

No. S243805

SUPREME COURT
FILED

JUN 08 2018

Jorge Navarrete Clerk

Deputy

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

**Motion to Augment the Record; Memorandum in
Support; Declaration in Support; Proposed
Order [Cal. Rules of Ct., rule 8.155(a)]**

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MOTION TO AUGMENT THE RECORD; MEMORANDUM IN SUPPORT

I. INTRODUCTION

Pursuant to California Rule of Court 8.155(a), Plaintiffs, Appellants and Petitioners Amanda Frlekin et al. (collectively “Appellants”), on behalf of themselves and the certified class, move the Court to augment the record on appeal (“excerpts of record”) with the following documents, all of which were previously filed with the United States District Court for the Northern District of California (“district court”) in this action (Declaration of Kimberly A. Kralowec, below (“Kralowec Decl.”), ¶2):

Exhibit 1 to Kralowec Decl. (pp. 0002-0012): Excerpts from the January 8, 2014 deposition of Carol Monkowski, Vice-President of Retail Strategy and then Senior Director of Field Operations for Defendant-Respondent Apple, Inc. (“Respondent”) (“Monkowski Depo.”), filed February 20, 2014 in the district court (Dkt. No. 145-1).¹ (Ms. Monkowski executed a declaration, which is not part of the excerpts of record, but is attached as Exhibit A to, and the subject of, Apple Inc.’s Motion for Judicial Notice, filed 3/19/18 with its Answer Brief on the Merits (“Answer Brief”) (“Monkowski Declaration”).

Exhibit 2 to Kralowec Decl. (pp. 0014-0022): Monkowski Depo., Exhibit 19, “Loss Prevention” section of Apple’s posted policy and procedure. (Dkt. No. 145-3).

Exhibit 3 to Kralowec Decl. (pp. 0024-0035): Monkowski Depo., Exhibit 22, excerpt from Apple’s CORE employee training facilitator’s guide, concerning “Loss Prevention.” (Dkt. No. 145-3).

¹ The Monkowski Depo. transcript and exhibits (Exhs. 1, 2 & 3 hereto) were filed by Respondent and authenticated in a declaration of Respondent’s counsel, Todd K. Boyer, at SER 52:27-53:1. Docket numbers (“Dkt. No.”) refer to the district court’s docket.

Exhibit 4 to Kralowec Decl. (pp. 0037-0040): Excerpts from reporter's Transcript of Proceedings from May 22, 2014 hearing before the Hon. William H. Alsop of the district court (on Respondent's motion for summary judgment), filed 5/31/14 in the district court (Dkt. No. 167).

Exhibit 5 to Kralowec Decl. (pp. 0042-0047): Excerpts from Plaintiffs' Motion for Rule 23(c)(4) Certification of Particular Issues, filed May 12, 2015 in the district court (Dkt. No. 246-2).

Exhibit 6 to Kralowec Decl. (pp. 0049-0064): Excerpts from reporter's Transcript of Proceedings from July 2, 2015 hearing before the Hon. William H. Alsop of the district court, (on Appellants' Motion for Rule 23(c)(4) Certification of Particular Issues), filed July 9, 2015 in the district court (Dkt. No. 295).

Exhibit 7 to Kralowec Decl. (pp. 0066-0070): Excerpts from Plaintiffs' Second Supplemental Brief Pursuant to Court Order in Support of Motion for Rule 23(c)(4) Certification of Particular Issues, filed July 8, 2015 in the district court (Dkt. No. 291).

Exhibit 8 to Kralowec Decl. (pp. 0072-0074): Excerpts from Joint Statement Regarding Class and Notice and Related Documents, filed July 29, 2015 in the district court (Dkt. No. 305).

For the following reasons, Appellants respectfully ask the Court to grant their motion to augment the excerpts of record herein with each of these exhibits.

II. ARGUMENT

Rule 8.155(a) provides that the reviewing court "may order the record augmented" "at any time" on "motion of a party," with "any document filed or lodged in the superior court" (Cal. R. Ct. 8.155(a)(1)) or "a certified transcript ... of

oral proceedings not designated under rule 8.130” (Cal. R. Ct. R. 8.155(a)(2)).² It is well established that this rule is to be construed liberally. *People v. Brooks*, 26 Cal.3d 471, 484 (1980); *People v. Gaston*, 20 Cal.3d 476, 483 (1978) (construing prior rule 12a).

