

1:11 CV-852

**EXHIBIT 1 – APPENDIX IN SUPPORT OF DEFENDANT’S
NOTICE OF REMOVAL**

In support of the Notice of Removal, Defendant Apple Inc., provides the attached documentation filed of record with the state court:

<u>Attachment</u>	<u>Description</u>	<u>Dated Filed</u>
A	List of All Counsel of Record	
B	Certified Copies of all State Process and Court Pleadings	August 25, 2011
C	Copy of Defendant’s Answer to Plaintiff’s Original Petition filed in State Court	September 21, 2011

EXHIBIT 1-A

LIST OF ALL COUNSEL OF RECORD

Counsel for Plaintiff Rodney Maestas

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EXHIBIT 1-B

CITATION
THE STATE OF TEXAS
CAUSE NO. D-1-GN-11-002588

ORIGINAL

RODNEY MAESTAS

vs.
APPLE INC

TO: APPLE INC
BY SERVING ITS REGISTERED AGENT, CT CORPORATION SYSTEM
350 N. ST. PAUL STREET
DALLAS, TEXAS 75201

Filed in The District Court
of Travis County, Texas
SEP 09 2011 LL
At 12:45 PM.
Amalia Rodriguez-Mendoza, Clerk

Defendant, in the above styled and numbered cause:

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A.M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Attached is a copy of the PLAINTIFF'S ORIGINAL PETITION of the PLAINTIFF in the above styled and numbered cause, which was filed on AUGUST 25, 2011 in the 353RD JUDICIAL DISTRICT COURT of Travis County, Austin, Texas.

ISSUED AND GIVEN UNDER MY HAND AND SEAL of said Court at office, August 26, 2011.

REQUESTED BY:
WYLIE EMMETT KUMLER
2705 BEE CAVE ROAD, SUITE 220
AUSTIN, TX 78746
BUSINESS PHONE: (512) 330-0017
FAX: (512) 330-0067

AMALIA RODRIGUEZ-MENDOZA
Travis County District Clerk
Travis County Courthouse
1900 Guadalupe, P.O. Box 679003 (78767)
Austin, Texas 78701



[Signature]
GARZA STEPHANIE, Deputy

--- RETURN ---
Came to hand on the 30 day of August, 2011 at 2:15 o'clock P M., and executed at
_____ within the County of _____ on the
_____ day of _____, _____, at _____ o'clock _____ M., by delivering to the within named

_____, each in person, a true copy of this citation together with the PLAINTIFF'S ORIGINAL PETITION AND NOTICE OF FILING OF NEW EFILE MANDATE ORDER accompanying pleading, having first attached such copy of such citation to such copy of pleading and endorsed on such copy of citation the date of delivery.

Service Fee: \$ 64.00

Sheriff / Constable / Authorized Person

Sworn to and subscribed before me this the

By: **RETURN ATTACHED**
Printed Name of Server

_____ day of _____, _____.

Notary Public, THE STATE OF TEXAS

County, Texas

D-1-GN-11-002588

SERVICE FEE NOT PAID

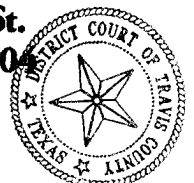
DRLS

D01 - 57373

Original

Service Copy

516 West Annie St.
Austin, Texas 78704
4576



002180682

ORIGINAL

RETURN


CAUSE No. D-1-GN-11-002588

Came to hand on the 30th day of August, 2011, at 2:15 o'clock p.m..

- Citation
- Plaintiff's Original Petition
- Travis County E-File Mandate Order
- Lawyer Referral Service Sheet

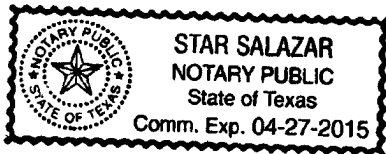
Executed at 350 N. St. Paul Street, #2900, Dallas, Tx. 75201, within the County of Dallas, on the 6th day of September, 2011, at 10:07 o'clock a.m., by delivering to the within named, Apple, Inc., by delivering to its Registered Agent, CT Corporation System, via U.S.P.S. Certified Mail, return receipt requested, a true copy of the above specified civil process, having first endorsed thereupon the date mailed. I am over eighteen (18) years of age and not a party to or interested in the outcome of the above numbered cause of action. I am authorized to serve citations and other notices in this cause by Texas Supreme Court Order #SCH1660. (return receipt attached)

Tod E. Pendergrass
 Printed Name of Process Server


 Signature of Authorized Process Server
 DRLS, 516 W. Annie, Austin, Tx. 78704
 4576

VERIFICATION
 STATE OF TEXAS, COUNTY OF TRAVIS

Before me, a notary public, on this day personally appeared the above named person, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements/facts therein contained are within his/her personal knowledge to be true and correct. Given under my hand and seal of office on the 8th day of September, 2011.



