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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

THIRD 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  
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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  
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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  
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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,  
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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  
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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 (7<sup>th</sup>) 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  
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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.

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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,  
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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,  
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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  
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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 restitute 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  
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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  
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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),  
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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  
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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  
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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.

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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 (7<sup>th</sup>) 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  
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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  
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- 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
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1 than eight (8) hours and/or a workweek longer than forty (40) hours,  
2 and also for all hours worked on the seventh (7<sup>th</sup>) 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  
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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  
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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  
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amount of economic losses sustained by the individual CALIFORNIA LABOR SUBCLASS members when compared to the substantial expense and burden of individual prosecution of this litigation;

- 2) Class certification will obviate the need for unduly duplicative litigation that would create the risk of:
  - A. Inconsistent or varying adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS, which would establish incompatible standards of conduct for the DEFENDANT; and/or,
  - B. Adjudications with respect to individual members of the CALIFORNIA LABOR SUBCLASS would as a practical matter be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests;
- 3) In the context of wage litigation because a substantial number of individual class members will avoid asserting their legal rights out of fear of retaliation by DEFENDANT, which may adversely affect an individual’s job with DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their claims through a representative; and,
- 4) A class action is superior to other available methods for the fair and efficient adjudication of this litigation because class treatment will obviate the need for unduly and unnecessary duplicative litigation that is likely to result in the absence of certification of this action pursuant to Fed. R. Civ. Proc. 23(b)(3).

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  
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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.

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

- 11 a. Failing to pay overtime in violation of Cal. Labor Code § 510;
- 12 b. Failing to provide meal and rest periods in violation of Cal. Lab. Code §§  
13 226.7 and 512;
- 14 c. Failing to provide accurate, itemized wage statements in violation of Cal. Lab.  
15 Code § 226;
- 16 d. Failing to properly classify employees in violation of Wage Order 4-2001, and  
17 the identical provisions in Cal. Labor Code 515 and 515.5;
- 18 e. Failing to timely pay wages upon termination of employment in violation of  
19 Cal. Labor Code §§ 201 and 202;
- 20 f. Employment for longer hours than those fixed by the order or under conditions  
21 of labor prohibited by the order in violation of Cal. Labor Code § 1198;
- 22 g. Failing to pay overtime in violation of the Fair Labor Standards Act, 29 U.S.C.  
23 § 201 and 29 U.S.C. § 207; and,
- 24 h. Failing to properly classify employees in violation of 8 C.C.R. § 11040  
25 (2009), 29 U.S.C. § 213, 29 C.F.R. 541.2, 29 C.F.R. 541.3, 29 C.F.R.  
26 541.100, 29 C.F.R. 541.200, 29 C.F.R. 541.300, 29 C.F.R. 541.400, 29 C.F.R.  
27 541.402, and the 1999 and 2006 Opinion Letters of the Department of Labor.

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

8           46. All the acts described herein as violations of, among other things, the  
9 Cal. Lab. Code, California Code of Regulations, and the Industrial Welfare Commission  
10 Wage Orders, are unlawful, are in violation of public policy, are immoral, unethical,  
11 oppressive, and unscrupulous, and are likely to deceive employees, and thereby constitute  
12 deceptive, unfair and unlawful business practices in violation of Cal. Bus. and Prof. Code §  
13 17200 *et seq.*

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

19           48. PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have no  
20 plain, speedy, and/or adequate remedy at law that will end the unfair and unlawful business  
21 practices of DEFENDANT. Further, the practices herein alleged presently continue to occur  
22 unabated. As a result of the unfair and unlawful business practices described above,  
23 PLAINTIFFS, and the other members of the CALIFORNIA CLASS, have suffered and will  
24 continue to suffer irreparable harm unless DEFENDANT is restrained from continuing to  
25 engage in these unfair and unlawful business practices. In addition, DEFENDANT should  
26 be required to disgorge their ill gotten gains into a fluid fund and to make restitution to  
27 PLAINTIFFS, and the other members of the CALIFORNIA CLASS.

