit the subclass of all non-exempt Retail employees (both managerial and non-  
19 managerial) who worked between December 16, 2007 and December 15, 2008 to take the correct  
20 number of rest breaks. Again, in their opening statement Plaintiffs confirmed that the policies at  
21 issue for the first year Retail UCL rest break claim are the same HRWeb policies that were at issue  
22 in the jury trial of Plaintiffs’ Retail statutory rest break claims. (12/8/16 RT, p.8232:13-21.)  
23 The Court finds Plaintiffs’ rest break claims have no merit. Substantial evidence confirms that any  
24 alleged defects in Apple’s rest break policies did not result in a failure to authorize and permit the  
25 subclass of all non-exempt Retail employees (both manager and non-manager employees) to take  
26 the correct number of rest breaks.

27                   ///

28                   ///

1                   **1. All Relevant Evidence Confirms Apple Authorized and Permitted The**  
2                   **Correct Number Of Rest Breaks For Retail Shifts**

3                   Apple Retail Store Leaders testified that they scheduled employees to work shifts of 4.0,  
4 5.0, 6.0 or 8.0 hours (See, e.g., 11115/16 RT, p. 5549:3-23 [Karen Gillebaard]; 11/21/16 RT, p.  
5 6434:8-11 Nancy Martinez]; 11/22/16 RT, p. 6712:13-25 [Jody Yorkey; 11/28/16 RT, p. 6884:4-19  
6 [Paul Voigt].)<sup>11</sup> Numerous class member witnesses confirmed that Apple's Retail stores scheduled  
7 employees to work shifts of 4.0, 5.0, 6.0 or 8.0 hours. (See, e.g., 10/25/16 RT, p. 1147:3-11  
8 [Benjamin Dixon]; 10/25/16 RT, p. 1197:13-16 [Jesse Meyers]; 10/26/16 RT, p. 1341:20-1342:3  
9 [Steve ~1; 10/26/16 RT, p. 1448:21~1449:4 [Coleman Howard]; 10/27/16 RT, p. 1687:27-1688:1  
10 [Christopher Pentz]; 10/27/16 RT, p. 1759:1-24 [Kofi Baffour]; 10/31/16 RT, p. 2171:12-20  
11 [Ramsey Hawkins]; 10/31/16 RT, p. 2073:21-2074:5 [Paul Hagggar]; 11/3/16 RT, p. 2751:24-  
12 2752:2 [Bradley Brunet]; 11/7/16 RT, p. 3177:21-3178:3 [Michael Falcone].)<sup>12</sup> Apple's policy and  
13 scheduling guidelines provided the correct number of rest breaks for each of these shifts and  
14 therefore cannot give rise to liability. See, e.g., *Roth v. CHA Hollywood Med. Ctr., L.P.*, 2013 WL  
15 5775129,\*6 (C.D. Cal. Oct. 25, 2013).

16                   Named Plaintiff Hawkins testified that he worked 9-hour shifts and was entitled to a one-  
17 hour meal period and two rest breaks. (10/31/16 RT, p. 2086:8-11.) Named Plaintiffs Felczer and  
18 Goldman further testified that when they worked more than six hours, they were entitled to a  
19 second rest break. (11/18/16 RT, p. 3367:2-23 [Felczer]; 11/2/16 RT, p. 2638:11-14 [Goldman].)  
20 None of Plaintiffs claimed Apple refused to permit them to take rest breaks. Under such  
21 circumstances, Plaintiffs have not produced evidence of a rest break violation, *Driscoll, supra*, 2016  
22 WL 6994923, at \*5.

23                   Additionally, 45 Retail UCL rest break subclass members, 19 of whom worked during the  
24 first year UCL rest break period, admitted they took the correct number of rest breaks when  
25 working the shifts of more than 3.5 but less than 4 hours, more than 6 but less than 8 hours, and  
26 more than 10 but less than 12 hours. (Exhibit 1621.)

27 \_\_\_\_\_  
28 <sup>11</sup> A chart of the cited testimony is attached as "Exhibit E."

<sup>12</sup> A chart of the cited testimony is attached as "Exhibit F."

1                   **2.     The Equities Of This Claim Weigh In Apple's Favor.**

2                   Plaintiffs' Retail UCL rest period claim sounds in equity, and the equities here weigh in  
3 Apple's favor. First, during the time period covered by Plaintiffs' claim, the nature of  
4 California's rest break law was unsettled. In April 2007, the California Supreme Court issued its  
5 decision in *Murphy v. Kenneth Cole Prod., Inc.*, 40 Cal. 4th 1094 (2007). In that decision, the  
6 Court stated, "Pursuant to IWC wage orders, employees are entitled to an unpaid 30-minute, duty-  
7 free meal period after working for five hours and a paid 10-minute rest period per four hours of  
8 work." *Murphy, supra*, 40 Cal. 4th at 1104 (emphasis added). Apple's rest break policy was  
9 consistent with the language used by the California Supreme Court. Moreover, in June 2011,  
10 another California Superior Court found Apple's rest break policy – which was substantially the  
11 same as the policy at issue now - complied with California law. (Exhibit 1549.) Apple's person  
12 most qualified regarding the Retail rest break policy, Stephanie Fehr, testified that she relied on  
13 that decision to conclude Apple's rest break policy was lawful. The Court concludes that Apple's  
14 reliance was reasonable.

15                   Second, Plaintiffs have offered no methodology by which the Court could identify a rest  
16 break violation and/or calculate rest break damages. In closing argument, Plaintiffs attempted to  
17 establish rest break damages by multiplying Dr. Fountain's count of what he labeled "rest break  
18 shifts" (i.e., shifts of more than 3.5 but less than 4 hours, more than 6 but less than 8 hours, and  
19 more than 10 but less than 12 hours) by an alleged average hourly rate of pay. However, that  
20 calculation was wholly unreliable. Dr. Fountain testified about his count of rest break shifts for the  
21 first year Retail UCL rest break claim for the first time from the witness stand.<sup>13</sup> He derived his  
22 counts from a manipulation of data contained in three prior reports, much of which had been  
23 overstated because Dr. Fountain had included duplicate shifts and shifts worked outside of  
24 California in his prior reports. Moreover, Dr. Fountain confirmed he conducted no investigation to  
25 determine whether the employees who recorded these shifts took the correct number of rest breaks.  
26 Plaintiffs assumed that every rest break shift counted by Dr. Fountain represented a rest break  
27

28 <sup>13</sup> Although the Court allowed Dr. Fountain to revise his report during trial to prepare an analysis of the first year Retail UCL claims, Dr. Fountain failed to do so.

1 violation – even though Apple had submitted admissions from 45 Retail UCL rest break subclass  
2 members who confirmed they had taken the correct number of breaks 99-100% of the time they  
3 worked the shifts in question. Moreover, Plaintiffs applied a supposed average hourly rate of pay  
4 for the subclass members that they formulated on their own, even though they had the class  
5 members' actual rates of pay available. As set forth above, an estimate (especially an incorrect  
6 one) cannot be the basis for restitution. *Colgan, supra*, 135 Cal. App. 4<sup>th</sup> at 672, 699-700;  
7 *Johnson v. GMRI*, 2007 WL 2009809, \*3 (E.D. Cal. 2007).

8 Third, there were again instances where one subclass member claimed another subclass  
9 member was the cause of a missed break. For example, class member Steve Camuti testified that  
10 he regularly worked an 8-hour shift and understood he was entitled to two rest breaks. (10/26/16  
11 RT, p. 1349:6-22.) However, he claimed that class member and non-exempt manager Chris Lamb  
12 failed to permit him to take some second rest breaks. (10/26/16 RT, p. 1352:11-1356:21, p. 1359:7-  
13 15, p. 1374:18-1375:18.) Mr. Lamb later testified that Mr. Camuti was the only Genius on his team  
14 that claimed he could not take rest breaks, Mr. Lamb repeatedly coached Mr. Camuti to take rest  
15 breaks, and there was no reason Mr. Camuti could not take rest breaks. (11/29/16 RT, p. 7107:2-  
16 7112:25.) It is fundamentally unfair to hold Apple liable for these intra-class disputes.

17 For all of these reasons, it would be inequitable to hold Apple liable for Plaintiffs' Retail  
18 UCL rest break claims.

#### 19 E. The Retail PAGA Rest Break Claim

20 Plaintiff Hawkins asserted a claim for PAGA penalties claiming Apple failed to authorize  
21 and permit its Retail store employees who worked between February 27, 2012 and July 31, 2012 to  
22 take the appropriate number of rest breaks. Plaintiff Hawkins testified on two separate days during  
23 the jury trial. He confirmed that he regularly worked 9-hour shifts and was eligible for a 1- hour  
24 meal period and two 15-minute rest breaks. (10/31/16 RT, p. 2086:8-11.) During trial, Mr. Hawkins  
25 never testified that he was denied the opportunity to take his rest breaks.

26 At the conclusion of the bench trial, the Parties stipulated that if Plaintiff Hawkins had  
27 been permitted to testify again, he would have testified that he "missed" his rest breaks 99% of the  
28 time when he worked shifts between February 27 and July 31, 2012. (12/15/16 RT, p. 9946:6- 24.)



1 In their closing arguments of the bench trial, Plaintiffs' counsel made no reference to Mr. Hawkins'  
2 PAGA rest break claim. The Court concludes Mr. Hawkins failed to meet his burden of proof  
3 regarding his PAGA rest break claim.

4 The Court finds Apple authorized and permitted its non-exempt Retail employees to take the  
5 correct number of rest breaks for the shifts they worked between February 27 and July 31, 2012.

6 Plaintiff Hawkins failed to provide evidence that he was an "aggrieved employee" for  
7 purpose of his PAGA rest break claim, and thus he failed to prove he had standing to prosecute the  
8 PAGA rest break claim. Mr. Hawkins testified that Apple authorized him to take the correct number  
9 of rest breaks for the shifts he worked. Consequently, Mr. Hawkins needed to offer evidence that  
10 Apple refused to permit him to take rest breaks when working the shifts in question. *Driscoll v.*  
11 *Granite Rock Co., supra*, 6 Cal. App. 5th at 222. Mr. Hawkins offered no such evidence.

12 Plaintiff Hawkins offered no evidence that any other non-exempt Apple Retail employee  
13 who worked between February 27 and July 31, 2012 was aggrieved. In fact, Hawkins testified that  
14 he made sure his employees got their breaks. (11/2/16 RT, p. 2514:10-2517:1.)

15 Additionally, Plaintiff Hawkins offered no evidence: of the non-exempt Retail employees  
16 who worked between February 27 and July 31, 2012; that Apple failed to authorize any of those  
17 employees to take the correct number of rest breaks; that Apple denied any of those employees the  
18 opportunity to take rest breaks; the number of pay periods during which Apple allegedly failed to  
19 authorize and permit any non-exempt Retail employee to take the correct number of rest breaks  
20 between February 27 and July 31, 2012; and/or a PAGA penalty calculation for failure to provide  
21 rest breaks.