When Appellants designated documents and transcripts for the excerpts of record, there was no apparent need for the materials Appellants now seek to add by this motion. Kralowec Decl., ¶¶3-4. Appellant’s excerpts of record complied with the Ninth Circuit’s rules, which provide that “excerpts of record shall not include briefs or other memoranda of law filed in the district court unless necessary to the resolution of an issue on appeal, and shall include only those pages necessary therefor” (Circuit Rule 30-1.4), and provide for potential sanctions for over-designation (Circuit Rule 30-2).

The need to augment the record now arises from Respondents’ Answer Brief on the Merits, filed in this Court, including (1) arguments relying on statements in the Monkowski Declaration it has asked the Court to judicially notice, which Respondent did not include in its supplemental excerpts of record and never mentioned in its briefs to the Ninth Circuit; and (2) its discussion of the positions of counsel and certain rulings of the district court in connection with class certification, which did not mention important parts of the record that are essential to a complete understanding of these positions and rulings. Kralowec Decl., ¶3.

This motion is timely, will cause no delay, and demonstrates a compelling need for augmentation.

² Rule 8.155(a) refers to the “superior” court, but as the parties are before this Court on certified questions from the Ninth Circuit, the Rule should logically apply to documents and transcripts filed in the district court.

A. Augmentation to Include the Monkowski Deposition and Exhibits (Exhs. 1, 2 & 3 hereto) Should be Permitted to Refute Statements in the Monkowski Declaration Filed with Respondents' Request for Judicial Notice

While Respondent repeatedly cites the Monkowski Declaration in its Answer Brief,³ Respondent did not include that declaration in its supplemental excerpts of record, and did not rely on it in the Ninth Circuit briefing. Kralowec Decl., ¶3.

Accordingly, Appellants now seek to augment the record with an excerpt from Ms. Monkowski's deposition (Monkowski Depo.), and two exhibits to that deposition. The purpose of these excerpts is to refute the newly-submitted Monkowski Declaration. See Kralowec Decl., ¶2 & Exhs. 1, 2 & 3.

Regardless of whether the Court ultimately considers the substance of that declaration,⁴ in accordance with the liberal construction of Rule 8.155(a), Appellants should nonetheless be permitted to augment the record with Exhibits 1, 2 and 3 to refute Respondent's reframed arguments in its Answer Brief as to what constitutes "work" under the applicable Wage Order. Kralowec Decl., ¶3.

B. Augmentation to Include Excerpts from Transcripts of Hearings (Exhs. 4 & 6 hereto), and Appellants' Briefs and the Parties' Joint Statement (Exhs. 5, 7 & 8 hereto), Should be Permitted to Provide Full Context for the Parties' Positions and the District Court's Rulings on Class Certification

Repeatedly in its Answer Brief, Respondent asserts "facts" regarding Appellants' motion for, and the district court's rulings on, class certification. In

³ Respondent argues in its Answer Brief that a statement in the Monkowski Declaration, that "Apple does not employ individuals in its retail stores for the purpose of submitting to" Checks, is determinative of whether the Checks constitute "work" under the applicable Wage Orders. Answer Brief at 53. Appellants seek to add Exhibits 1, 2 & 3 to refute that statement. Kralowec Decl, ¶3.

⁴ Judicial notice may be granted of the fact that a declaration was filed, but not the truth of the statements made in it. *People v. Woodell*, 17 Cal. 4th 448, 455 (1998).

particular, Respondent cites a non-existent “stipulation” and certain rulings of the district court concerning class members with a “special need” to bring bags to work. *See, e.g.*, Answer Brief at 10-11.

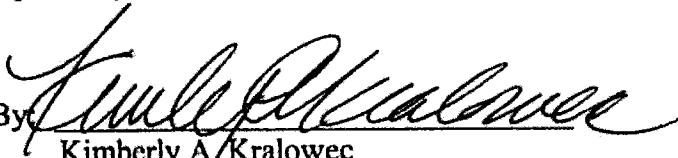
Appellants seek to augment the record with additional pages from the transcripts of two hearings below (heavily cited by Respondent) and eleven pages of excerpts from documents filed in the district court below. Exhs. 4, 5, 6, 7 & 8 hereto. These documents provide the context for the district court’s rulings on which Respondent relies. Kralowec Decl., ¶4. These excerpts will aid the Court in ruling on the certified question because they provide a complete picture of the actual rulings made in the district court.

III. CONCLUSION

For the above reasons, this Court is respectfully asked to grant the motion to augment the record to include the documents attached hereto as Exhs. 1 through 8.

Dated: June 8, 2018

Respectfully submitted,

By 
Kimberly A. Kralowec
KRALOWEC LAW, P.C.