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**SECOND CAUSE OF ACTION**

**For Failure To Pay Overtime Compensation**

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

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

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

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

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

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

53. Cal. Lab. Code § 1194 states:

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

54. Cal. Lab. Code § 1198 provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions



1 of labor for employees. The employment of any employee for longer hours  
2 than those fixed by the order or under conditions of labor prohibited by the  
3 order is unlawful.

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

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

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

17 (1) For any initial violation, fifty dollars (\$50) for each underpaid  
18 employee for each pay period for which the employee was underpaid in  
19 addition to an amount sufficient to recover underpaid wages.

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

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

25 (b) If upon inspection or investigation the Labor Commissioner determines  
26 that a person had paid or caused to be paid a wage for overtime work in  
27 violation of any provision of this chapter, or any provision regulating hours  
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1 and days of work in any order of the Industrial Welfare Commission, the  
2 Labor Commissioner may issue a citation. The procedures for issuing,  
3 contesting, and enforcing judgments for citations or civil penalties issued by  
4 the Labor Commissioner for a violation of this chapter shall be the same as  
5 those set out in Section 1197.1.

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

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

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

- 17 (a) The employee’s primary duty must be management of the enterprise, or of a  
18 customarily recognized department or subdivision; and,  
19 (b) The employee must customarily and regularly direct the work of at least two  
20 (2) or more other employees; and,  
21 (c) The employee must have the authority to hire and fire, or to command  
22 particularly serious attention to his or his recommendations on such actions  
23 affecting other employees; and,  
24 (d) The employee must customarily and regularly exercise discretion and  
25 independent judgment; and,  
26 (e) The employee must be primarily engaged in duties which meet the test of  
27 exemption.  
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1 No member of the CALIFORNIA LABOR SUBCLASS was or is an executive because  
2 they all fail to meet the requirements of being an “executive” within the meaning of Order  
3 No. 4-2001.

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

- 6 (a) The employee must perform office or non-manual work directly related to  
7 management policies or general business operation of the employer; and,
- 8 (b) The employee must customarily and regularly exercise discretion and  
9 independent judgment; and,
- 10 (c) The employee must regularly and directly assist a proprietor or an exempt  
11 administrator; or,
- 12 (d) The employee must perform, under only general supervision, work requiring  
13 special training, experience, or knowledge, or,
- 14 (e) The employee must execute special assignments and tasks under only general  
15 supervision; and,
- 16 (f) The employee must be primarily engaged in duties which meet the test of  
17 exemption.

18 No member of the CALIFORNIA LABOR SUBCLASS was or is an administrator because  
19 they all fail to meet the requirements for being an “administrator” under Order No. 4-2001.

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

- 25 (a) The employee is primarily engaged in an occupation commonly recognized as  
26 a learned or artistic profession. For the purposes of this subsection, “learned  
27 or artistic profession” means an employee who is primarily engaged in the  
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1 performance of:

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

17 (b) The employee must customarily and regularly exercise discretion and  
18 independent judgment; and.

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

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

27 (a) The employee must primarily perform work which is intellectual or creative  
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1 and that requires the exercise of discretion and independent judgment; and,

2 (b) The employee is primarily engaged in duties which consist of one or more of  
3 the following:

- 4 1) the application of systems analysis techniques and procedures,  
5 including consulting with users, to determine hardware, software, or  
6 system functional specifications;
- 7 2) the design, development, documentation, analysis, creation, testing or  
8 modification of computer systems or programs, including prototypes,  
9 based on and related to user or system design specifications;
- 10 3) the documentation, testing, creation or modification of computer  
11 programs related to the design of the software or hardware for  
12 computer operating systems; and,

13 (c) The employee must be highly skilled and proficient in the theoretical and  
14 practical application of highly specialized information to computer systems  
15 analysis, programming and software engineering. A job title shall not be  
16 determinative of the applicability of this exemption; and,

17 (d) The employee's hourly rate of pay is not less than forty-one dollars (\$ 41.00),  
18 or the annualized full-time salary equivalent of that rate, provided that all  
19 other requirements of this section are met and that in each workweek the  
20 employee receives not less than forty-one dollars (\$ 41.00) per hour worked.  
21 This is the rate which is adjusted by the DLSR on October 1 of each year to be  
22 effective on January 1 of the following year by an amount equal to the  
23 percentage increase in the California Consumer Price Index for Urban Wage  
24 Earners and Clerical Workers.

