I	Case 3:22-cv-03902-VC Document 20	6 Filed 08/31/22 Page 1 of 19
1 2	Daniel M. Hutchinson (SBN 239458) LIEFF CABRASER HEIMANN & BERNST 275 Battery Street, 29th Floor	EIN, LLP
	San Francisco, CA 94111-3339	
3	Telephone: 415.956.1000 Facsimile: 415.956.1008	
4	dhutchinson@lchb.com Rachel Geman (<i>pro hac vice</i>)	
5 6	Jessica Moldovan (<i>pro hac vice</i>) LIEFF CABRASER HEIMANN & BERNST	EIN LLP
7	250 Hudson Street, 8th Floor New York, NY 10013-1413	
8	Telephone: 212.355.9500 Facsimile: 212.355.9592	
9	rgeman@lchb.com jmoldovan@lchb.com	
10	Charles J. Stiegler, (SBN 245973)	
11	STIEGLER LAW FIRM LLC 318 Harrison Ave., Suite 104	
12	New Orleans, LA 70124 Telephone: 504.267.0777 Facsimile: 504.513.3084 Charles@StieglerLawFirm.com	
13		
14	Robert B. Landry III (pro hac vice motion for ROBERT B. LANDRY III, PLC	thcoming)
15	5420 Corporate Boulevard, Suite 204 Baton Rouge, LA 70808	
16	Telephone: 225.349.7460 Facsimile: 225.349.7466	
17	rlandry@landryfirm.com	
18	Counsel for Plaintiffs and the Proposed FLSA and Rule 23 Class	Collective
19	UNITED STATI	ES DISTRICT COURT
20	NORTHERN DIST	TRICT OF CALIFORNIA
21		
22	ANTHONY P. FOREMAN, individually, and on behalf of persons similarly situated.	Case No. 3:22-cv-03902
23	Plaintiffs,	FIRST AMENDED CLASS, COLLECTIVE, AND REPRESENTATIVE ACTION
24	VS.	COMPLAINT AND JURY TRIAL DEMAND
25	APPLE, INC.	
26	Defendant.	
27		
28		

1	Plaintiffs Anthony P. Foreman ("Foreman") and Connor Sleighter ("Sleighter) (together,
2	"Plaintiffs"), individually and on behalf of all others similarly situated, bring this action against
3	Apple, Inc. ("Apple" or "Defendant") and allege as follows:
4	INTRODUCTION
5	1. This is a collective, class, and representative action to recover overtime wages
6	owed under federal and state law by Apple. Plaintiffs and other similarly situated former and
7	current employees of Apple worked as Solutions Consultants.
8	2. Apple has failed to include all statutorily required forms of compensation—
9	including commissions earned by Solutions Consultants—in determining the regular rate for
10	purposes of calculating overtime pay.
11	3. In addition, Apple has failed to pay Solutions Consultants for all hours worked.
12	For example, Apple has engaged in an unlawful pattern or practice of denying earned overtime to
13	its Solutions Consultant by requiring them to begin their workday at home via online
14	videoconferences, to clock out after these videoconferences were complete, and to then travel to
15	their work site location, i.e., next job assignment, without being paid for their time in transit.
16	4. These practices violate the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 <i>et</i>
17	seq., and its implementing regulations.
18	5. These practices also violate California's Labor Code, IWC Wage Orders, and
19	Unfair Competition Law.
20	6. On behalf of themselves and all those similarly situated, Plaintiffs seek actual and
21	liquidated damages, including but not limited to damages for willful violations of the FLSA, as
22	well as fees and costs, for Apple's violations of the FLSA.
23	7. In addition, Plaintiff Sleighter brings a proposed class action in California under
24	California's wage and hour laws, and a proposed representative action in California under
25	California's Private Attorneys General Act ("PAGA"), California Labor Code §§ 2698, et seq.
26	("PAGA Group"), as otherwise tolled by equity, through the entry of judgment.
27	
28	