Lee A. Shalov
MCLAUGHLIN & STERN, LLP

Attorneys for Plaintiffs, Appellants, and
Petitioners

DECLARATION OF KIMBERLY A. KRALOWEC IN SUPPORT OF MOTION TO AUGMENT THE RECORD

I, Kimberly A. Kralowec, declare as follows:

1. I am an attorney licensed to practice law in the State of California. I am appellate counsel of record for petitioners Amanda Frlekin et al. in the above-

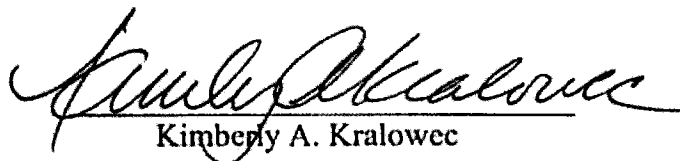
referenced proceeding. I have personal knowledge of the matters stated below, and if called upon to testify, would do so competently as to them.

2. Exhibits 1 through 8 attached hereto are true and correct copies of the documents identified in the list above. Each of these documents was filed in the district court in the proceedings below. The documents are necessary, and augmentation should be granted, for the following reasons.

3. Exhibits 1 through 3 are needed to refute the declaration of Carol Monkowski, of which Apple now seeks judicial notice, and which Apple cites in connection with its arguments concerning the “suffered or permitted to work” test. Apple did not include this declaration in its supplemental excerpts of record in the Ninth Circuit, and the declaration was not cited in Apple’s Ninth Circuit briefing. As a result, Appellants had no occasion to seek to augment the record to include these materials in that court.

4. Exhibits 4 through 8 provide the context needed so that the Court may fully understand, and so that Appellants may fully respond to, Apple’s argument concerning certain positions taken by counsel, and certain rulings of the district court at the class certification stage, regarding “special needs” class members. Apple’s argument to this Court on that point differs in some respects from the argument presented in its Ninth Circuit brief, so there was no need to submit additional pages in that court in order to refute it. Now, Appellants respectfully request that the record be augmented to include sixteen additional hearing transcript pages, of which Apple’s supplemental excerpts of record included only selected portions (SER 26-38), plus eleven more pages of excerpts from the class certification briefing in the district court.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on June 8, 2018 at San Francisco, California.


Kimberly A. Kralowec

No. S243805

Supreme Court
OF THE
State of California

AMANDA FRLEKIN, ET AL.,
Plaintiffs, Appellants, and Petitioners,

v.

APPLE, INC.,
Defendant and Respondent.

On a Certified Question from the United States
Court of Appeals for the Ninth Circuit
Case No. 15-17382

[Proposed]
Order Granting Motion to Augment the Record

Pursuant to Rule of Court 8.155(a), the motion to augment the record of petitioners Amanda Frlekin et al. is hereby granted in full.

Justice

EXHIBIT 1

000001

[Page 1]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AMANDA FRELKIN, DEAN PELLE,
ADAM KILKER and BRANDON FISHER
on behalf of themselves and all
others similarly situated,

Plaintiffs,

vs.

No. 12-cv-3451-WHA

APPLE INC., a California
corporation,

Defendant.

DEPOSITION OF CAROL MONKOWSKI

January 8, 2014

10:09 a.m.

50 West San Fernando Street, 15th Floor
San Jose, California

REPORTED BY:

Tracy Fletcher

CSR No. 11683

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INDEX TO EXHIBITS

CAROL MONKOWSKI

Frelkin & Pelle vs. Apple Inc.

Wednesday, January 8, 2014

Tracy Fletcher CSR No. 11683

MARKED	DESCRIPTION	PAGE
Exhibit 5	Notice of taking deposition	7
Exhibit 6	Defendant's objections to notice	8
Exhibit 7	Document titled, "Employee bag check do's and dont's"	56
Exhibit 8	Document titled, "Employee conduct"	89
Exhibit 9	Document titled, "Employee conduct"	97
Exhibit 10	Document titled, "Pay details for nonexempt employees"	103
Exhibit 11	Document titled, "Summary"	104
Exhibit 12	Document titled, "Closing checklist"	105
Exhibit 13	Document titled, "Employee package and bag searches-Article 2008-116.0"	111
Exhibit 14	Document titled, "Time and attendance"	113
Exhibit 15	Document titled, "Personal technology at work"	114
Exhibit 16	Document titled, "Closing checklist- Article 2008-150.0"	114
Exhibit 17	Single-page document Bates stamped 2208	115
Exhibit 18	Document titled, "Attendance and punctuality"	118
Exhibit 19	Document titled, "Loss prevention"	120

	EXHIBITS CONTINUED	
1		
2	MARKED DESCRIPTION	PAGE
3	Exhibit 20 Document titled "Activity:Personal tech cards"	126
4		
5	Exhibit 21 Declaration of Carol Monkowski	127
6		
7	Exhibit 22 Loss prevention facilitator guide	136
8		
9	Exhibit 23 Article regarding meals, breaks and off-the-clock working	150
10	Exhibit 24 Document regarding CICO	152
11	Exhibit 25 CICO screenshot	154
12	Exhibit 26 Screenshot	155
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
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1 A. Okay.