- 25 1) The adjusted rates for each year of the CALIFORNIA LABOR  
26 SUBCLASS are as follows: In 2002, the rate was \$42.64. In  
27 2003, the rate was \$43.58. In 2004, the rate was \$44.63. In 2005, the  
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1 rate was \$45.84. In 2006, the rate was \$47.81. In 2007, the rate is  
2 \$49.77. Currently, in 2008, the rate is \$36.00. No member of the  
3 CALIFORNIA CLASS was or is an exempt “Computer Software  
4 Employee” because they all fail to meet the requirements of Order No.  
5 4-2001.

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

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

- 11 (a) They did not work as executives or administrators; and,
- 12 (b) The professional exemption articulated in Wage Order 4-2001, section  
13 (1)(A)(3)(h) and Labor Code § 515, and the professional exemption articulated  
14 in Cal. Lab. Code § 515.5, does not apply to PLAINTIFFS, nor to the other  
15 members of the CALIFORNIA LABOR SUBCLASS, because they are either  
16 computer software employees paid less than the requisite amount set forth in  
17 Cal. Lab. § 515.5(a)(4) and under subdivision (1)(A)(3)(h)(iv) of Order No. 4-  
18 2001, and/or did not otherwise meet all the applicable requirements to work  
19 under the exemption of computer software employee for the reasons set forth  
20 above in this Complaint.

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

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

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

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

15 66. Therefore, PLAINTIFFS, and the other members of the CALIFORNIA  
16 LABOR SUBCLASS, request recovery of regular and overtime compensation according to  
17 proof, interest, attorney's fees and cost pursuant to Cal. Lab. Code §1194(a), as well as the  
18 assessment of any statutory penalties against DEFENDANT, in a sum as provided by the  
19 Cal. Lab. Code and/or other statutes.

20 67. In performing the acts and practices herein alleged in violation of labor  
21 laws and refusing to provide the requisite regular and overtime compensation, the  
22 DEFENDANT acted and continues to act intentionally, oppressively, and maliciously  
23 toward the PLAINTIFFS, and toward the other members of the CALIFORNIA LABOR  
24 SUBCLASS, with a conscious and utter disregard of their legal rights, or the consequences  
25 to them, and with the despicable intent of depriving them of their property and legal rights  
26 and otherwise causing them injury in order to increase corporate profits at the expense of  
27 PLAINTIFFS and the members of the Class.

1 **THIRD CAUSE OF ACTION**

2 **For Failure to Pay Wages When Due**

3 **[Cal. Lab. Code § 203]**

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

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

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

9 As used in this article:

10 (a) "Wages" includes all amounts for labor performed by employees of every  
11 description, whether the amount is fixed or ascertained by the standard of  
12 time, task, piece, commission basis, or other method of calculation.

13 (b) "Labor" includes labor, work, or service whether rendered or performed  
14 under contract, subcontract, partnership, station plan, or other agreement if the  
15 labor to be paid for is performed personally by the person demanding  
16 payment.

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

18 If an employee not having a written contract for a definite period quits his or  
19 her employment, his or her wages shall become due and payable not later than  
20 72 hours thereafter, unless the employee has given 72 hours previous notice of  
21 his or her intention to quit, in which case the employee is entitled to his or her  
22 wages at the time of quitting. Notwithstanding any other provision of law, an  
23 employee who quits without providing a 72-hour notice shall be entitled to  
24 receive payment by mail if he or she so requests and designates a mailing  
25 address. The date of the mailing shall constitute the date of payment for  
26 purposes of the requirement to provide payment within 72 hours of the notice  
27 of quitting.