8. "Class Members" are all hourly paid employees of Apple, holding the job title of 1 2 Solutions Consultant in California at any time during the time period from four years prior to the 3 filing of this action (the "California Class Period"). 9. 4 "FLSA Collective Members" are all hourly paid employees of Apple, holding the job title of Solutions Consultant anywhere in the United States at any time during the time period 5 6 from three years prior to the filing of this action (the "FLSA Period"). 7 10. Defendant has failed to pay Plaintiffs and the Class Members, the Collective 8 Members, and the PAGA Group Members for all regular and overtime hours worked in violation 9 of federal and state wage and hour laws, including failing to pay overtime wages under FLSA, 29 10 U.S.C. §§ 201, *et seq.* and the FLSA's implementing regulations; failing to provide overtime 11 wages in violation of California Labor Code §§ 510, 1194; failing to furnish accurate wage statements in violation of California Labor Code §§ 226, 226.3; failing to timely pay all wages 12 13 earned in violation of California Labor Code §§ 204, 210; failure to pay all compensation due 14 upon discharge or resignation in violation of California Labor Code §§ 201, 202; engaging in 15 unfair business practices in violation of California Business & Professions Code §§ 17200, et 16 seq.; and violating California's Private Attorneys General Act, California Labor Code §§ 2698, et 17 seq. 18 11. These employees are similarly situated for the purposes of certification under the FLSA and Rule 23 of the Federal Rules of Civil Procedure. 19 12. 20 On behalf of the Class, Collective, and PAGA Group Members, Plaintiffs seek damages, penalties, restitution, injunctive, and declaratory relief, as well as fees and costs, for 21 22 Defendant's violations of the FLSA and California law. 23 JURISDICTION AND VENUE 13. 24 The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 (federal 25 question), 28 U.S.C. § 1337 (actions arising under Acts of Congress regulating commerce), and 26 29 U.S.C. § 216(b) (the FLSA). 27 14. This Court also has jurisdiction over this action under the Class Action Fairness 28 Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1) there are 100 or more

Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 4 of 19

1	members in t	he proposed class; (2) at least some members of the proposed class have a different
2		om Defendant; and (3) the claims of the proposed class members exceed \$5,000,000
	-	
3	in the aggreg	
4	15.	In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over
5		a state law claims because those claims derive from a common nucleus of operative
6	facts.	
7	16.	This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§
8	2201 and 220)2.
9	17.	The United States District Court for the Northern District of California has
10	personal juris	diction over Defendant because Defendant has its principal place of business in this
11	District and d	loes business in California and in this District.
12	18.	Venue is proper in this Court because Defendant has its principal place of business
13	in Santa Clar	a County and a substantial part of the events or omissions giving rise to the claims
14	asserted herei	in occurred in this judicial district. See 28 U.S.C. § 1391(b).
15	19.	Plaintiffs hereby demand trial by jury.
	17.	rantenie nerecy demand that of july.
16	17.	PARTIES
	20.	
16	20.	PARTIES
16 17	20. Livingston Pa	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in
16 17 18	20. Livingston Pa	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his
16 17 18 19	20. Livingston Pa employment 21.	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022.
 16 17 18 19 20 	20. Livingston Pa employment 21.	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the
 16 17 18 19 20 21 	20. Livingston Pa employment 21. FLSA Conser 22.	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the nt Form attached hereto as Exhibit A .
 16 17 18 19 20 21 22 	20. Livingston Pa employment 21. FLSA Conser 22. Rapids, Mich	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the nt Form attached hereto as Exhibit A. Plaintiff Sleighter is an individual of the full age of majority, domiciled in Grand
 16 17 18 19 20 21 22 23 	20. Livingston Pa employment 21. FLSA Conser 22. Rapids, Mich	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the nt Form attached hereto as Exhibit A . Plaintiff Sleighter is an individual of the full age of majority, domiciled in Grand igan. At all times relevant to this case, he was a resident of the State of California.
 16 17 18 19 20 21 22 23 24 	20. Livingston Pa employment 21. FLSA Conser 22. Rapids, Mich He began wo 23.	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the nt Form attached hereto as Exhibit A . Plaintiff Sleighter is an individual of the full age of majority, domiciled in Grand igan. At all times relevant to this case, he was a resident of the State of California. rking for Defendant in 2016 and resigned his employment in 2021.
 16 17 18 19 20 21 22 23 24 25 	20. Livingston Pa employment 21. FLSA Conser 22. Rapids, Mich He began wo 23.	PARTIES Plaintiff Foreman is an individual of the full age of majority, domiciled in arish, Louisiana. He began working for Defendant in 2014 and resigned his in February 2022. Foreman's consent to file this Complaint is evidenced by his signature on the nt Form attached hereto as Exhibit A. Plaintiff Sleighter is an individual of the full age of majority, domiciled in Grand igan. At all times relevant to this case, he was a resident of the State of California. rking for Defendant in 2016 and resigned his employment in 2021. Sleighter's consent to file this Complaint is evidenced by his signature on the

