

1 **BLUMENTHAL & NORDREHAUG**
 2 Norman B. Blumenthal (State Bar #068687)
 3 Kyle R. Nordrehaug (State Bar #205975)
 4 Aparajit Bhowmik (State Bar #248066)
 5 2255 Calle Clara
 6 La Jolla, CA 92037
 7 Telephone: (858)551-1223
 8 Facsimile: (858) 551-1232

9 **UNITED EMPLOYEES LAW GROUP**
 10 Walter Haines (State Bar #71705)
 11 65 Pine Ave, #312
 12 Long Beach, CA 90802
 13 Telephone: (562) 256-1047
 14 Facsimile: (562) 256-1006

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **SAN JOSE DIVISION**

18 DAVID WALSH, an individual, DAVID
 19 KALUA, an individual, on behalf of
 20 themselves, and on behalf of all persons
 21 similarly situated,

22 Plaintiffs,

23 vs.

24 APPLE, INC.,

25 Defendants.

CASE No. 05:08-cv-04918-JF

SECOND AMENDED CLASS AND
 COLLECTIVE ACTION COMPLAINT
 FOR:

1. UNFAIR COMPETITION IN VIOLATION OF CAL. BUS. & PROF. CODE § 17200, *et seq.*
2. FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LAB. CODE §§ 510, *et seq.*;
3. FAILURE TO PROVIDE WAGES WHEN DUE IN VIOLATION OF CAL. LAB. CODE § 203;
4. FAILURE TO PROVIDE ACCURATE ITEMIZED STATEMENTS IN VIOLATION OF CAL. LAB. CODE § 226;
5. FAILURE TO PROVIDE MEAL AND REST PERIODS IN VIOLATION OF CAL. LAB. CODE § 226.7 AND 512;
6. FAILURE TO PAY COMPENSATION IN VIOLATION OF 29 U.S.C. § 201, *et seq.*; and,
7. LABOR CODE PRIVATE ATTORNEY GENERAL ACT [Labor Code § 2698];

DEMAND FOR A JURY TRIAL

Action Filed: August 4, 2008

1 **INTRODUCTION**

2 Plaintiffs David Walsh and David Kalua (collectively referred to herein as
3 “PLAINTIFFS”), allege with particularity here upon information and belief, except for their
4 own acts and knowledge, that PLAINTIFFS and other GNCS and IS&T Support Staff
5 Members have a meritorious class claim for unpaid overtime wages as a result of
6 Defendant’s uniform practice of classifying GNCS and IS&T Support Staff Members as
7 exempt from overtime wages based upon job title alone and without regard to the actual time
8 worked and labor performed doing their assigned tasks as is Defendant’s legal burden. The
9 evidence will prove that Plaintiffs and other GNCS and IS&T Support Staff Members are
10 primarily performing labor within a defined skill set in accordance with established protocol
11 to manually install, configure, and replace Defendant’s computer hardware and to
12 troubleshoot on a 24/7 basis reported problems to keep the Defendant’s GNCS and IS&T
13 equipment operational. Had Defendant complied with the law and not so misclassified these
14 employees, Defendant would have had to pay Plaintiff and the other GNCS and IS&T
15 Support Staff Members their overtime wages due as required by law or hired additional
16 personnel to perform these tasks.

17
18 **THE PARTIES**

19 1. Defendant Apple, Inc., (hereinafter referred to as “Apple” or
20 “DEFENDANT”), is a California corporation. Apple’s Corporate Headquarters is located in
21 Silicon Valley in Cupertino, California. Many major functional groups of Apple are
22 represented at these Cupertino headquarters, including Engineering, Marketing, Sales, Legal,
23 Human Resources, and AppleCare groups. Apple also has substantial offices in Elk Grove,
24 California.

25 2. Apple conducted and continues to conduct substantial and regular business
26 throughout California.

27 3. Apple is engaged in the design, manufacture, and marketing of personal
28

1 computers, portable digital music players, and mobile communication devices. Other
2 products marketed by Apple include software, peripherals, and networking solutions. These
3 products are sold worldwide via Apple's online stores and 124 retail stores, as well as
4 through third-party wholesalers, resellers, and value-added resellers. In addition, Apple also
5 sells a variety of third-party Macintosh ("Mac"), iPod and iPhone compatible products,
6 including application software, printers, storage devices, speakers, headphones, and various
7 other accessories and peripherals that are also available through Apple's online and retail
8 stores. Together, Apple's products can generally be grouped under five product lines: 1)
9 desktops, portables, iPod, other music related products and services 2) peripherals and other
10 hardware 3) software 4) services and 5) other sales.

11 4. In order to provide this wide array of products to millions of customers and
12 potential customers worldwide, Apple employs many employees within the Global Network
13 and Computing Services Group ("GNCS") and the Information Systems & Technology
14 Group ("IS&T"). These groups service Apple's corporate systems, retail systems and
15 related infrastructure. Within the GNCS and IS&T groups, Apple employs individuals with
16 the common job titles of "Systems Engineers," "Data Center Systems Engineers," "WAN
17 Network / Voice Engineers," "Network Engineers," "Retail Engineers," and "Information
18 Systems Analyst," (collectively GNCS and IS&T Support Staff") who provide the labor for
19 the installation, configuration, implementation, maintenance, troubleshooting, technical
20 support, and upgrades of Apple's corporate systems, retail systems and other related
21 computer systems and infrastructure. As a matter of course, technical problems often arise
22 with these systems and infrastructure at all hours of the day and at all hours of the night.
23 When this happens, HelpDesk or other similar trouble tickets are generated by end-users in
24 the Apple GNCS and IS&T groups and sent to the GNCS and IS&T Support Staff Members
25 who diagnose and troubleshoot the technical support issues as the problems arise on a 24/7
26 basis as instructed by the direction of their supervisors.

27 5. Plaintiff David Walsh was hired by Apple in the state of California and
28

1 worked for Apple from April of 1995 to November of 2007 as a member of the GNCS and
2 IS&T Support Staff. Plaintiff David Kalua was hired by Apple in the state of California and
3 worked for Apple from 2000 to 2007. During the period 2000 through 2007, Plaintiff Kalua
4 was employed by Apple as a member of the GNCS and IS&T Support Staff.

5 6. When Plaintiff Walsh was initially hired, he was given the job title of
6 Network Engineer and classified as exempt. When Plaintiff Kalua was initially hired, he
7 was given the job title of Information Systems Analyst and classified as exempt. Plaintiff
8 Kalua was subsequently given the job title Network Engineer and was classified as exempt.
9 As GNCS and IS&T Support Staff Members, PLAINTIFFS' primary duties, and the primary
10 duties of the other putative class members, consisted of providing the labor for the
11 troubleshooting, installing, configuring and maintaining Apple's computer software and
12 hardware and providing on-call support to Apple's GNCS and IS&T groups. This work was
13 performed in the DEFENDANT's home offices, data centers, and retail stores, as the need
14 arose by physically installing, physically configuring, and physically replacing and
15 maintaining network equipment and by performing all tasks incident thereto. The GNCS
16 and IS&T Support Staff Members did not exercise any independent discretion, judgment, or
17 make any management decisions with respect to matters of significance. To the contrary,
18 the work of the PLAINTIFFS and the other members of the putative class was to provide, on
19 a daily basis, network support services to end-users in the Apple system in accordance with
20 the management decisions and business policies established by Apple. In fact, no
21 installation, configuration or replacement of the network equipment was made by
22 PLAINTIFFS or other members of the putative class without first obtaining approval from
23 management.

24 7. Throughout the day and into the night, PLAINTIFFS and the other GNCS and
25 IS&T Support Staff Members would receive a multitude of HelpDesk or "trouble tickets"
26 that requested diagnosis and troubleshooting of Apple's computer systems. Coverage to
27 respond to the tickets was required 24 hours per day, 7 days per week. Responding to these
28

1 tickets was not only performed throughout PLAINTIFFS' and the other GNCS and IS&T
2 Support Staff Members' normal workday, but also pursuant to an on-call rotation by which
3 PLAINTIFFS and the other GNCS and IS&T Support Staff Members were responsible to
4 respond to the tickets and perform troubleshooting work to resolve the problems at issue at
5 all hours of the night. Apple required PLAINTIFFS and the other GNCS and IS&T Support
6 Staff Members to regularly work many overtime hours without paying PLAINTIFFS and the
7 other GNCS and IS&T Support Staff Members overtime compensation because Apple had
8 initially classified PLAINTIFFS and the other GNCS and IS&T Support Staff Members as
9 exempt. Although PLAINTIFFS and the other GNCS and IS&T Support Staff Members
10 performed non-exempt work that regularly required the performance of manual labor, such
11 as racking, stacking, wiring and physically putting into place computer and network
12 hardware, Apple took no steps to analyze the services actually performed and the time
13 actually spent by PLAINTIFFS and the other GNCS and IS&T Support Staff Members on
14 each task to ensure that the classification of PLAINTIFFS and the other GNCS and IS&T
15 Support Staff Members as exempt was, in fact, properly based on the primary job duties
16 each of them actually performed as was Defendant's legal burden.

17
18 **THE CONDUCT**

19 8. Apple does not have any policies or procedures in place that catalogue,
20 inventory, list, or otherwise compile the actual time worked and labor that is actually
21 performed by the GNCS and IS&T Support Staff Members. The classification of these
22 employees as exempt is deceptively based on job title alone, rather than the expected time
23 and labor that is to be provided by the GNCS and IS&T Support Staff Members in
24 performing various assigned tasks after they are hired and placed into their particular
25 maintenance and support teams. Thereafter, no reevaluation or reclassification analysis
26 regarding the propriety of their exempt status is performed by Apple, because the company's
27 business model is to initially classify these employees as exempt based on job title alone,
28

1 regardless of the amount of time spent and the actual labor performed by them on various
2 tasks during the course of their employment.

3 9. Neither PLAINTIFFS nor any other GNCS and IS&T Support Staff Member
4 was primarily engaged in work of a type that was or now is directly related to management
5 policies or general business operations, when giving these words a fair but narrow
6 construction. To the contrary, the work of a GNCS and IS&T Support Staff Member is
7 labor wherein PLAINTIFFS and the other GNCS and IS&T Support Staff Members are
8 primarily engaged in the day to day business of the DEFENDANT to keep the networks that
9 perform the day to day functions of DEFENDANT's business operating in accordance with
10 the management policies established by DEFENDANT's management.

11 10. PLAINTIFFS and the other GNCS and IS&T Support Staff Members labored
12 as working members on the production side of DEFENDANT's business. The primary work
13 of PLAINTIFFS and the other GNCS and IS&T Support Staff Members were and are to
14 perform manual labor in order to install, configure and replace DEFENDANT's hardware
15 and equipment and to troubleshoot reported problems to keep the GNCS and IS&T groups
16 operational. As a result of this work, PLAINTIFFS and the other GNCS and IS&T Support
17 Staff Members were primarily involved in, day to day, repairing the network infrastructure,
18 server infrastructure and enhancements, installing and configuring new hardware and
19 software, and replacing routers and switches as necessary. This work was executed
20 primarily by the performance of manual labor within a defined skill set, involving upgrades
21 of the operating systems and networks, the routing of cables, switches, and the electrical
22 power systems supporting such infrastructure to keep the Network running and the
23 performance of day to day operational maintenance of the infrastructure, pursuant to known
24 protocol followed by these employees. Physical demands of the position include standing,
25 sitting, walking, bending, lifting, and moving computer items, some of which weigh as much
26 as one hundred (100) pounds, as needed. PLAINTIFFS and the other GNCS and IS&T
27 Support Staff Members performed these tasks either from within the DEFENDANT's home
28

1 offices, data centers or by traveling to off-site retail stores owned and operated by the
2 DEFENDANT. In performing the herein alleged duties and work, PLAINTIFFS and the
3 other GNCS and IS&T Support Staff Members were improperly classified by
4 DEFENDANT as exempt from overtime pay. As a result, although PLAINTIFFS and the
5 other GNCS and IS&T Support Staff Members regularly worked more than eight (8) hours a
6 day and/or forty (40) hours a week and also on the seventh (7th) day of a workweek, they
7 were not properly compensated for these hours of work as required by law.