2 Q. Could an employee accumulate points for not
3 complying with a policy like the bag-check policy?

4 A. No.

5 Q. Thank you. Okay. Have you ever seen any Apple
6 policies that recommend or suggest that managers check
7 coats as well as bags?

8 A. No, I have not.

9 MR. SHALOV: Let's mark as the next numbered
10 exhibit, it appears to be a series of documents. The
11 first page is entitled, "Loss prevention." The Bates
12 numbers are 2662 through 2670.

13 (Plaintiffs' Exhibit 19 was marked)

14 MR. SHALOV:

15 Q. I'm showing you what has been marked as Exhibit
16 19; have you ever seen this document or series of
17 documents before, Ms. Monkowski?

18 A. Yes.

19 Q. What is this document or series of documents?

20 A. This is loss prevention section of policy and
21 procedure from 2006.

22 Q. Did this appear in iCommunicate?

23 A. Yes.

24 Q. Did this appear in RNN?

25 A. Yes. Because -- 2009, yes.

1 Q. Did this appear in RetailMe?

2 A. No.

3 Q. How do we know?

4 A. Because of the versions of policy and when they
5 cut off. 2011 RetailMe was developed, and that's when
6 an update that we have was 2011.

7 Q. Were there procedures and guidelines similar to
8 those that appear in Exhibit 19 incorporated into the
9 policies and procedures that appeared in RetailMe?

10 A. Policies, yes, both, because both appeared --
11 no. The 2011 version was very streamlined, so if I was
12 looking at this, there are certain things that are in
13 there, but there is not a section on internal or
14 external the way it is laid out today. We looked at
15 those.

16 Q. What does that mean, we looked at those? I
17 don't want you to tell me anything you discussed with
18 your lawyer.

19 A. No. No. I was talking about us. I'm sorry.
20 They don't exist this way. There's not -- this section
21 has not been repeated or for some of these categories,
22 like sales floor, products, security, the second page,
23 back room product security no longer exists in the newer
24 version. This is 2006.

25 Q. Okay. Were the guidelines that appear in

1 Exhibit 19 applicable between 2006 and 2010 before
2 RetailMe was implemented?

3 MS. STRAUSS: Objection. Form.

4 THE WITNESS: Yes, possibly.

5 MR. SHALOV:

6 Q. Do you see the section on the first page called
7 "loss prevention"?

8 A. Yes.

9 Q. Did this section or substantially similar
10 language appearing in this section appear in RetailMe?

11 MS. STRAUSS: Objection. Form.

12 THE WITNESS: I mean, to be accurate, I'd have
13 to compare the two together to know exactly what was
14 left out and what isn't. We changed and updated our
15 language and words, so I'm not trying to be difficult.
16 I just don't want to be inaccurate.

17 MR. SHALOV:

18 Q. Let's go to the page bearing Bates number 2669.

19 A. 2669. Yes.

20 Q. About a third of the way down, there's a bullet
21 point that reads as follows: Quote, "Consistently
22 conduct personal property checks. All employees who
23 enter an employee-only area within the store, in parens,
24 such as cashwrap, genius bar, back room office, close
25 paren, are subject to coat, bag, backpack and purse

1 inspection when leaving the store for any reason," close
2 quote. Do you see that?

3 A. I do.

4 Q. Does that refresh your memory that Apple had
5 procedures with regard to not only checking bags and
6 packages but coats?

7 A. It does.

8 MS. STRAUSS: Objection. Form.

9 THE WITNESS: Too fast. It does refresh my
10 memory that that was part of the written policy, but not
11 a practice that I ever saw.

12 MR. SHALOV:

13 Q. Let's flip back to the preceding page, which is
14 2668, under the heading, quote, "internal theft," close
15 quote. Do you see that?