1	24.	Named a defendant herein is Apple, a California corporation with its principal
2	place of busin	ess in Cupertino, California. Based on information and belief, Defendant employs
3	Solutions Cor	nsultants throughout the United States.
4		FACTUAL ALLEGATIONS
5	<u>Background</u>	
6	25.	Plaintiffs Foreman and Sleighter worked for Apple as "Solutions Consultants."
7	Solutions Cor	nsultants promote the sales of Apple solutions and products in the Apple section of
8	retail store loc	cations.
9	26.	During the times relevant to this lawsuit, Foreman's work location was in a Best
10	Buy retail stor	re in Baton Rouge, where he worked as a liaison between Apple and Best Buy (or
11	Best Buy cust	tomers).
12	27.	During the times relevant to this lawsuit, Sleighter worked on site in multiple
13	locations in C	alifornia, including Best Buy, Verizon, AT&T, TMobile, and Sprint.
14	28.	At all material times, Foreman, Sleighter, and the other FLSA Collective Plaintiffs
15	were "engage	d in commerce" within the meaning of § 6 and § 7 of the FLSA, and subject to the
16	individual cov	verage of the FLSA.
17	29.	At all material times, the FLSA Collective Plaintiffs were the "employees" of
18	Apple within	the meaning of the FLSA.
19	30.	At all material times, Defendant was and is an "enterprise engaged in commerce"
20	within the me	aning of the FLSA.
21	31.	Defendant's annual sales made or business done was in excess of \$500,000 during
22	all years relev	ant to this action.
23	32.	Foreman, Sleighter, and the other FLSA Collective Plaintiffs were paid on an
24	hourly basis.	
25	33.	Foreman, Sleighter, and the other FLSA Collective Plaintiffs regularly work forty
26	or more hours	s per week. However, they were not paid overtime for all hours worked over forty in
27	a workweek a	and, when paid overtime, they were not paid at the correct rate.
28		

	Case 3.22-CV-03902-VC Document 20 Filed 06/31/22 Page 0 01 19
1	<u>Overtime Violation – Regular Rate</u>
2	34. Defendant did not properly calculate Plaintiffs' regular rate for purposes of
3	determining overtime pay for Solutions Consultants, thereby dramatically underpaying them for
4	overtime worked.
5	35. Foreman, Sleighter, and the FLSA Collective Plaintiffs were paid on an hourly
6	basis.
7	36. Foreman, Sleighter, and the FLSA Collective Plaintiffs were also separately paid
8	commissions.
9	37. In calculating Plaintiffs' regular rate for purposes of determining overtime pay,
10	however, Defendant did not incorporate commission payments. As a result, the overtime rate was
11	only one and one-half times Plaintiffs' hourly rate-not the combination of Plaintiffs' hourly rate
12	and commission payments. The overtime rate was therefore lower than it should have been.
13	<u>Overtime Violation – Travel Time</u>
14	38. Defendant also did not compensate Plaintiffs and the other FLSA Collective
15	Plaintiffs for time they spent in transit between mandatory work activities.
16	39. For example, two or three times a week, Plaintiff Foreman's manager scheduled a
17	videoconference work meeting with Foreman and the other Solutions Consultants in his Region
18	(the Region included parts of Texas, Louisiana, and stretched into Florida). These work meetings
19	took place early in the morning, and the Solutions Consultants attended the meeting while at
20	home.
21	40. These work meetings constituted an integral and indispensable part of Defendant's
22	business, as the Solutions Consultants discussed new technologies and received mandatory
23	instructions and required job information from their supervisors and the Regional Manager.
24	41. The time spent on these work meetings, at which attendance was mandatory, was
25	more than <i>de minimis</i> .
26	42. Apple instructed Foreman (and all FLSA Collective Plaintiffs) to clock in for these
27	meetings, which generally lasted about an hour. However, when the meeting ended, Apple
28	instructed Foreman and other FLSA Collective Plaintiffs to clock out before they immediately
	CLASS, COLLECTIVE, AND REPRESENTATIVE - 6 - ACTION COMPLAINT

Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 6 of 19

travelled on site to continue their workdays. Only upon arrival at their work sites were Foreman
 and other FLSA Collective Plaintiffs told to clock back in.

43. This policy or practice was temporarily suspended during the coronavirus
shutdown, due to work-from-home policies in effect at the time. However, in 2021, when the
work-from-home policies ended, Defendant once again returned to the same practice of requiring
Solutions Consultants to clock out after the videoconference work meetings and clock back in
only upon arrival at their work sites, thereby not accounting for the time spent in transit.

Additional Wage and Hour Violations

8

17

9 44. In addition, Defendant did not provide Solutions Consultants with timely, accurate,
10 and itemized wage statements, including *inter alia*, failing to provide wage statements which set
11 forth their total hours actually worked, net wages actually earned, and overtime rates that
12 reflected commissions earned. As a result, Solutions Consultants did not know the amount of
13 wages they were (and are) owed.

45. Defendant also failed to pay Solutions Consultants all wages due and owing twice
during each calendar month on their regular paydays, in that Defendant did not pay for all
overtime hours they worked.