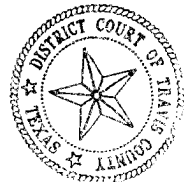
Star Salazar
 NOTARY PUBLIC in and for the State of TEXAS

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input type="checkbox"/> Agent <input checked="" type="checkbox"/> Addressee</p> <p>B. Registered by (Printed Name) <u>Robert Pina</u> C. Date of Delivery <u>SEP 06 2011</u></p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>
<p>1. Article Addressed to:</p> <p>C.T. Corporation System 350 N. St Paul Street, #2900 Dallas, Tx. 75201</p>	<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> G.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>

7007 0710 0000 0723 9108



Filed Date	Category	Description	Additional Info
9/9/2011	SRVPROCES...	EXE SERVICE OF CITATION	APPLE INC



CAUSE NO. _____

RODNEY MAESTAS,

Plaintiff,

v.

APPLE INC.,

Defendant.

§
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§

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

TRAVIS COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff RODNEY MAESTAS ("Maestas" or "Plaintiff"), and files this Original Petition complaining of Defendant APPLE INC. ("Apple" or "Defendant"), and for causes of action would show the Court the following:

I. DISCOVERY

1.1 Plaintiff intends to conduct discovery under Rule 190.3 (Level 2) of the Texas Rules of Civil Procedure.

II. PARTIES

- 2.1 Plaintiff is an individual residing in Travis County, Texas.
- 2.2 Defendant is an entity that may be served through its registered agent: C T Corporation System, 350 N. St. Paul Street, Suite 2900, Dallas, Texas 75201-4234.

III. JURISDICTION, VENUE AND CONDITION PRECEDENT

- 3.1 The amount in controversy exceeds the jurisdictional minimum amount in controversy for this Court.
- 3.2 Pursuant to *Texas Civil Practice and Remedies Code* §15.002, venue is proper in Travis



County, Texas, as it is the county in which all or a substantial part of the events or omissions giving rise to these claims occurred.

3.3 All conditions precedent have been performed or have occurred.

IV. FACTS

4.1 Apple is a developer, manufacturer, and retailer of computer hardware and software products, as well as mobile devices.

4.2 Maestas started working for Defendant in 1999 as part of the Company's U.S. Education Sales Department, Inside Sales Organization, which is based in Austin. Up until the later part of 2009, Plaintiff had been working as an Account Executive ("AE") within the Inside Sales Organization. Inside AEs are partnered with Field AEs, and are responsible for connecting with customers and developing sales of Apple products in the K through 12 education market. Plaintiff's direct supervisor was Elaine Candelas, Inside Regional Sales Manager.

4.3 Maestas was a valued employee of Apple for over eleven (11) years. During his employment with Defendant, Plaintiff received numerous awards in recognition of his outstanding sales performance. During his entire employment with Defendant, Plaintiff's sales performance consistently met or exceeded the quarterly revenue targets established by Defendant. In 2008 and 2009 alone, Plaintiff was responsible for helping produce \$42,652,149 in sales revenues for Defendant. Throughout his career with Defendant, Plaintiff consistently received an overall performance rating of "Solid Contributor" in his annual performance reviews. Customers enjoyed working with Plaintiff and he was recognized as having an excellent relationship with his field AEs.