16 A. Yes.

17 Q. Are these directives?

18 MS. STRAUSS: I'm sorry, where are you? You
19 lost me.

20 MR. SHALOV: 2668.

21 THE WITNESS: The page before.

22 MS. STRAUSS: Thank you.

23 MR. SHALOV:

24 Q. Are these directives to retail store managers?

25 A. No.

1 Q. Who are they directives to, if anybody?

2 A. I don't know that they're directives. They are
3 published in the policy for all employees to see.

4 Q. I just want to get my terminology right, Ms.
5 Monkowski, are the items that appear on page 2668
6 policies, procedures or guidelines or something
7 different?

8 A. They are part of the document in 2006 that was
9 called policy and procedure that was posted to all
10 employees, um, a written policy and procedures.

11 Q. And these policies and procedures that appear
12 on this page were available not only to managers but
13 retail store employees as well? That's a bad question.

14 Are these policies and procedures available to
15 all retail store employees?

16 A. Yes.

17 Q. So it would include not only managers but
18 specialists as well?

19 MS. STRAUSS: Objection. Form.

20 THE WITNESS: Yes.

21 MR. SHALOV:

22 Q. And all retail store employees could access the
23 policies and procedures that appear on this page through
24 iCommunicate, correct?

25 MS. STRAUSS: Objection. Form.

1 priority. They do what they do day in and day out. Our
2 focus for that would be back of house team which are
3 inventory people count and keep track of the inventory
4 is the high priority, we're focusing on the theft rate.
5 Not when it comes to these policies. They do not -- we
6 do not believe it contributes either way, so that's why
7 we don't insist or have a way to audit or figure out if
8 they're doing it or not or insist on compliance.

9 Q. Is loss prevention very important to Apple?

10 MS. STRAUSS: Objection. Form.

11 THE WITNESS: I don't know I can answer for
12 Apple. Is it something we talk about every day? No
13 because we don't have high shrink, and we don't have
14 high loss.

15 MR. SHALOV: Let's mark as Exhibit 22, a
16 document entitled, "Loss prevention," Bates numbers 2863
17 through 2874.

18 (Plaintiffs' Exhibit 22 was marked)

19 MR. SHALOV:

20 Q. Showing you what has been marked as Exhibit 22,
21 and I'll ask you if you've ever seen this before, Ms.
22 Monkowski?

23 Before we begin, Ms. Monkowski, I'm going to
24 state for the record that the questions I ask you about
25 Exhibit 22 are going to be in your individual capacity

1 and not as your capacity as a representative of Apple
2 pursuant to the 30(b)(6) deposition notice that was
3 issued to the company, okay?

4 A. Yes.

5 Q. All right. Have you seen this before?

6 A. I believe when it first launched, yes.

7 Q. Can you identify it for the record?

8 A. It is part of official core training.

9 Q. Of whom?

10 A. Of all employees.

11 Q. And do you have an idea when this document or
12 presentation was created? And I say "presentation"
13 because I see a reference to slides, but if I
14 mischaracterize the document, you will tell me.

15 A. Um, yeah. From what I'm reading, I'm not sure
16 if it was 2012.

17 Q. And as best you can tell, is this actually a
18 document or a presentation or both?

19 A. This is a facilitator's guide, which is in the
20 front.

21 Q. What does that mean, a facilitator's guide?

22 A. Who's doing the training would use this guide,
23 so they would be the trainer, uses this guide to
24 facilitate the activities here which appears to be
25 slides. I've now gone through it.

1 STATE OF CALIFORNIA)

)

2 COUNTY OF SAN MATEO)

3

4 I, Tracy Fletcher, Certified Shorthand
5 Reporter, do hereby certify:

6 That prior to being examined, the witness in
7 the foregoing proceedings was by me duly sworn to
8 testify to the truth, the whole truth, and nothing but
9 the truth;

10 That said proceedings were taken before me at
11 the time and place therein set forth, and were taken
12 down by me in shorthand and thereafter transcribed into
13 typewriting under my direction and supervision;

14 I further certify that I am neither counsel
15 for, nor related to, any party to said proceedings,
16 nor in any way interested in the outcome thereof.

17 In witness whereof, I have hereunto subscribed
18 my name.

19

20 Dated: January 9, 2014

21

22

Tracy Fletcher



23

Tracy Fletcher
CSR No. 11683

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EXHIBIT 2

000013

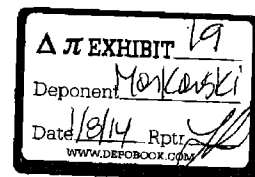
Loss Prevention

Loss—whether it occurs from external theft, internal theft, paperwork mistakes, or inaccurate inventories—is a costly and controllable expense that can dramatically impact your store's profitability.