1 71. Cal. Lab. Code § 203 provides:

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

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

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

16  
17 **FOURTH CAUSE OF ACTION**

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

19 **[Cal. Lab. Code § 226]**

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

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

25 75. Cal. Labor Code § 226 provides that an employer must furnish employees  
26 with  
27 an “accurate itemized statement in writing showing:  
28

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

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

23 77. DEFENDANT knowingly and intentionally failed to comply with Labor Code  
24 § 226, causing damages to PLAINTIFFS, and the other members of the CALIFORNIA  
25 LABOR SUBCLASS. These damages include, but are not limited to, costs expended  
26 calculating the true hours worked and the amount of employment taxes which were not  
27 properly paid to state and federal tax authorities. These damages are difficult to estimate.

1 Therefore, PLAINTIFFS, and the other members of the CALIFORNIA LABOR  
2 SUBCLASS may recover liquidated damages of \$50.00 for the initial pay period in which  
3 the violation occurred, and \$100.00 for each violation in subsequent pay period pursuant to  
4 Labor Code § 226, in an amount according to proof at the time of trial (but in no event more  
5 than \$4,000.00 for PLAINTIFFS and each respective member of the CALIFORNIA  
6 LABOR SUBCLASS herein) pursuant to Labor Code § 226(g).

7  
8 **FIFTH CAUSE OF ACTION**

9 **For Failure to Provide Meal and/or Rest Periods**

10 **[Cal. Lab. Code §§ 226.7 and 512]**

11 **(By PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS)**

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

15 79. Cal. Lab. Code § 512 provides, in relevant part: “An employer may not  
16 employ an employee for a work period of more than five hours per day without providing  
17 the employee with a meal period of not less than 30 minutes, except that if the total work  
18 period per day of the employee is no more than six hours, the meal period may be waived by  
19 mutual consent of both the employer and employee. An employer may not employ an  
20 employee for a work period of more than 10 hours per day without providing the employee  
21 with a second meal period of not less than 30 minutes, except that if the total hours worked  
22 is no more than 12 hours, the second meal period may be waived by mutual consent of the  
23 employer and the employee only if the first meal period was not waived.”

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

26 Meal Periods:

27 (A) No employer shall employ any person for a work period of more than  
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1 five (5) hours without a meal period of not less than 30 minutes, except  
2 that when a work period of not more than six (6) hours will complete  
3 the day's work the meal period may be waived by mutual consent of the  
4 employer and the employee.

5 (B) An employer may not employ an employee for a work period of more  
6 than ten (10) hours per day without providing the employee with a  
7 second meal period of not less than thirty (30) minutes, except that if  
8 the total hours worked is no more than twelve (12) hours, the second  
9 meal period may be waived by mutual consent of the employer and the  
10 employee only if the first meal period was not waived.

11 (C) Unless the employee is relieved of all duty during a 30 minute meal  
12 period, the meal period shall be considered an "on duty" meal period  
13 and counted as time worked. An "on duty" meal period shall be  
14 permitted only when the nature of the work prevents an employee from  
15 being relieved of all duty and when by written agreement between the  
16 parties an on-the-job paid meal period is agreed to. The written  
17 agreement shall state that the employee may, in writing, revoke the  
18 agreement at any time.

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

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

26 Rest Periods:

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

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

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

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

15 (b) If an employer fails to provide an employee a meal period or rest period in  
16 accordance with an applicable order of the Industrial Welfare Commission, the  
17 employer shall pay the employee one additional hour of pay at the employee's  
18 regular rate of compensation for each work day that the meal or rest period is  
19 not provided.

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

24 84. Therefore, PLAINTIFFS demand on behalf of themselves and the members of  
25 the CALIFORNIA LABOR SUBCLASS, one (1) hour of premium pay for each workday in  
26 which a rest period was not provided as required by law and one (1) hour of premium pay  
27 for each workday in which a meal period was not provided as required by law.  
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**SIXTH CAUSE OF ACTION**

**For Failure to Pay Overtime Compensation**

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

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

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

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

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

- a. Whether DEFENDANT misclassified PLAINTIFFS and members of the COLLECTIVE CLASS as exempt from receiving compensation for all hours worked, including federal overtime compensation;
- b. Whether DEFENDANT failed to adequately compensate the members of the COLLECTIVE CLASS for all hours worked as required by the FLSA, including the time worked through their meal periods;

1 c. Whether DEFENDANT should be enjoined from continuing the practices  
2 which violate the FLSA; and,

3 d. Whether DEFENDANT is liable to the COLLECTIVE CLASS.

