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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

DAVID WALSH, an individual, on behalf of
 himself, and on behalf of all persons similarly
 situated,
 Plaintiff,
 v.
 APPLE INC.; and DOES 1-10,
 Defendants.

CASE NO. C 08-04918 JF
**DEFENDANT APPLE INC.'S
 ANSWER TO THIRD AMENDED
 CLASS ACTION COMPLAINT**

1 Defendant Apple Inc. (“Apple”) hereby answers Plaintiffs’ Third Amended Complaint
2 (the “Complaint”) as follows:

3 Defendant denies each an every allegation contained in the Complaint except those
4 expressly admitted below and except for legal conclusions, to which no response is required:

5 1. Apple admits the allegation in paragraph 1 that Apple is a California
6 corporation with headquarters located in the Silicon Valley in Cupertino, California.

7 2. Apple admits the allegation in paragraph 1 that functions related to
8 engineering, marketing, sales, legal, and human resources are performed at Apple’s headquarters.

9 3. Apple admits the allegation in paragraph 1 that Apple has an office located
10 in Elk Grove, California.

11 4. Apple admits the allegation in paragraph 2 that Apple conducted and
12 continues to conduct substantial and regular business throughout California during the relevant
13 time period.¹

14 5. Apple admits the allegation in paragraph 3 that Apple is engaged in the
15 design, manufacture, and marketing of personal computers, portable digital music players, and
16 mobile communications devices.

17 6. Apple admits the allegation in paragraph 3 that Apple’s products are sold
18 worldwide via Apple’s online store and retail stores, as well as through third-party wholesalers
19 and resellers.

20 7. Apple admits the allegation in paragraph 3 that Apple sells a variety of
21 third-party Macintosh, iPod and iPhone compatible products, including application software,
22 printers, storage devices, speakers, headphones, and various other accessories and peripherals on
23 Apple’s online store and in Apple’s retail stores.

24 8. Apple admits the allegation in paragraph 4 that Apple employs employees
25 within the Global Network and Computing Services Group (“GNCS”) and the Information
26 Systems & Technology Group (“IS&T”).

27 _____
28 ¹ As used herein, the term “relevant time period” refers to the alleged class period, namely four years prior to the
filing of the Complaint. *See* Third Amended Complaint, ¶ 17.

1 9. Apple admits the allegation in paragraph 4 that some employees in GNCS
2 and IS&T provided service to Apple’s information technology systems during the relevant time
3 period.

4 10. Apple admits the allegation in paragraph 4 that some employees in GNCS
5 and IS&T held job titles of Systems Engineers, Network Engineers and Information Systems
6 Analyst during the relevant time period.

7 11. Apple admits the allegation in paragraph 4 that some employees in GNCS
8 and IS&T engaged in the installation, configuration, implementation, maintenance,
9 troubleshooting, technical support, or upgrades of Apple’s information technology systems during
10 the relevant time period.

11 12. Apple admits the allegation in paragraph 4 that technical problems arose
12 with Apple’s information technology systems at various times during the relevant time period.

13 13. Apple admits the allegation in paragraph 4 that in some instances during
14 the relevant time period, tickets were generated and sent to some employees in GNCS and IS&T
15 who diagnosed and resolved issues related to Apple’s information technology systems.

16 14. Apple admits the allegation in paragraph 5 that plaintiff David Walsh was
17 employed by Apple in the State of California from April 1995 to November 2007 and that at least
18 some of this time was spent working in GNCS and IS&T.

19 15. Apple admits the allegation in paragraph 5 that plaintiff David Kalua was
20 employed by Apple in the State of California from August 2000 to January 2008 in GNCS and
21 IS&T.

22 16. Apple admits the allegation in paragraph 6 that plaintiff Kalua held the job
23 title of Information Systems Analyst and was classified as exempt upon his initial hire with
24 Apple.

25 17. Apple admits the allegation in paragraph 6 that some employees in GNCS
26 and IS&T performed work for Apple in home offices, data centers or retail stores, in some
27 instances, during the relevant time period.