Each and every employee is responsible for controlling loss in his/her store. This section details some of the ways you can help control loss in your store, and includes the following:

- Controlling external theft through customer service
- Identifying, controlling, and deterring internal theft
- Controlling and handling cash
- Guidelines for alarm systems, keys, and safes

One aspect of controlling loss that is not covered in this chapter is inventory management. Properly managing your inventory is one of the easiest ways to improve your store's profitability. Information on inventory management can be found in the Product/Merchandise Handling section.



Backroom Product Security

Technology products carry a higher price point than other types of products typically sold in stores (such as clothing, books, and kitchen supplies), so securing our products is critical. All stores must observe strict criteria for securing products. There are two levels of backroom product security: Unsecured and Secured. These levels are described below.

Store Managers and/or the Loss Prevention department may, at their discretion, impose additional security or tighter measures if they believe certain products and/or special circumstances warrant it.

Back of house security rules

1. Cages must remain locked at all times.
2. The door to the stockroom must remain closed at all times.
3. The back door to public areas must never be left open and unattended.
4. Keys to cages must never be given to an unauthorized employee.

Security Levels

Unsecured - Level 1

For products in the Unsecured category, use open shelving and peg boards. Level 1 products consist of everything that does not fit into the Level 2 criteria.

Secured - Level 2

Store items in the Secured category in a visible locked cage. Only store management and the Inventory Control Specialist will have keys to locked cages, which must remain locked when not in use. The following list is not all inclusive - it is a guide to the type of product that falls in the Secure level.

1. Internal shrink risk items (determined by the store management team).
2. RTW, Customer Returns, and Demo BOH product that is not ready for sale.
3. Customer units in for service that are not in the Genius Room, including Standard Care.

Authorized key holders

Only the following individuals are authorized to carry keys to cages and the BOH door.

1. Inventory Control Specialist
2. ASM and above

Salesfloor Product Security

Alarmed security cables must be placed on all demo laptops, cameras, camcorders, PDAs, and MP3 players, including iPod, on the salesfloor. Security cables and alarm boxes are available to order from Schwarz (Quick Click: [Schwarz website](#)).

Each store will receive two special Allen wrenches with their cable kits upon store opening. The wrenches must be kept in the key box in the manager's office at all times. If either of these wrenches are lost, notify the Loss Prevention department immediately.

Keys to the alarm boxes will be given to each manager in the store. All spare keys must be kept in the key box in the manager's office. If a key is lost, notify the Loss Prevention department immediately. All replacement keys will be ordered through the Loss Prevention department.

Defective Cables

In the event you receive defective cables, contact Se-Kure's Customer Service department at 800 322-2435. You will need to ask for a Return Goods Authorization Number (RGA#); explain what the defect is and list the items that you want to return. Once the RGA# is issued, you may return the merchandise. The RGA# number should be noted on the outside of the package. It will be inspected and credit issued for any defective product that is within warranty (1 year.) Product that is not defective (properly functioning) will be returned to the store.

External Theft

Shoplifting

Unfortunately, shoplifting is a reality and a common occurrence in the retail industry. 40% of all retail shrink is due to external theft. 90% of shoplifters are "professionals." They shoplift in order to pay their bills and feed their families. The other 10% are the "opportunists." If given the opportunity, they will shoplift for the thrill and challenge. The best way to prevent shoplifting is to provide consistently great customer service. For the safety of our employees and our customers, it is Apple's policy to prevent theft through customer service. Under no circumstance are you to make a stop or apprehend a person you believe or suspect to be a shoplifter.

Prevention

To prevent theft, follow the Apple steps of service and

- Acknowledge every customer. If you are helping another customer, a simple smile and eye contact acknowledging new customers lets them know you are aware of their presence. Acknowledging customers with eye contact and a warm welcome is the number one deterrent to external theft. Do not "watch" or "follow" customers you think may have concealed merchandise, but do offer assistance to them.
- Be aware. Look around your store regularly and take note of all customer activity.
- Never turn your back on the front of the store. Always face towards the front door when working with customers. This allows you to give a warm welcome to incoming customers and a fond farewell to departing customers.
- Software theft often occurs by opening a box and removing and concealing the contents of it. The Marketplace section of your store is a "hot spot" and should be covered at all times.
- Know what merchandise is in high demand and/or easily concealed. Pay extra attention to the sections of your store that house this merchandise.
- Stay focused. Your number one priority is customers and customer service. Always.
- Do not leave vendors or other unauthorized persons in the store unattended. At least one manager and one other person must be in the store at all times, except during overnight work, where only one manager must be present with the vendor doing the work.

