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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN JOSE DIVISION

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

Case No. 5:22-cv-03902

**COLLECTIVE ACTION COMPLAINT
AND JURY TRIAL DEMAND**

1 Plaintiff Anthony P. Foreman (“Foreman” or “Plaintiff”), individually and on behalf of all
2 others similarly situated, brings this action against Apple, Inc. (“Apple” or “Defendant”) and
3 alleges as follows:

4 **INTRODUCTION**

5 1. This is a collective action to recover overtime wages owed under federal law
6 brought by Foreman, on behalf of all similarly situated former and current employees of Apple,
7 who worked as a Solutions Consultant within the past three years (hereinafter referred to as
8 “Plaintiffs” or the “FLSA Collective Plaintiffs”).

9 2. For at least the past three years, Apple has failed to include all statutorily required
10 forms of compensation—including commissions earned by Solutions Consultants—in
11 determining the regular rate for purposes of calculating overtime pay.

12 3. In addition, Apple has failed to pay Solutions Consultants for all hours worked.
13 Specifically, Apple has engaged in an unlawful pattern or practice of denying earned overtime to
14 its Solutions Consultant by requiring them to begin their workday at home via online
15 videoconferences, to clock out after these videoconferences were complete, and to then travel to
16 their work site location, i.e., next job assignment, without being paid for their time in transit.

17 4. These practices violate the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et*
18 *seq.*, and its implementing regulations.

19 5. On behalf of himself and the FLSA Collective, Plaintiff seeks actual and liquidated
20 damages, including but not limited to damages for willful violations of the FLSA, as well as fees
21 and costs, for Apple’s violations of the FLSA.

22 **JURISDICTION AND VENUE**

23 6. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 (federal
24 question), 28 U.S.C. § 1337 (actions arising under Acts of Congress regulating commerce) and 29
25 U.S.C. § 216(b) (the FLSA).

26 7. The United States District Court for the Northern District of California has
27 personal jurisdiction over Defendant because Defendant has its principal place of business in this
28 District and does business in California and in this District.

1 8. Venue is proper in this Court because Defendant has its principal place of business
2 in Santa Clara County and a substantial part of the events or omissions giving rise to the claims
3 asserted herein occurred in this judicial district. *See* 28 U.S.C. § 1391(b).

4 9. Plaintiff hereby demands trial by jury.

5 **PARTIES**

6 10. Foreman is an individual of the full age of majority, domiciled in Livingston
7 Parish, Louisiana. He began working for Defendant in 2014 and resigned his employment in
8 February 2022.

9 11. Foreman’s consent to file this Complaint is evidenced by his signature on the
10 FLSA Consent Form attached as an exhibit hereto.

11 12. Named a defendant herein is Apple, a California corporation with its principal
12 place of business in Cupertino, California. Based on information and belief, Defendant employs
13 Solutions Consultants throughout the United States.

14 **FACTUAL ALLEGATIONS**

15 **Background**

16 13. Foreman worked for Apple as a “Solutions Consultant” in Baton Rouge,
17 Louisiana. Solutions Consultants promote the sales of Apple solutions and products in the Apple
18 section of retail store locations. During the times relevant to this lawsuit, Foreman’s work
19 location was in a Best Buy retail store in Baton Rouge, where he worked as a liaison between
20 Apple and Best Buy (or Best Buy customers).

21 14. At all material times, Foreman and the other FLSA Collective Plaintiffs were
22 “engaged in commerce” within the meaning of § 6 and § 7 of the FLSA, and subject to the
23 individual coverage of the FLSA.

24 15. At all material times, the FLSA Collective Plaintiffs were the “employees” of
25 Apple within the meaning of the FLSA.

26 16. At all material times, Defendant was and is an “enterprise engaged in commerce”
27 within the meaning of the FLSA.

28

1 17. Defendant's annual sales made or business done was in excess of \$500,000 during
2 all years relevant to this action.

3 18. Foreman and the other FLSA Collective Plaintiffs were paid on an hourly basis.

4 19. Foreman and the other FLSA Collective Plaintiffs regularly work forty or more
5 hours per week. However, they were not paid overtime for all hours worked over forty in a
6 workweek and, when paid overtime, they were not paid at the correct rate.

7 **Overtime Violation – Regular Rate**

8 20. Defendant did not properly calculate Plaintiffs' regular rate for purposes of
9 determining overtime pay for Solutions Consultants, thereby dramatically underpaying them for
10 overtime worked.

11 21. Foreman and the FLSA Collective Plaintiffs were paid on an hourly basis.

12 22. Foreman and the FLSA Collective Plaintiffs were also separately paid
13 commissions.

14 23. In calculating Foreman's and Plaintiffs' regular rate for purposes of determining
15 overtime pay, however, Defendant did not incorporate commission payments. As a result, the
16 overtime rate was only one and one-half times Plaintiffs' hourly rate—not the combination of
17 Plaintiffs' hourly rate and commission payments. The overtime rate was therefore lower than it
18 should have been.

19 **Overtime Violation – Travel Time**

20 24. Defendant also did not compensate Plaintiff and the other FLSA Collective
21 Plaintiffs for time they spent in transit between mandatory work activities.

