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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

DAVID WALSH, an individual, and DAVID
KALUA, and individual, on behalf of themselves
and all persons similarly situated,

Plaintiffs,

v.

APPLE, INC.,

Defendant.

Case Number C 08-4918 JF (RS)

**ORDER¹ GRANTING IN PART AND
DENYING IN PART MOTIONS TO
STRIKE AND FOR A MORE
DEFINITE STATEMENT**

In this action for violations of the federal Fair Labor Standards Act, the California Labor Code, and California’s Unfair Competition Law (“UCL”), Plaintiffs David Walsh and David Kalua (“Plaintiffs”) allege that Defendant Apple, Inc. (“Defendant”) illegally classified Plaintiffs and other similarly situated individuals as categorically “exempt” from overtime pay, despite significant amounts of overtime labor they performed. By the instant motion, Defendant moves

¹ This disposition is not designated for publication in the official reports.

1 to strike references to certain statutory predicates for the UCL claims, and for a more definite
2 statement with respect to all of the alleged statutory violations. Specifically, as to the UCL
3 claims, Defendant argues that any reference to §§ 203 and 226 of the Labor Code as predicate
4 violations should be stricken because those sections provide for penalties not recoverable
5 through the UCL. Defendant also argues that in setting forth the UCL claims, the complaint
6 improperly refers to large portions of the relevant California codes, rather than identifying
7 specific statutory provisions that serve as the basis for the claims.

8 At oral argument, the parties agreed that references to § 203 should be stricken because
9 that provision contains only penalties for violations of other provisions, as opposed to any
10 independent substantive command. However, the parties also recognized that portions of § 226
11 do contain such independent commands, and that references to that section may stand to the
12 extent that they rely on the statute's substantive provisions and are directed solely at obtaining
13 injunctive relief. The parties' understanding is consistent with the reasoning of *Baas v. Dollar*
14 *Tree Stores, Inc.*, No. C 07-03108 JSW, 2007 WL 2462150, at *5 (N.D. Cal. Aug. 29, 2007),
15 which explained that Labor Code provisions that provide *only* for penalties may not serve as
16 predicates for a UCL claim.² Accordingly, the motion to strike will be granted to the extent set
17 forth above.

18 With respect to the motion for a more definite statement, Plaintiffs argued in their papers
19 that the complaint alleges violations of specific statutory provisions and therefore is adequate.
20 The Court largely agrees. See Second Amended Complaint ¶¶ 14, 23, 28, 33, 35, 44, 54, 61, 63,
21 92-101 (alleging violations of Cal. Labor Code §§ 510, 512, 515, 515.5, 1198, and of the FLSA,
22 29 U.S.C. §§ 201, 207, 213). However, consistent with the tone of civility set by both parties,
23 counsel for Plaintiff volunteered to amend the complaint to ensure that the statutory bases for
24

25 ² There is no dispute that *penalties* may not be recovered through a UCL claim. See, e.g.,
26 *Korea Supply Co. v. Lockheed Martin Corp.*, 29 Cal. 4th 1134, 1144 (2003); *Kasky v. Nike, Inc.*,
27 27 Cal. 4th 939, 950 (2002); *Cel-Tech Commc'ns, Inc. v. Los Angeles Cellular Tel. Co.*, 20 Cal.
28 4th 163, 179 (1999); see also *Tomlinson v. Indymac Bank*, 359 F. Supp. 2d 891, 895 (C.D. Cal.
2005).

1 the UCL claim are clear. Accordingly, pursuant to the parties' stipulation, the motion for a more
2 definite statement will be granted. Plaintiff shall file an amended complaint within thirty (30)
3 days of the date of this order.

4 **IT IS SO ORDERED.**

5
6 DATED: 3/16/09

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8 
9 JEREMY FOGEL
United States District Judge

1 This Order has been served electronically upon the following persons:

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