COLLECTIVE ACTION ALLEGATIONS

46. 18 Plaintiffs re-allege and incorporate by reference all allegations in all preceding 19 paragraphs. 20 47. Plaintiffs bring this case as a collective action under the FLSA to recover unpaid overtime compensation, liquidated damages, statutory penalties, attorney's fees and costs, and all 21 22 other damages owed to him and all similarly situated employees of Defendant. The Collective is defined as: 23 24 All hourly paid employees of Apple Inc., holding the job title of Solutions Consultant, who worked within the three years prior to 25 July 1, 2022. 26 48. There are numerous members of the FLSA Collective who have been affected by 27 Defendant's improper policies and practices as alleged herein. 28

49. The precise number of FLSA Collective Plaintiffs can be readily identified and
 located using Defendant's timesheets, payroll, and personnel records. Given the composition and
 size of the FLSA Collective Plaintiffs, potential opt-in class members may be informed of the
 pendency of this Collective Action by direct mail, text message, and email.

5 50. This action is properly maintained as a collective action because Plaintiffs are
6 similarly situated to the collective action members, who were subject to the same uniform
7 overtime policies, payment practices, and operational procedures. Defendant's willful policy or
8 practice of failing to pay employees proper wages and overtime compensation for all hours
9 worked has affected Plaintiffs and similarly situated employees in the same fashion.

51. Defendant applied these unlawful employment and payment policies in the same
manner to all potential members of the FLSA Collective. Common issues of law and fact
therefore predominate. Thus, liability and damages can be determined based on common and
collective-wide evidence. Pursuing this matter as a collective action serves the most expeditious
use of the Court's time and resources, as well as avoiding multiple actions on these issues with
potential for differing or inconsistent judgments.

16 52. Plaintiffs further request that the Court authorize expedited notice to the FLSA
17 Collective Plaintiffs to inform them of the pendency of this action and their right to "opt-in" to
18 this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid overtime
19 compensation and liquidated damages under the FLSA.

20

CALIFORNIA CLASS ACTION ALLEGATIONS

53. Plaintiff Sleighter ("Plaintiff" for purposes of this section) brings the Third
through Eighth Causes of Action for violations of California's wage and hour and unfair
competition laws as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of
himself and similarly situated employees.

54. Excluded from the Class are Defendant's legal representatives, officers, directors,
assigns, and successors, or any individual who has, or who at any time during the class period has
had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any

Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 9 of 19

1	members of the Judge's immediate family; and all persons who will submit timely and otherwise
2	proper requests for exclusion from the Class.
3	55. Plaintiff, on behalf of himself and the Class, alleges and incorporates by reference
4	the allegations in the preceding paragraphs, which demonstrate that class treatment is warranted
5	under Federal Rule of Civil Procedure 23.
6	56. The California Class is defined as:
7	All hourly paid employees of Apple, holding the job title of Solutions
8	Consultant in California at any time during the time period from four years prior to the filing of this action.
9	57. Numerosity: The Class is sufficiently numerous that joinder of all members is
10	impracticable. The exact numbers of such persons are not known to the Plaintiff because the facts
11	on which the calculation of that number can be based are presently within the sole control of
12	Defendant. Upon information and belief, there are over 100 people in the Class.
13	These people are readily ascertainable. The entire membership of the Class is unknown to
14	Plaintiff at this time; however, the identity of such membership is readily ascertainable via
15	Defendant's employment records reflecting the job titles of each such individual.
16	58. Typicality: The claims of Plaintiff are typical of the claims of the members of the
17	Class. Plaintiff, like other members of the Class, was subjected to Defendant's uniform policies
18	and practices that violated California law as described in this Class, Collective, and
19	Representative Action Complaint. The unpaid travel time expected of Plaintiff giving rise to the
20	claims asserted in this Class, Collective, and Representative Action Complaint was typical of that
21	of the members of the Class.
22	59. Adequacy: Plaintiff can and will fairly and adequately represent the interests of the
23	Class, and he has no interests that conflict with or are antagonistic to the interests of the Class.
24	Plaintiff suffered actual harm and damages as a result of Defendant's systematic and uniform
25	violations of the California wage and hour laws as set forth in this Class, Collective, and
26	Representative Action Complaint. Plaintiff has retained attorneys who are highly skilled,
27	competent, and experienced in complex and class action litigation, and who will vigorously assert
28	

the claims on behalf of the members of the Class. Plaintiff is willing and able to prosecute
 vigorously this action on behalf of the Class.

60. Predominance: There are common questions of law or fact affecting the rights of the members of the Class, including but not necessarily limited to, whether Defendant failed to provide the Class with overtime wages for all overtime hours worked; whether Defendant failed to provide the Class with accurate wage statements; whether Defendant failed to pay timely wages; and, whether Defendant engaged in unfair and/or unlawful business practices. These common questions predominate over questions affecting only individual members.