8 11. In addition to the job functions performed during the regular working hours,
9 PLAINTIFFS and the other GNCS and IS&T Support Staff Members were required to make
10 changes to the network equipment that could only be effectuated after hours according to
11 DEFENDANT's policies. This was done to avoid disruption of the DEFENDANT's day to
12 day business activities while the system was in use during regular business hours. During
13 this time, after a regularly worked eight (8) hour work day of manual labor, PLAINTIFFS
14 and the other GNCS and IS&T Support Staff Members were required to install, configure,
15 replace and/or troubleshoot DEFENDANT's network systems well into the night. These
16 same restrictions and obligations were also borne by the other members of the class similarly
17 situated to GNCS and IS&T Support Staff Members. Further, PLAINTIFFS and the other
18 GNCS and IS&T Support Staff Members were also required to remain on-call pursuant to
19 the DEFENDANT's "on-call" rotation plan (the "ROTATIONS"). According to the
20 ROTATIONS, each member of the Network Support Team, including the PLAINTIFFS,
21 took turns performing on-call duties approximately every six (6) weeks. The performance of
22 each ROTATION lasted for an entire seven (7) day workweek. During this time, after
23 returning home from an eight (8) hour work day, PLAINTIFFS and the other GNCS and
24 IS&T Support Staff Members were required to remain on stand-by for the entire night, every
25 night of the week, for the entire week without compensation. After working an entire
26 workday on the Friday of the ROTATION, PLAINTIFFS and the other GNCS and IS&T
27 Support Staff Members were also required to remain on call twenty-four (24) hours a day
28

1 from Friday evening until Monday morning, when they would report to the employer's work
2 site for their "regular" workday. The effect of DEFENDANT's on-call rotational system is
3 that, during the team members' rotation, the employee is subject to receiving a call and is
4 effectively precluded from engaging in any activity that would hinder his ability to
5 immediately respond to the technical support call. This system places severe limitations on
6 the activities of PLAINTIFFS and the members of this team and accordingly, their time is
7 effectively indentured for the benefit of the DEFENDANT. Each night of every
8 ROTATION, the movements of PLAINTIFFS and the other GNCS and IS&T Support Staff
9 Members were severely geographically restricted by the on-call responsibilities because
10 each night, PLAINTIFFS and the other GNCS and IS&T Support Staff Members were
11 subjected to frequent calls in conjunction with the unduly restrictive fixed, response time-
12 limit that necessitated an answer to each call. Further, PLAINTIFFS and the other GNCS
13 and IS&T Support Staff Members were extremely restricted in the kind and extent of
14 personal activities they could engage in. Many personal activities, including, but not limited
15 to, taking their families to see a movie in a theater, taking their families to dinner at a
16 restaurant, engaging in organized sporting activities, participating in weddings,
17 supplementing their incomes with a second job, and/or attending to medical issues with the
18 assistance of a doctor, dentist, or other professional, had to be avoided entirely. Another
19 inconvenience imposed upon PLAINTIFFS and the other GNCS and IS&T Support Staff
20 Members was the inability to provide themselves with an entire night of uninterrupted sleep,
21 as the technical support calls often came in past eleven o'clock at night (11:00 p.m.).
22 Despite these demanding conditions imposed by DEFENDANT, regular and overtime
23 compensation for (a) the hours work was performed during the ROTATIONS and (b) the
24 "on-call" hours worked as time spent, wherein PLAINTIFFS and the other GNCS and IS&T
25 Support Staff Members were so restricted during the ROTATIONS as to be effectively
26 engaged to wait, were withheld by DEFENDANT from PLAINTIFFS and the other GNCS
27 and IS&T Support Staff Members.

1 12. PLAINTIFFS bring this class action on behalf of themselves and a class
2 consisting of all individuals who are or previously were employed by Defendant Apple, Inc.
3 as GNCS and IS&T Support Staff Members (the “CALIFORNIA CLASS” or “CLASS”) in
4 California during the Class Period. The GNCS and IS&T Support Staff Members included
5 in this class definition are those Apple employees within GNCS or IS&T groups who
6 worked in one or more position with the title “Network Engineer,” “Systems Engineer,”
7 “Data Center Systems Engineer,” “WAN Network / Voice Engineer,” “Retail Engineer,”
8 and/or “Information Systems Analyst.” The class period applicable to this CALIFORNIA
9 CLASS is defined as the period beginning August 4, 2004 (four years prior to the filing of
10 this Complaint) and ending on a future date as determined by the Court (the “CLASS
11 PERIOD”). As a matter of company policy and practice, DEFENDANT has unlawfully,
12 unfairly and/or deceptively classified every GNCS and IS&T Support Staff Member as
13 exempt based on job title alone, failed to pay the required overtime compensation and
14 otherwise failed to comply with all labor laws with respect to these GNCS and IS&T
15 Support Staff Members.

16 13. By reason of this uniform conduct applicable to PLAINTIFFS and all
17 CALIFORNIA CLASS members, DEFENDANT committed acts of unfair competition in
18 violation of the California Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 (the
19 “UCL”), by engaging in a company-wide policy and procedure which failed to correctly
20 determine whether the PLAINTIFFS and the CALIFORNIA CLASS of similarly situated
21 GNCS and IS&T Support Staff Members were properly classified as exempt. The proper
22 classification of these employees is the DEFENDANT’s burden. As a result of
23 DEFENDANT’s intentional disregard of the obligation to meet this burden, DEFENDANT
24 failed to properly calculate and/or pay all required overtime compensation for work
25 performed by the members of the CALIFORNIA CLASS and violated the Fair Labor
26 Standards Act and the California Labor Code and regulations promulgated thereunder as
27 herein alleged.

1 14. PLAINTIFFS and all members of the CALIFORNIA CLASS are and were
2 uniformly classified and treated by DEFENDANT as exempt at the time of hire and
3 thereafter, DEFENDANT failed to take the proper steps to determine whether PLAINTIFFS,
4 and the other members of the similarly-situated CALIFORNIA CLASS, were properly
5 classified under Industrial Welfare Commission Wage Order 4-2001 and Cal. Lab. Code §§
6 510 *et seq.* and Section 13 of the Fair Labor Standards Act (the “FLSA”) as exempt from
7 applicable federal and state labor laws. Since DEFENDANT affirmatively and wilfully had
8 in place a business policy, practice and procedure which failed to allow for an accurate
9 determination of whether exempting PLAINTIFFS and the members of the CALIFORNIA
10 CLASS complied with either the FLSA or the California Labor Laws, DEFENDANT’s
11 practices violated and continue to violate the law. In addition, the DEFENDANT acted
12 deceptively by falsely and fraudulently telling PLAINTIFFS and each member of the
13 CALIFORNIA CLASS that they were exempt from overtime pay when DEFENDANT
14 knew or should have known that this statement was false and not based on known facts.
15 DEFENDANT also acted unfairly by violating the labor laws of the United States and
16 California. As a result of this policy and practice, DEFENDANT violated the UCL.

17 15. As a result of DEFENDANT’s UCL violation, PLAINTIFFS, on behalf of
18 themselves and the CALIFORNIA CLASS, seek disgorgement of DEFENDANT’s ill-gotten
19 gains into a fluid fund to recover all the money that DEFENDANT was required by law to
20 pay for work performed, but failed to pay, to PLAINTIFFS and all other CALIFORNIA
21 CLASS members and restitution to PLAINTIFFS and the CALIFORNIA CLASS.
22 PLAINTIFFS also seek penalties and all other relief available to him and other similarly
23 situated employees under California law. PLAINTIFFS also seek declaratory relief finding
24 that the employment practices and policies of the DEFENDANT violate California law and
25 injunctive relief to enjoin the DEFENDANT from continuing to engage in such employment
26 practices.

27 16. PLAINTIFFS and the members of the CALIFORNIA CLASS have no plain,
28

1 speedy or adequate remedy at law and will suffer irreparable injury if DEFENDANT is
2 permitted to continue to engage in the unlawful acts and practices herein alleged. The illegal
3 conduct alleged herein is continuing and to prevent future injury and losses, and to avoid a
4 multiplicity of lawsuits, PLAINTIFFS are entitled to an injunction and other equitable relief,
5 on behalf of himself and the CLASS, to prevent and enjoin such practices. PLAINTIFFS
6 therefore request a preliminary and/or permanent injunction as the DEFENDANT provides
7 no indication that DEFENDANT will not continue such wrongful activity in the future,
8 along with restitution, penalties, interest, compensation and other equitable relief as
9 provided by law.

10
11 **THE CALIFORNIA CLASS**

12 17. PLAINTIFFS bring this class action on behalf of themselves and all
13 individuals who are or previously were employed by DEFENDANT as GNCS and IS&T
14 Support Staff Members in California during the period four years prior to the filing of this
15 Complaint and ending on the date as determined by the Court (“CALIFORNIA CLASS
16 PERIOD” or “CLASS PERIOD”), who were uniformly classified by Defendant as exempt
17 based on job title alone (the “CALIFORNIA CLASS”). The CALIFORNIA CLASS
18 Members included in this class definition are those Apple employees within GNCS or IS&T
19 groups who worked in a position entitled “Network Engineer,” “Systems Engineer,” “Data
20 Center Systems Engineer,” “WAN Network / Voice Engineers,” “Retail Engineer,” and/or
21 “Information Systems Analyst.” To the extent equitable tolling operates to toll claims by
22 the CALIFORNIA CLASS against DEFENDANT, the CLASS PERIOD should be adjusted
23 accordingly.

24 18. DEFENDANT, as a matter of corporate policy, practice and procedure, and in
25 violation of the applicable Labor Code, Industrial Welfare Commission (“IWC”) Wage
26 Order Requirements, and the applicable provisions of California law, intentionally,
27 knowingly, and wilfully, engaged in a practice whereby DEFENDANT unfairly, unlawfully,
28

1 and deceptively failed to institute a practice to ensure that the employees employed in a
2 position as a GNCS and IS&T Support Staff Member were properly classified as exempt
3 from the requirements of California Labor Code §§ 510, *et seq.* There may be other
4 employees who are similarly situated to the GNCS and IS&T Support Staff Members but
5 have different position titles which are currently unknown. To the extent such similarly
6 situated employees are discovered, PLAINTIFFS will amend the class definition
7 accordingly to include such additional position titles.

8 19. DEFENDANT has the burden of proof that each and every employee is
9 properly classified as exempt from the requirements of the Cal. Lab. Code §§ 510, *et seq.*
10 DEFENDANT, however, as a matter of uniform and systematic policy and procedure failed
11 to have in place during the CALIFORNIA CLASS PERIOD and still fails to have in place a
12 policy or practice to make any individual determination of exemption for any California
13 Class Members so as to satisfy their burden. Rather, the DEFENDANT's uniform policy
14 and practice in place at all times during the CALIFORNIA CLASS PERIOD and currently
15 in place is to systematically classify each and every California Class Member as exempt
16 from the requirements of the California Labor Code §§ 510, *et seq.*, based on job title alone.
17 This common business practice applicable to each and every California Class Member can
18 be adjudicated on a classwide basis as unlawful, unfair, and/or deceptive under Cal.
19 Business & Professions Code §17200, *et seq.* (the "UCL") as causation, damages, and
20 reliance are not elements of this claim.