22 **F. The Corporate UCL Missed Meal Period Policy Claims**

23 The question presented by the Corporate UCL meal period subclass' "missed" meal period  
24 claims is whether Apple engaged in an unlawful business practice by operating under  
25 uniform, company-wide policies that failed to authorize and permit the subclass of all non-  
26 exempt Corporate employees who worked between December 16, 2007 and July 31, 2012 to take a  
27 first, 30- minute meal period when they worked more than five hours and/or a second meal period  
28 when they worked more than 10 hours. In their opening statement, Plaintiffs confirmed the meal

1 period policies at issue in the Corporate trial were the same meal period policies at issue in the jury  
2 trial of the Retail statutory meal period claims. (12/8/16 RT, p. 8232:22 -8233:2.) The answer to  
3 this question presented by this claim is no. Both the Manager View and the Employee View of  
4 Apple's meal period policies in effect between December 16, 2007 and July 31, 2012 expressly  
5 stated that employees who worked more than five hours were entitled to at least one 30-minute  
6 meal period, and employees who worked more than 10 hours were entitled to a second 30-minute  
7 meal period.

8 **G. The Corporate UCL Late Meal Period Policy Claims**

9 The question presented by the Corporate UCL meal period subclass' "late" meal period  
10 policy claims is whether Apple engaged in an unlawful business practice by operating under  
11 uniform, company-wide policies that failed to authorize and permit the subclass of all non-exempt  
12 Corporate employees who worked between December 16, 2007 and July 31, 2012 to miss the  
13 opportunity to take a first meal period by the start of the sixth hour of work and/or a second meal  
14 period by the start of the eleventh hour of work. Again, in their opening statement, Plaintiffs  
15 confirmed the meal period policies at issue in the Corporate trial were the same HRWeb meal  
16 period policies at issue in the jury trial of the Retail statutory meal period claims. (12/8/16 RT, p.  
17 8232:22 - 8233:2.) The answer to the question posed by this claim is no. The Manager View of the  
18 HR Web meal period policy expressly stated, "[the first] meal period must be taken within the first  
19 five hours of the shift," and/or "[t]he employee cannot work more than five hours at any time  
20 during a work shift without a meal period." Based on this language, Apple's policy was to  
21 authorize and permit Corporate employees who worked more than five hours to take their first meal  
22 period by the start of the sixth hour of work, and to authorize and permit Corporate employees who  
23 worked more than ten hours to take a second meal period by the start of the eleventh hour of work.

24 Plaintiffs argued that the Employee View of Apple's meal period policy for Corporate  
25 employees did not explain the time within which employees were entitled to take their meal  
26 periods. However, California law does not require employers to have a meal period policy. *See*  
27 *Dailey v. Sears, Roebuck and Co.*, 214 Cal. App. 4th 974, 1002 ("[T]he absence of a formal written  
28 policy explaining salaried managers' rights to meal and rest periods does not necessarily imply the

1 existence of a uniform policy or widespread practice of either depriving these employees of meal  
2 and rest periods or requiring them to work during those periods.”). The law requires only that  
3 employers post the applicable Wage Order, and substantial evidence offered at trial confirms that  
4 Apple posted the Wage Order in its Corporate departments. (*See, e.g.*, 12/13/16 RT, p. 9564:6-13  
5 [Renee Conmy]; 12/14/16 RT, p. 9728:10-9729:6 [Diep Luu]; 12/14/16 RT 9785:20-9786:7  
6 [Rupesh Pawar]; 12/14/16 RT, p. 9878:7-25 [Todd Plank]; 12/15/16 RT, p. 10019:17-10020:11  
7 [Maria Ruiz];12/15/16 RT, p. 10055:1-11 [Tom Humphreys].

8 Moreover, the language of the Employee View of Apple’s meal period policy closely  
9 tracked the language of the Wage Order itself. For example:

- 10 • The Wage Order states, “No employer shall employ any person for a work period of  
11 more than five (5) hours without a meal period of not less than 30 minutes...” and the  
12 Employee View of Apple’s meal period policy stated, “All nonexempt employees who  
13 work more than 5 hours at any time during a work shift must take at least one 30-  
14 minute meal period.”
- 15 • The Wage Order states, “An employer may not employ an employee for a work period  
16 of more than ten (10) hour per day without providing the employee with a second meal  
17 period of not less than 30 minutes...” and the Employee View of Apple’s meal period  
18 policy stated, “All nonexempt employee who work more than 10 hours at any time  
19 during a work shift must take a second 30-minute meal period.”

20 **H. The Corporate UCL Late Meal Period Scheduling Practices Claim**

21 The question presented by the Corporate UCL subclass’ “late” meal period scheduling  
22 practices claims is whether Apple engaged in an unlawful business practice by consistently  
23 applying a uniform scheduling practice that caused the subclass of all non-exempt Corporate  
24 employees who worked between December 16, 2007 and July 31, 2012 to be denied the  
25 opportunity to take a first meal period by the start of the sixth hour of work and/or a second meal  
26 period by the start of the eleventh hour of work. The Court concludes the answer to this question is  
27 no.

28 ///

1                   **1. All Relevant Evidence Confirms Apple’s Practice Was To**  
2                   **Schedule Timely Meal Periods For Its Corporate Employees.**

3                   The only evidence of a “uniform” scheduling practice is Apple’s meal period policy. That  
4 policy informed managers that first meal periods “must be taken within the first five hours of the  
5 shift” and/or no employee may “work more than five hours at any time during a work shift without  
6 a meal period.” Thus, the policy established a lawful scheduling practice.

7                   Apple’s Corporate Departments did not use a uniform scheduling tool. There were more  
8 than 900 different Corporate departments that had significantly different work environments – from  
9 Engineers who worked independently in corporate offices, to cooks who worked in restaurant  
10 environments, to telephone sales and support employees who worked in office buildings in Elk  
11 Grove or from home. Evidence at trial confirmed those departments scheduled meal periods  
12 differently. For example, the (only six) class member witnesses Plaintiffs presented at trial  
13 confirmed: some departments issued electronic schedules indicating when employees were  
14 expected to take their meal periods; some departments issued no schedules and allowed employees  
15 to take their meal periods at their own discretion, including when they worked from home; some  
16 departments, like the Shipping and Receiving Department at the Elk Grove warehouse, verbally  
17 called out when it was time for everyone to take meal periods, etc.

18                  Corporate managers who testified at trial confirmed that their practice was to schedule meal  
19 periods within the first five hours of an employee’s shift. (*See, e.g.*, 12/14/16 RT, p. 9866:4-  
20 9867:15 [Todd Plank]; 12/15/16 RT, p. 9965:21-9966:9 [John Garber]; 12/15/16 RT, p.  
21 10096:21-10097:14 [Mark Stinson].)<sup>14</sup>

22                   **2. Plaintiffs’ Evidence Was Not Relevant Or Credible.**

23                  Plaintiffs offered time records showing Corporate employees sometimes recorded meal  
24 periods starting after the start of the sixth hour or work. However, Plaintiffs offered no  
25 evidence that would uniformly explain – in one stroke – why Corporate employees recorded their  
26 meal periods when they did. In fact, Dr. Fountain conceded that Apple’s time records did not reflect  
27 why an employee recorded meal periods when they did.

28                  <sup>14</sup> A chart of the cited testimony is attached as “Exhibit G.”

1 The only evidence Plaintiffs offered regarding why Corporate employees recorded meal  
2 periods when they did was class member testimony. However, pursuant to the witness admonition,  
3 the Court may not rely on that testimony to decide either liability or damages in this case. In any  
4 event, the Court found class member testimony regarding why employees recorded meal periods  
5 when they did unreliable. For example, Sam Worthen testified that as a Tier I Agent, Apple  
6 scheduled his meal periods to start “past the sixth or seventh hour of work.” (12/8/16 RT, p.  
7 8712:22-8713:15.) On cross-examination, Apple reviewed several months of Mr. Worthen’s time  
8 records as a Tier I Agent, and those time records confirmed Mr. Worthen consistently recorded his  
9 meal periods by the start of the sixth hour of work. Mr. Worthen further testified that when he  
10 worked in the Carpe Facto group, he could take his meal periods at his discretion. (12/8/16 RT, p.  
11 8808:16-20 [Worthen].) By authorizing Mr. Worthen to take meal periods at his discretion, Apple  
12 authorized him to take meal periods within the first five hours of his shift. Mr. Worthen confirmed  
13 that no manager prohibited him from taking a meal period within the first five hours of his shift.  
14 (12/8/16 RT, p. 8805:2-20.) Under Driscoll, this testimony does not represent a violation.

### 15 3. The Equities Of This Claim Weigh In Apple’s Favor.

16 The equities also favor Apple regarding this claim. Several class members confirmed Apple  
17 authorized them to take meal periods at their own discretion. (12/8/16 RT, p. 8808:16-20  
18 [Worthen]; 12/14/16 RT, p. 9677:18-9678:2 [Diep Luu]; 12/14/16 RT, p. 9635:9-23  
19 [Niki Donnelly].) There was no evidence that Apple prohibited those employees from taking meal  
20 periods within the first five hours. Under Driscoll, the testimony of these witnesses does not  
21 represent a violation. Other witnesses, like Jessica Dellava, confirmed she had no issues regarding  
22 meal periods, but rather had issues only regarding second rest breaks and only when working for  
23 particular manager (who was also a class member). In addition, some of Plaintiffs’ witnesses were  
24 substantially impeached. (*See, e.g.*, Joseph Lane Carco (whose pre-trial declarations contained  
25 false statements), Jessica Dellava (same), etc.)

26 For all of these reasons, the Court concludes it would be inequitable to impose meal  
27 period liability against Apple for this claim.

28 ///

1           **I.       The Corporate UCL Rest Break Claims**

2           The question presented by the Corporate UCL rest break subclass is whether Apple  
3 engaged in an unlawful business practice by operating under uniform, company-wide policies that  
4 failed to authorize and permit the subclass of all non-exempt Corporate employees who worked  
5 between December 16, 2007 and July 31, 2012 to take the correct number of rest breaks. The  
6 answer to the question is no. Again, Plaintiffs stated that the rest period policies at issue in the jury  
7 trial of the Retail statutory rest break claims were the same HRWeb policies at issue in the trial of  
8 the Corporate UCL rest break claims. (12/8/16 RT, p. 8232:22-8233:2.) The Court concludes that  
9 Apple’s rest break policy provided the correct number of rest breaks for the shifts worked by  
10 Corporate employees.

11                   **1.       All Relevant Evidence Confirms Apple Authorized And Permitted Its**  
12                   **Employees To Take The Correct Number Of Rest Breaks For Their**  
13                   **Shifts:**

14           Apple Corporate managers testified that they typically scheduled their employees to work  
15 an 8-hour shift with two rest breaks. (12/14/16 RT, p. 9866:4-9867:16 [Todd Plank]; 12/15/16  
16 RT, p. 10050:13-10051:7 [Tom Humphreys]; 12/15/16 RT, p. 9961:19-9962:8 [John Garber];  
17 12/15/16 RT, p. 10100:20-10101:12 [Mark Stinson].)<sup>15</sup> Witnesses at trial – both Plaintiffs’ and  
18 Apple’s – confirmed that Apple’s Corporate employees are regularly scheduled to work 8-hour  
19 shifts with two rest breaks. (See, e.g., 12/8/16 RT, p. 8834:23-8835:8 [Shirverlion Worthen];  
20 12/12/16 RT, 21 p. 9094:10-20 [Gloria Hallman]; 12/12/16 RT, p. 9244:25-9246:17 [Joseph  
21 Carco]. 12/12/16 RT, p. 9321:6-9321:15 [Jessica Dellava]; 12/15/16 RT, p. 10017:12-10018:1  
22 [Maria Ruiz].)<sup>16</sup> Apple’s policy provided the correct number of rest breaks for employees who  
23 were scheduled to work 8 hours, and therefore the policy could not give rise to liability. See, e.g.,  
24 *Roth v. CHA Hollywood Med. Ctr., L.P.*, supra, 2013 WL 5775129 at \*6.