9 61. Superiority: Certification of the Class would provide substantial benefits to the
10 Court and Class Members. Individual members of the Class suffered relatively small damages
11 compared to the significant expense and burden of individual prosecution of this litigation. In
12 addition, class certification will obviate the need for unduly duplicative litigation, which might
13 result in inconsistent judgments about Defendant's uniform policies and practices.

Existence and Predominance of Common Questions of Fact and Law: There are
common questions of law and fact as to the members of the Class, which predominate over
questions affecting only individual members of the Class including, without limitation:

a. Whether Defendant failed to properly pay for all hours worked, includingovertime hours;

b. Whether Defendant failed to keep true and accurate time and pay records
for all hours worked by the Class, and other records required by the California Labor Code;

c. Whether Defendant failed to pay compensation promptly upon discharge or
resignation as required by the California Labor Code;

d. Whether Defendant engaged in unlawful, unfair, and/or deceptive business
practices in violation of California Business & Professions Code §§ 17200, *et seq.*;

e. Whether Defendant engaged in the relevant policies, procedures, or
practices alleged herein with oppression, fraud, or malice within the meaning of California Civil
Code § 3288; and

f. The nature and extent of class-wide injury and the measure of damages for
 those injuries.

3	63. Manageability of Class and Common Modes of Proof: The nature of this action
4	makes use of the class action format, a particularly efficient and appropriate procedure, to afford
5	relief to Plaintiff Sleighter and Class Members for the wrongs alleged herein. Specifically,
6	Defendant maintains all records necessary to identify each and every member of the Class. To
7	the extent Defendant maintains inadequate records, or has not retained records, Plaintiff Sleighter
8	proposes surveys, representative testimony of members of the Class, and record sampling done on
9	a statistically significant and randomized basis to prove each claim as hereinafter alleged. Initial
10	investigation shows a clear and common pattern and practice of failing to provide overtime
11	wages, failing to provide accurate wage statements, and engaging in unfair competition, with the
12	intended effect of increasing the profitability of Defendant's business in California. Further,
13	Defendant utilized these uniform practices and procedures to gain an unfair competitive
14	advantage over competitors, by essentially lowering their operating costs in comparison to
15	competitors that complied with labor laws. Therefore, Plaintiff Sleighter brings this action for the
16	benefit of the public, for the benefit of the affected employees, and to promote the public policy
17	of the State of California to protect employee wages and to prevent unfair competition.
18	FIRST CAUSE OF ACTION
19	Failure to Provide Overtime Wages – Regular Rate – Fair Labor Standards Act, 29 U.S.C. §§ 201, et seq.;
20	(On Behalf of Plaintiffs and the Collective)
21	64. Plaintiffs re-allege and incorporate by reference all allegations in all preceding
22	paragraphs.
23	65. The FLSA requires that overtime premiums be paid at "a rate not less than one and
24	one-half times the regular rate at which [the employee] is employed." 29 U.S.C. § 207(a).
25	66. "Regular rate" is defined as including "all remuneration paid to, or on behalf of,
26	the employee," subject to eight discrete statutory exceptions. 29 U.S.C. $\$$ 207(e)(1) – (8).
27	Commissions "are payments for hours worked and must be included in the regular rate." See 29
28	C.F.R. § 778.117.
	CLASS, COLLECTIVE, AND REPRESENTATIVE

1	67. Defendant calculates overtime for the FLSA Collective Plaintiffs based on their
2	base hourly rate, without taking into account commissions and/or other compensation. Such
3	commissions and/or other compensation are not included in the statutory exceptions set forth
4	above, and Defendant's exclusion of those payments from the regular rate results in
5	underpayment of overtime.
6	68. Defendant has failed to properly disclose or apprise the FLSA Collective Plaintiffs
7	of their rights under the FLSA.
8	69. Due to the intentional, willful, and unlawful acts of Defendant, the FLSA
9	Collective Plaintiffs suffered lost compensation for time worked over forty (40) hours per week,
10	and hereby seek recovery of all such sums plus liquidated damages.
11	70. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant
12	to 29 U.S.C. §216(b).
13	SECOND CAUSE OF ACTION
14	Failure to Provide Overtime Wages – Unpaid Travel Time – Fair Labor Standards Act 29 U.S.C. §§ 201, <i>et seq.</i> ;
15	(On Behalf of Plaintiffs and the Collective)
16	71. Plaintiffs re-allege and incorporate by reference all allegations in all preceding
17	paragraphs.
18	72. The FLSA requires employers to pay employees who work over forty hours in a
19	workweek overtime compensation "not less than one and one-half times the regular rate at which
20	he is employed." 29 U.S.C. § 207(a)(1). "Where an employee is required to report at a meeting
21	place to receive instructions or to perform other work there , the travel from the designated
22	place to the work place is part of the day's work, and must be counted as hours worked regardless
23	of contract, custom, or practice." 29 C.F.R. § 785.38.
24	73. Defendant violated the FLSA by failing to pay Plaintiffs and the FLSA Collective
25	Plaintiffs the legally mandated hourly overtime premium for all hours worked over forty in a
26	workweek.
27	74. Defendant's failure to pay federally-mandated overtime is the result of a deliberate
28	scheme whereby Defendant sought to avoid or reduce paying overtime.
	CLASS, COLLECTIVE, AND REPRESENTATIVE