21 20. At no time before, during or after the PLAINTIFFS' employment with
22 Apple was any CALIFORNIA CLASS Member reclassified as non-exempt from the
23 applicable requirements of California Labor Code §§ 510, *et seq.* after each California Class
24 Member was initially, uniformly, and systematically classified as exempt upon being hired.

25 21. Any individual declarations of any California Class Members offered at this
26 time purporting to indicate that one or more GNCS and IS&T Support Staff Members may
27 have been properly classified is of no force or affect absent evidence that DEFENDANT
28

1 had a uniform system in place to satisfy DEFENDANT's burden that DEFENDANT, at all
2 times had in effect a policy and practice to determine whether the California Class Members
3 were being properly classified as exempt pursuant to Cal. Lab. Code §§ 510, *et seq.* Absent
4 proof of such a system, DEFENDANT's business practice is uniformly unlawful, unfair
5 and/or deceptive under the UCL and may be so adjudicated on a classwide basis. As a result
6 of the UCL violations, the PLAINTIFFS and the California Class Members are entitled to
7 have this unfair business practice enjoined and to cause DEFENDANT to disgorge their ill-
8 gotten gains into a fluid fund and to retribute these funds to the PLAINTIFFS and the
9 California Class Members according to proof.

10 22. The CALIFORNIA CLASS, numbering more than 50 members, is so
11 numerous that joinder of all CALIFORNIA CLASS Members is impracticable.

12 23. DEFENDANT uniformly violated the rights of the CALIFORNIA CLASS
13 under California law by:

- 14 (a) Violating the California Unfair Competition Laws, Cal. Bus. & Prof.
15 Code § 17200, *et seq.*, by unlawfully, unfairly and/or deceptively
16 having in place company policies, practices and procedures that
17 uniformly classified PLAINTIFFS and the members of the
18 CALIFORNIA CLASS as exempt based on job title alone;
- 19 (b) Committing an act of unfair competition in violation of the California
20 Unfair Competition Laws, Cal. Bus. & Prof. Code § 17200 *et seq.*, by
21 unlawfully, unfairly, and/or deceptively failing to have in place a
22 company policy, practice and procedure that accurately determined the
23 percentages of time PLAINTIFFS and the members of the
24 CALIFORNIA CLASS actually spent performing non-exempt, as
25 compared to exempt, job duties;
- 26 (c) Committing an act of unfair competition in violation of the California
27 Unfair Competition Laws, Cal. Bus. & Prof. Code §§ 17200 *et seq.*, by
28

1 having in place a company policy, practice and procedure that failed to
2 reclassify as non-exempt those members of the CALIFORNIA CLASS
3 whose actual job duties are primarily comprised non-exempt job
4 functions;

5 (d) Violating Cal. Lab. Code §§510, *et seq.* by failing to pay the correct
6 overtime pay to PLAINTIFFS and the members of the CALIFORNIA
7 CLASS who were improperly classified as exempt;

8 (e) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
9 PLAINTIFFS and the members of the CALIFORNIA CLASS who
10 were improperly classified as exempt with meal and rest periods;

11 (f) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and
12 the members of the CALIFORNIA CLASS who were improperly
13 classified as exempt with an accurate itemized statement in writing
14 showing the gross wages earned, the net wages earned, all applicable
15 hourly rates in effect during the pay period and the corresponding
16 number of hours worked at each hourly rate by the employee; and,

17 (g) Violating Cal. Lab. Code § 203 by failing to provide restitution of
18 wages owed to the members of the CALIFORNIA CLASS who were
19 improperly classified as exempt and who have terminated their
20 employment.

21 24. This Class Action meets the statutory prerequisites for the maintenance of a
22 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(2) and/or (3) in that:

23 (a) The persons who comprise the CALIFORNIA CLASS are so numerous
24 that the joinder of all such persons is impracticable and the disposition
25 of their claims as a class will benefit the parties and the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
28

1 CALIFORNIA CLASS will apply uniformly to every member of the
2 CALIFORNIA CLASS;

3 (c) The claims of the representative PLAINTIFFS are typical of the claims
4 of each member of the CALIFORNIA CLASS. PLAINTIFFS, like all
5 other members of the CALIFORNIA CLASS, were initially classified
6 as exempt upon hiring based on job title alone and labored under
7 DEFENDANT's systematic procedure that failed to analyze the job
8 functions actually performed in order to determine whether the
9 classification was properly made. PLAINTIFFS sustained economic
10 injury as a result of DEFENDANT's employment practices.
11 PLAINTIFFS and the members of the CALIFORNIA CLASS were and
12 are similarly or identically harmed by the same unlawful, deceptive,
13 unfair and pervasive pattern of misconduct engaged in by the
14 DEFENDANT by deceptively advising all GNCS and IS&T Support
15 Staff Members that they were exempt from overtime wages based on
16 job title alone, and unfairly failing to pay overtime to employees who
17 were improperly classified as exempt.

18 (d) The representative PLAINTIFFS will fairly and adequately represent
19 and protect the interest of the CALIFORNIA CLASS, and has retained
20 counsel who are competent and experienced in Class Action litigation.
21 There are no material conflicts between the claims of the representative
22 PLAINTIFFS and the members of the CALIFORNIA CLASS that
23 would make class certification inappropriate. Counsel for the
24 CALIFORNIA CLASS will vigorously assert the claims of all Class
25 Members.

26 25. In addition to meeting the statutory prerequisites to a Class Action, this action
27 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3),
28

1 in that:

2 (a) Without class certification and determination of declaratory, injunctive,
3 statutory and other legal questions within the class format, prosecution
4 of separate actions by individual members of the CALIFORNIA
5 CLASS will create the risk of:

6 1) Inconsistent or varying adjudications with respect to individual
7 members of the CALIFORNIA CLASS which would establish
8 incompatible standards of conduct for the parties opposing the
9 CALIFORNIA CLASS; and/or,

10 2) Adjudication with respect to individual members of the
11 CALIFORNIA CLASS which would as a practical matter be
12 dispositive of interests of the other members not party to the
13 adjudication or substantially impair or impede their ability to
14 protect their interests.

15 (b) The parties opposing the CALIFORNIA CLASS have acted or refused
16 to act on grounds generally applicable to the CALIFORNIA CLASS,
17 making appropriate class-wide relief with respect to the CALIFORNIA
18 CLASS as a whole in that the DEFENDANT uniformly classified and
19 treated the GNCS and IS&T Support Staff Members as exempt and,
20 thereafter, uniformly failed to take proper steps to determine whether
21 the GNCS and IS&T Support Staff Members were properly classified
22 as exempt, and thereby denied these employees overtime wages as
23 required by law;

24 1) With respect to the First Cause of Action, the final relief on
25 behalf of the CALIFORNIA CLASS sought does not relate
26 exclusively to restitution because through this claim
27 PLAINTIFFS seek declaratory relief holding that the
28

1 DEFENDANT's policy and practices constitute unfair
2 competition, along with declaratory relief, injunctive relief, and
3 incidental equitable relief as may be necessary to prevent and
4 remedy the conduct declared to constitute unfair competition;

5 (c) Common questions of law and fact exist as to the members of the
6 CALIFORNIA CLASS, with respect to the practices and violations of
7 California Law as listed above, and predominate over any question
8 affecting only individual members, and a Class Action is superior to
9 other available methods for the fair and efficient adjudication of the
10 controversy, including consideration of:

11 1) The interests of the members of the CALIFORNIA CLASS in
12 individually controlling the prosecution or defense of separate
13 actions in that the substantial expense of individual actions will
14 be avoided to recover the relatively small amount of economic
15 losses sustained by the individual CALIFORNIA CLASS
16 members when compared to the substantial expense and burden
17 of individual prosecution of this litigation;

18 2) Class certification will obviate the need for unduly duplicative
19 litigation that would create the risk of:

20 A. Inconsistent or varying adjudications with respect to
21 individual members of the CALIFORNIA CLASS, which
22 would establish incompatible standards of conduct for the
23 DEFENDANT; and/or,

24 B. Adjudications with respect to individual members of the
25 CALIFORNIA CLASS would as a practical matter be
26 dispositive of the interests of the other members not
27 parties to the adjudication or substantially impair or
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

the Court;

- (d) PLAINTIFFS, and the other CALIFORNIA CLASS members, will not be able to obtain effective and economic legal redress unless the action is maintained as a Class Action;
- (e) There is a community of interest in obtaining appropriate legal and equitable relief for the acts of unfair competition, statutory violations and other improprieties, and in obtaining adequate compensation for the damages and injuries which DEFENDANT's actions have inflicted upon the CALIFORNIA CLASS;
- (f) There is a community of interest in ensuring that the combined assets of DEFENDANT are sufficient to adequately compensate the members of the CALIFORNIA CLASS for the injuries sustained;
- (g) DEFENDANT has acted or refused to act on grounds generally applicable to the CALIFORNIA CLASS, thereby making final class-wide relief appropriate with respect to the CALIFORNIA CLASS as a whole;
- (h) The members of the CALIFORNIA CLASS are readily ascertainable from the business records of DEFENDANT. The CALIFORNIA CLASS consists of all DEFENDANT's GNCS and IS&T Support Staff Members employed in California during the CALIFORNIA CLASS PERIOD; and,
- (i) Class treatment provides manageable judicial treatment calculated to bring a efficient and rapid conclusion to all litigation of all wage and hour related claims arising out of the conduct of DEFENDANT as to the members of the CALIFORNIA CLASS.

27. DEFENDANT maintains records from which the Court can ascertain and identify by job title each of DEFENDANT's employees who as have been systematically,

1 intentionally and uniformly subjected to DEFENDANT’s corporate policy, practices and
2 procedures as herein alleged. PLAINTIFFS will seek leave to amend the complaint to
3 include any additional job titles of employees similarly situated to GNCS and IS&T Support
4 Staff Members when they have been identified.

5
6 **THE CALIFORNIA LABOR SUB-CLASS**

7 28. PLAINTIFFS further bring the Second, Third, Fourth, and Fifth causes of
8 action on behalf of a subclass which consists of all members of the CALIFORNIA CLASS
9 who were employed by Defendant Apple who were classified by Defendant as exempt and
10 who performed work in excess of eight (8) hours in one day and/or forty (40) hours in one
11 week and/or hours on the seventh (7th) consecutive day of a workweek and did not receive
12 overtime compensation as required by Labor Code Section 510 and Wage Order 4-2001 (the
13 “CALIFORNIA LABOR SUBCLASS”) pursuant to Fed. R. Civ. Proc. 23(b)(3).

14 29. Apple, as a matter of corporate policy, practice and procedure, and in violation
15 of the applicable California Labor Code (“Labor Code”), and Industrial Welfare
16 Commission (“IWC”) Wage Order Requirements intentionally, knowingly, and wilfully, on
17 the basis of job title alone and without regard to the actual overall requirements of the job,
18 systematically classified PLAINTIFFS and other members of the CALIFORNIA CLASS
19 and CALIFORNIA LABOR SUBCLASS as exempt from overtime wages and other labor
20 laws in order to avoid the payment of overtime wages by misclassifying their positions as
21 exempt from overtime wages and other labor laws. To the extent equitable tolling operates
22 to toll claims by the CALIFORNIA LABOR SUBCLASS against Apple, the
23 CALIFORNIA LABOR SUB-CLASS should be adjusted accordingly.