4.4 On or about February 3, 2009, Defendant notified Plaintiff that his sales performance needed improvement. However, Plaintiff's sales performance exceeded the revenue target for



the first-quarter of 2009. In May of 2009, Defendant once again notified Plaintiff that his work performance needed improvement. Again, Plaintiff's sales performance exceeded the revenue target for the second-quarter of 2009. In fact, Plaintiff's sales performance for the second-quarter of 2009 was 115.81% of the revenue target. In August of 2009, despite his outstanding sales performance, Defendant again complained about Plaintiff's work performance. Again, Plaintiff's sales performance exceeded the sales performance exceeded the revenue target for the third-quarter revenue of 2009. By the end of 2009, Plaintiff had met or exceeded all of the quarterly revenue targets. Further, Plaintiff was responsible for helping produce \$17,298,178 in sales revenues for Defendant. Regardless, Defendant continued to unjustifiably criticize Plaintiff's performance and he was placed on a Documented Coaching Plan. Shortly thereafter, Plaintiff went to Human Resources and complained that he was being discriminated against.

4.5 Despite his outstanding sales performance in 2009, Defendant informed Plaintiff that his job title would change from AE to Area Sales Representative ("ASR"). As an ASR, Plaintiff's job responsibilities changed from sales to administrative duties and he was no longer be eligible to receive the same level of commissions he received as an AE. Defendant informed Plaintiff that despite the title change and new duties, he would remain on a performance plan. On or about April 20, 2010, Defendant terminated Plaintiff.

4.6 Plaintiff alleges that during is employment with Defendant, his direct supervisor made discriminatory comments regarding his age. Further, Plaintiff alleges that Defendant unjustifiably criticized his work performance despite his long record of proven success. Plaintiff alleges that Defendant placed him on unwarranted performance plans designed to justify his unlawful termination.



V. CAUSES OF ACTION

5.1 The allegations contained in Paragraphs 4.1 through 4.6 inclusive are hereby incorporated by inference for all causes of action.

A. TCHRA

5.2 The conduct of Defendant towards Plaintiff, through its agents, employees, managers, and supervisors, as set forth above, among other activities, constitutes age discrimination, in direct violation of the Texas Commission on Human Rights Act ("TCHRA").

5.3 The TCHRA prohibits an employer from discharging or in any other way discriminating against an employee because of the employee's race, color, disability, religion, sex, national origin, or age. TEX. LAB. CODE § 21.051.

5.4 Specifically, section 21.051 of the labor code provides that "an employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer: (1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or (2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee." *Id.* Further, "an employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency aids, abets, incites or coerces a person to engage in a discriminatory practice." TEX. LAB. CODE § 21.056. Additionally, the TCHRA also prohibits employers from retaliating or discriminating against an employee who engages in certain protected activities under chapter 21 of the labor code. TEX. LAB. CODE § 21.055.



5.5 Plaintiff is a member of a protected class and was selected for unfavorable treatment by Defendant, including his termination, because of his age. There is no legitimate non-discriminatory reason for Defendant's actions, and if such a reason is propounded, it is a pretext. Plaintiff's age was a determining or motivating factor in Defendant's decision to terminate Plaintiff's employment and otherwise discriminate against him. Unlawful discrimination moved Defendants toward its decision or was a factor that played a part in Defendant's employment decisions as to Plaintiff. The unlawful practices committed by Defendants were and are a direct cause of Plaintiff's damages, as more fully set forth below.

5.6 Further, Defendants retaliated against Plaintiff for making a discrimination complaint and otherwise opposing discrimination by the employer. *See* TEX. LAB. CODE § 21.055. Plaintiff made a discrimination complaint and opposed a discriminatory practice by Defendant, suffered adverse employment actions as a result in that Defendant terminated Plaintiff's employment and otherwise discriminated against him, and there is a causal connection between the making of the discrimination complaint and opposition to the discriminatory practice and the adverse employment actions. The unlawful practices committed by Defendant are a direct cause of Plaintiff's damages, as more fully set forth below.

B. ADEA

5.7 Furthermore, the conduct of Defendant towards Plaintiff, through its agents, employees, managers, and supervisors, as set forth above, among other activities, constitutes age discrimination, in direct violation of the Age Discrimination in Employment Act ("ADEA").

5.8 Under the ADEA, it is unlawful for an employer "to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation,



terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1).

5.9 Plaintiff is a member of a protected class and was selected for unfavorable treatment by Defendant, including his termination, because of his age. There is no legitimate non-discriminatory reason for Defendant's actions, and if such a reason is propounded, it is a pretext. Plaintiff's age was a determining or motivating factor in Defendant's decision to terminate Plaintiff's employment and otherwise discriminate against him. Unlawful discrimination moved Defendant toward its decision or was a factor that played a part in Defendant's employment decisions as to Plaintiff. The unlawful practices committed by Defendant are a direct cause of Plaintiff's damages, as more fully set forth below.