1	75. Plaintiffs and the FLSA Collective Plaintiffs were, and are, entitled to be paid at
2	the statutory rate of one and one-half times Plaintiffs' regular rate of pay for those hours worked
3	in excess of forty (40) hours for each workweek.
4	76. Defendant's actions were willful and/or showed reckless disregard for the
5	provisions of the FLSA as evidenced by their failure to compensate the FLSA Collective
6	Plaintiffs at the statutory rate of one and one-half times Plaintiffs' regular rate of pay for the hours
7	worked in excess of forty (40) hours per workweek when Defendant knew, or should have
8	known, such payment was due.
9	77. Defendant has failed to properly disclose or apprise the FLSA Collective Plaintiffs
10	of their rights under the FLSA.
11	78. Due to the intentional, willful, and unlawful acts of Defendant, the FLSA
12	Collective Plaintiffs suffered lost compensation for time worked over forty (40) hours per week,
13	and hereby seek recovery of all such sums plus liquidated damages.
14	79. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant
15	to 29 U.S.C. §216(b).
16	THIRD CAUSE OF ACTION
17	Failure To Pay Overtime Wages Cal. Labor Code §§ 510, 1194
18	(On Behalf of Plaintiff Sleighter and the California Class)
19	80. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
20	herein.
21	81. During Plaintiff Sleighter's tenure as a Solutions Consultant, he and Class
22	Members worked in excess of eight (8) hours in a day, and/or in excess of forty (40) hours in a
23	week.
24	82. During this time, Defendant intentionally and willfully failed to pay Plaintiff
25	Sleighter and the Class overtime premium pay for hours worked in excess of eight (8) hours in a
26	day, and/or in excess of forty (40) hours in a week.
27	83. During this time, Plaintiff Sleighter and the Class did not qualify for an exemption
28	from overtime compensation.

1	84. Defendant's failure to pay Plaintiff Sleighter and the Class the unpaid balance of
2	overtime compensation violates the provisions of the California Labor Code §§ 510, 1194, 1198,
3	and IWC Wage Order Nos. 4-2001 and 7-2001.
4	85. Due to Defendant's unlawful conduct, as set forth herein, Plaintiff Sleighter and
5	the Class sustained damages, including loss of earnings for hours of overtime worked. Plaintiff
6	Sleighter and the Class are entitled to damages, including overtime wages in an amount to be
7	established at trial, prejudgment interest, costs, and attorneys' fees pursuant to statute and other
8	applicable law.
9	FOURTH CAUSE OF ACTION
10	Failure To Furnish Accurate Wage Statements Cal. Labor Code §§ 226, 226.3
11	(On Behalf of Plaintiff Sleighter and the California Class)
12	
13	86. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
	herein.
14	87. Defendant knowingly and intentionally failed to provide Plaintiff Sleighter and the
15	Class with timely, accurate, and itemized wage statements, including inter alia, failing to provide
16	wage statements which set forth their total hours actually worked, net wages actually earned, and
17	overtime rates that reflected commissions earned, in violation of California Labor Code § 226.
18	Such failure injured Plaintiff Sleighter and the Class by, among other things, impeding them from
19	knowing the amount of wages they were and are owed.
20	88. Plaintiff Sleighter and the Class are entitled to and seek injunctive relief requiring
21	Defendant to comply with California Labor Code § 226(a), and further seek the amount provided
22	under California Labor Code § 226(e), including the greater of all actual damages or fifty dollars
23	(\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
24	employee for each violation in a subsequent pay period, up to \$4,000 per employee. Pursuant to
25	California Labor Code § 226(g), Plaintiff Sleighter and the Class are entitled to injunctive relief
26	to ensure Defendant complies with California Labor Code § 226.
27	89. As a direct and proximate result of Defendant's unlawful conduct, as alleged
28	herein, Plaintiff Sleighter and the Class have sustained economic damages in an amount to be CLASS, COLLECTIVE, AND REPRESENTATIVE