24 30. To the extent that Apple has created a number of job levels and/or job titles for
25 GNCS and IS&T Support Staff Members to create the superficial appearance of a number of
26 unique jobs, when in fact, these jobs are substantially similar, these job titles can be easily
27 grouped together for the purpose of determining whether they are exempt from overtime
28

1 wages. Apple has uniformly misclassified these CALIFORNIA CLASS and CALIFORNIA
2 LABOR SUBCLASS members as exempt and denied them overtime wages and other
3 benefits to which non-exempt employees are entitled in order to unfairly cheat the
4 competition and unlawfully profit. PLAINTIFFS will seek leave to amend the complaint to
5 include any additional job titles of employees similarly situated to GNCS and IS&T Support
6 Staff Members when they have been identified.

7 31. Apple maintains records from which the Court can ascertain and identify by
8 job title each of Apple's employees who as CALIFORNIA CLASS and CALIFORNIA
9 LABOR SUBCLASS members have been systematically, intentionally and uniformly
10 misclassified as exempt as a matter of DEFENDANT's corporate policy, practices and
11 procedures.

12 32. The CALIFORNIA LABOR SUB-CLASS is so numerous that joinder of all
13 GNCS and IS&T Support Staff Members is impracticable.

14 33. Common questions of law and fact exist as to members of the CALIFORNIA
15 LABOR SUB-CLASS, including, but not limited, to the following:

- 16 (a) Whether DEFENDANT unlawfully failed to pay overtime
17 compensation to members of the CALIFORNIA LABOR SUB-CLASS
18 in violation of the California Labor Code and applicable regulations
19 and California Wage Order 4-2001;
- 20 (b) Whether the members of the CALIFORNIA LABOR SUB-CLASS are
21 non-exempt employees entitled to overtime compensation for overtime
22 hours worked under the overtime pay requirements of California Law;
- 23 (c) Whether DEFENDANT's policy and practice of classifying the
24 SUBCLASS members as exempt from overtime compensation and
25 failing to pay the CALIFORNIA LABOR SUB-CLASS members
26 overtime violate applicable provisions of California law;
- 27 (d) Whether DEFENDANT unlawfully failed to keep and furnish
28

- 1 California members with accurate records of hours worked;
- 2 (e) Whether DEFENDANT’s policy and practice of failing to pay
- 3 members of the CALIFORNIA LABOR SUB-CLASS all wages when
- 4 due within the time required by law after their employment ended
- 5 violates California law;
- 6 (f) Whether DEFENDANT unlawfully failed to provide all required meal
- 7 and rest periods to the members of the CALIFORNIA LABOR SUB-
- 8 CLASS; and,
- 9 (g) Whether DEFENDANT unlawfully failed to tender full payment and/or
- 10 restitution of wages owed or in the manner required by California law
- 11 to the members of the CALIFORNIA LABOR SUBCLASS who have
- 12 terminated their employment; and,
- 13 (h) The proper measure of damages and penalties owed to the members of
- 14 the CALIFORNIA LABOR SUB-CLASS.

15 34. DEFENDANT, as a matter of corporate policy, practice and procedure,
16 classified all GNCS and IS&T Support Staff Members as exempt from overtime wages and
17 other labor laws. All GNCS and IS&T Support Staff Members, including the PLAINTIFFS,
18 performed the same primary functions and were paid by DEFENDANT according to
19 uniform and systematic company procedures, which, as alleged herein above, failed to
20 correctly pay overtime compensation. This business practice was uniformly applied to each
21 and every member of the CALIFORNIA LABOR SUBCLASS, and therefore, the propriety
22 of this conduct can be adjudicated on a classwide basis.

23 35. DEFENDANT violated the rights of the CALIFORNIA LABOR SUBCLASS
24 under California law by:

- 25 (a) Violating Cal. Lab. Code §§ 510, *et seq.* by misclassifying and thereby
- 26 failing to pay PLAINTIFFS and the members of the CALIFORNIA
- 27 LABOR SUBCLASS the correct overtime pay for a work day longer
- 28

1 than eight (8) hours and/or a workweek longer than forty (40) hours,
2 and also for all hours worked on the seventh (7th) day of a workweek
3 for which DEFENDANT is liable pursuant to Cal. Lab. Code § 1194;

4 (b) Violating Cal. Lab. Code § 203, which provides that when an employee
5 is discharged or quits from employment, the employer must pay the
6 employee all wages due without abatement, by failing to tender full
7 payment and/or restitution of wages owed or in the manner required by
8 California law to the members of the CALIFORNIA LABOR
9 SUBCLASS who have terminated their employment;

10 (c) Violating Cal. Lab. Code §§ 226.7 and 512, by failing to provide
11 PLAINTIFFS and the members of the CALIFORNIA LABOR CLASS
12 who were improperly classified as exempt with meal and rest periods;

13 (d) Violating Cal. Lab. Code § 226 by failing to provide PLAINTIFFS and
14 the members of the CALIFORNIA LABOR CLASS who were
15 improperly classified as exempt with an accurate itemized statement in
16 writing showing the gross wages earned, the net wages earned, all
17 applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the
19 employee; and,

20 36. This Class Action meets the statutory prerequisites for the maintenance of a
21 Class Action as set forth in Fed. R. Civ. Proc. 23(b)(3), in that:

22 (a) The persons who comprise the CALIFORNIA LABOR SUBCLASS
23 are so numerous that the joinder of all such persons is impracticable
24 and the disposition of their claims as a class will benefit the parties and
25 the Court;

26 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief
27 issues that are raised in this Complaint are common to the
28

1 CALIFORNIA LABOR SUBCLASS and will apply uniformly to every
2 member of the CALIFORNIA LABOR SUBCLASS;

3 (c) The claims of the representative PLAINTIFFS are typical of the claims
4 of each member of the CALIFORNIA LABOR SUBCLASS.

5 PLAINTIFFS, like all other members of the CALIFORNIA LABOR
6 SUBCLASS, performed primarily non-exempt job functions, a
7 significant amount of which required the performance of non-office,
8 manual labor, and was improperly classified as exempt and denied
9 overtime pay as a result of DEFENDANT's systematic classification
10 practices. PLAINTIFFS and all other members of the CALIFORNIA
11 LABOR SUBCLASS sustained economic injuries arising from
12 DEFENDANT's violations of the laws of California; and,

13 (d) The representative PLAINTIFFS will fairly and adequately represent
14 and protect the interest of the CALIFORNIA LABOR SUBCLASS,
15 and has retained counsel who are competent and experienced in Class
16 Action litigation. There are no material conflicts between the claims of
17 the representative PLAINTIFFS and the members of the CALIFORNIA
18 LABOR SUBCLASS that would make class certification inappropriate.
19 Counsel for the CALIFORNIA LABOR SUBCLASS will vigorously
20 assert the claims of all Class Members.

21 37. In addition to meeting the statutory prerequisites to a Class Action, this action
22 is properly maintained as a Class Action pursuant to Fed. R. Civ. Proc. 23(b)(3), in that:

23 (a) Without class certification and determination of declaratory, injunctive,
24 statutory and other legal questions within the class format, prosecution
25 of separate actions by individual members of the CALIFORNIA
26 LABOR SUBCLASS will create the risk of:

27 1) Inconsistent or varying adjudications with respect to individual
28

1 members of the CALIFORNIA LABOR SUBCLASS which
2 would establish incompatible standards of conduct for the
3 parties opposing the CALIFORNIA LABOR SUBCLASS; or,

4 2) Adjudication with respect to individual members of the
5 CALIFORNIA LABOR SUBCLASS which would as a practical
6 matter be dispositive of interests of the other members not party
7 to the adjudication or substantially impair or impede their ability
8 to protect their interests.

9 (b) The parties opposing the CALIFORNIA LABOR SUBCLASS have
10 acted or refused to act on grounds generally applicable to the
11 CALIFORNIA SUBCLASS, making appropriate class-wide relief with
12 respect to the SUBCLASS as a whole in that the DEFENDANT
13 uniformly classified and treated the CALIFORNIA LABOR
14 SUBCLASS Members as exempt and, thereafter, uniformly failed to
15 take proper steps to determine whether the CALIFORNIA LABOR
16 SUBCLASS Members were properly classified as exempt, and thereby
17 denied these employees overtime wages as required by law;

18 (c) Common questions of law and fact predominate as to the members of
19 the CALIFORNIA LABOR SUBCLASS, with respect to the practices
20 and violations of California Law as listed above, and predominate over
21 any question affecting only individual members, and a Class Action is
22 superior to other available methods for the fair and efficient
23 adjudication of the controversy, including consideration of:

24 1) The interests of the members of the CALIFORNIA LABOR
25 SUBCLASS in individually controlling the prosecution or
26 defense of separate actions in that the substantial expense of
27 individual actions will be avoided to recover the relatively small
28

1 amount of economic losses sustained by the individual
2 CALIFORNIA LABOR SUBCLASS members when compared
3 to the substantial expense and burden of individual prosecution
4 of this litigation;

5 2) Class certification will obviate the need for unduly duplicative
6 litigation that would create the risk of:

7 A. Inconsistent or varying adjudications with respect to
8 individual members of the CALIFORNIA LABOR
9 SUBCLASS, which would establish incompatible
10 standards of conduct for the DEFENDANT; and/or,

11 B. Adjudications with respect to individual members of the
12 CALIFORNIA LABOR SUBCLASS would as a practical
13 matter be dispositive of the interests of the other members
14 not parties to the adjudication or substantially impair or
15 impede their ability to protect their interests;

16 3) In the context of wage litigation because a substantial number of
17 individual class members will avoid asserting their legal rights
18 out of fear of retaliation by DEFENDANT, which may
19 adversely affect an individual's job with DEFENDANT or with
20 a subsequent employer, the Class Action is the only means to
21 assert their claims through a representative; and,

22 4) A class action is superior to other available methods for the fair
23 and efficient adjudication of this litigation because class
24 treatment will obviate the need for unduly and unnecessary
25 duplicative litigation that is likely to result in the absence of
26 certification of this action pursuant to Fed. R. Civ. Proc.
27 23(b)(3).
28

1 38. This Court should permit this action to be maintained as a Class Action
2 pursuant to Fed. R. Civ. Proc. 23(b)(3) because:

- 3 (a) The questions of law and fact common to the CALIFORNIA LABOR
4 SUBCLASS predominate over any question affecting only individual
5 members;
- 6 (b) A Class Action is superior to any other available method for the fair
7 and efficient adjudication of the claims of the members of the
8 CALIFORNIA LABOR SUBCLASS because in the context of
9 employment litigation a substantial number of individual Class
10 members will avoid asserting their rights individually out of fear of
11 retaliation or adverse impact on their employment;
- 12 (c) The members of the CALIFORNIA LABOR SUBCLASS are so
13 numerous that it is impractical to bring all members of the
14 CALIFORNIA LABOR SUBCLASS before the Court;
- 15 (d) PLAINTIFFS, and the other CALIFORNIA LABOR SUBCLASS
16 members, will not be able to obtain effective and economic legal
17 redress unless the action is maintained as a Class Action;
- 18 (e) There is a community of interest in obtaining appropriate legal and
19 equitable relief for the acts of unfair competition, statutory violations
20 and other improprieties, and in obtaining adequate compensation for the
21 damages and injuries which DEFENDANT's actions have inflicted
22 upon the CALIFORNIA LABOR SUBCLASS;
- 23 (f) There is a community of interest in ensuring that the combined assets of
24 DEFENDANT are sufficient to adequately compensate the members of
25 the CALIFORNIA LABOR SUBCLASS for the injuries sustained;
- 26 (g) DEFENDANT has acted or refused to act on grounds generally
27 applicable to the CALIFORNIA LABOR SUBCLASS, thereby making
28

1 final class-wide relief appropriate with respect to the CALIFORNIA
2 LABOR SUBCLASS as a whole;

3 (h) The members of the CALIFORNIA LABOR SUBCLASS are readily
4 ascertainable from the business records of DEFENDANT. The
5 CALIFORNIA LABOR SUBCLASS consists of those GNCS and
6 IS&T Support Staff Members who worked overtime ours and who were
7 not paid overtime; and,

8 (i) Class treatment provides manageable judicial treatment calculated to
9 bring a efficient and rapid conclusion to all litigation of all wage and
10 hour related claims arising out of the conduct of DEFENDANT as to
11 the members of the CALIFORNIA LABOR SUBCLASS.