22 25. Two or three times a week, Plaintiff's manager scheduled a videoconference work
23 meeting with Foreman and the other Solutions Consultants in his Region (the Region included
24 parts of Texas, Louisiana, and stretched into Florida). These work meetings took place early in
25 the morning, and the Solutions Consultants attended the meeting while at home.

26 26. These work meetings constituted an integral and indispensable part of Defendant's
27 business, as the Solutions Consultants discussed new technologies and received mandatory
28 instructions and required job information from their supervisors and the Regional Manager.

1 34. This action is properly maintained as a collective action because Foreman is
2 similarly situated to the collective action members, who were subject to the same uniform
3 overtime policies, payment practices, and operational procedures. Defendant's willful policy or
4 practice of failing to pay employees proper wages and overtime compensation for all hours
5 worked has affected Foreman and similarly situated employees in the same fashion.

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

12 36. Plaintiff further requests that the Court authorize expedited notice to the FLSA
13 Collective Plaintiffs to inform them of the pendency of this action and their right to "opt-in" to
14 this lawsuit pursuant to 29 U.S.C. § 216(b), for the purpose of seeking unpaid overtime
15 compensation and liquidated damages under the FLSA.

16 **COUNT ONE:**
17 **FAIR LABOR STANDARDS ACT – REGULAR RATE**

18 37. Plaintiff re-alleges and incorporates by reference all allegations in all preceding
19 paragraphs.

20 38. The FLSA requires that overtime premiums be paid at "a rate not less than one and
21 one-half times the regular rate at which [the employee] is employed." 29 U.S.C. § 207(a).

22 39. "Regular rate" is defined as including "all remuneration paid to, or on behalf of,
23 the employee," subject to eight discrete statutory exceptions. 29 U.S.C. § 207(e)(1) – (8).
24 Commissions "are payments for hours worked and must be included in the regular rate." *See* 29
25 C.F.R. § 778.117.

26 40. Defendant calculates overtime for the FLSA Collective Plaintiffs based on their
27 base hourly rate, without taking into account commissions and/or other compensation. Such
28 commissions and/or other compensation are not included in the statutory exceptions set forth

1 above, and Defendant’s exclusion of those payments from the regular rate results in
2 underpayment of overtime.

3 41. Defendant has failed to properly disclose or apprise the FLSA Collective Plaintiffs
4 of their rights under the FLSA.

5 42. Due to the intentional, willful, and unlawful acts of Defendant, the FLSA
6 Collective Plaintiffs suffered lost compensation for time worked over forty (40) hours per week,
7 and hereby seek recovery of all such sums plus liquidated damages.

8 43. Plaintiffs are entitled to an award of reasonable attorney’s fees and costs pursuant
9 to 29 U.S.C. §216(b).

10 **COUNT TWO:**
11 **FAIR LABOR STANDARDS ACT – UNPAID OVERTIME**

12 44. Plaintiff re-alleges and incorporates by reference all allegations in all preceding
13 paragraphs.

14 45. The FLSA requires employers to pay employees who work over forty hours in a
15 workweek overtime compensation “not less than one and one-half times the regular rate at which
16 he is employed.” 29 U.S.C. § 207(a)(1). “Where an employee is required to report at a meeting
17 place to receive instructions or to perform other work there . . . , the travel from the designated
18 place to the work place is part of the day’s work, and must be counted as hours worked regardless
19 of contract, custom, or practice.” 29 C.F.R. § 785.38.

20 46. Defendant violated the FLSA by failing to pay Plaintiff and the FLSA Collective
21 Plaintiffs the legally mandated hourly overtime premium for all hours worked over forty in a
22 workweek.

23 47. Defendant’s failure to pay federally-mandated overtime is the result of a deliberate
24 scheme whereby Defendant sought to avoid or reduce paying overtime by requiring Plaintiff and
25 the FLSA Collective Plaintiffs to clock out after completing their mandatory morning
26 videoconference work meeting, drive to their work site, and then—and only then—clock back in.

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1 48. Plaintiff and the FLSA Collective Plaintiffs were, and are, entitled to be paid at the
2 statutory rate of one and one-half times Plaintiffs' regular rate of pay for those hours worked in
3 excess of forty (40) hours for each workweek.

4 49. 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 50. Defendant has failed to properly disclose or apprise the FLSA Collective Plaintiffs
10 of their rights under the FLSA.

11 51. 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 52. Plaintiffs are entitled to an award of reasonable attorney's fees and costs pursuant
15 to 29 U.S.C. §216(b).

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff Anthony P. Foreman, on behalf of himself and the FLSA
18 Collective Plaintiffs, respectfully prays for judgment against Defendant as follows:

- 19 a. Certification as a collective action;
- 20 b. Payment of unpaid overtime wages to Foreman and the FLSA Collective
21 Action Plaintiffs;
- 22 c. Liquidated damages to the fullest extent permitted under the law;
- 23 d. Litigation costs, expenses, and attorney's fees to the fullest extent
24 permitted under the law;
- 25 e. In the event that Plaintiffs do not recover liquidated damages as allowed,
26 then Plaintiffs demand an award of prejudgment interest as a lesser
27 alternative to liquidated damages.
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Dated: July 1, 2022

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: 

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