25           Moreover, Apple provided evidence that 13 Corporate UCL rest break subclass  
26 members who worked in 19 different Corporate departments admitted they took the correct number  
27 ///

28 <sup>15</sup> A chart of the cited testimony is attached as “Exhibit H.”

<sup>16</sup> A chart of the cited testimony is attached as “Exhibit I.”

1 of rest breaks when working the shifts for more than 3.5 but less than 4 hours, more than 6 but less  
2 than 8 hours, and/or more than 10 but less than 12 hours.

3 **2. Plaintiffs' Evidence Was Not Relevant Or Credible.**

4 The Court did not find the evidence submitted by Plaintiffs regarding this claim persuasive.  
5 Dr. Fountain again testified about the number of "rest break shifts" recorded by Corporate UCL rest  
6 break subclass members. However, Plaintiffs offered no evidence indicating whether the employees  
7 who recorded those shifts took the correct number of rest breaks, and if not, why they failed to take  
8 the correct number of rest breaks. Dr. Fountain confirmed he did not analyze employee work  
9 schedules to determine whether the employees who recorded the disputed rest break shifts were  
10 scheduled to take the correct number of rest breaks, and Dr. Fountain performed no investigation to  
11 determine whether the subclass members in fact took the correct number of rest breaks.

12 To prove whether employees who recorded the disputed "rest break shifts" took the correct  
13 number of rest breaks, Plaintiffs relied on class member testimony. However, based on the witness  
14 admonition, the Court may not decide either liability or damages based on that evidence. In any  
15 event, the Court found class member testimony to be unpersuasive. For example, named Plaintiff  
16 Lane Carco testified that he missed roughly half of his second rest breaks because of his unique  
17 interpretation of Apple's policy. However, his co-worker and fellow class member, Lisa Carlson,  
18 testified that she saw Mr. Carco take his rest breaks every day. Class member Nikki Donnelly  
19 claimed she was unable to take rest breaks, but she managed her own schedule and testified she  
20 was a "team of one." (12/14/16 RT, p. 9650:2-6.) Class member Diep Luu testified that Apple sent  
21 her an email with a link to Apple's meal and rest break policy. Nonetheless, Ms. Luu claimed she  
22 had no knowledge of the terms of Apple's rest break policy. (12/14/16 RT, p. 9678:3- 9679:17.)  
23 Class member Jessica Dellava originally testified that she missed almost every single rest break.  
24 (12/13/16 RT, p. 9366:7-11.) Through cross-examination, Ms. Dellava's pre-trial declaration and  
25 deposition testimony were substantially impeached, and Ms. Dellava's rest break claim was  
26 reduced to: only some second rest breaks: only when she was managed by class member and  
27 non-exempt manager Devin Goodearle; and only when she was working at a remote food station  
28 toward the end of her employment with Apple. (12/12/16 RT, p. 9308:16-9309:15; 12/13/16 RT, p.

1 9381:7- 15.) In keeping with Plaintiff's instruction, it would be improper to make a class-wide  
2 liability or damage determination on this type of anecdotal evidence.

### 3 3. The Equities Of This Claim Favor Apple.

4 A number of equitable factors weigh in Apple's favor for this claim. First, during the time  
5 period covered by Plaintiffs' claim, the nature of California's rest break law was unsettled. Notably,  
6 in April 2007, the California Supreme Court issued a decision stating, "Pursuant to IWC wage  
7 orders, employees are entitled to ... a paid 10-minute rest period per four hours of work." *Murphy*,  
8 *supra*, 40 Cal. 4<sup>th</sup> at 1104 (emphasis added). Apple's rest break policy was consistent with the  
9 language used by the California Supreme Court. Moreover, in June 2011, another California  
10 Superior Court found Apple's rest break policy – which was substantially the same as the policy at  
11 issue now - complied with California law. (Exhibit 1549.) Apple's person most qualified  
12 regarding the Corporate rest break policy, Renee Conmy, testified that she relied on that decision to  
13 conclude Apple's rest break policy was lawful. The Court concludes that Apple's reliance was  
14 reasonable.

15 Second, intra-class conflicts underlie some of the claims. For example, class member Jessica  
16 Dellava claimed that class member and non-exempt manager Devin Goodearle failed to authorize  
17 and permit her to take some of her second rest breaks. Additionally, Plaintiffs' witnesses were  
18 substantially impeached on cross-examination. (*See, e.g.*, the testimony of named Plaintiff Joseph  
19 Carco and Jessica Dellava.)

20 Third, in closing arguments, Plaintiffs proffered a rest break damage calculation by  
21 multiplying the Corporate "rest break shift" counts prepared by Dr. Fountain by an average hourly  
22 rate. This calculation was wholly unreliable. Dr. Fountain's rest break shift counts for Corporate  
23 employees included duplicate shifts and shifts worked outside of California. Moreover, Plaintiffs  
24 assumed that every disputed "rest break" shift constituted a violation when substantial record  
25 evidence confirmed class members took the correct number of rest breaks when working those  
26 shifts. Plaintiffs also applied an average hourly rate of pay that had no basis in the record, rather  
27 than using the actual rate of pay for subclass member who had allegedly experienced a rest  
28 break violation. As set forth above, an estimate of damages, especially a knowingly inflated



1 one, cannot be the basis for restitution. *Colgan, supra*, 135 Cal. App. 4th at 672, 699-700; *Johnson*  
2 v. *GMRI*, 2007 WL 2009809, \*3 (E.D. Cal. 2007).

3 For all of these reasons, the Court finds it would be inequitable to impose rest break  
4 liability against Apple in this case.

5 **V. CONCLUSION**

6 In summary:

7 1. The Court enters judgment in Apple's favor regarding all of Plaintiffs' Retail UCL  
8 meal and rest period claims.

9 2. The Court enters judgment in Apple's favor regarding Plaintiff Hawkins' PAGA rest  
10 break claim;

11 3. The Court enters judgment in Apple's favor regarding all of Plaintiffs' Corporate  
12 UCL meal and rest period claims.

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Dated: March 8, 2017

  
EDDIE C. STURGEON  
Judge of the Superior Court

# **Exhibit A**



**EXHIBIT A**  
**RETAIL STORE MANAGER TESTIMONY RE: MEAL PERIOD SCHEDULING PRACTICES**

<b>WITNESS</b>	<b>TESTIMONY RE: SCHEDULING OF MEAL PERIOD</b>
<p><b>Davis, Barbara</b>  Store Leader  State Street  2010 - 1/21/11</p>	<p>Q. Now, when you say "midpoint" for the meal, what are you referencing in terms of time into the work shift?</p> <p>A. So the meals were scheduled before the fifth hour of somebody who was working the eight-hour day.  (Reporter's Transcript, 6602:16-6602:20, Nov. 22, 2016)</p>
<p><b>Gillebaard, Karen</b>  Store Leader  Fashion Island; UTC</p>	<p>Q. And so how many hours would they be scheduled for?</p> <p>A. It would be the length of nine hours because they would have one hour for a lunch hour, but they would be on the clock getting paid for eight hours.</p> <p>Q. How many rest breaks would those employees be scheduled for?</p> <p>A. Two.</p>
<p>06/2011 - Present</p>	<p>Q. And when would they occur?</p> <p>A. Usually one would occur before their lunch hour, and the second one would occur in the afternoon or after their lunch hour in the second half of their shift.  (Reporter's Transcript, 5549:19-5550:6, Nov. 15, 2016)</p> <p>Q. Can you find Mr. Felczer on that document?</p> <p>A. So Brandon is under business, about, again, a little more than three-fourths of the page down, yeah.</p> <p>Q. All right. And when was he scheduled to take his lunch -- actually, when was he scheduled to start a shift?</p> <p>A. 9:00 a.m.</p> <p>Q. And when was he scheduled for his lunch?</p> <p>A. 1:00 p.m.</p> <p>Q. All right. And how far into the shift would that have been?</p> <p>A. Four hours.  (Reporter's Transcript, 5615:14-5615:25, Nov. 15, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Hawkins, Ramsey</b> (Named Plaintiff)</p> <p>Store Manager; HR People Manager</p> <p>Palo Alto; Hillsdale</p> <p>11/3/01 - 11/13/12</p>	<p>Q. Yeah. So if someone would have an eight-hour shift, that would mean that they would be actually on for a nine-hour block of time but have an hour off in the middle; correct?</p> <p>A. That's correct.</p> <p>Q. All right. And as far as you knew and made an effort, people were scheduled for that meal somewhere in the middle of their shift; correct?</p> <p>A. Yeah, that was -- generally, you would be scheduled anywhere towards the middle of it, as close to it as possible.</p> <p>(Reporter's Transcript, 2519:18-2520:4, Nov. 2, 2016)</p>
<p><b>Jones, Steve</b></p> <p>Manager; Store Leader</p> <p>South Coast Plaza; Fashion Island</p>	<p>Q. And did you ever notify your employees -- well, did you ever have the discussion with the employees in your stores, in both stores, regarding those timing requirements?</p> <p>A. Yes, often. I think the easiest thing that comes to my mind is to talk about it -- we would have the clipboard and we would be referencing breaks and lunches, and if somebody asked to go late to a lunch or something, we would talk about when is your fifth hour, you know, when is your fifth hour of work. And we would do the math with them to make sure we knew when they needed to go to lunch on time.</p> <p>(Reporter's Transcript, 7231:15-7232:1, Nov. 29, 2016)</p>
<p><b>Lamb, Chris</b> (Class Member)</p> <p>Manager</p> <p>Emeryville; Union Square</p>	<p>Q. And generally when in the workday would that one-hour lunch appear?</p> <p>[...]</p> <p>THE WITNESS: Usually midway through their shift.</p> <p>(Reporter's Transcript, 7103:24-7104:6, Nov. 29, 2016)</p>
<p><b>Lauterjing, Ryan</b></p> <p>Store Leader; Market Leader</p> <p>Beverly Center; Victoria Gardens</p> <p>12/5/09 - Present</p>	<p>Q. Okay. Let's talk about the timing that meal periods were scheduled. You said that I typically scheduled them for four hours into the shift?</p> <p>A. For lunches?</p> <p>Q. Right. A. Yes.</p> <p>Q. All right. So sometimes they were scheduled later than four hours?</p> <p>A. Sometimes.</p> <p>(Reporter's Transcript, 7338:15-7338:23, Nov. 29, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Martinez, Nancy</b> Store Leader Arden Fair; Roseville 06/2011 - Present</p>	<p>Q. And what did you learn about scheduling lunches breaks during that manager immersion training?</p> <p>A. That training reinforced what I brought with me from my retail career. Typically employees work about eight hours a day. They are scheduled eight hours and you insert their lunch in the middle of their shift and you put 15-minute breaks on either side. So if we had an employee working a 9:00 a.m. to 6:00 p.m. shift, we'd schedule their lunch sometime between probably 12:30 and 1:30 and they'd have a 15-minute break before that, at Apple, and a 15-minute break after that somewhere in the middle of those four hours.</p> <p>(Reporter's Transcript, 6422:6-6422:18, Nov. 21, 2016)</p> <p>Q. Can you give an example of a situation with a new hire when you have explained breaks and lunches to them during that mini orientation process that you described?</p> <p>A. Sure. New employee starts their shift for the day, it's 9:00 a.m. to 6:00 p.m. And I might say, you are going to start your day selling product, selling Macs in our store. And about 10:45 you'll see on the chart that there's a break for you. Apple schedules 15-minute breaks, but at that time our break room was remote. It was not connected to the store. It was on the other side of the mall, and so we would let our new employees know that they had a few extra minutes to go to and from the break room. So up to 20 minutes we would allow for breaks because of the remote break room and let them know they didn't need to clock out. They just needed to return to the store after their break and report back to their zone. So that would be probably 10:45 to 11:05. And we'd also inform them about their lunch and explain clocking out for lunch and then clocking back in. Typically a lunch for a 9:00 a.m. to 6:00 p.m. shift would be an hour from 1:00 to 2:00. And then in the afternoon they'd have another 15-minute paid break with a few minutes coming and going to the remote break room. And that would be probably around 4:00.</p> <p>(Reporter's Transcript, 6430:18-6431:20, Nov. 21, 2016)</p>
<p><b>Melcher, Megan</b> Manager; Store Leader; Market Leader The Grove; Glendale Galleria 3/2005 - Present</p>	<p>Q. Can you give the jury a sense of generally what specifically was discussed in terms of meal and rest breaks?</p> <p>A. Yeah. We would frame up the day, so typically it would start either from 9:00 to 6:00 or 10:00 to 7:00, so when we would be going through the calendar of the day, we'd frame up that two hours into the day, we'll take our first break; and at the four-hour mark, we would take our lunch; and our last break would be two hours after that, so they would understand kind of what the system looked like as they entered the store.</p> <p>(Reporter's Transcript, 7965:21-7966:6, Dec. 5, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Voigt, Paul</b> Sr. Assistant Sales Manager; Market Leader South Coast Plaza; Inland Empire 11/2005 - Present</p>	<p>Q. And scheduling of the meal period, about what time within a full-time nine-hour day would you be scheduling the meal period?</p> <p>A. At the four-hour mark or the midpoint. (Reporter's Transcript, 6884:22-6884:25, Nov. 28, 2016)</p>
<p><b>Yorkey, Jody</b> Manager; Store Leader UTC; Fashion Valley</p>	<p>Q. All right. So in a shift where an individual was scheduled to work eight hours, what would they be receiving in terms of a meal break?</p> <p>A. A one-hour clocked-out lunch.</p> <p>Q. All right. And that was true during this referenced period of time; correct?</p>
<p>2002 - Present</p>	<p>A. Yes.</p> <p>Q. Okay. And when would that one hour occur during this scheduled eight hours of work?</p> <p>A. Usually right in the middle. (Reporter's Transcript, 6712:3-6712:12, Nov. 22, 2016)</p> <p>Q. All right. Now, directing your attention to the referenced period of time, what method did you have in your store for getting people to take their meals and rest breaks?</p> <p>A. We personally used a little Excel spreadsheet, which – that had lines that went across. So if someone worked 8:00 to 5:00, there'd be a little eight at the top, and the line would go 8:00 to 5:00. The lunch would be in the middle, so like from 12:00 to 1:00. And then there would be a 15-minute break right around 10:00, which was a little black square. And then another 15-minute break probably around 3:00, which was a black square. (Reporter's Transcript, 6713:9-6713:22, Nov. 22, 2016)</p>