12
13 **JURISDICTION AND VENUE**

14 39. This Court has jurisdiction over PLAINTIFFS' claims pursuant to 29
15 U.S.C. § 216(b) (Fair Labor Standards Act), 28 U.S.C. § 1331 (federal question jurisdiction),
16 and 28 U.S.C. § 1367 (supplemental jurisdiction). The state law claims are part of the same
17 case and controversy as the federal claims, the state law claims are closely related to the
18 federal claims. The state law claims share a "common nucleus of operative fact" with the
19 federal claims because the claims all arise from the same misclassification practice, so the
20 state and federal claims would normally be tried together.

21 40. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because
22 (i) DEFENDANT is subject to personal jurisdiction in this District and therefore, reside in
23 this District , (ii) DEFENDANT committed the wrongful conduct against PLAINTIFFS and
24 certain members of the CLASS in Santa Clara County, California , and/or (iii)
25 DEFENDANT has taken the position that venue is proper in this district.

26
27 **FIRST CAUSE OF ACTION**

1 **For Unlawful Business Practices**

2 **[Cal. Bus. And Prof. Code § 17200 et seq.]**

3 **(By PLAINTIFFS and the CALIFORNIA CLASS and against DEFENDANT)**

4 41. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
5 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
6 through 40 of this Complaint. This cause of action is brought on behalf of PLAINTIFFS
7 and the CALIFORNIA CLASS.

8 42. DEFENDANT is a “person” as that term is defined under Cal. Bus. and Prof.
9 Code § 17021.

10 43. California Business & Professions Code § 17200 *et seq.* (the “UCL”)
11 defines unfair competition as any unlawful, unfair, or fraudulent business act or practice.
12 Section 17203 authorizes injunctive, declaratory, and/or other equitable relief with respect to
13 unfair competition as follows:

14 Any person who engages, has engaged, or proposes to engage in unfair
15 competition may be enjoined in any court of competent jurisdiction. The court
16 may make such orders or judgments, including the appointment of a receiver,
17 as may be necessary to prevent the use or employment by any person of any
18 practice which constitutes unfair competition, as defined in this chapter, or as
19 may be necessary to restore to any person in interest any money or property,
20 real or personal, which may have been acquired by means of such unfair
21 competition.

22 California Business & Professions Code § 17203.

23 44. Through the conduct alleged herein, DEFENDANT has engaged in an
24 unlawful, unfair, and/or deceptive business practice by violating California law, including
25 but not limited to provisions of the Wage Orders, the Regulations implementing the Fair
26 Labor Standards Act as enacted by the Secretary of Labor, the California Labor Code, the
27 Code of Federal Regulations and the California Code of Regulations, the opinions of the
28

1 Department of Labor Standards Enforcement, California Labor Code §§ 510, *et seq.*,
2 California Labor Code § 226, California Labor Code § 226.7, and California Labor Code §
3 203 by unfairly violating the public policy of the state of California to take all reasonable
4 steps to properly classify employees as exempt or non-exempt and by deceptively telling the
5 PLAINTIFFS and the members of the CALIFORNIA CLASS that they were all exempt
6 when DEFENDANT knew this statement to be untrue, for which this Court should issue
7 declaratory, injunctive and other equitable relief, pursuant to Cal. Bus. & Prof. Code §
8 17203, as may be necessary to prevent and remedy the conduct held to constitute unfair
9 competition.

10 45. By and through the unlawful, unfair, and/or deceptive business practices
11 described herein, DEFENDANT has obtained valuable property, money, and services from
12 the PLAINTIFFS, and the other members of the CALIFORNIA CLASS, and has deprived
13 them of valuable rights and benefits guaranteed by law, all to their detriment and to the
14 benefit of DEFENDANT so as to allow DEFENDANT to unfairly compete. Declaratory
15 and injunctive relief is necessary to prevent and remedy this unfair competition, and
16 pecuniary compensation alone would not afford adequate and complete relief.

17 46. All the acts described herein as violations of, among other things, the
18 Cal. Lab. Code, California Code of Regulations, and the Industrial Welfare Commission
19 Wage Orders, are unlawful, are in violation of public policy, are immoral, unethical,
20 oppressive, and unscrupulous, and are likely to deceive employees, and thereby constitute
21 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §
22 17200 *et seq.*

23 47. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, are
24 further entitled to, and do, seek a declaration that the above described business practices are
25 deceptive unfair and/or unlawful and that an injunctive relief should be issued restraining
26 DEFENDANT from engaging in any of these deceptive, unfair and unlawful business
27 practices in the future.

28

1 48. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have no
2 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business
3 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur
4 unabated. As a result of the unfair and unlawful business practices described above,
5 PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered and will
6 continue to suffer irreparable harm unless DEFENDANT is restrained from continuing to
7 engage in these unfair and unlawful business practices. In addition, DEFENDANT should
8 be required to disgorge their ill gotten gains into a fluid fund and to make restitution to
9 PLAINTIFFS, and the other members of the CALIFORNIA CLASS.

10
11 **SECOND CAUSE OF ACTION**

12 **For Failure To Pay Overtime Compensation**

13 **[Cal. Lab. Code §§ 510, 515.5, 1194, 1197 and 1198]**

14 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS and Against**
15 **DEFENDANT)**

16 49. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
17 CLASS, reallege and incorporate by this reference, as though fully set forth herein,
18 paragraphs 1 through 48 of this Complaint.

19 50. Cal. Lab. Code § 510 provides that employees in California shall not be
20 employed more than eight (8) hours in any workday or forty (40) hours in a workweek or on
21 a seventh (7th) consecutive workday of a workweek unless they receive additional
22 compensation beyond their regular wages in amounts specified by law.

23 51. Cal. Lab. Code § 551 states that, “Every person employed in any occupation
24 of labor is entitled to one day’s rest therefrom in seven.”

25 52. Cal. Lab. Code § 552 states that, “No employer of labor shall cause his
26 employees to work more than six days in seven.”

27 53. Cal. Lab. Code § 1194 states:
28

1 Notwithstanding any agreement to work for a lesser wage, any employee
2 receiving less than the legal minimum wage or the legal overtime
3 compensation applicable to the employee is entitled to recover in a civil action
4 the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney's fees, and costs
6 of suit.

7 54. Cal. Lab. Code § 1198 provides:

8 The maximum hours of work and the standard conditions of labor fixed by the
9 commission shall be the maximum hours of work and the standard conditions
10 of labor for employees. The employment of any employee for longer hours
11 than those fixed by the order or under conditions of labor prohibited by the
12 order is unlawful.

13 55. DEFENDANT has intentionally and uniformly designated certain employees
14 as “exempt” from receiving wages for all hours worked and from receiving certain other
15 rights, by their job title and without regard to DEFENDANT’s realistic expectations, the
16 requirements of the job, and the method of payment made by DEFENDANT, including
17 PLAINTIFFS and the other members of the CALIFORNIA LABOR SUB-CLASS who
18 worked on the production side of the DEFENDANT’s business enterprise. This was done in
19 an illegal attempt to avoid payment of regular and overtime wages and other benefits in
20 violation of the Cal. Lab. Code and Industrial Welfare Commission requirements.

21 56. In addition, Labor Code Section 558 provides:

22 (a) Any employer or other person acting on behalf of an employer
23 who violates, or causes to be violated, a section of this chapter or any
24 provision regulating hours and days of work in any order of the Industrial
25 Welfare Commission shall be subject to a civil penalty as follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid
27 employee for each pay period for which the employee was underpaid in
28

1 addition to an amount sufficient to recover underpaid wages.

2 (2) For each subsequent violation, one hundred dollars (\$100) for each
3 underpaid employee for each pay period for which the employee was
4 underpaid in addition to an amount sufficient to recover underpaid wages.

5 (3) Wages recovered pursuant to this section shall be paid to the
6 affected employee.

7 (b) If upon inspection or investigation the Labor Commissioner determines
8 that a person had paid or caused to be paid a wage for overtime work in
9 violation of any provision of this chapter, or any provision regulating hours
10 and days of work in any order of the Industrial Welfare Commission, the
11 Labor Commissioner may issue a citation. The procedures for issuing,
12 contesting, and enforcing judgments for citations or civil penalties issued by
13 the Labor Commissioner for a violation of this chapter shall be the same as
14 those set out in Section 1197.1.

15 (c) The civil penalties provided for in this section are in addition to any other
16 civil or criminal penalty provided by law.

17 57. DEFENDANT has intentionally and uniformly designated certain employees
18 as “exempt” employees, by their job title and without regard to DEFENDANT’s realistic
19 expectations and actual overall requirements of the job, including PLAINTIFFS and the
20 other members of the CALIFORNIA LABOR SUBCLASS who worked on the production
21 side of the DEFENDANT’s GNCS or IS&T groups. This was done in an illegal attempt to
22 avoid payment of overtime wages and other benefits in violation of the Cal. Lab. Code and
23 Industrial Welfare Commission requirements.

24 58. For an employee to be exempt as a bona fide “executive,” all the following
25 criteria must be met and DEFENDANT has the burden of proving that:

26 (a) The employee’s primary duty must be management of the enterprise, or of a
27 customarily recognized department or subdivision; and,
28

- 1 (b) The employee must customarily and regularly direct the work of at least two
- 2 (2) or more other employees; and,
- 3 (c) The employee must have the authority to hire and fire, or to command
- 4 particularly serious attention to his or his recommendations on such actions
- 5 affecting other employees; and,
- 6 (d) The employee must customarily and regularly exercise discretion and
- 7 independent judgment; and,
- 8 (e) The employee must be primarily engaged in duties which meet the test of
- 9 exemption.

10 No member of the CALIFORNIA LABOR SUBCLASS was or is an executive because
11 they all fail to meet the requirements of being an “executive” within the meaning of Order
12 No. 4-2001.

13 59. For an employee to be exempt as a bona fide “administrator,” all of the
14 following criteria must be met and DEFENDANT has the burden of proving that:

- 15 (a) The employee must perform office or non-manual work directly related to
- 16 management policies or general business operation of the employer; and,
- 17 (b) The employee must customarily and regularly exercise discretion and
- 18 independent judgment; and,
- 19 (c) The employee must regularly and directly assist a proprietor or an exempt
- 20 administrator; or,
- 21 (d) The employee must perform, under only general supervision, work requiring
- 22 special training, experience, or knowledge, or,
- 23 (e) The employee must execute special assignments and tasks under only general
- 24 supervision; and,
- 25 (f) The employee must be primarily engaged in duties which meet the test of
- 26 exemption.

27 No member of the CALIFORNIA LABOR SUBCLASS was or is an administrator because
28

1 they all fail to meet the requirements for being an “administrator” under Order No. 4-2001.