4 88. The Sixth cause of action for the violations of the FLSA may be brought and  
5 maintained as an “opt-in” collective action pursuant to Section 16(b) of FLSA, 29 U.S.C.  
6 216(b), for all claims asserted by the representative PLAINTIFFS of the COLLECTIVE  
7 CLASS because the claims of the PLAINTIFFS are similar to the claims of the members of  
8 the prospective COLLECTIVE CLASS.

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

16 90. DEFENDANT is engaged in communication, business, and transmission  
17 between California and other states, and are, therefore, engaged in commerce within the  
18 meaning of 29 U.S.C. § 203(b).

19 91. 29 U.S.C. § 255 provides that a three-year statute of limitations applies to  
20 willful violations of the FLSA.

21 92. 29 U.S.C. § 207(a)(1) provides in pertinent part:

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

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

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

16           94.    Apple has willfully engaged in a widespread pattern and practice of  
17 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
18 employees as “exempt” employees, by their job title and without regard to DEFENDANT’s  
19 realistic expectations and actual overall requirements of the job, including PLAINTIFFS and  
20 the other members of the COLLECTIVE CLASS who worked on the production side of the  
21 DEFENDANT’s business enterprise. This was done in an illegal attempt to avoid payment  
22 of overtime wages and other benefits in violation of the FLSA and Code of Federal  
23 Regulations requirements.

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

3 96. 29 C.F.R. 541.2 establishes that a job title alone is insufficient to establish the  
4 exempt status of an employee. The exempt or nonexempt status of any particular employee  
5 must be determined on the basis of whether the employee's salary and duties meet the  
6 requirements of the regulations in this part.

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

16 98. For an employee to be exempt as a bona fide "executive," all the following  
17 criteria must be met and DEFENDANT has the burden of proving that:

- 18 (a) The employee's primary duty must be management of the enterprise, or of a  
19 customarily recognized department or subdivision;
- 20 (b) The employee must customarily and regularly direct the work of at least two  
21 (2) or more other employees;
- 22 (c) The employee must have the authority to hire and fire, or to command  
23 particularly serious attention to his or his recommendations on such actions  
24 affecting other employees; and,
- 25 (d) The employee must be primarily engaged in duties which meet the test of  
26 exemption.

27 No member of the COLLECTIVE CLASS was or is an executive because they all fail to  
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1 meet the requirements of being an “executive” under section 13 of the FLSA and 29 C.F.R.  
2 541.100. Moreover, none of the members of the COLLECTIVE CLASS were senior or lead  
3 computer programmers who managed the work of two or more other programmers in a  
4 customarily recognized department or subdivision of the employer, and whose  
5 recommendations as to the hiring, firing, advancement, promotion or other change of status  
6 of the other programmers were given particular weight and therefore, they do not qualify for  
7 the executive exemption as a computer employees under 29 C.F.R. 541.402.

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

- 10 (a) The employee must perform office or non-manual work directly related to  
11 management or general business operation of the employer or the employer’s  
12 customers;
- 13 (b) The employee must customarily and regularly exercise discretion and  
14 independent  
15 judgment with respect to matters of significance; and,
- 16 (c) The employee must regularly and directly assist a proprietor or an exempt  
17 administrator; or,
- 18 (d) The employee must perform under only general supervision, work requiring  
19 special training, experience, or knowledge; and,
- 20 (e) The employee must be primarily engaged in duties which meet the test of  
21 exemption.

22 No member of the COLLECTIVE CLASS was or is an administrator because they all fail to  
23 meet the requirements of for being an “administrator” under section 13(a) of the FLSA and  
24 29 C.F.R. 541.300. Moreover, their primary duty does not include work such as planning,  
25 scheduling, and coordinating activities required to develop systems to solve complex  
26 business, scientific or engineering problems of the employer or the employer's customers  
27 and therefore, they are not qualified for the administrative exemption as computer  
28

1 employees under 29 C.F.R. 541.402.