28 18. Apple admits the allegation in paragraph 7 that some employees in GNCS

1 and IS&T were “on-call” in some instances during the relevant time period.

2 19. Apple admits the allegation in paragraph 8 that Apple did not require
3 exempt employees in GNCS and IS&T to record hours worked during the relevant time period
4 because such employees were properly classified as exempt.

5 20. Apple admits the allegation in paragraph 10 that some employees in GNCS
6 and IS&T stood, sat, walked, bent, and lifted or moved technology equipment of various weights
7 in some instances in the course of their employment during the relevant time period.

8 21. Apple admits the allegation in paragraph 11 that in some instances during
9 the relevant time period, changes to Apple’s network equipment were performed after hours to
10 avoid disruption to Apple’s business.

11 22. Apple admits the allegation in paragraph 11 that some changes to network
12 equipment were effectuated and some technical support calls came in outside of regular business
13 hours.

14 23. Apple admits the allegation in paragraph 27 that Apple maintains records
15 reflecting the job titles of its employees in GNCS and IS&T during the relevant time.

16 24. Apple admits the allegation in paragraph 39 that this court has federal
17 question jurisdiction and supplemental jurisdiction over Plaintiffs’ claims in the Complaint.

18 25. Apple admits the allegation in paragraph 40 that venue is proper in this
19 court.

20 26. Apple admits the allegation in paragraph 40 that it has taken the position
21 that venue is proper in this district.

22 27. Apple admits the allegation in paragraph 72 that some employees in GNCS
23 and IS&T in California holding job titles of Systems Engineers, Data Center Systems Engineers,
24 WAN Network / Voice Engineers, Network Engineers, Retail Engineers, or Information Systems
25 Analyst terminated their employment during the relevant time period.

26 28. Apple lacks information or belief as to the allegation in paragraph 97
27 regarding whether Plaintiffs hold bachelor’s degrees.

28 29. Apple lacks information or belief as to the allegation in paragraph 110

1 regarding whether Plaintiffs sent written notice by certified mail to the Labor and Workforce
2 Development Agency of the provisions of the Labor Code that Apple allegedly violated.

3 30. Apple admits the allegation in paragraph 110 that Plaintiffs sent written
4 notice by certified mail to Apple of the provisions of the Labor Code that Apple allegedly
5 violated.

6 31. Apple lacks information and belief as to the allegation in paragraph 111
7 regarding whether Plaintiffs received notice from the Labor and Workforce Development Agency
8 within 33 calendar days of the postmark date of the written notice allegedly provided by Plaintiffs
9 to the Labor and Workforce Development Agency.

10 **AFFIRMATIVE DEFENSES**

11 Apple asserts the following affirmative defenses to the Complaint:

12 **FIRST DEFENSE**

13 **(Failure to State a Claim)**

14 1. As a separate defense to the Complaint and each claim therein, Apple
15 alleges that the Complaint, and each purported claim set forth therein, fails to state a claim upon
16 which relief may be granted.

17 **SECOND DEFENSE**

18 **(No Causation)**

19 2. As a separate defense to the Complaint and each claim therein, no conduct
20 by or attributable to Apple was the cause in fact or legal cause of the damages, if any, suffered by
21 Plaintiffs and the proposed class.

22 **THIRD DEFENSE**

23 **(Negligence)**

24 3. As a separate defense to the Complaint and each claim therein, should it be
25 determined that Plaintiffs and the proposed class have been damaged, said damages were
26 proximately caused by their own conduct.

27 **FOURTH DEFENSE**

28 **(Failure To Perform Duties)**

1 compensatory, consequential or liquidated damages, or any other damages, costs or fees allowed
2 by California and/or federal law, as applicable.