2 60. The Industrial Welfare Commission, ICW Wage Order 4-2001, at
3 section (1)(A)(3)(h), at Labor Code § 515, and Cal. Lab. ' 515.5 also set forth the
4 requirements which must be complied with to place an employee in the “professional”
5 exempt category. For an employee to be “exempt” as a bona fide “professional”, all the
6 following criteria must be met and DEFENDANT has the burden of proving that:

7 (a) The employee is primarily engaged in an occupation commonly recognized as
8 a learned or artistic profession. For the purposes of this subsection, “learned
9 or artistic profession” means an employee who is primarily engaged in the
10 performance of:

- 11 1) Work requiring knowledge of an advanced type in a field or science or
12 learning customarily acquired by a prolonged course of specialized
13 intellectual instruction and study, as distinguished from a general
14 academic education and from an apprenticeship, and from training in
15 the performance of routine mental, manual, or physical processes, or
16 work that is an essential part or necessarily incident to any of the above
17 work; or,
- 18 2) Work that is original and creative in character in a recognized field of
19 artistic endeavor, and the result of which depends primarily on the
20 invention, imagination or talent of the employee or work that is an
21 essential part of or incident to any of the above work; and,
- 22 3) Whose work is predominately intellectual and varied in character (as
23 opposed to routine mental, manual, mechanical, or physical work) and
24 is of such character cannot be standardized in relation to a given period
25 of time.

26 (b) The employee must customarily and regularly exercise discretion and
27 independent judgment; and.

1 (c) The employee earns a monthly salary equivalent to no less than two (2) times
2 the state minimum wage for full-time employment. No member of the
3 CALIFORNIA LABOR SUBCLASS was or is a professional because they all
4 fail to meet the requirements of being a “professional” within the meaning of
5 Order No. 4-2001.

6 In particular, for an employee to be “exempt” as a bona fide “professional” with respect to
7 the requirements for a computer software employee, all the following criteria must be met
8 and DEFENDANT has the burden of proving that:

- 9 (a) The employee must primarily perform work which is intellectual or creative
10 and that requires the exercise of discretion and independent judgment; and,
- 11 (b) The employee is primarily engaged in duties which consist of one or more of
12 the following:
- 13 1) the application of systems analysis techniques and procedures,
14 including consulting with users, to determine hardware, software, or
15 system functional specifications;
 - 16 2) the design, development, documentation, analysis, creation, testing or
17 modification of computer systems or programs, including prototypes,
18 based on and related to user or system design specifications;
 - 19 3) the documentation, testing, creation or modification of computer
20 programs related to the design of the software or hardware for
21 computer operating systems; and,
- 22 (c) The employee must be highly skilled and proficient in the theoretical and
23 practical application of highly specialized information to computer systems
24 analysis, programming and software engineering. A job title shall not be
25 determinative of the applicability of this exemption; and,
- 26 (d) The employee's hourly rate of pay is not less than forty-one dollars (\$ 41.00),
27 or the annualized full-time salary equivalent of that rate, provided that all
28

1 other requirements of this section are met and that in each workweek the
2 employee receives not less than forty-one dollars (\$ 41.00) per hour worked.
3 This is the rate which is adjusted by the DLSR on October 1 of each year to be
4 effective on January 1 of the following year by an amount equal to the
5 percentage increase in the California Consumer Price Index for Urban Wage
6 Earners and Clerical Workers.

7 1) The adjusted rates for each year of the CALIFORNIA LABOR
8 SUBCLASS are as follows: In 2002, the rate was \$42.64. In
9 2003, the rate was \$43.58. In 2004, the rate was \$44.63. In 2005, the
10 rate was \$45.84. In 2006, the rate was \$47.81. In 2007, the rate is
11 \$49.77. Currently, in 2008, the rate is \$36.00. No member of the
12 CALIFORNIA CLASS was or is an exempt "Computer Software
13 Employee" because they all fail to meet the requirements of Order No.
14 4-2001.

15 PLAINTIFFS and all members of the CALIFORNIA LABOR SUBCLASS were paid less
16 than these amounts during the Class Period.

17 61. PLAINTIFFS, and other members of the CALIFORNIA LABOR
18 SUBCLASS, do not fit the definition of an exempt executive, administrative, or professional
19 employee because:

- 20 (a) They did not work as executives or administrators; and,
21 (b) The professional exemption articulated in Wage Order 4-2001, section
22 (1)(A)(3)(h) and Labor Code § 515, and the professional exemption articulated
23 in Cal. Lab. Code § 515.5, does not apply to PLAINTIFFS, nor to the other
24 members of the CALIFORNIA LABOR SUBCLASS, because they are either
25 computer software employees paid less than the requisite amount set forth in
26 Cal. Lab. § 515.5(a)(4) and under subdivision (1)(A)(3)(h)(iv) of Order No. 4-
27 2001, and/or did not otherwise meet all the applicable requirements to work
28

1 under the exemption of computer software employee for the reasons set forth
2 above in this Complaint.

3 62. During the class period, the PLAINTIFFS, and other members of the
4 CALIFORNIA LABOR SUBCLASS, worked more than eight (8) hours in a workday
5 and/or forty (40) hours in a work week, and also worked on the seventh (7th) day of a
6 workweek.

7 63. At all relevant times, DEFENDANT failed to pay PLAINTIFFS, and
8 other members of the CALIFORNIA LABOR SUBCLASS, overtime compensation for the
9 hours they have worked in excess of the maximum hours permissible by law as required by
10 Cal. Lab. Code §§ 510 and 1198, even though PLAINTIFFS, and the other members of the
11 CALIFORNIA LABOR SUBCLASS, were regularly required to work, and did in fact work,
12 overtime hours.

13 64. By virtue of DEFENDANT's unlawful failure to pay additional premium
14 overtime compensation to the PLAINTIFFS, and the other members of the CALIFORNIA
15 LABOR SUBCLASS, for their overtime hours, the PLAINTIFFS, and the other members of
16 the CALIFORNIA LABOR SUBCLASS, have suffered, and will continue to suffer, an
17 economic injury in amounts which are presently unknown to them and which will be
18 ascertained according to proof at trial.

19 65. DEFENDANT knew or should have known that PLAINTIFFS, and the
20 other members of the CALIFORNIA LABOR SUBCLASS, were misclassified as exempt
21 and DEFENDANT systematically elected, either through intentional malfeasance or gross
22 nonfeasance, not to pay them for their overtime labor as a matter of uniform corporate
23 policy, practice and procedure.

24 66. Therefore, PLAINTIFFS, and the other members of the CALIFORNIA
25 LABOR SUBCLASS, request recovery of regular and overtime compensation according to
26 proof, interest, attorney's fees and cost pursuant to Cal. Lab. Code §1194(a), as well as the
27 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the
28

1 Cal. Lab. Code and/or other statutes.

2 67. In performing the acts and practices herein alleged in violation of labor
3 laws and refusing to provide the requisite regular and overtime compensation, the
4 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously
5 toward the PLAINTIFFS, and toward the other members of the CALIFORNIA LABOR
6 SUBCLASS, with a conscious and utter disregard of their legal rights, or the consequences
7 to them, and with the despicable intent of depriving them of their property and legal rights
8 and otherwise causing them injury in order to increase corporate profits at the expense of
9 PLAINTIFFS and the members of the Class.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THIRD CAUSE OF ACTION
For Failure to Pay Wages When Due
[Cal. Lab. Code § 203]

(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS)

68. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-CLASS, reallege and incorporate by reference, as though fully set forth herein, paragraphs 1 through 67 of this Complaint.

69. Cal. Lab. Code § 200 provides that:

As used in this article:

- (a) "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.
- (b) "Labor" includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

70. Cal. Lab. Code § 202 provides, in relevant part, that:

1 If an employee not having a written contract for a definite period quits his or
2 her employment, his or her wages shall become due and payable not later than
3 72 hours thereafter, unless the employee has given 72 hours previous notice of
4 his or her intention to quit, in which case the employee is entitled to his or her
5 wages at the time of quitting. Notwithstanding any other provision of law, an
6 employee who quits without providing a 72-hour notice shall be entitled to
7 receive payment by mail if he or she so requests and designates a mailing
8 address. The date of the mailing shall constitute the date of payment for
9 purposes of the requirement to provide payment within 72 hours of the notice
10 of quitting.

11 71. Cal. Lab. Code § 203 provides:

12 If an employer willfully fails to pay, without abatement or reduction, in
13 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
14 employee who is discharged or who quits, the wages of the employee shall
15 continue as a penalty from the due date thereof at the same rate until paid or
16 until an action therefor is commenced; but the wages shall not continue for
17 more than 30 days.

18 72. PLAINTIFFS and other members of the CALIFORNIA LABOR SUB-
19 CLASS members have terminated their employment and DEFENDANT has not tendered
20 payment of wages owed.

21 73. Therefore, as provided by Cal Lab. Code § 203, on behalf of himself and the
22 members of the CALIFORNIA LABOR SUB-CLASS, PLAINTIFFS demand thirty days of
23 pay as penalty for not paying all wages due at time of termination for all employees who
24 terminated employment during the CALIFORNIA LABOR SUB-CLASS PERIOD and
25 payment of all wages due, plus interest.

26
27 **FOURTH CAUSE OF ACTION**

1 **For Failure to Provide Accurate Itemized Statements**

2 **[Cal. Lab. Code § 226]**

3 **(By PLAINTIFFS and the CALIFORNIA LABOR SUB-CLASS)**

4 74. PLAINTIFFS, and the other members of the CALIFORNIA LABOR SUB-
5 CLASS, reallege and incorporate by this reference, as though fully set forth herein,
6 paragraphs 1 through 73 of this Complaint. This cause of action is brought on behalf of
7 PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS.

8 75. Cal. Labor Code § 226 provides that an employer must furnish employees
9 with

10 an “accurate itemized statement in writing showing:

- 11 (1) gross wages earned,
12 (2) total hours worked by the employee, except for any employee whose
13 compensation is solely based on a salary and who is exempt from payment of
14 overtime under subdivision (a) of Section 515 or any applicable order of the
15 Industrial Welfare Commission,
16 (3) the number of piecerate units earned and any applicable piece rate if the employee
17 is paid on a piece-rate basis,
18 (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item,
20 (5) net wages earned,
21 (6) the inclusive dates of the period for which the employee is paid,
22 (7) the name of the employee and his or her social security number, except that by
23 January 1, 2008, only the last four digits of his or her social security number or an
24 employee identification number other than a social security number may be shown on
25 the itemized statement,
26 (8) the name and address of the legal entity that is the employer, and
27 (9) all applicable hourly rates in effect during the pay period and the corresponding
28

1 number of hours worked at each hourly rate by the employee.”

2 76. At all times relevant herein, DEFENDANT violated Labor Code § 226, in that
3 DEFENDANT failed to properly and accurately itemize the gross wages earned, the net
4 wages earned, and all applicable hourly rates in effect during the pay period and the
5 corresponding number of hours worked at each hourly rate by the employee.

6 77. DEFENDANT knowingly and intentionally failed to comply with Labor Code
7 § 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA
8 LABOR SUBCLASS. These damages include, but are not limited to, costs expended
9 calculating the true hours worked and the amount of employment taxes which were not
10 properly paid to state and federal tax authorities. These damages are difficult to estimate.
11 Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR
12 SUBCLASS may recover liquidated damages of \$50.00 for the initial pay period in which
13 the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to
14 Labor Code § 226, in an amount according to proof at the time of trial (but in no event more
15 than \$4,000.00 for PLAINTIFFS and each respective member of the CALIFORNIA
16 LABOR SUBCLASS herein) pursuant to Labor Code § 226(g).

17
18
19
20
21
22
23
24
25
26
27
28

FIFTH CAUSE OF ACTION

For Failure to Provide Meal and/or Rest Periods

[Cal. Lab. Code §§ 226.7 and 512]

(By PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS)

78. PLAINTIFFS, and the other members of the CALIFORNIA LABOR
SUBCLASS, reallege and incorporate by reference, as though fully set forth herein,
paragraphs 1 through 77 of this Complaint.