1 a second meal period by the start of the eleventh hour of work. As noted above, the Court concludes  
2 Apple did not do so.

3  
4 **1. All Relevant Evidence Confirms Apple's Practice Was To  
Schedule Timely Meal Periods.**

5 The only evidence of a "uniform" scheduling practice is Apple's meal period policy. That  
6 policy informed managers that first meal periods "must be taken within the first five hours of the  
7 shift" and no employee may "work more than five hours at any time during a work shift without a  
8 meal period." Thus, the policy established a lawful scheduling practice.

9 Apple's California Retail stores did not use a uniform scheduling tool. Apple provided its  
10 Retail stores with a Kronos scheduling tool, and that tool was configured to schedule meal periods  
11 within the first five hours of a shift. (11/1/16 RT, p. 2351:17-2352:12 [Robert Hearn].) However,  
12 numerous witnesses testified that the tool did not generate useable schedules. Consequently, stores  
13 developed and used a variety of different scheduling tools, including Excel spreadsheets, Numbers  
14 spreadsheets, appointments scheduled in Concierge, a HUD scheduling tool, the Scheduler on  
15 iPads, etc.

16 Retail store managers who testified at trial (including named Plaintiff Hawkins) confirmed  
17 that their practice was to schedule meal periods within the first five hours of an employee's shift.  
18 (See, e.g., 11/22/16 RT, p. 6602:16-20 [Barbara Davis]; 11/15/16 RT, p. 5615:14- 25 [Karen  
19 Gillebaard]; 11/2/16 RT, p. 2519:18-2520:4 [Ramsey Hawkins]; 11/29/1 RT, p. 7231:157232:1  
20 [Steve Jones]; 11/29/16 RT, p. 7103:24-7104:6 [Chris Lamb]; 11/29/16 RT 7338:15-23 [Ryan  
21 Lauterjing]; 11/21/16 RT, p. 6422:6-18, 6430:18-6431:20 [Nancy Martinez]; 12/5/16 RT, p.  
22 7965:21-7966:6 [Megan Melcher]; 11/28/16 RT, p. 6884:22-25 [Paul Voigt]; 11/22/16 RT, p.  
23 6713:9-22 [Jody Yorkey].)<sup>6</sup> Numerous class members and opt-outs corroborated this practice. (See,  
24 e.g., 11/29/16 RT, p. 7145:2-12 [Matt Baxter]; 11/30/16 RT, p. 7564:5-19 [Peter Brown]; 11/22/16  
25 RT, p. 6646:23-25 [Alex Corbin]; 10/25/16 RT, p. 1152:25-28 [Ben Dixon]; 12/5/16 RT, p. 7927:6-  
26 14 [Matt Dunlap]; 10/25/16 RT, p. 1197:3-16 [Jesse Meyers]; 10/26/16 RT, p. 1308:19-  
27 1309:9 [Monica Pease]; 10/27/16 RT, p. 1640:8-19 [Christopher Pentz]; 11/17/16 RT, p. 6079:7-12

28 <sup>6</sup> A chart of the cited testimony is attached as "Exhibit A."



# **Exhibit B**

**EXHIBIT B**

**RETAIL CLASS MEMBER AND OPT-OUT TESTIMONY RE: SCHEDULING OF MEAL PERIODS**

<b>WITNESS</b>	<b>TESTIMONY RE: SCHEDULING OF MEAL PERIOD</b>
<p><b>Baxter, Matt</b> Specialist Mission Viejo 12/2008 - 11/2009</p>	<p>Q. During that time frame from December 2008 through November of 2009 when you were a full-time Specialist at the Mission Viejo store, could you please describe your typical shift with your typical allotment of breaks.</p> <p>A. Yeah. It was similar to what I just laid out in the day. We would take a 15-minute break, a couple of hours into the shift, a lunch break, four hours into the shift, and then another 15-minute break a couple of hours after the lunch break. (Reporter's Transcript, 7145:2-7145:12, Nov. 29, 2016)</p>
<p><b>Brown, Peter</b> (read in) Specialist Pasadena</p>	<p>Q. Do you recall that you were generally scheduled to take your lunch about halfway between your shift or before that fifth hour of work?</p> <p>A. From my understanding, from what I remember, it was contingent on that, yes.</p> <p>Q. So you would be scheduled to go to lunch before the fifth hour?</p>
<p>2005 - 12/2010</p>	<p>A. Correct.</p> <p>Q. And you were aware of that requirement that you were supposed to take lunch before that fifth hour; correct -- I'm sorry. And you were aware of that requirement that you were supposed to take lunch before that fifth hour; right?</p> <p>A. Correct. (Reporter's Transcript, 7564:5-7564:19, Nov. 30, 2016)</p>
<p><b>Corbin, Alex</b> Specialist Fashion Valley 10/2011 - Present</p>	<p>Q. And at the half time or the lunch, when would that typically be located on your eight-hour shift?</p> <p>A. Generally at the four-hour mark. (Reporter's Transcript, 6646:23-6646:25, Nov. 22, 2016)</p>
<p><b>Dixon, Ben</b> Specialist Valley Fair 5/17/08 - 9/11/09</p>	<p>Q. At Apple were you ever scheduled for a meal period after five hours?</p> <p>A. I don't recall that. (Reporter's Transcript, 1136:4-1136:6, Oct. 25, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Dunlap, Matt</b> Genius Fashion Valley; Otay Ranch 11/2006 - 3/2016</p>	<p>Q. And what was that understanding?</p> <p>A. Basically, breaks were taken, you know, maybe two hours or so into the shift. Lunch was in the middle. It was usually scheduled either four hours in or three hours in or on the fifth hour depending on, you know, on what availability looked like, or what time I came in. They couldn't have everyone go to lunch at the same time, so a lot of times my lunch was at a different time.</p> <p>(Reporter's Transcript, 7927:6-7927:14, Dec. 5, 2016)</p>
<p><b>Meyers, Jesse</b> BOH; Sales; Genius; Lead Genius The Grove; Pasadena; San Diego 10/2002 - 5/2011</p>	<p>Q. And does that schedule mean that you were scheduled for your lunch four hours into your shift?</p> <p>A. Correct.</p> <p>Q. Okay. And you were scheduled for a one-hour lunch; correct?</p> <p>A. Correct.</p> <p>Q. And you were scheduled for a nine-hour shift with a one-hour lunch, so eight hours of working time; correct?</p> <p>A. Correct.</p>
	<p>Q. And that was your normal schedule when you worked at the UTC store?</p> <p>A. Not those specific hours, but the nine-hour lunch [sic] with the one-hour meal break, yes.</p> <p>(Reporter's Transcript, 1197:3-1197:16, Oct. 25, 2016)</p>
<p><b>Pease, Monica</b> BOH Specialist; Inventory Control Specialist Palo Alto 12/2007 - 3/2012</p>	<p>Q. And at some point you became in charge of scheduling your team for breaks and lunches; correct?</p> <p>A. That's right.</p> <p>Q. And what year was that, do you recall?</p> <p>A. I don't -- it was maybe 2010-2011.</p> <p>Q. And when you scheduled your team for breaks and lunches, you tried to do it around the four-hour mark?</p> <p>A. Yes, I tried. Because it's not fun to take it much later than that.</p> <p>Q. And you also scheduled your own lunches; correct?</p> <p>A. That's correct.</p> <p>Q. And you tried to schedule your own lunch around the four-hour mark; right?</p> <p>A. That's correct.</p> <p>(Reporter's Transcript (Amended with Index), 1308:19-1309:9, Oct. 26, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Pentz, Christopher</b> Specialist Victoria Gardens 5/22/10 - 3/25/11</p>	<p>Q. Was a meal break always scheduled for you? A. Yes. Q. When you came in in the morning, you would see it on a posted schedule; correct? A. Generally on the wall, yes. Q. And after how many hours of your workday would that meal break be scheduled? A. Generally at the four-hour mark. Q. All right. And so whenever you would arrive for the start of your shift, you would see a meal break for you after four hours; correct? A. Generally, yes. (Reporter's Transcript, 1640:8-1640:19, Oct. 27, 2016)</p>
<p><b>Precop, Richard</b> Specialist Topanga 8/2008 - 6/2010</p>	<p>Q. Going back to the time when you were working the full nine-hour shift as a part-time Specialist -- A. Uh-huh. Q. -- approximately how long into your shift would your meal period be scheduled? A. Maybe, like, four hours in. (Reporter's Transcript, 6079:7-6079:12, Nov. 17, 2016)</p>
<p><b>Wassman, Greg</b> Genius; Specialist Los Gatos 8/13/11 - Present</p>	<p>Q. -- all right, you indicated that you had a period of time when you generally went to lunch; is that correct? A. Uh-huh. Q. Yes? A. Uh-huh; correct. Q. Okay. And that was sometime in the middle of the shift? A. Usually directly in the middle. [...] THE WITNESS: It was usually the middle of the shift. Sometimes a little earlier because they didn't want to make us stressed out. We needed a break. So -- (Reporter's Transcript, 6025:4-6025:17, Nov. 17, 2016)</p>