Concealment

Concealing merchandise is the act of putting merchandise out of sight to prevent it from being found. Be aware of the following common items someone could use to conceal merchandise:

- Shopping bags, especially those that are not from the stores in your area or those that are old, badly wrinkled, or have obvious folds or creases
 - Large/empty purses or bags
 - Unseasonable clothing (for example, heavy coats in warm weather)
 - Jackets or coats carried in a way that conceals an arm or a hand
-
- Strollers/baby carriers
If you observe a customer concealing merchandise, follow these steps:
 - Notify your manager immediately. You and your manager should decide who will approach the customer.
 - When approaching, use a service-oriented, non confrontational statement to allow the customer to return the merchandise without feeling threatened. This approach can also help avoid a scene in your store.
 - Ask open-ended questions that refer to the item.
 - Offer to hold the item at the cashwrap until the customer is finished shopping.

- If possible, refer to the concealed item by name. If the customer knows you are aware that they have concealed an item, they are more likely to return the item. For example, you might say
 - "Photoshop is a great program. Customers tell me they love being able to manipulate their pictures. What do you like about it?"
 - "That iPod is a great way to take your iTunes with you. I'd be happy to hold it at the cashwrap for you while you continue looking around."

When approaching a suspected shoplifter, **never accuse the person of stealing**. Always approach the customer with a smile and a sincere wish to provide customer service. Maintain positive tone and body language with the customer. If the customer objects in any way, calmly explain that you thought you saw the customer making a selection and wanted to help.

Remember, customer service is your job. If you approach suspected shoplifters with this in mind, you will avoid the appearance of discrimination. In most cases, the suspected shoplifter will relinquish the item.

Apprehending Shoplifters

Under no circumstances are you to apprehend a shoplifter. For your own safety, do not chase a suspected shoplifter. If you are certain a shoplifting incident has occurred, keep the customer in view and ask another team member to contact the local police department. If you have a shoplifting problem in your store, call the Loss Prevention department at Campus, who will work with you to create a plan of action.

If you are approached by a police officer and informed that a suspect with your merchandise has been apprehended, immediately call the Loss Prevention department at Campus. Do not sign a complaint unless instructed to do so by Campus.

Documenting Theft or Attempted Theft

When an actual or attempted theft occurs in your store, do not take it personally. The shoplifter has stolen from Apple, not you. Be sure to complete an Incident Report found on iCommunicate (**Quick Click: Policy and Procedure**) and route it appropriately (that is, to your Regional Director, Loss Prevention department, and RFL). The following guidelines should be followed when completing the Incident Report:

- All fields should be complete. If an item does not apply, use N/A (not applicable).
- Complete the report at the time of the incident while the details are fresh in your mind.
- To avoid misunderstandings, do not use abbreviations.
- Describe the incident in a chronological manner.
- Provide only relevant, factual information. Do not include information unrelated to the incident.
- Use the Who, What, Where, When, Why format to complete the report. This will help ensure all necessary information is documented.
- Be specific and clear. Note only the facts. Do not speculate or add opinions to the report.

In addition to completing an Incident Report, notify the local police department. They will complete a Theft of Property report including the product descriptions, serial numbers, and part numbers.

Appearing as a Witness

You may be subpoenaed to testify in a shoplifting case. If this occurs, contact your manager or the Loss Prevention department.

Apple litigation needs to see any subpoenas that are served to/upon Apple Computer, Inc.

If your store receives a subpoena, fax it to 408-974-9316 and forward the original to the Apple Legal department via interoffice mail at MS:81-2SU (include in your Campus mail with this address).

If there are any questions or concerns as to what the subpoena entails, please feel free to contact one of the following individuals directly:

- Anh Nguyen: 408-974-4069
- Carol Jacobsen 408-974-6908
- Adeline Yu: 408-974-9609

If a subpoena is served for an individual employee and the subpoena is unrelated to Apple Computer, Inc. then there is no need to fax it to the Legal Department. Note: Apple Legal is not authorized to accept service on behalf of our employees.

Securing Demo Products

All demo products on the salesfloor, including those in the window displays, must be properly secured with 3M adhesive tape. 3M adhesive tape secures the product to the table or fixture while protecting the exterior of the product. The 3M tape is available to order from Schwarz (Quick Click: [Schwarz website](#)).

Empty Product Boxes

Empty product boxes may be available for high-end software. Place the empty product boxes on the salesfloor in lieu of actual product to avoid external theft. Be sure to place a Demo/Empty Product Box sticker (available from Schwarz, Quick Click: [Schwarz website](#)) over the price label to alert cashiers that the box is in fact empty. When selling the item, retrieve the actual product from the back-of-house for the customer. Do not open product boxes and remove product to create an "empty product box" without Retail Product Merchandising and Store Operations approval and direction.