- 14 -

	Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 15 of 19
1	established at trial, and are entitled to recover economic and statutory damages, penalties, interest,
2	costs, and reasonable attorneys' fees.
3	FIFTH CAUSE OF ACTION Failure To Timely Pay All Wages Earned
4	Cal. Labor Code §§ 204, 210 (On Behalf of Plaintiff Sleighter and the California Class)
5	(On Benan of Flammin Sleighter and the Cantonnia Class)
6	90. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
7	herein.
8	91. California Labor Code § 204 requires biweekly payment of wages for all
9	employees except salaried executive, administrative, and professional employees covered by the
10	FLSA, whom it requires employers to pay at least once per month.
11	92. California Labor Code § 210 makes any person subject to civil penalties for failing
12	to timely pay employees as required by California Labor Code § 204.
13	93. Defendant failed to pay Plaintiff Sleighter and the Class all wages due and owing
14	twice during each calendar month on their regular paydays, in that Defendant did not pay Plaintiff
15	Sleighter and the Class for all overtime hours they worked.
16	94. As a direct and proximate result of Defendant's unlawful conduct, as alleged
17	herein, Plaintiff and the Class are entitled to recover \$100 for Defendant's initial violation, and
18	\$200 for each subsequent violation, plus twenty-five percent of the amount of wages unlawfully
19	withheld, as well as interest, costs, and reasonable attorneys' fees.
20	SIXTH CAUSE OF ACTION
21	Waiting Time Penalties Cal. Labor Code §§ 201, 202, & 203
22	(On Behalf of Plaintiff Sleighter and the California Class)
23	95. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
24	herein.
25	96. California Labor Code sections 201 and 202 require employers to pay their
26	employees all wages due within the time specified by law. California Labor Code section 203
27	provides that if an employer willfully fails to timely pay such wages, the employer must continue
28	

Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 16 of 19

1	to pay the subject employees' wages until the back wages are paid in full or an action is
2	commenced, up to a maximum of thirty days of wages.
3	97. Defendant failed to pay Plaintiff Sleighter and members of the Class all wages due
4	upon discharge or resignation within thirty days since their employment with Defendant ended.
5	98. As a consequence of Defendant's willful conduct in not paying compensation for
6	all hours worked, Plaintiff Sleighter and members of the Class are entitled to thirty days' wages
7	under Labor Code section 203, together with interest thereon and attorney's fees and costs
8 9 10	SEVENTH CAUSE OF ACTION Unlawful, Unfair, and/or Deceptive Business Practices, Cal. Bus. & Prof. Code §§ 17200, et seq. (On Behalf of Plaintiff Sleighter and the California Class)
11 12	99. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
12	herein.
	100. Defendant's failure to pay overtime wages, failure to furnish accurate wage
14	statements, and failure to timely pay all wages earned are unlawful under California law as
15	described herein. Therefore, these business practices are also unlawful and prohibited by
16	California Business and Professions Code §§ 17200, et seq.
17	101. California Labor Code § 90.5 provides that it is the public policy of California to
18	protect employees from working under unlawful conditions—and to protect employers who
19	comply with the law from those who attempt to gain a competitive advantage at the expense of
20	their workers. The actions of Defendant in committing the wage and hour violations described
21	herein therefore constitute unfair, fraudulent, and/or deceptive business practices, within the
22	meaning of California Business and Professions Code §§ 17200, et seq.
23	102. Plaintiff Sleighter, individually and on behalf of all others similarly situated, is
24	entitled to an injunction and/or other equitable relief against such unlawful practices in order to
25	prevent future loss, for which there is no adequate remedy at law, and to avoid a multiplicity of
26	lawsuits. Plaintiff Sleighter and all others similarly situated s are entitled to full restitution and/or
27	disgorgement of all profits earned as a result of Defendant's business acts and practices.
28	

