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8 Attorneys for Defendant
APPLE INC.

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

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.
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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

23 LYNNE C. HERMLE
24 JOSEPH C. LIBURT
25 JESSICA R. PERRY
26 SITTHIKIT CHARITYASATIT
27 ORRICK, HERRINGTON & SUTCLIFFE LLP

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/s/ Jessica R. Perry
Jessica R. Perry
Attorneys for Defendant
APPLE INC.

[illegible]

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

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

Norman B Blumenthal
norm@bamlawlj.com

Executed on September 23, 2008, in Menlo Park, California.

/s/ Tina McBride
Tina McBride