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

- 5 (a) Requires knowledge of an advanced type in a field of science or learning  
6 customarily acquired by a prolonged course of specialized intellectual  
7 instruction; or
- 8 (b) Requires invention, imagination, originality or talent in a recognized field of  
9 artistic or creative endeavor.

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

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

- 14 (a) The application of systems analysis techniques and procedures, including  
15 consulting with users, to determine hardware, software or system functional  
16 specifications;
- 17 (b) The design, development, documentation, analysis, creation, testing or  
18 modification of computer systems or programs, including prototypes, based on  
19 and related to user or system design specifications;
- 20 (c) The design, documentation, testing, creation or modification of computer  
21 programs related to machine operating systems; or
- 22 (d) A combination of the aforementioned duties, the performance of which  
23 requires the same level of skills.

24 The “primary duty” of the PLAINTIFFS, and the other members of the COLLECTIVE  
25 CLASS, as defined in 29 C.F.R. 541.700, did not consist of the job functions outlined  
26 above. Rather, the primary duty of the PLAINTIFFS, and the other members of the  
27 COLLECTIVE CLASS, consists of configuring, installing, and troubleshooting computer  
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1 applications, networks, and hardware and related equipment. Although the primary duty  
2 was highly dependent on and facilitated by the use of computers and computer software  
3 programs, the primary duty did not involve:

- 4 (1) the determination of hardware, software, or system functional specifications;
- 5 (2) the design, development, documentation, analysis, creation, testing, or  
6 modification of computer systems or programs; or
- 7 (3) a combination of these duties, the performance of which requiring the same  
8 level of skills.

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

17 102. During the COLLECTIVE CLASS PERIOD, the PLAINTIFFS, and  
18 other members of the COLLECTIVE CLASS, worked more than forty (40) hours in a work  
19 week and were also required to perform duties that were primarily for the benefit of the  
20 employer during meal periods.

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

26 104. At all relevant times, DEFENDANT failed to pay PLAINTIFFS, and  
27 other members of the COLLECTIVE CLASS, regular compensation for the hours they have  
28

1 worked, performing duties primarily for the benefit of the employer during meal periods.

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

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

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

11 108. PLAINTIFFS, therefore, demands that he and the members of the  
12 COLLECTIVE CLASS be paid overtime compensation as required by the FLSA for every  
13 hour of overtime worked in any work week for which they were not compensated, regular  
14 compensation for every hour worked primarily for the benefit of Apple for which they were  
15 not compensated, plus interest and attorneys’ fees as provided by law.

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18 **SEVENTH CAUSE OF ACTION**

19 **Labor Code Private Attorneys General Act**

20 **[Cal. Labor Code § 2698]**

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

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

26 110. On August 8, 2008, PLAINTIFFS gave written notice by certified mail to  
27 the Labor and Workforce Development Agency (the “LWDA”) and the employer of the  
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1 specific provisions of this code alleged to have been violated as required by Labor Code §  
2 2699.3.

3 111. California Labor Code § 2699.3 provides:

4 The agency shall notify the employer and the aggrieved employee or  
5 representative by certified mail that it does not intend to investigate the  
6 alleged violation within 30 calendar days of the postmark date of the notice  
7 received pursuant to paragraph (1). Upon receipt of that notice or if no notice  
8 is provided within 33 calendar days of the postmark date of the notice given  
9 pursuant to paragraph (1), the aggrieved employee may commence a civil  
10 action pursuant to Section 2699.

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

14 111. The policies, acts and practices heretofore described were and are an unlawful  
15 business act or practice because DEFENDANTS' failure to pay wages, failure to provide  
16 rest and meal period breaks, failure to pay wages and compensation for work without rest  
17 and meal period breaks and failure to provide accurate wage statements and maintain  
18 accurate time records for PLAINTIFFS and the other members of the CLASS violates  
19 applicable Labor Code sections and gives rise to statutory penalties as a result of such  
20 conduct. PLAINTIFFS, as aggrieved employees, hereby seek recovery of civil penalties as  
21 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of themselves  
22 and other current and former employees of DEFENDANT which comprise the CLASS,  
23 against whom one or more of the violations of the Labor Code was committed. In addition,  
24 PLAINTIFFS, as an aggrieved employee, hereby seeks recovery of civil penalties as  
25 prescribed by the Labor Code Private Attorney General Act of 2004 on behalf of the State of  
26 California and/or the LWDA, to the fullest extent available under the law.