# **Exhibit C**

**EXHIBIT C**  
**RETAIL STORE MANAGER TESTIMONY RE: WARM HANDOFFS**

<b>WITNESS</b>	<b>TESTIMONY RE: WARM HANDOFFS</b>
<b>Davis, Barbara</b> Store Leader State Street 2010 - 1/21/11	<p>Q. How would you work the staggering of individuals for these breaks? And I'm only talking about the period of time that we have spoken about, Black Friday 2010 to July 31st, 2012.</p> <p>A. So since you're building out the breaks and the flow of the breaks prior to opening the store, you sort of -- you work it where it's, like, maybe these two people who came in at 9:00 will go on break at 11:00, and then when they come back, these two people will go. And then if for some reason, like, this person, person A was supposed to go right at 11:00 but they are still with a customer, you might have this person go and then say, like, okay, so when you come back, make sure you go find Kyron and get him on a break. So, like, you can do it that way. And if -- sometimes, though, if we had people who were free and they were just coming on a shift, we might do a handoff and then have that person go over to Corona -- and these are, like, employees we have now. I don't think we had -- but, like, if you could do a handoff for Corona so he can get on his 15 and just take over working with that customer. So there were different strategies to it just to make sure that you were keeping everything on track.</p> <p>(Reporter's Transcript, 6603:22-6604:20, Nov. 22, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p>Gillebaard, Karen Store Leader Fashion Island; UTC 06/2011 - Present</p>	<p>Q. All right. Are you familiar with the term "warm handoff"?</p> <p>A. Yes.</p> <p>Q. Can you tell the jury what that term means in the Apple environment?</p> <p>A. A warm handoff in Apple would be -- because anything within a customer journey, an interaction with a customer could take anywhere from five minutes to 25 minutes to an hour. And so we were very dedicated and it was very important to all of us to make sure that we were able to meet the needs of the customer. For each customer that was different. So if someone was scheduled to go to a break or a lunch and they were in this transaction with this customer, then it was the manager who could go and say I'm going to have John who is going to go over and relieve you and go do a warm handoff. And then the team member would be there, John would walk up, and they would say, okay, I'm going to introduce you to John. I'm going to go take my break or my lunch or it's time for me to go home, so John is going to continue for me. They would give a brief introduction of what was going on at the time, wish them good luck, it was nice to meet you, and now John is going to take over for me.</p> <p>Q. To your personal knowledge, did any of these warm handoff events cause any customer-related problem?</p>
	<p>A. No.</p> <p>Q. To your personal knowledge, did any of these warm handoffs cause any employee-related problem?</p> <p>[...]</p> <p>THE WITNESS: No.</p> <p>(Reporter's Transcript, 5558:2-5559:12, Nov. 15, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Jones, Steve</b> Manager; Store Leader  South Coast Plaza; Fashion Island</p>	<p>Q. And were the situations where – well, did you experience any situations when you attempted to relieve an employee for a break and they were engaged with a customer?</p> <p>A. Yes, absolutely.</p> <p>Q. And what did you do in those types of situation?</p> <p>A. Well, we actually have a name for it within Apple as well. We call it "the warm handoff." We don't want it to be sort of an abrupt transition from one employee to another, so we want to have that experience with the customer be as smooth as possible. So it's something we would talk about in training, as well as in conversations with the team, so that if you were already 20 or 30 minutes into a deep conversation about purchasing a new Mac for your child, for example, we would want that transition to be smooth. So we would bring a member of the team over and introduce them to the customer and ensure that the member of the team who had started with the customer had enough time to introduce the next person who's going to be picking up for them, as well as to get them up to speed on any relevant information that they already discussed. It would be very similar at the Genius Bar as well. If a Genius or a Family Room Specialist would be partway through troubleshooting a product, they would pass that information on to the next person and to do that warm handoff to the employee so that they could then step away and go to break or lunch.</p>
	<p>(Reporter's Transcript, 7239:9-7240:12, Nov. 29, 2016)</p> <p>Q. Did you ever engage in a warm handoff with an employee where you took over the customer?</p> <p>A. Yes, a few times where looking around there was a few customers that were already waiting. There wasn't anybody that could be moved from one area of the store to the other to help cover that person's break, and so I just told the employee, hey, I'll step in and take care of the rest of the sale. And why don't you go ahead and head to lunch.</p> <p>(Reporter's Transcript, 7240:22-7241:5, Nov. 29, 2016)</p>



WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Lamb, Chris</b>  <b>(Class Member)</b>            Manager            Emeryville;            Union Square</p>	<p>Q. Okay. What did you explain to Mr. Camuti during these conversations in and around April of 2009?</p> <p>A. I thanked him for letting me know that he wasn't able to take his last break, and I would say there's other resources available. Let me know. I can help. There's Lead Geniuses. There's other managers. We have people that can -- that can kind of take over for you so that you can take your last break.</p> <p>(Reporter's Transcript, 7110:8-7110:15, Nov. 29, 2016)</p> <p>Q. And what was your response upon hearing that?</p> <p>A. I said, Steve, you need to take your breaks. Like, it's not an option to skip your break. We have people that can take over for you that can help the customers that are waiting, so you don't have to take this on all yourself. There's other resources in the store. We had a lot of employees in the flagship, so --</p> <p>(Reporter's Transcript, 7112:8-7112:14, Nov. 29, 2016)</p>
<p><b>Lauterjing, Ryan</b>            Store Leader;            Market Leader            Beverly Center;            Victoria Gardens            12/5/09 - Present</p>	<p>Q. During that specified time frame at the Victoria Gardens store, were you ever involved in a warm handoff?</p> <p>A. Me, yeah, personally, yes, I was. There was times where I was the Leader on the floor, and, yeah, they would let -- I would let them know that they were going to lunch and that we would be getting someone else to help them out. If they had any questions, typically they would work between the two of them, but, I mean, I was always meeting customers or engaging with customers if I was in that role at the time.</p> <p>Q. And on any of those occasions when you facilitated a warm handoff at the Victoria Gardens store during that time frame, do you recall any issues with the customers being upset about the warm handoff?</p> <p>A. No, not that I recall.</p> <p>Q. During that same time frame at the Victoria Garden store, do you recall any instances where the employee said they didn't want a warm handoff?</p> <p>A. That an employee didn't want a warm handoff?</p> <p>Q. Correct.</p> <p>A. No. [...]</p> <p>BY MR. LEGGIERI: Q. On those occasions when you would approach an employee to facilitate the warm handoff to another team member, what was their response?</p> <p>A. They were fine with it. It was a very team-oriented atmosphere, so, typically, we would -- they would do that for each other. So they would want to make sure that that customer was happy.</p> <p>(Reporter's Transcript, 7319:7-7320:20, Nov. 29, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Martinez, Nancy</b> Store Leader Arden Fair, Roseville 06/2011 - Present</p>	<p>Q. And when you went through Core Training, did any of the Core Training cover meal and rest breaks?</p> <p>A. Yes. [...] THE WITNESS: There was a full day where we partnered with an experienced manager in the store, and we'd review schedules and shifts and work with the employees on a phrase called "tapping them out." So we'd connect with an employee. When it was their break time, let them know it was their time to take their break or lunch.</p> <p>BY MR. LEGGIERI: Q. And you referred to that as "tapping them out"?</p> <p>A. Yes.</p> <p>Q. Who provided you with training on this tapping-them-out method to relieve employees for lunches and rest breaks?</p> <p>A. It would have been one of the managers at the Apple Los Gatos store at the time.</p> <p>Q. And what was explained to you as to how the tapping-them-out process would work?</p>
	<p>A. Well, we would have a break and meal chart for the store. And what was explained to us is we'd identify the employees and we'd approach them shortly before the time they were due for a break or a meal period. And if they were free, we'd excuse them and ask them to enjoy their break. And if they were in the middle of an interaction, we'd politely try to insert ourselves and remind them: This is break time, and how is it going? In some cases the employee may be very close to finishing an interaction with a customer, and we'd ask them, would you like us to bring someone in to relieve you so that you can take your break or meal period? And we'd really put it – we'd empower the team: Is this a good time for you to go? There would be times where the employees would say I'm almost done and I really want to stay with my customer. We have this great relationship. Or, you know, I have been working hard on this interaction. It will just be five or six more minutes. So, you know, we'd have that agreement.</p> <p>(Reporter's Transcript, 6422:19-6424:14, Nov. 21, 2016)</p> <p>Q. On those occasions that you have approached an employee to tap him on the shoulder regarding a break and they are with a customer, what types of things have happened?</p> <p>A. In those occasions when an employee and customer are working together and we'd like them to be notified it's your time for break or lunch, we'll have a conversation. And, again, I think I mentioned this a little bit earlier, the employee really has a voice in this. If they are working with a customer and they've built a relationship or they are working on a technical repair, the employee may request to stay with that customer. And we want to give the employee that option. They also may say, no, I could really use a break now. And the manager's role is to find somebody to come help. And we'll introduce that person to the customer, and we'll politely excuse the employee that's with them. And the customers are very understanding about that.</p> <p>(Reporter's Transcript, 6426:25-6427:19, Nov. 21, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Melcher, Megan</b>  Manager; Store Leader; Market Leader  The Grove; Glendale Galleria  3/2005 - Present</p>	<p>Q. Are you familiar with the term "warm handoff" or "warm introduction"?</p> <p>A. Yes.</p> <p>Q. What is that?</p> <p>A. If a team member is engaged with a customer, and it can be in various parts of the store, so either in the Red Zone or in the Genius Bar area, and it's time for them to go on their break, we would find a team member to take over the interaction and finish it so the team member could go on their break.</p> <p>Q. And did you witness the warm handoff or warm introduction taking place during your time as Store Leader of those four stores from December 16th, 2008, through July 31st, 2012?</p> <p>A. Yeah.</p> <p>Q. How often would you see that occur?</p> <p>A. Not as frequently, but sometimes you may be faced in a situation where in Glendale Galleria, a father coming in, didn't have a Genius Bar appointment, was really upset. His iPhone had completely crashed. The hard drive was dead, and it wasn't booting up. And his son has been in hospice care, and he had just lost his son. And he was very worried that all of that data was going to be gone. And one of our technicians, started the session, like, without having to wait for an appointment, and it was a very long interaction. And we tried to provide a warm handoff during that exchange, and the team member wanted to stay until they got the device working. So that was one instance I can remember around a warm handoff.</p>
	<p>(Reporter's Transcript, 7975:21-7977:1, Dec. 5, 2016)</p> <p>Q. Have you ever heard any customer complain about the warm handoff?</p> <p>A. Yeah, there were times. Especially customers -- they start to -- when they start to build an interaction with a team member. Sometimes it's very difficult to not want to stay with that same person especially because technology can be daunting for some [...] So once they finally have someone helping them, they don't want to give that person up sometimes. So we had a couple of situations where customers were not as open to having us switch the team member off, and so even though we did it, they didn't always enjoy that part of the warm handoff. BY MR. BOYER:</p> <p>Q. So in the situation where the customer was not that happy --</p> <p>[...]</p> <p>BY MR. BOYER: Q. In the situation that you just described where the customer was unhappy with the warm handoff, was the warm handoff completed despite the customer complaint?</p> <p>A. Yeah, it was.</p> <p>(Reporter's Transcript, 7977:2-7978:5, Dec. 5, 2016)</p>

