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8 Attorneys for Defendant  
 APPLE INC.

10 UNITED STATES DISTRICT COURT  
 11 SOUTHERN DISTRICT OF CALIFORNIA

13 DAVID WALSH, an individual, on behalf of  
 himself, and on behalf of all persons similarly  
 14 situated,

15 Plaintiff,

16 v.

17 APPLE INC.; and DOES 1-10,

18 Defendants.

CASE NO. 08 CV 1410 JM POR

**DEFENDANT APPLE INC'S NOTICE  
 OF MOTIONS AND MOTIONS TO  
 STRIKE AND FOR A MORE  
 DEFINITE STATEMENT**

Date: November 14, 2008  
 Time: 1:30 p.m.  
 Dept.: 16  
 Judge: Hon. Jeffrey T. Miller

1 TO PLAINTIFF DAVID WALSH AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on November 14, 2008, at 1:30 p.m., or as soon thereafter  
3 as the matter may be heard before the Honorable Jeffrey T. Miller, Courtroom 16 on the Fifth  
4 Floor of the above Court, at 880 Front Street, San Diego, California, Defendant Apple Inc.  
5 (“Apple”) will and hereby does move the Court, pursuant to Fed. R. Civ. P. 12(f), for an order  
6 striking the class definition and all class allegations in the First Amended Class and Collective  
7 Action Complaint on the ground that the proposed class definition is imprecise, vague, and  
8 ambiguous; striking any references and attempts to incorporate California Labor Code sections  
9 203 and 226 into Plaintiff’s first claim under Business and Professions Code Section 17200 on  
10 the ground that Labor Code sections 203 and 226 are penalties and thus cannot be recovered  
11 under Section 17200; striking all references to “Doe” defendants on the ground that such  
12 references are improper; and striking Plaintiff’s Prayer for Relief as to his requests for an  
13 accounting and imposition of a constructive trust on the ground that Plaintiff has no basis for such  
14 requests. Apple will also and hereby does move the Court, pursuant to Fed. R. Civ. P. 12(e), for  
15 an order directing Plaintiff to file a more definite statement of his class definition on the ground  
16 that the proposed class definition is imprecise, vague, and ambiguous, and is insufficient to show  
17 the requisite ascertainable class.

18 The motions are based on this Notice, the accompanying Memorandum of Points and  
19 Authorities, pleadings and papers on file in this action, any matter of which the Court may or  
20 must take judicial notice, any documentary evidence or oral argument given at the hearing on the  
21 motion, and any other matter which the Court deems appropriate.

22 Dated: September 23, 2008

LYNNE C. HERMLE  
JOSEPH C. LIBURT  
JESSICA R. PERRY  
SITTHIKIT CHARİYASATIT  
ORRICK, HERRINGTON & SUTCLIFFE LLP

26 \_\_\_\_\_  
27 /s/ Jessica R. Perry  
28 Jessica R. Perry  
Attorneys for Defendant  
APPLE INC.

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**DECLARATION OF ELECTRONIC SERVICE**

I, Tina McBride, am a citizen of the United States, more than eighteen years old and not a party to this action. My business address and place of employment is Orrick, Herrington & Sutcliffe LLP, 1000 Marsh Road, Menlo Park, California 94025.

I hereby certify that, on September 23, 2008, I have taken steps to cause the following documents:

- DEFENDANT APPLE INC.'S NOTICE OF MOTIONS AND MOTIONS TO STRIKE AND FOR A MORE DEFINITE STATEMENT**
- MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT APPLE INC.'S MOTIONS TO STRIKE AND FOR A MORE DEFINITE STATEMENT**

when filed through the Electronic Case Filing ("ECF") system, to be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF"), including the following:

Norman B Blumenthal  
norm@bamlawlj.com

The NEF shows no non-registered participants.  
Executed on September 23, 2008, in Menlo Park, California.

I declare under penalty of perjury under the laws of the State of California and of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
/s/ Tina McBride  
Tina McBride