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and Rule 23 Class*

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21

22 ANTHONY P. FOREMAN, individually,
and on behalf of persons similarly situated.
23
24 Plaintiffs,
vs.
25 APPLE, INC.
26 Defendant.

Case No. 3:22-cv-03902

**FIRST AMENDED CLASS, COLLECTIVE,
AND REPRESENTATIVE ACTION
COMPLAINT AND JURY TRIAL
DEMAND**

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 *et*
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.

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1 members in the proposed class; (2) at least some members of the proposed class have a different
2 citizenship from Defendant; and (3) the claims of the proposed class members exceed \$5,000,000
3 in the aggregate.

4 15. In addition, this Court has supplemental jurisdiction under 28 U.S.C. § 1367 over
5 the California 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 2202.

9 17. The United States District Court for the Northern District of California has
10 personal jurisdiction over Defendant because Defendant has its principal place of business in this
11 District and does 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 Clara County and a substantial part of the events or omissions giving rise to the claims
14 asserted herein occurred in this judicial district. *See* 28 U.S.C. § 1391(b).

15 19. Plaintiffs hereby demand trial by jury.

16 **PARTIES**

17 20. Plaintiff Foreman is an individual of the full age of majority, domiciled in
18 Livingston Parish, Louisiana. He began working for Defendant in 2014 and resigned his
19 employment in February 2022.

20 21. Foreman's consent to file this Complaint is evidenced by his signature on the
21 FLSA Consent Form attached hereto as **Exhibit A**.

22 22. Plaintiff Sleighter is an individual of the full age of majority, domiciled in Grand
23 Rapids, Michigan. At all times relevant to this case, he was a resident of the State of California.
24 He began working for Defendant in 2016 and resigned his employment in 2021.

25 23. Sleighter's consent to file this Complaint is evidenced by his signature on the
26 FLSA Consent Form attached hereto as **Exhibit B**.

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1 **Overtime Violation – Regular Rate**

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 **Overtime Violation – Travel Time**

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 *de minimis*.

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

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

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

8 **Additional Wage and Hour Violations**

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.

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

17 **COLLECTIVE ACTION ALLEGATIONS**

18 46. 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
21 overtime compensation, liquidated damages, statutory penalties, attorney's fees and costs, and all
22 other damages owed to him and all similarly situated employees of Defendant. The Collective is
23 defined as:

24 All hourly paid employees of Apple Inc., holding the job title of
25 Solutions Consultant, who worked within the three years prior to
26 July 1, 2022.

27 48. There are numerous members of the FLSA Collective who have been affected by
28 Defendant's improper policies and practices as alleged herein.

1 49. The precise number of FLSA Collective Plaintiffs can be readily identified and
2 located using Defendant’s timesheets, payroll, and personnel records. Given the composition and
3 size of the FLSA Collective Plaintiffs, potential opt-in class members may be informed of the
4 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.

10 51. Defendant applied these unlawful employment and payment policies in the same
11 manner to all potential members of the FLSA Collective. Common issues of law and fact
12 therefore predominate. Thus, liability and damages can be determined based on common and
13 collective-wide evidence. Pursuing this matter as a collective action serves the most expeditious
14 use of the Court’s time and resources, as well as avoiding multiple actions on these issues with
15 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**

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

25 54. Excluded from the Class are Defendant’s legal representatives, officers, directors,
26 assigns, and successors, or any individual who has, or who at any time during the class period has
27 had, a controlling interest in Defendant; the Judge(s) to whom this case is assigned and any
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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
9 years prior to the filing of this action.

10 57. Numerosity: The Class is sufficiently numerous that joinder of all members is
11 impracticable. The exact numbers of such persons are not known to the Plaintiff because the facts
12 on which the calculation of that number can be based are presently within the sole control of
13 Defendant. Upon information and belief, there are over 100 people in the Class.
14 These people are readily ascertainable. The entire membership of the Class is unknown to
15 Plaintiff at this time; however, the identity of such membership is readily ascertainable via
16 Defendant's employment records reflecting the job titles of each such individual.

17 58. Typicality: The claims of Plaintiff are typical of the claims of the members of the
18 Class. Plaintiff, like other members of the Class, was subjected to Defendant's uniform policies
19 and practices that violated California law as described in this Class, Collective, and
20 Representative Action Complaint. The unpaid travel time expected of Plaintiff giving rise to the
21 claims asserted in this Class, Collective, and Representative Action Complaint was typical of that
22 of the members of the Class.

23 59. Adequacy: Plaintiff can and will fairly and adequately represent the interests of the
24 Class, and he has no interests that conflict with or are antagonistic to the interests of the Class.
25 Plaintiff suffered actual harm and damages as a result of Defendant's systematic and uniform
26 violations of the California wage and hour laws as set forth in this Class, Collective, and
27 Representative Action Complaint. Plaintiff has retained attorneys who are highly skilled,
28 competent, and experienced in complex and class action litigation, and who will vigorously assert

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

3 60. Predominance: There are common questions of law or fact affecting the rights of
4 the members of the Class, including but not necessarily limited to, whether Defendant failed to
5 provide the Class with overtime wages for all overtime hours worked; whether Defendant failed
6 to provide the Class with accurate wage statements; whether Defendant failed to pay timely
7 wages; and, whether Defendant engaged in unfair and/or unlawful business practices. These
8 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.

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

17 a. Whether Defendant failed to properly pay for all hours worked, including
18 overtime hours;

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

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

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

25 e. Whether Defendant engaged in the relevant policies, procedures, or
26 practices alleged herein with oppression, fraud, or malice within the meaning of California Civil
27 Code § 3288; and
28

1 f. The nature and extent of class-wide injury and the measure of damages for
2 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,**
20 **29 U.S.C. §§ 201, et seq.;**
(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.

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**
11 **Cal. Labor Code §§ 226, 226.3**
(On Behalf of Plaintiff Sleighter and the California Class)

12 86. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
13 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

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**
4 **Failure To Timely Pay All Wages Earned**
5 **Cal. Labor Code §§ 204, 210**
(On Behalf of Plaintiff Sleighter and the California 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**
22 **Cal. Labor Code §§ 201, 202, & 203**
(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

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 **SEVENTH CAUSE OF ACTION**
9 **Unlawful, Unfair, and/or Deceptive Business Practices,**
10 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
(On Behalf of Plaintiff Sleighter and the California Class)

11 99. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth
12 herein.

13 100. 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 *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

1 i. Such other injunctive and equitable relief as the Court may deem just and
2 proper.

3 Dated: August 31, 2022

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

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6 By: 

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