# **Exhibit D**

**EXHIBIT D**  
**RETAIL CLASS MEMBER AND OPT-OUT TESTIMONY RE: WARM HANDOFFS**

<b>WITNESS</b>	<b>TESTIMONY RE: WARM HANDOFFS</b>
<p><b>Brooks, Stanley</b> Specialist Fashion Valley 09/2011 - Present</p>	<p>Q. Are you familiar with the term "warm handoff"?</p> <p>A. Yes.</p> <p>Q. What does that term mean to you?</p> <p>A. If you are tied up with a customer and, for whatever reason, you have to leave that customer, we were instructed to hand off the -- I should say warm handoff that customer to a fellow employee.</p> <p>Q. Would you have occasion or did you have occasion to do that at any point up to July 31st, 2012?</p> <p>A. Often.</p> <p>Q. And how did that work in practice?</p> <p>A. In practice -- it was depending on the customer. Sometimes it could get a little awkward because you are spending a lot of time with the one customer building up that rapport and all of a sudden you may leave them to bring in someone that doesn't know what's going on, but sometimes that happens.</p>
	<p>Q. And the reason that you would have to bring someone in was what?</p> <p>A. Usually because of break times.</p> <p>(Reporter's Transcript, 6974:11-6975:5, Nov. 28, 2016)</p>
<p><b>Clark, Reagan</b> Business Manager Otay Ranch 10/12/09 - Present</p>	<p>Q. Let me ask this --</p> <p>A. Sure.</p> <p>Q. -- could you just describe the warm handoff process?</p> <p>A. The warm handoff process is me saying to a Specialist or a Specialist saying to me this is so and so, asking, you know, permission from the customer if it's okay if we were to hand off. And, of course, it would be, because they would understand. And we would share reasons why it's important to do a handoff due to breaks and lunches. And after we have shared the important details of the conversation, then we would be able to hand off and take over that conversation.</p> <p>Q. Did you, as a Business Manager, ever take over a customer interaction for an employee who was going either on lunch or a break, again during this time frame?</p> <p>A. Yeah. All of the time, yeah</p> <p>(Reporter's Transcript, 6837:2-6837:20, Nov. 28, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Corbin, Alex</b> Specialist Fashion Valley 10/2011 - Present</p>	<p>Q. And during that October of 2011 through July 31st, 2012 time frame when the leaders were carrying that printed-out schedule, did they ever remind you that it was time to take a break?</p> <p>A. I would say yeah. Usually at least once. So, for instance, if you were – maybe you just wrapped up with a customer and you had ten minutes until your break, they would say, hey, just so you know, you have got your 15 coming in up in ten. That way that you could kind of set yourself up to not get engaged in anything beyond that so that you could take your break on time. If you were working with a customer, managers would touch base with us. And, essentially, you know, we would try to define if we could resolve the situation within the next five minutes. And if we could, we were given that option to stick around. But we were always given the option to have handoff, where we would essentially bring another associate in, explain to them what was going on, and that way, you know, we could go our break and then someone else could take over.</p> <p>(Reporter's Transcript, 6653:18-6654:14, Nov. 22, 2016)</p>
<p><b>Coyne, Matt</b> Specialist Mission Viejo 12/2009 - Present</p>	<p>Q. Are you familiar with the term "warm handoff"?</p> <p>A. I am.</p> <p>Q. And were you familiar with the term back during the time frame when you were a part-time Specialist at South Coast Plaza?</p> <p>A. I was.</p> <p>Q. And what did the term "warm handoff" mean to you during that time frame when you were a part-time Specialist at South Coast Plaza?</p> <p>A. That's a good question. So if someone comes in to an Apple store and they want a product, you know, we don't just hand them the product. We try to see – you know, as long as they are not in a rush, what they are looking for out of a product and finding that right one. And that takes time to really understand what someone is looking for. So you are gathering all of this information about them and how they want to use it. And once you have all of that, it can be disruptive to go to another area in zoning or take your break or do something like that. So you might hand that off to someone in a way, giving that information in a very easy kind of compact way away from the customer so you can hand all of that off. And that would be kind of a warm handoff of the customer. So you are not just walking away with all of this information without handing all of that discover to someone.</p> <p>(Reporter's Transcript, 7017:15-7018:15, Nov. 28, 2016)</p>

WITNESS	TESTIMONY RE: WARM HANDOFFS
<p><b>Lewis, Maret</b> Specialist; Manager</p> <p>Third Street Promenade; The Grove; Century City</p> <p>11/2009 - Present</p>	<p>Q. During that time frame that we've been discussing, when you were a part-time Specialist at Third Street, were you familiar with the term "warm handoff"?</p> <p>A. Yes.</p> <p>Q. And what did that term mean to you back then?</p> <p>A. For example, if I am working with a customer and then it's time for me to go on my break or change zones, I would then introduce that customer to one of my coworkers. For example, say, my coworker's name is Bob and my customer's name was Mary, I would say, you know, hey, Bob. This is Mary. We've been working on her new iPhone. We're putting on her Apple ID. This is where we have left off. You're in good hands, and then I go.</p> <p>(Reporter's Transcript, 7436:15-7437:3, Nov. 30, 2016)</p>
<p><b>Roberts, Timothy</b> Specialist</p> <p>Manhattan Beach</p>	<p>Q. Did you ever hear that called something called "a warm handoff"? Does that ring a bell?</p> <p>A. Yes, I did.</p> <p>Q. When that happened, did you transfer over your customer or were there ever times when you said, no thanks, I'd rather finish with a customer? A. If a manager came over with another Specialist to finish the sale for me, I most certainly would have handed the customer off.</p> <p>Q. Was it your understanding that even if a manager didn't come over with another Specialist, that you could still transfer a customer over to someone else?</p> <p>A. I did understand that, yes.</p> <p>Q. Did you ever do that without a manager's help?</p> <p>A. Absolutely.</p> <p>(Reporter's Transcript, 3239:22-3240:10, Nov. 7, 2016)</p>
<p><b>Wassman, Greg</b> Genius; Specialist</p> <p>Los Gatos</p> <p>8/13/11 - Present</p>	<p>THE WITNESS: Okay. Sorry. We would go to -- we'd be selling the iPhone, and we could do a warm handoff so we were not delayed in our breaks when we were told you need to go. So it wasn't the same type of atmosphere as the Genius Bar. It was much more immediate, I guess, might be a good way of putting it as far as breaks go.</p> <p>(Reporter's Transcript, 6036:8-6036:14, Nov. 17, 2016)</p>

# **Exhibit E**



**EXHIBIT E**  
**RETAIL STORE MANAGER TESTIMONY RE: RETAIL SHIFT LENGTHS**

<b>WITNESS</b>	<b>TESTIMONY RE: SCHEDULING OF SHIFTS</b>
<p><b>Gillebaard, Karen</b>  Store Leader  Fashion Island;  UTC  06/2011 - Present</p>	<p>Q. And directing your attention to the period of time from June of 2010 to July 31st of 2012, can you tell us what the blocks of time that your employees were scheduled for? In other words, what were the scheduled shifts for your employees at UTC?</p> <p>A. The scheduled shifts for an employee at UTC? If they were part-time or full-time – it could be a four-hour shift, a six-hour shift. If they were full-time it was, of course, an eight-hour shift.</p> <p>Q. And were those the typical shifts?</p> <p>A. Typical. It varied, the number of hours per shift for a part-time employee versus, of course, a full-time employee had an eight-hour shift each day.</p> <p>Q. All right. And for employees with an eight-hour shift, you're talking about eight work hours? A. Correct. Correct.</p> <p>Q. And so how many hours would they be scheduled for?</p>
	<p>A. It would be the length of nine hours because they would have one hour for a lunch hour, but they would be on the clock getting paid for eight hours.  (Reporter's Transcript, 5549:3-23, Nov. 15, 2016)</p>
<p><b>Martinez, Nancy</b>  Store Leader  Arden Fair;  Roseville  06/2011 - Present</p>	<p>Q. And you testified before that employees were typically scheduled for an eight-hour shift; is that correct?</p> <p>A. Correct.  (Reporter's Transcript, 6434: 8-11, Nov. 21, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF SHIFTS
<p><b>Voigt, Paul</b>            Sr. Assistant            Sales Manager;            Market Leader              South Coast            Plaza; Inland            Empire              11/2005 -            Present</p>	<p>Q. And what do you mean by that, checking off in the two-hour mark.</p> <p>A. So for the most part, we scheduled employees to work eight-hours or a nine-hour shift, and every two hours we would give them a 15-minute break.</p> <p>Q. And did you have part-time employees during that time period as well?</p> <p>A. Yes, sir.</p> <p>Q. And what types of shifts would they be scheduled for?</p> <p>A. For the most part we scheduled everyone, as I said, a nine-hour shift or eight hours to work. We did have quite a few employees that were in school, and so sometimes during the week, we would schedule employees four- or five-hour shifts once they got out of school.</p> <p>(Reporter's Transcript, 6884:4-19, Nov. 28, 2016)</p>
<p><b>Yorkey, Jody</b>            Manager; Store            Leader              UTC; Fashion            Valley              2002 - Present</p>	<p>Q. All right. And were there individuals who worked any shifts on a regular basis other than eight hours of work?</p> <p>A. Well, part-time employees would usually work a four- or five-hour shift.</p> <p>Sometimes there might be another shift, but the four- and the five-hour shifts were the most common shifts because a lot of times we'll have, like, a 4:00 to 9:00 or a 5:00 to 10:00. It's the students that go to school that have to -- that come after school or a lot -- we actually have people that work full-time Monday through Friday, 8:00-to-5:00- or 9:00-to-5:00-type jobs, and they would come, you know, 6:00 to 10:00, which is a four-hour shift.</p> <p>(Reporter's Transcript, 6712:13-25, Nov. 22, 2016)</p>