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1 **PRAYER**

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

3 1. On behalf of PLAINTIFFS and the CALIFORNIA CLASS:

- 4 A) That the Court certify the First Cause of Action asserted by the CALIFORNIA  
5 CLASS as a class action pursuant to Fed. R. Civ. Proc. 23(b)(2) and/or (3);  
6 B) An order temporarily, preliminarily and permanently enjoining and restraining  
7 DEFENDANT from engaging in similar unlawful conduct as set forth herein;  
8 C) An order requiring DEFENDANT to provide restitution of all sums unlawfully  
9 withheld from compensation due to PLAINTIFFS and the other members of  
10 the CALIFORNIA CLASSES; and,  
11 D) Disgorgement of DEFENDANT’s ill-gotten gains into a fluid fund for  
12 restitution of the sums incidental to DEFENDANT’s violations due to  
13 PLAINTIFFS and to the other members of the CALIFORNIA CLASS.

14 2. On behalf of PLAINTIFFS and the CALIFORNIA LABOR SUBCLASS:

- 15 A) That the Court certify the Second, Third, Fourth, and Fifth Causes of Action  
16 asserted by the CALIFORNIA LABOR SUBCLASS as a class action pursuant  
17 to Fed. R. Civ. Proc. 23(b)(3);  
18 B) Compensatory damages, according to proof at trial, including compensatory  
19 damages for both regular and overtime compensation due PLAINTIFFS and  
20 the other members of the CALIFORNIA LABOR SUBCLASS, during the  
21 applicable CALIFORNIA CLASS PERIODS plus interest thereon at the  
22 statutory rate;  
23 C) One (1) hour of premium pay for each workday in which a rest period was not  
24 provided to PLAINTIFFS and each member of the CALIFORNIA LABOR  
25 SUBCLASS for each four (4) hours of work during the period commencing on  
26 the date that is within four years prior to the filing of this Complaint;  
27 D) One hour of premium pay for each day in which a meal period was not  
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1 provided to PLAINTIFFS and each member of the CALIFORNIA LABOR  
2 SUBCLASS as required by law;

3 E) The wages of PLAINTIFFS and all terminated employee from the  
4 CALIFORNIA LABOR SUBCLASS as a penalty from the due date thereof at  
5 the same rate until paid or until an action therefor is commenced, for violation  
6 of Cal. Lab. Code § 203;

7 F) The greater of all actual damages or fifty dollars (\$50) for the initial pay  
8 period in which a violation occurs and one hundred dollars (\$100) per each  
9 member of the CALIFORNIA LABOR SUBCLASS for each violation in a  
10 subsequent pay period, not exceeding an aggregate penalty of four thousand  
11 dollars (\$4,000) for violation of Cal. Lab. Code § 226.

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

13 A) That the Court certify the Sixth Cause of Action asserted by the  
14 COLLECTIVE CLASS as an opt-in class action under 29 U.S.C. § 216(b);

15 B) That the Court declare the rights and duties of the parties consistent with the  
16 relief sought by PLAINTIFFS;

17 C) Issue a declaratory judgment that DEFENDANT's acts, policies, practices and  
18 procedures complained of herein violated provisions of the Fair Labor  
19 Standards Act;

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

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

25 4. On all claims:

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

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

8 C) Such other and further relief as the Court deems just and equitable.  
9

10 Dated: May 1, 2009

BLUMENTHAL & NORDREHAUG

11 By: s/Norman B. Blumenthal  
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**DEMAND FOR JURY TRIAL**

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

Dated: May 1, 2009

BLUMENTHAL & NORDREHAUG

By: s/Norman B. Blumenthal  
Norman B. Blumenthal  
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