Internal Theft

While most of our employees are honest, theft by employees is a reality—a reality that can contribute greatly to your store's shrinkage if not deterred and controlled. 45% of all retail shrink is due to internal theft.

Strong communication and strict adherence to policies and procedures are the keys to controlling internal theft in your store.

Defining Internal Theft

Internal theft can occur in a variety of ways, including

- Stealing merchandise from the store or from a customer's product that is being repaired
- Stealing money
- Stealing company assets
- Unauthorized copying of software
- Giving unauthorized discounts to customers or friends
- Processing fraudulent or nonexistent transactions
- Conspiracy or collusion with vendors
- Using a customer's credit card or financing account for personal use

Why Internal Loss Occurs

There are a number of reasons an employee may steal from Apple. The following are some common reasons that an employee may be stealing:

- The employee may feel that Apple owes him or her something extra for all of his/her hard work.
- The employee may be experiencing financial issues and feel that Apple "won't miss one computer" or some cash.
- The employee may be disgruntled due to losing hours, being passed over for a promotion or pay increase, or disagreements with the management team.

Controlling and Deterring Internal Theft

Apple does not tolerate dishonesty at any level. Internal theft should be discussed openly and on a regular basis with all employees. It is your responsibility to contact your manager and/or the Loss Prevention department if you become aware of an internal theft issue or a possible internal theft issue.

To help control and deter internal theft:

- Realize it can happen in your store.
- Post your internal loss prevention tip hotline poster and ensure your employees are aware of it.
- Do not circumvent or take shortcuts regarding policies and procedures. Follow all documented policies and procedures.
- Adhere to all store key policies. Never hand store keys to an unauthorized employee.
- You are never permitted to be in the store alone. A minimum of two people, one of whom must be a member of store management, must be present when you enter and exit the store and at all times while you're in the store, except during an overnight (see page 8-4). Do not leave vendors or other unauthorized persons in the store unattended.
- Purchases made by your friends or relatives must be processed by someone other than you.
- Trash removal must be supervised and inspected by a manager.

- All personal belongings brought into the store must be stored in shift lockers.
- Personal belongings are not to be left in lockers overnight.
- Purse, backpack, book bag, and package inspections must be conducted by a manager every time an employee leaves the store (for example, breaks, lunches, shift changes, and so on). This policy applies to all employees, including management and Campus visitors. All personal technology must be logged on a Personal Technology Card.

Additional ways store management can deter and control internal theft:

- Discuss employee performance on a regular basis.
- Discuss theft and control measures on a regular basis.
- Immediately report all lost or stolen keys.
- Conduct frequent and random reviews of transactions and documents for compliance.
- Monitor the frequency of employee personal phone calls and visitors. Take action as necessary.
- Allow employees to enter and exit only from the front entrance.
- Consistently conduct personal property checks. All employees who enter an employee-only area within the store (such as cashwrap, Genius Bar, backroom, office) are subject to coat, bag, backpack, and purse inspection when leaving the store for any reason. This includes any purchases made in your store and purchases made from other stores. You must inform your manager when leaving the store, even if you do not have any personal packages with you.
- A member of management must physically inspect the trash at the exit door before it is removed from the store.
- Trash must be bagged in clear garbage bags.
- Check in between cardboard boxes and shipments when disposing of trash.
- Do not give store keys to unauthorized employees to remove the trash or to accept shipments and deliveries.
- Managers may never leave employees unsupervised with the back door open.
- Managers should physically walk the store. Check all areas where merchandise could be stashed (such as bathrooms, backroom, high shelves, ceiling tiles, and so on). If stashed merchandise is found, contact your manager right away.

If your personal property is missing, notify your manager and/or the Loss Prevention department. Complete an Incident Report to document the details. Apple will not be responsible for loss of or damage to any personal property.

Confidential Loss Prevention Hotline

Apple does not tolerate dishonesty at any level. It is your responsibility to contact your manager if you become aware of an internal theft issue or a possible internal theft issue. If you feel uncomfortable discussing the issue with your manager or the employee you are reporting is a manager, contact the Confidential Loss Prevention Hotline at 800 241-5689 from any phone.

The hotline is staffed 24 hours a day, seven days a week by trained professionals. You are not obligated to give your name. You will be asked what store you are reporting and any details of the incident. The Loss Prevention department will follow up on all calls within 72 hours.