# **Exhibit F**

**EXHIBIT F**  
**CLASS MEMBER TESTIMONY RE: RETAIL SCHEDULED SHIFTS**

<b>WITNESS</b>	<b>TESTIMONY RE: RETAIL SCHEDULED SHIFTS</b>
<p><b>Baffour, Kofi</b>  Specialist  Third Street Promenade  1/29/11 - 11/7/14</p>	<p>Q. Did you generally work a full-time schedule when you were at Apple?  A. I alternated between part-time and, I believe it was -- not half-time, so it would be part-time and full-time.  Q. And when you were a part-time employee for Apple, how many hours on a workday would you generally be scheduled for?  A. Some days would be four hours and most days would be eight hours.  Q. Got it. Did you ever work any day at Apple when you were scheduled for something other than either a four-hour shift or an eight-hour work shift?  [...]  THE WITNESS: Sure.  BY MR. ADLER: Q. And what would be those other workday schedules that you would have other than a four-hour or an eight-hour?  A. Six hours maybe, five hours.  (Reporter's Transcript, 1759:1-1759:24, Oct. 27, 2016)</p>
<p><b>Brunet, Bradley</b>  Specialist  The Grove  4/4/07 - 3/2010</p>	<p>A. Yeah. If I was working an eight-hour shift, which at that point I did exclusively with, you know, rare exception, then, yeah, I was supposed to get a one-hour lunch and two 15-minute breaks.  (Reporter's Transcript, 2751:24-2752:2, Nov. 3, 2016)  Q. But other than, you know, the random meeting on a Sunday, your almost virtually exclusive schedule was an eight-hour shift with a one-hour lunch and two 15-minute rest breaks; correct?  [...]  THE WITNESS: Okay. Essentially that's what I was supposed to be scheduled.  (Reporter's Transcript, 2780:22-2781:6, Nov. 3, 2016)</p>
<p><b>Dixon, Ben</b>  Specialist  Valley Fair  5/17/08 - 9/11/09</p>	<p>Q. Okay. Do you recall how long the shifts that you normally were scheduled to work?  A. Between -- well, they varied. It would depend on my variability since it was part-time. It could be four hours; it could be eight hours.  Q. So there were times you were scheduled to work four hours?  A. We'd have to check the time records to be sure, but I think so.  (Reporter's Transcript, 1147:3-1147:11, Oct. 25, 2016)</p>

WITNESS	TESTIMONY RE: RETAIL SCHEDULED SHIFTS
<p><b>Falcone, Michael</b> Specialist; Assistant Store Manager; Store Manager Otay Ranch; Hillsdale</p>	<p>Q. Okay. Now, what was the schedule that you generally worked when you were in California at the Hillsdale store?</p> <p>A. I didn't have a generally – a set schedule. My hours changed constantly.</p> <p>Q. Did you have a certain number of hours per day that you were scheduled to work?</p> <p>A. Yes. Typically I was scheduled for nine hours.</p> <p>Q. And would that include a one-hour lunch?</p> <p>A. That would.</p> <p>(Reporter's Transcript, 3177:21-3178:3, Nov. 7, 2016)</p>
<p><b>Felczer, Brandon</b> Specialist Fashion Valley; UTC</p>	<p>"Question: Yes. Were you scheduled to work a nine-hour shift with a 60-minute unpaid break?</p> <p>"Answer: The schedule that was provided, yes, showed that my start and end time – and from your saying, yeah, I believe it – say it went from 10:00 to 7:00, that would be nine hours. That's what you're meaning?</p>
	<p>"Question: Yes.</p> <p>"Answer: Okay."</p> <p>(Reporter's Transcript, 3440:25-3441:10, Nov. 8, 2016)</p>
<p><b>Haggar, Paul</b> Specialist; Expert UTC 8/9/08 - 7/14/11</p>	<p>Q. Would this be a typical schedule for you, a nine-hour schedule with an hour lunch and then the two scheduled 15-minute breaks?</p> <p>[...]</p> <p>THE WITNESS: Yeah, this – yes. This is a pretty standard schedule. When you work eight hours, you have an hour lunch and two 15-minute breaks. BY MR. LEGGIERI:</p> <p>(Reporter's Transcript, 2073:21-2074:5, Oct. 31, 2016)</p> <p>Q. And, again, this was the typical schedule that you worked when you were a full-time employee; correct?</p> <p>A. Not necessarily those specific hours, but that length of a shift and that structure. Yeah. When you are full-time, generally it's an eight-, nine-hour shift, yes.</p> <p>(Reporter's Transcript, 2083:15-2083:20, Oct. 31, 2016)</p>

WITNESS	TESTIMONY RE: RETAIL SCHEDULED SHIFTS
<p><b>Hawkins, Ramsey</b> Store Manager; HR People Manager Palo Alto 11/3/01 - 11/13/12</p>	<p>Q. You were generally scheduled for a nine-hour day with eight hours of work and one hour of lunch; correct?</p> <p>[...]</p> <p>THE WITNESS: Yes. Most of my shifts were eight hours worked, nine hours scheduled.</p> <p>(Reporter's Transcript, 2171:12-2171:20, Oct. 31, 2016)</p>
<p><b>Howard, Coleman</b> Specialist; Genius San Luis Obispo 03/2008 - 03/2012</p>	<p>Q. Thank you. You were a full-time employee; correct?</p> <p>A. That's correct.</p> <p>Q. And you worked a nine-hour shift with the two 15s and a 60-minute lunch?</p> <p>A. Ideally.</p> <p>Q. That's what you were scheduled for. You were scheduled for a nine-hour shift --</p> <p>A. Scheduled for nine-hour shifts.</p>
	<p>(Reporter's Transcript (Amended with Index), 1448:21-1449:4, Oct. 26, 2016)</p>
<p><b>Meyers, Jesse</b> BOH; Sales; Genius; Lead Genius The Grove; Pasadena; San Diego 10/2002 - 5/2011</p>	<p>Q. And that was your normal schedule when you worked at the UTC store?</p> <p>A. Not those specific hours, but the nine-hour lunch [sic] with the one-hour meal break, yes.</p> <p>(Reporter's Transcript, 1197:13-1197:16, Oct. 25, 2016)</p>

WITNESS	TESTIMONY RE: RETAIL SCHEDULED SHIFTS
<p><b>Pentz, Christopher</b> Specialist Victoria Gardens 5/22/10 - 3/25/11</p>	<p>Q. Okay. So you would generally work at the outset of your employment either a four-hour shift or a six-hour shift; correct?</p> <p>A. Correct. (Reporter's Transcript, 1662:22-1662:25, Oct. 27, 2016)</p> <p>Q. And when you were scheduled for your eight-hour shift of work, you were scheduled for a one-hour meal break and then two 15-minute rest breaks; correct?</p> <p>A. That was what I was told, yes. (Reporter's Transcript, 1663:9-1663:13, Oct. 27, 2016)</p> <p>So it was one of the two. It was very up in the air. I did not have a 9:00-to-5:00-type schedule when I was working at Apple (Reporter's Transcript, 1665:3-1665:5, Oct. 27, 2016)</p> <p>Q. Were you ever scheduled for a seven-hour shift?</p> <p>A. I was not. (Reporter's Transcript, 1687:27-1688:1, Oct. 27, 2016)</p>
<p><b>Smith, Justin</b> Specialist Century City 10/2011 - 2/2013</p>	<p>A. I mean, I feel like that's a bit later in my shift. I mean, if out of an eight-hour shift if I'm taking my lunch, you know, closer to the sixth hour, I would think that's pretty long. (Reporter's Transcript (Amended with Index), 1522:22-1522:25, Oct. 26, 2016)</p>
<p><b>Sosnowski, Michelle</b> Specialist The Grove 09/05/08 - Present</p>	<p>Q. You said that you were sometimes scheduled for six hours and sometimes scheduled for eight hours?</p> <p>A. Uh-huh. (Reporter's Transcript, 1768:11-1768:13, Oct. 27, 2016)</p>
<p><b>Torres, Michael</b> Specialist Fashion Valley; Otay Ranch 6/15/09 - 12/08/10</p>	<p>Q. And if you were scheduled to work five hours, but it looks like you clocked out a little bit late at 3:08; correct?</p> <p>A. Yes.</p> <p>Q. And you were done with your shift for the day; correct?</p> <p>A. According to this time period, yes, I was in for just that day. (Reporter's Transcript, 1582:26-1583:5, Oct. 27, 2016)</p>

<b>WITNESS</b>	<b>TESTIMONY RE: RETAIL SCHEDULED SHIFTS</b>
<b>Young Smith, Jeremy</b> Specialist The Oaks 11/18/11 - 10/19/13	Q. You said you were scheduled for shifts including six and seven hours; is that right? A. Yes. (Reporter's Transcript, 1701:23-1701:25, Oct. 27, 2016) Q. How many times do you recall seeing someone in the store scheduled for a seven-hour shift? MR. ADLER: Objection, Your Honor. Foundation. Speculation. Irrelevant. THE COURT: Overruled. That's a specific question. You may answer. THE WITNESS: Rarely. I rarely saw a seven-hour shift. (Reporter's Transcript, 1689:9-1689:17, Oct. 27, 2016)



# **Exhibit G**

**EXHIBIT G**

**CORPORATE MANAGER TESTIMONY RE: MEAL PERIOD SCHEDULING PRACTICES**

<b>WITNESS</b>	<b>TESTIMONY RE: SCHEDULING OF MEAL PERIOD</b>
<p><b>Plank, Todd</b>                      AppleCare                      Team Manager;                      Project                      Manager; Area                      Manager; Sr.                      Area Manager                      Austin, TX                      9/2/08 - Present</p>	<p>Q. Now, were you responsible for structuring the work schedules of these students who were working for Apple in this college program?                      [...]                      THE WITNESS: I wasn't directly responsible for any one schedule. It was basically how the scheduling was handled, the process. We have a scheduling team that does that.</p> <p>BY MR. ADLER: Q. All right. How were those student advisors scheduled during this period of time of 2008 through July 31st of 2012?                      A. Okay. So they would work directly with their team manager, their direct supervisor. They would basically get their college schedule for the semester, and they would look at their availability and then pick the shifts that were available around their college schedule. And then they got to choose which weekend day they worked their longer shift.</p>
	<p>Q. Do you know if those individuals would have any type of breaks or meals built into their scheduled day?                      A. Absolutely. As a standard, in an eight-hour schedule, that's a nine-hour block of work with one hour off in between for lunch. And that lunch – our guidelines and our policies were that lunch would be scheduled within the first five hours of the start of your shift. So, basically, they would work three and a half to four hours with a 15-minute paid break at the first half of their shift, take a lunch break, log back in and work another three, four hours with another 15-minute paid break in that segment.</p> <p>Q. And that was for these students who were working through the AppleCare program nationally; correct?                      A. Right.                      (Reporter's Transcript, 9866:4-9867:16, Dec. 14, 2016)</p>
<p><b>Garber, John</b>                      Area Manager                      of AppleCare                      Contact Center                      Elk Grove                      2001 - Present</p>	<p>Q. And during that time that you were the EDU group manager from 2008 to 2010, did you review advisors' schedules who worked for you?                      A. Yes, I did.</p> <p>Q. And in that review of the schedules, did you notice when lunch periods would typically be scheduled?                      A. Yes, I did.</p> <p>Q. And when was that?                      A. Typically, four to five hours within that nine-hour context of their scheduled day, but always before the fifth hour.                      (Reporter's Transcript, 9965:21-9966:9, Dec. 15, 2016)</p>