79. Cal. Lab. Code § 512 provides, in relevant part: “An employer may not
employ an employee for a work period of more than five hours per day without providing
the employee with a meal period of not less than 30 minutes, except that if the total work

1 period per day of the employee is no more than six hours, the meal period may be waived by
2 mutual consent of both the employer and employee. An employer may not employ an
3 employee for a work period of more than 10 hours per day without providing the employee
4 with a second meal period of not less than 30 minutes, except that if the total hours worked
5 is no more than 12 hours, the second meal period may be waived by mutual consent of the
6 employer and the employee only if the first meal period was not waived.”

7 80. Section 11 of the Order 4-2001 of the Industrial Wage Commission (the
8 “Wage Order”) provides, in relevant part:

9 Meal Periods:

- 10 (A) No employer shall employ any person for a work period of more than
11 five (5) hours without a meal period of not less than 30 minutes, except
12 that when a work period of not more than six (6) hours will complete
13 the day's work the meal period may be waived by mutual consent of the
14 employer and the employee.
- 15 (B) An employer may not employ an employee for a work period of more
16 than ten (10) hours per day without providing the employee with a
17 second meal period of not less than thirty (30) minutes, except that if
18 the total hours worked is no more than twelve (12) hours, the second
19 meal period may be waived by mutual consent of the employer and the
20 employee only if the first meal period was not waived.
- 21 (C) Unless the employee is relieved of all duty during a 30 minute meal
22 period, the meal period shall be considered an "on duty" meal period
23 and counted as time worked. An "on duty" meal period shall be
24 permitted only when the nature of the work prevents an employee from
25 being relieved of all duty and when by written agreement between the
26 parties an on-the-job paid meal period is agreed to. The written
27 agreement shall state that the employee may, in writing, revoke the
28

1 agreement at any time.

2 (D) If an employer fails to provide an employee a meal period in
3 accordance with the applicable provisions of this order, the employer
4 shall pay the employee one (1) hour of pay at the employee's regular
5 rate of compensation for each workday that the meal period is not
6 provided.

7 81. Section 12 of Order 4-2001 of the Industrial Wage Commission (the "Wage
8 Order") provides, in relevant part:

9 Rest Periods:

10 (A) Every employer shall authorize and permit all employees to take rest
11 periods, which insofar as practicable shall be in the middle of each
12 work period. The authorized rest period time shall be based on the total
13 hours worked daily at the rate of ten (10) minutes net rest time per four
14 (4) hours or major fraction thereof. However, a rest period need not be
15 authorized for employees whose total daily work time is less than three
16 and one-half (3 1/2) hours. Authorized rest period time shall be counted
17 as hours worked for which there shall be no deduction from wages.

18 (B) If an employer fails to provide an employee a rest period in accordance
19 with the applicable provisions of this Order, the employer shall pay the
20 employee one (1) hour of pay at the employee's regular rate of
21 compensation for each work day that the rest period is not provided.

22 82. Cal. Lab. Code § 226.7 provides:

23 (a) No employer shall require any employee to work during any meal or rest
24 period mandated by an applicable order of the Industrial Welfare Commission.

25 (b) If an employer fails to provide an employee a meal period or rest period in
26 accordance with an applicable order of the Industrial Welfare Commission, the
27 employer shall pay the employee one additional hour of pay at the employee's
28

1 regular rate of compensation for each work day that the meal or rest period is
2 not provided.

3 83. DEFENDANT has intentionally and improperly failed to provide all rest
4 and/or meal periods without any work or duties to PLAINTIFFS and the other members of
5 the CALIFORNIA LABOR SUBCLASS as required by law, and by failing to do so
6 DEFENDANT violated the provisions of Labor Code 226.7.

7 84. Therefore, PLAINTIFFS demand on behalf of themselves and the members of
8 the CALIFORNIA LABOR SUBCLASS, one (1) hour of premium pay for each workday in
9 which a rest period was not provided as required by law and one (1) hour of premium pay
10 for each workday in which a meal period was not provided as required by law.

11
12 **SIXTH CAUSE OF ACTION**

13 **For Failure to Pay Overtime Compensation**

14 **[FLSA, 29 U.S.C. § 201, *et seq.*]**

15 **(By PLAINTIFFS and the COLLECTIVE CLASS)**

16 85. PLAINTIFFS, and the other members of the COLLECTIVE CLASS, reallege
17 and incorporate by reference, as though fully set forth herein, paragraphs 1 through 84 of
18 this Complaint.

19 86. PLAINTIFFS also bring this lawsuit as a collective action under the Fair
20 Labor and Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”), on behalf of all persons
21 who were, are, or will be employed by DEFENDANTS as GNCS and IS&T Support Staff
22 Members during the period commencing three years prior to the filing of this Complaint and
23 ending on the date as the Court shall determine (the “COLLECTIVE CLASS PERIOD”),
24 who performed work in excess of forty (40) hours in one week and did not receive overtime
25 compensation as required by the FLSA (the “COLLECTIVE CLASS”). To the extent
26 equitable tolling operates to toll claims by the COLLECTIVE CLASS against the
27 DEFENDANT, the COLLECTIVE CLASS PERIOD should be adjusted accordingly. The
28

1 COLLECTIVE CLASS includes all such persons, whether or not they were paid by
2 commission, by salary, or by part commission and part salary.

3 87. Questions of law and fact common to the COLLECTIVE CLASS as a whole,
4 but not limited to the following, include:

- 5 a. Whether DEFENDANT misclassified PLAINTIFFS and members of the
6 COLLECTIVE CLASS as exempt from receiving compensation for all hours
7 worked, including federal overtime compensation;
- 8 b. Whether DEFENDANT failed to adequately compensate the members
9 of the COLLECTIVE CLASS for all hours worked as required by the FLSA,
10 including the time worked through their meal periods;
- 11 c. Whether DEFENDANT should be enjoined from continuing the practices
12 which violate the FLSA; and,
- 13 d. Whether DEFENDANT is liable to the COLLECTIVE CLASS.

14 88. The Sixth cause of action for the violations of the FLSA may be brought and
15 maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.
16 216(b), for all claims asserted by the representative PLAINTIFFS of the COLLECTIVE
17 CLASS because the claims of the PLAINTIFFS are similar to the claims of the members of
18 the prospective COLLECTIVE CLASS.

19 89. PLAINTIFFS and the COLLECTIVE CLASS are similarly situated, have
20 substantially similar job requirements and pay provisions, and are subject to
21 DEFENDANT’s common and uniform policy and practice of misclassifying their
22 employees, failing to pay for all actual time worked and wages earned, and failing to
23 accurately record all hours worked by these employees in violation of the FLSA and the
24 Regulations implementing the Act as enacted by the Secretary of Labor (the
25 “REGULATIONS”).

26 90. DEFENDANT is engaged in communication, business, and transmission
27 between California and other states, and are, therefore, engaged in commerce within the
28

1 meaning of 29 U.S.C. § 203(b).

2 91. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to
3 willful violations of the FLSA.

4 92. 29 U.S.C. § 207(a)(1) provides in pertinent part:

5 Except as otherwise provided in this section, no employer shall employ any of
6 his employees who in any workweek is engaged in commerce or in the
7 production of goods for commerce, or is employed in an enterprise engaged in
8 commerce or in the production of goods for commerce, for a workweek longer
9 than forty hours unless such employee receives compensation for his
10 employment in excess of the hours above specified at a rate not less than one
11 and one-half times the regular rate at which he is employed.

12 93. Section 213(a)(1) of the FLSA provides that the overtime pay
13 requirement does not apply to:

14 any employee employed in a bona fide executive, administrative, or
15 professional capacity (including any employee employed in the capacity of
16 academic administrative personnel or teacher in elementary or secondary
17 schools), or in the capacity of outside salesman (as such terms are defined and
18 delimited from time to time by regulations of the Secretary, subject to the
19 provisions of the Administrative Procedure Act [5 USCS §§ 551 et seq.]
20 except [that] an employee of a retail or service establishment shall not be
21 excluded from the definition of employee employed in a bona fide executive
22 or administrative capacity because of the number of hours in his workweek
23 which he devotes to activities not directly or closely related to the
24 performance of executive or administrative activities, if less than 40 per
25 centum of his hours worked in the workweek are devoted to such activities).

26 94. Apple has willfully engaged in a widespread pattern and practice of
27 violating the provisions of the FLSA, as detailed above, by uniformly designating certain
28

1 employees as “exempt” employees, by their job title and without regard to DEFENDANT’s
2 realistic expectations and actual overall requirements of the job, including PLAINTIFFS and
3 the other members of the COLLECTIVE CLASS who worked on the production side of the
4 DEFENDANT’s business enterprise. This was done in an illegal attempt to avoid payment
5 of overtime wages and other benefits in violation of the FLSA and Code of Federal
6 Regulations requirements.

7 95. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*,
8 PLAINTIFFS and the members of the COLLECTIVE CLASS are entitled to compensation
9 for all hours actually worked, including time spent monitoring DEFENDANT’s equipment
10 and waiting for and responding to technical support requests during meal periods, and are
11 also entitled to wages at a rate not less than one and one-half times their regular rate of pay
12 for all hours worked in excess of forty (40) hours in any workweek.

13 96. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the
14 exempt status of an employee. The exempt or nonexempt status of any particular employee
15 must be determined on the basis of whether the employee's salary and duties meet the
16 requirements of the regulations in this part.

17 97. The exemptions of the FLSA as listed in section 13(a), and as explained by 29
18 C.F.R. 541.3, do not apply to PLAINTIFFS and the other members of the COLLECTIVE
19 CLASS, because their work consists of non-management, production line labor performed
20 with skills and knowledge acquired from on-the-job training, rather than from the prolonged
21 course of specialized intellectual instruction required for exempt learned professional
22 employees such as medical doctors, architects and archeologists. PLAINTIFFS either do
23 not hold a bachelor’s degree, have not taken any prolonged course of specialization relating
24 to network systems or infrastructure, and/or have attained the vast majority of the skills they
25 use as employees of Apple from on the job training.

26 98. For an employee to be exempt as a bona fide “executive,” all the following
27 criteria must be met and DEFENDANT has the burden of proving that:
28

- 1 (a) The employee's primary duty must be management of the enterprise, or of a
2 customarily recognized department or subdivision;
- 3 (b) The employee must customarily and regularly direct the work of at least two
4 (2) or more other employees;
- 5 (c) The employee must have the authority to hire and fire, or to command
6 particularly serious attention to his or his recommendations on such actions
7 affecting other employees; and,
- 8 (d) The employee must be primarily engaged in duties which meet the test of
9 exemption.

10 No member of the COLLECTIVE CLASS was or is an executive because they all fail to
11 meet the requirements of being an "executive" under section 13 of the FLSA and 29 C.F.R.
12 541.100. Moreover, none of the members of the COLLECTIVE CLASS were senior or lead
13 computer programmers who managed the work of two or more other programmers in a
14 customarily recognized department or subdivision of the employer, and whose
15 recommendations as to the hiring, firing, advancement, promotion or other change of status
16 of the other programmers were given particular weight and therefore, they do not qualify for
17 the executive exemption as a computer employees under 29 C.F.R. 541.402.

18 99. For an employee to be exempt as a bona fide "administrator," all of the
19 following criteria must be met and DEFENDANT has the burden of proving that:

- 20 (a) The employee must perform office or non-manual work directly related to
21 management or general business operation of the employer or the employer's
22 customers;
- 23 (b) The employee must customarily and regularly exercise discretion and
24 independent
25 judgment with respect to matters of significance; and,
- 26 (c) The employee must regularly and directly assist a proprietor or an exempt
27 administrator; or,

- 1 (d) The employee must perform under only general supervision, work requiring
2 special training, experience, or knowledge; and,
3 (e) The employee must be primarily engaged in duties which meet the test of
4 exemption.