1	103. The illegal conduct alleged is continuing, and there is no indication that Defendant
2	will discontinue such activity. Plaintiff Sleighter alleges that if Defendant is not enjoined from
3	the conduct set forth in this Complaint, Defendant will continue to engage in the wage and hour
4	violations described herein.
5	104. Defendant committed the unlawful actions herein despicably, maliciously,
6	fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff Sleighter and the
7	Class, from an improper and evil motive amounting to oppression, fraud, and/or malice, and in
8	conscious disregard of the rights of Plaintiff Sleighter and the Class. Plaintiff Sleighter and the
9	Class are therefore entitled to recover punitive damages from Defendant pursuant to California
10	Civil Code § 3294, in an amount to be proven at trial.
11	EIGHTH CAUSE OF ACTION
12	Violation of the Private Attorneys General Act, Cal. Labor Code §§ 2698, et seq.
13	(On Behalf of Plaintiff Sleighter and the California Class)
14	105. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
15	herein.
16	106. The Private Attorneys General Act, Cal. Lab. Code §§ 2698, et seq., authorizes
17	Plaintiff Sleighter to recover civil penalties that otherwise would have been "assessed and
18	collected by the Labor and Workforce Development Agency" for violations of the Labor Code
19	through a "civil action brought by an aggrieved employee on behalf of himself or herself and
20	other current or former employees." Cal. Lab. Code § 2699(a).
21	107. Plaintiff Sleighter is an "aggrieved employee[s]" under PAGA, as he was
22	employed by Defendant during the applicable statutory period and suffered each of the wage and
23	hour violations alleged herein. As such, Plaintiff Sleighter seeks to recover, on behalf of himself
24	and all other current and former aggrieved Solutions Consultants the civil penalties provided by
25	PAGA, plus reasonable attorneys' fees and costs.
26	108. Plaintiff Sleighter seeks to recover the PAGA civil penalties through a
27	representative action as permitted by PAGA and the California Supreme Court in Arias v.
28	
	CLASS COLLECTIVE AND REPRESENTATIVE

1	Superior Court (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims is not
2	required, but Plaintiff Sleighter may choose to seek certification of the PAGA claims.
3	109. Plaintiff Sleighter has satisfied the requirements for bringing a civil action under
4	PAGA, as set forth in California Labor Code § 2699.3.
5	110. Plaintiff Sleighter sent a notice to the California Labor and Workforce
6	Development Agency on August 31, 2022, indicating his intent to seek penalties under PAGA
7	due to Defendant's failure to pay employees for hours over eight (8) in a day and/or over forty
8	(40) in a week and to furnish them with accurate wage statements.
9	111. Under PAGA, Plaintiff Sleighter and the State of California are entitled to recover
10	the maximum civil penalties permitted by law for the violations of the California Labor Code and
11	IWC Order Nos. 4-2001 and 7-2001 alleged herein.
12	PRAYER FOR RELIEF
13	WHEREFORE, Plaintiffs on behalf of themselves and all similarly situated persons
14	respectfully pray for relief as follows:
15	a. Designation of this action as a collective action on behalf of the FLSA
16	Collective and prompt issuance of notice pursuant to 29 U.S.C. § 216(b);
17	b. Certification of the Class for violations of the California Labor Code and
18	California Unfair Competition Law;
19	c. Designation of Plaintiff Sleighter as a Class Representative and of the
20	undersigned Counsel as Class Counsel;
21	d. Payment of unpaid overtime wages to Foreman and the FLSA Collective
22	Action Plaintiffs;
23	e. Liquidated damages, penalties, restitution, and/or exemplary and punitive
24	damages to the fullest extent permitted under the law;
25	f. Litigation costs, expenses, and attorney's fees to the fullest extent
26	permitted under the law;
27	g. Restitution to the fullest extent permitted under law;
28	h. Pre-judgment and/or post-judgment interest as provided by law; and
	CLASS COLLECTIVE AND DEDDESENTATIVE

I	Case 3:22-cv-03902-VC Document 26 Filed 08/31/22 Page 19 of 19
1	i. Such other injunctive and equitable relief as the Court may deem just and
2	proper.
3	Dated: August 31, 2022 Respectfully submitted,
4	LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
5	Q. Dg/AA
6	By: Daniel Auch
7	Daniel M. Hutchinson (SBN 239458) LIEFF CABRASER HEIMANN &
8	BERNSTEIN, LLP 275 Battery Street, 29th Floor
9	San Francisco, CA 94111-3339 Telephone: 415.956.1000
10	Facsimile: 415.956.1008 dhutchinson@lchb.com
11	Rachel Geman (pro hac vice)
12	Jessica Moldovan (<i>pro hac vice</i>) LIEFF CABRASER HEIMANN &
13	BERNSTEIN, LLP 250 Hudson Street, 8th Floor
14	New York, NY 10013-1413 Telephone: 212.355.9500
15	Facsimile: 212.355.9592 rgeman@lchb.com
16	jmoldovan@lchb.com
17	Charles J. Stiegler (SBN 245973) STIEGLER LAW FIRM LLC
18	318 Harrison Ave., Suite 104 New Orleans, LA 70124
19	Telephone: 504.267.0777 Facsimile: 504.513.3084
20	charles@stieglerlawfirm.com
21	Robert B. Landry III (pro hac vice motion forthcoming)
22	ROBERT B. LANDRY III, PLC 5420 Corporate Blvd., Suite 204
23	Baton Rouge, LA 70808 Telephone: 225.349.7460
24	Facsimile: 225.349.7466 rlandry@landryfirm.com
25	Counsel for Plaintiffs and the Proposed FLSA
26	Collective and Rule 23 Class
27	
28	