WITNESS	TESTIMONY RE: SCHEDULING OF MEAL PERIOD
<p><b>Stinson, Mark</b>  IS&amp;T Helpline  Manager  Elk Grove  2010 - Present</p>	<p>Q. At what point in the day were the employees that you supervised scheduled for their first rest break?</p> <p>[...]</p> <p>THE WITNESS: Two hours into their shift.</p> <p>BY MR. ADLER: Q. All right. And then did the employees that you supervised as the Helpline Manager have a meal break scheduled for them?</p> <p>A. They did.</p> <p>Q. And when would that occur during the individual's workday?</p> <p>[...]</p> <p>THE WITNESS: That ranged from three and a half hours into the shift and no earlier to five hours into the shift and no later. If they had 30-minute shifts, those were the people that had their lunch start five hours into the shift. If they had a 60-minute lunch, we generally didn't want them to start anything later than four and a half hours into the shift because our goal was to have all of the lunches done by five and a half hours.</p> <p>(Reporter's Transcript, 10096:14-10097:14, Dec. 15, 2016)</p>

# **Exhibit H**

**EXHIBIT H**  
**CORPORATE MANAGER TESTIMONY RE: SHIFT LENGTHS**

<b>WITNESS</b>	<b>TESTIMONY RE: SHIFT LENGTHS</b>
<p><b>Garber, John</b>  Area Manager  of AppleCare  Contact Center  Elk Grove  2001 - Present</p>	<p>Q. And what was the structure of an advisor, like Mr. Worthen's day during the time that you managed them?</p> <p>A. So they would be scheduled for five days a week for nine hours, eight of those hours on the clock with a one-hour lunch period off the clock.</p> <p>Q. And would they be scheduled for any other breaks on this schedule?</p> <p>A. Yes, they would get –</p> <p>[...]</p> <p>THE WITNESS: Thank you, Your Honor. Yes. They would be scheduled for two 15-minute on-the-clock breaks.</p> <p>(Reporter's Transcript, 9961:19-9962:8, Dec. 15, 2016)</p>
<p><b>Humphreys, Tom</b>  Manager  Elk Grove  2011 - Present</p>	<p>Q. For those Apple employees that you supervised who worked that schedule that you discussed of 6:00 a.m. until 2:30 p.m., were those employees scheduled for breaks?</p> <p>[...]</p> <p>THE WITNESS: Yes, they were.</p> <p>BY MR. LEGGIERI: Q. Would you please describe the structure for how those employees that you supervised were allotted their rest breaks and lunches?</p> <p>A. Sure. So we would start at 6:00. Roughly two hours into the shift we would give them a 15-minute break, and then before the fifth hour, we would give them a 30-minute lunch period, and then between the lunch period and the end of their shift, we would give them another 15-minute break.</p> <p>(Reporter's Transcript, 10050:13-10051:7, Dec. 15, 2016)</p>

WITNESS	TESTIMONY RE: SHIFT LENGTHS
<p><b>Plank, Todd</b>  AppleCare  Team Manager;  Project  Manager; Area  Manager; Sr.  Area Manager  Austin, TX  9/2/08 - Present</p>	<p>Q. Now, were you responsible for structuring the work schedules of these students who were working for Apple in this college program?</p> <p>[...]</p> <p>THE WITNESS: I wasn't directly responsible for any one schedule. It was basically how the scheduling was handled, the process. We have a scheduling team that does that.</p> <p>BY MR. ADLER: Q. All right. How were those student advisors scheduled during this period of time of 2008 through July 31st of 2012?</p> <p>A. Okay. So they would work directly with their team manager, their direct supervisor. They would basically get their college schedule for the semester, and they would look at their availability and then pick the shifts that were available around their college schedule. And then they got to choose which weekend day they worked their longer shift.</p> <p>Q. Do you know if those individuals would have any type of breaks or meals built into their scheduled day?</p> <p>A. Absolutely. As a standard, in an eight-hour schedule, that's a nine-hour block of work with one hour' off in between for lunch. And that lunch = our guidelines and our policies were that lunch would be scheduled within the first five hours of the start of your shift. So, basically, they would work three and a half to four hours with a 15-minute paid break at the first half of their shift, take a lunch break, log back in and work another three, four hours with another 15-minute paid break in that segment.</p> <p>Q. And that was for these students who were working through the AppleCare program nationally; correct?</p> <p>A. Right.</p> <p>(Reporter's Transcript, 9866:4-9867:16, Dec. 14, 2'16)</p>
<p><b>Stinson, Mark</b>  IS&amp;T Helpline  Manager  Elk Grove  2010 - Present</p>	<p>Q. All right. Let's talk about employees under your supervision when you were a Helpline Manager who worked an eight-hour day, what was the structure of the breaks and lunches for those employees?</p> <p>A. They were very similar to the ten-hour shifts, two hours in was their first rest period break, lunches, no earlier than three and a half hours in, no later than five hours in they would start. We had the same, you know, the same rule on -- it was a guideline. It wasn't a rule that if you had a 60-minute lunch period, we wanted them to start four and a half hours in no later than that. And then the second rest period was at the sixth hour mark or roughly around that. And I say roughly because the lunches, the meal period breaks were actually scheduled and as were the rest breaks, but we asked -- you know, we let people go on their own.</p> <p>(Reporter's Transcript, 10100:20-10101:11, Dec. 15, 2016)</p>

# **Exhibit I**

**EXHIBIT I**  
**CORPORATE NON-MANAGER TESTIMONY RE: SHIFT LENGTHS**

<b>WITNESS</b>	<b>TESTIMONY RE: SHIFT LENGTHS</b>
<p><b>Carco, Joseph</b> Account Manager Elk Grove 12/16/07 - 6/20/08</p>	<p>Q. During the period of December of 2007 to June of 2008, you actually had a schedule for your workday that was in the online system at Apple; isn't that right? [...]</p> <p>THE WITNESS: Yes.</p> <p>BY MR. ADLER: Q. And you did not have visibility to other people's schedules, just your own; correct?</p> <p>A. Correct.</p> <p>Q. And that schedule in the online system was not something that typically changed week to week; correct?</p> <p>A. As to the specific hours, like the start time and stop time, and my lunches? Typically, no. But the lunches could change if, say, a meeting was scheduled or something like that.</p> <p>Q. But generally they stayed -- the online schedule for you stayed pretty much the same during this period of time; correct?</p> <p>A. It was rather consistent, yes.</p> <p>Q. I'm sorry, it was what?</p> <p>A. Consistent.</p> <p>Q. And the online schedule that you had access to during this period of time, December of 2007 through June of 2008, had a meal period built into it for you; correct?</p> <p>A. Correct.</p> <p>Q. And this online schedule that you had access to during this period of time had rest break times built into it, didn't it? [...]</p> <p>THE WITNESS: To the best of my recollection, yes.</p> <p>BY MR. ADLER: Q. And for each eight-hour workday that you had on this online schedule, you had two rest breaks built into the schedule; correct? [...]</p> <p>THE WITNESS: I believe so.</p> <p>(Reporter's Transcript, 9244:25-9246:17, Dec. 12, 2016)</p>



WITNESS	TESTIMONY RE: SHIFT LENGTHS
<p><b>Dellava, Jessica</b>            Prep Cook;            Café Cashier            Elk Grove            12/16/07 -            5/29/12</p>	<p>Q. And what was your typical schedule in terms of hours worked per day as a full-time employee?</p> <p>A. Like the actual schedule, like, when I started and when I --</p> <p>Q. Not so much the start and end times, but the amount of time worked per day?</p> <p>A. About eight hours unless there was overtime.</p> <p>Q. And was that eight hours working with a half hour lunch?</p> <p>A. Yes.</p> <p>(Reporter's Transcript, 9321:6-9321:15, Dec. 12, 2016)</p>
<p><b>Hallman, Gloria</b>            Tech Customer            Service Support            Elk Grove            12/16/07 -            8/5/11</p>	<p>Q. Okay. What's your understanding of Apple's meal period policy, again, between the time frame of December 16th, 2007, to August 2011?</p> <p>[...]</p> <p>THE WITNESS: Based on -- the shift that I was working at the time was an eight-hour shift for five days a week. We were given two, 15-minute breaks and a one-hour lunch.</p> <p>(Reporter's Transcript, 9094:10-9094:20, Dec. 12, 2016)</p>
<p><b>Ruiz, Maria</b>            Receptionist/Operator            Cupertino            12/16/07 -            7/13/12</p>	<p>Q. Okay. On that same schedule that you had throughout that time period, were you scheduled for rest breaks and lunches?</p> <p>A. Correct.</p> <p>Q. Would you please walk us through your break schedule starting at 8:00 a.m.?</p> <p>A. My first break will be at 9:45 and then my lunch break will be at 12:55 and then I get off at 5:00 -- sorry. In the afternoon I get my last break, which is at 3:45 p.m.</p> <p>Q. Did that schedule -- did that break schedule vary at all?</p> <p>A. No, not at all.</p> <p>Q. Throughout the entire time frame from December 16th, 2007, through July 31st, 2012?</p> <p>A. Still the same.</p> <p>(Reporter's Transcript, 10017:12-10018:2, Dec. 15, 2016)</p>

WITNESS	TESTIMONY RE: SHIFT LENGTHS
<p><b>Worthen, Shirverlion</b></p> <p>Tech Customer Service Support</p> <p>Elk Grove</p> <p>12/20/08 - 7/22/12</p>	<p>THE WITNESS: I was always scheduled for eight hours, so, yeah, the two breaks for eight hours.</p> <p>BY MR. BOYER: Q. Okay. So you were always scheduled to take two breaks because you were always scheduled to work eight hours --</p> <p>A. When you say --</p> <p>Q. -- correct?</p> <p>A. I'm sorry.</p> <p>MR. BELONG: Could we have it read back. (Record read.)</p> <p>THE WITNESS: So once again, I think -- define schedule; right? Once again, if we worked an overtime shift, then for that Saturday, we were scheduled for five, then, no. All right? But if it was a regular shift, then, from my understanding, if we worked the eight hours, we would get the two. But, like I think I told you earlier as well, and I don't remember if it was scheduled inside Empower.</p> <p>(Reporter's Transcript (Amended for page numbering error), 8834:23-8835:20, Dec. 8, 2016)</p>