5 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to
6 meet the requirements of for being an “administrator” under section 13(a) of the FLSA and
7 29 C.F.R. 541.300. Moreover, their primary duty does not include work such as planning,
8 scheduling, and coordinating activities required to develop systems to solve complex
9 business, scientific or engineering problems of the employer or the employer's customers
10 and therefore, they are not qualified for the administrative exemption as computer
11 employees under 29 C.F.R. 541.402.

12 100. For an employee to be “exempt” as a bona fide “professional”, the
13 DEFENDANT has the burden of proving that the primary duty of the employee is the
14 performance of work that:

- 15 (a) Requires knowledge of an advanced type in a field of science or learning
16 customarily acquired by a prolonged course of specialized intellectual
17 instruction; or
18 (b) Requires invention, imagination, originality or talent in a recognized field of
19 artistic or creative endeavor.

20 No member of the COLLECTIVE CLASS was or is a professional because they all fail to
21 meet the requirements of being an “professional” within the meaning of 29 CFR 541.300.

22 101. For an employee to be “exempt” as a computer software employee,
23 DEFENDANT has the burden of showing that the primary duty of the employee consists of:

- 24 (a) The application of systems analysis techniques and procedures, including
25 consulting with users, to determine hardware, software or system functional
26 specifications;
27 (b) The design, development, documentation, analysis, creation, testing or
28

1 modification of computer systems or programs, including prototypes, based on
2 and related to user or system design specifications;

3 (c) The design, documentation, testing, creation or modification of computer
4 programs related to machine operating systems; or

5 (d) A combination of the aforementioned duties, the performance of which
6 requires the same level of skills.

7 The “primary duty” of the PLAINTIFFS, and the other members of the COLLECTIVE
8 CLASS, as defined in 29 C.F.R. 541.700, did not consist of the job functions outlined
9 above. Rather, the primary duty of the PLAINTIFFS, and the other members of the
10 COLLECTIVE CLASS, consists of configuring, installing, and troubleshooting computer
11 applications, networks, and hardware and related equipment. Although the primary duty
12 was highly dependent on and facilitated by the use of computers and computer software
13 programs, the primary duty did not involve:

14 (1) the determination of hardware, software, or system functional specifications;

15 (2) the design, development, documentation, analysis, creation, testing, or
16 modification of computer systems or programs; or

17 (3) a combination of these duties, the performance of which requiring the same
18 level of skills.

19 PLAINTIFFS primarily engaged in trouble shooting and service functions by providing
20 repairs and/or basic support for the Apple networks. Further, PLAINTIFFS and their teams
21 operated under intense scrutiny from management performing the upgrades of hardware and
22 software, limited modifications of hardware and software, troubleshooting, and other non-
23 exempt functions that constituted their primary duties. Thus, no member of the
24 COLLECTIVE CLASS was or is exempt as a computer systems analyst, computer
25 programmer, or software engineer because they all fail to meet the requirements of being a
26 “professional” within the meaning of 29 U.S.C. § 213 and 29 C.F.R. 541.400.

27 102. During the COLLECTIVE CLASS PERIOD, the PLAINTIFFS, and
28

1 other members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work
2 week and were also required to perform duties that were primarily for the benefit of the
3 employer during meal periods.

4 103. At all relevant times, DEFENDANT failed to pay PLAINTIFFS, and
5 other members of the COLLECTIVE CLASS, overtime compensation for the hours they
6 have worked in excess of the maximum hours permissible by law as required by section 207
7 of the FLSA, even though PLAINTIFFS, and the other members of the COLLECTIVE
8 CLASS, were regularly required to work, and did in fact work, overtime hours.

9 104. At all relevant times, DEFENDANT failed to pay PLAINTIFFS, and
10 other members of the COLLECTIVE CLASS, regular compensation for the hours they have
11 worked, performing duties primarily for the benefit of the employer during meal periods.

12 105. For purposes of the Fair Labor Standards Act, the employment practices
13 of DEFENDANT were and are uniform throughout the United States in all respects material
14 to the claims asserted in this Complaint.

15 106. There are no other exemptions applicable to PLAINTIFFS and/or to members
16 of the COLLECTIVE CLASS.

17 107. As a result of DEFENDANT's failure to pay overtime and failure to pay
18 regular compensation for hours worked during meal periods, as required by the FLSA,
19 PLAINTIFFS and the members of the COLLECTIVE CLASS were damaged in an amount
20 to be proved at trial.

21 108. PLAINTIFFS, therefore, demands that he and the members of the
22 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every
23 hour of overtime worked in any work week for which they were not compensated, regular
24 compensation for every hour worked primarily for the benefit of Apple for which they were
25 not compensated, plus interest and attorneys' fees as provided by law.

26
27
28

1 **SEVENTH CAUSE OF ACTION**

2 **Labor Code Private Attorneys General Act**

3 **[Cal. Labor Code § 2698]**

4 **(By PLAINTIFFS and the CALIFORNIA CLASS and against All Defendants)**

5 109. PLAINTIFFS, and the other members of the CALIFORNIA CLASS,
6 reallege and incorporate by this reference, as though fully set forth herein, paragraphs 1
7 through 108 of this Complaint. This cause of action is brought on behalf of PLAINTIFFS
8 and the CALIFORNIA CLASS.

9 110. On August 8, 2008, PLAINTIFFS gave written notice by certified mail to
10 the Labor and Workforce Development Agency (the "LWDA") and the employer of the
11 specific provisions of this code alleged to have been violated as required by Labor Code §
12 2699.3.

13 111. California Labor Code § 2699.3 provides:

14 The agency shall notify the employer and the aggrieved employee or
15 representative by certified mail that it does not intend to investigate the
16 alleged violation within 30 calendar days of the postmark date of the notice
17 received pursuant to paragraph (1). Upon receipt of that notice or if no notice
18 is provided within 33 calendar days of the postmark date of the notice given
19 pursuant to paragraph (1), the aggrieved employee may commence a civil
20 action pursuant to Section 2699.

21 111. No notice from the LWDA was received within 33 calendar days of the
22 postmark date of the written notice provided by PLAINTIFFS to the LWDA, and therefore,
23 PLAINTIFFS now commence a civil action pursuant to Section 2699.

24 111. The policies, acts and practices heretofore described were and are an unlawful
25 business act or practice because DEFENDANTS' failure to pay wages, failure to provide
26 rest and meal period breaks, failure to pay wages and compensation for work without rest
27 and meal period breaks and failure to provide accurate wage statements and maintain
28

1 accurate time records for PLAINTIFFS and the other members of the CLASS violates
2 applicable Labor Code sections and gives rise to statutory penalties as a result of such
3 conduct. PLAINTIFFS, as aggrieved employees, hereby seek recovery of civil penalties as
4 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves
5 and other current and former employees of DEFENDANT which comprise the CLASS,
6 against whom one or more of the violations of the Labor Code was committed. In addition,
7 PLAINTIFFS, as an aggrieved employee, hereby seeks recovery of civil penalties as
8 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of the State of
9 California and/or the LWDA, to the fullest extent available under the law.

10
11 **PRAYER**

12 WHEREFOR, PLAINTIFFS pray for judgment against DEFENDANT as follows:

- 13 1. On behalf of PLAINTIFFS and the CALIFORNIA CLASS:
- 14 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA
 - 15 CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);
 - 16 B) An order temporarily, preliminarily and permanently enjoining and restraining
 - 17 DEFENDANT from engaging in similar unlawful conduct as set forth herein;
 - 18 C) An order requiring DEFENDANT to provide restitution of all sums unlawfully
 - 19 withheld from compensation due to PLAINTIFFS and the other members of
 - 20 the CALIFORNIA CLASSES; and,
 - 21 D) Disgorgement of DEFENDANT's ill-gotten gains into a fluid fund for
 - 22 restitution of the sums incidental to DEFENDANT's violations due to
 - 23 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.
- 24 2. On behalf of PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS:
- 25 A) That the Court certify the Second, Third, Fourth, and Fifth Causes of Action
 - 26 asserted by the CALIFORNIA LABOR SUBCLASS as a class action pursuant
 - 27 to Fed. R. Civ. Proc. 23(b)(3);
- 28

- 1 B) Compensatory damages, according to proof at trial, including compensatory
2 damages for both regular and overtime compensation due PLAINTIFFS and
3 the other members of the CALIFORNIA LABOR SUBCLASS, during the
4 applicable CALIFORNIA CLASS PERIODS plus interest thereon at the
5 statutory rate;
- 6 C) One (1) hour of premium pay for each workday in which a rest period was not
7 provided to PLAINTIFFS and each member of the CALIFORNIA LABOR
8 SUBCLASS for each four (4) hours of work during the period commencing on
9 the date that is within four years prior to the filing of this Complaint;
- 10 D) One hour of premium pay for each day in which a meal period was not
11 provided to PLAINTIFFS and each member of the CALIFORNIA LABOR
12 SUBCLASS as required by law;
- 13 E) The wages of PLAINTIFFS and all terminated employee from the
14 CALIFORNIA LABOR SUBCLASS as a penalty from the due date thereof at
15 the same rate until paid or until an action therefor is commenced, for violation
16 of Cal. Lab. Code § 203;
- 17 F) The greater of all actual damages or fifty dollars (\$50) for the initial pay
18 period in which a violation occurs and one hundred dollars (\$100) per each
19 member of the CALIFORNIA LABOR SUBCLASS for each violation in a
20 subsequent pay period, not exceeding an aggregate penalty of four thousand
21 dollars (\$4,000) for violation of Cal. Lab. Code § 226.

22 3. On behalf of PLAINTIFFS and the COLLECTIVE CLASS:

- 23 A) That the Court certify the Sixth Cause of Action asserted by the
24 COLLECTIVE CLASS as an opt-in class action under 29 U.S.C. § 216(b);
- 25 B) That the Court declare the rights and duties of the parties consistent with the
26 relief sought by PLAINTIFFS;
- 27 C) Issue a declaratory judgment that DEFENDANT's acts, policies, practices and
28

1 procedures complained of herein violated provisions of the Fair Labor
2 Standards Act;

3 D) That DEFENDANT be enjoined from further violations of the Fair Labor
4 Standards Act;

5 E) That the PLAINTIFFS and the members of the COLLECTIVE CLASS
6 recover compensatory, damages and an equal amount of liquidated damages as
7 provided under the law and in 29 U.S.C. § 216(b).

8 4. On all claims:

9 A) An award of interest, including prejudgment interest at the legal rate.

10 B) An award of liquidated damages, statutory damages, including reasonable
11 attorneys' fees and cost of suit, but only to the extent that such reasonable
12 attorneys' fees and costs are recoverable pursuant to Cal. Lab. Code §1194
13 and 29 U.S.C. § 216(b). PLAINTIFFS only request and seek attorneys' fees
14 with respect to the overtime claims alleged herein. Neither this prayer nor any
15 other allegation or prayer in this Complaint is to be construed as a request,
16 under any circumstance, that would result in a request for attorneys' fees or
17 costs available under Cal. Lab. Code § 218.5;

18 C) Such other and further relief as the Court deems just and equitable.
19

20 Dated: December 30, 2008

BLUMENTHAL & NORDREHAUG

21 By: s/Norman B. Blumenthal
22 Norman B. Blumenthal
Attorneys for Plaintiff

23 UNITED EMPLOYEES LAW GROUP
24 Walter Haines, Esq.
65 Pine Ave, #312
25 Long Beach, CA 90802
Telephone: (562) 256-1047
26 Facsimile: (562) 256-1006
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on issues triable to a jury.

Dated: December 30, 2008

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

UNITED EMPLOYEES LAW GROUP
Walter Haines, Esq.
65 Pine Ave, #312
Long Beach, CA 90802
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

K:\D\NBB\Walsh v. Apple\p-SAC-01.wpd