3 **TWENTY-SECOND DEFENSE**

4 **(Adequate Remedy)**

5 22. As a separate defense to the Complaint and each claim therein, Plaintiffs
6 and the proposed class members are not entitled to equitable relief because Plaintiffs and the
7 proposed class members have failed to avail themselves of or exhaust plain, adequate, or
8 complete remedies of laws available to Plaintiffs and the proposed class under the provisions of
9 applicable state or federal law.

10 **TWENTY-THIRD DEFENSE**

11 **(Private Attorney General Act)**

12 23. As a separate defense to the Complaint and all claims for penalties under
13 the Labor Code Private Attorney General Act, administrative remedies may not have been
14 exhausted.

15 **TWENTY-FOURTH DEFENSE**

16 **(Unconstitutional)**

17 24. As a separate defense to the Complaint and each claim therein,
18 adjudication of Plaintiffs' claims on a class wide basis would violate Apple's right to due process
19 and a jury trial and is barred by the Rules Enabling Act.

20 **TWENTY-FIFTH DEFENSE**

21 **(Failure to Abide by Opt-In Requirement)**

22 25. As a separate defense to the Complaint and each claim therein, the
23 proposed Fair Labor Standards collective class cannot be represented in this action to the extent
24 members of the putative class have failed to abide by the "opt-in" requirements of 29 U.S.C. §
25 216(b).

26 **TWENTY-SIXTH DEFENSE**

27 **(Non-Compensable Time Under Portal-to-Portal Act)**

28 26. As a separate defense to the Complaint and each claim therein, some or all

1 of the disputed time is not compensable pursuant to the Portal-to-Portal Act of 1947.

2 **TWENTY-SEVENTH DEFENSE**

3 **(Timely Demand for Wages Payable)**

4 27. As a separate defense to the Complaint and each claim therein, Plaintiffs
5 and/or the proposed class have failed to timely make a demand in writing for wages due and
6 payable.

7 **TWENTY-EIGHTH DEFENSE**

8 **(No Liquidated Damages)**

9 28. As a separate defense to the Complaint and each claim therein, Plaintiffs
10 and/or the proposed class may not recover liquidated damages because (1) Apple and all of its
11 officers, directors, managers or agents acted at all times in good faith and did not commit any
12 willful violation of the Fair Labor Standards Act or any California laws; (2) Apple (including its
13 officers, directors, managers or agents) did not authorize or ratify any such willful violation; and
14 (3) Plaintiffs have failed to state facts sufficient to support an award of such damages against
15 Apple.

16 **TWENTY-NINTH DEFENSE**

17 **(No Recovery of Amounts Due and Paid)**

18 29. As a separate defense to the Complaint and each claim therein, Plaintiffs
19 and/or the proposed class are precluded from recovering any amounts from Apple where Apple
20 has paid all sums legally due under the Fair Labor Standards Act and applicable state law.

21 **THIRTIETH DEFENSE**

22 **(Consent to Pay System)**

23 30. As a separate defense to the Complaint and each claim therein, the claims
24 of Plaintiffs and/or the proposed class are barred in whole or in part because Plaintiffs and/or the
25 proposed class consented to the pay system that is the subject of the Complaint.

26 **THIRTY-FIRST DEFENSE**

27 **(Right to Assert Further Defenses)**

28 31. Apple has insufficient knowledge or information on which to form a belief

1 as to whether it has any additional, as yet unstated, defenses available. Apple reserves the right to
2 assert additional affirmative defenses.

3 **PRAYER FOR RELIEF**

4 Apple prays that the Court grant the following relief:

- 5 1. That the Complaint be dismissed with prejudice and that Plaintiffs take
6 nothing thereby;
- 7 2. That the purported classes not be certified;
- 8 3. That judgment be entered in favor of Apple on all claims;
- 9 4. That Apple be awarded its attorneys' fees and costs of suit; and
- 10 4. For such other and further relief as this Court may deem proper.

11 Dated: May 18, 2009

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13 JOSEPH C. LIBURT
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/s/
Joseph C. Liburt
Attorneys for Apple
APPLE INC.