5.10 Defendant retaliated against Plaintiff for making a discrimination complaint and otherwise opposing discrimination by the employer. *See* TEX. LAB. CODE § 21.055. Plaintiff made a discrimination complaint and opposed a discriminatory practice by Defendants, suffered adverse employment actions as a result in that Defendants terminated Plaintiff's employment and otherwise discriminated against him, and there is a causal connection between the making of the discrimination complaint and opposition to the discriminatory practice and the adverse employment actions. The unlawful practices committed by Defendant were and are a direct cause of Plaintiff's damages, as more fully set forth below.

VI. DAMAGES

6.1 As a result of Defendant's unlawful conduct, Plaintiff has suffered economic and actual damages, including past and future lost income, back wages or back pay, interest on back pay and front pay, future wages or front pay, lost earnings in the past and future, lost benefits under



the contract or employment relationship, all consequential damages resulting from the breach of contract, employment benefits in the past, and employment benefits in the future.

VII. COMPENSATORY DAMAGES

7.1 Defendant has intentionally engaged in an unlawful employment practice by discriminating against Plaintiff because of his age. Plaintiff additionally brings suit for compensatory damages, including emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, job search expenses, lost earning capacity in the past and future, and other pecuniary and non-pecuniary losses.

VIII. ATTORNEY AND EXPERT FEES

8.1 A prevailing party may recover reasonable attorney and expert fees. *See* TEX. LAB. CODE § 21.259. Plaintiff brings suit for these fees from Defendant. Plaintiff seeks all reasonable expert fees and attorney fees in this case, including preparation and trial of this lawsuit, post-trial, pre-appeal work, any appeal to the Texas Court of Appeals, making or responding to an application for writ of error to the Texas Supreme Court, an appeal to the Texas Supreme Court if an application for writ of error is granted, and post-judgment discovery and collection in the event execution on the judgment is necessary.

IX. PUNITIVE DAMAGES

9.1 Defendant has acted with malice or reckless indifference to Plaintiff's rights. Defendant, by engaging in the aforementioned acts and/or in authorizing and/or ratifying the aforementioned acts, engaged in willful, malicious, intentional, and oppressive conduct and acted with willful and conscious disregard, or alternatively reckless disregard or indifference of the rights, welfare, and safety of Plaintiff, therefore justifying the award of punitive and exemplary damages in an



amount to be determined at trial. Therefore, Plaintiff additionally brings suit for punitive damages and exemplary damages.

X. JURY DEMAND

10.1 Plaintiff hereby demands a trial by jury of all the issues and facts in this case.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear and answer herein, and, upon final trial, Plaintiff have Judgment against Defendant, as requested above, and as follows:

1. Judgment against Defendant for all damages alleged in this petition;
2. Interest before and after judgment at the highest rate provided by law, until paid;
3. Costs of suit;
4. Reasonable and necessary attorney fees and expert witness fees;
5. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,

MELTON & KUMLER, L.L.P.
2705 Bee Cave Road, Suite 220
Austin, TX 78746
(512) 330-0017 Telephone
(512) 330-0067 Facsimile



Wylie E. Kumler
State Bar No. 24050896

ATTORNEYS FOR PLAINTIFF



I, AMALIA RODRIGUEZ MENDOZA, District Clerk of Travis County, Texas, do hereby certify that this is a true and correct copy as same appears of record in my office. Witness my hand and seal of office on

9-20-11

AMALIA RODRIGUEZ-MENDOZA

DISTRICT CLERK

By Deputy



Joshua [Signature]

EXHIBIT 1-C

NO. D-1-GN-11-002588

RODNEY MAESTAS,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	353 RD JUDICIAL DISTRICT
	§	
APPLE INC.,	§	
	§	
DEFENDANT.	§	TRAVIS COUNTY, TEXAS

DEFENDANT’S ANSWER TO PLAINTIFF’S ORIGINAL PETITION

Defendant Apple Inc. (“Defendant”) files its Answer to Plaintiff’s Original Petition.

I.
GENERAL DENIAL

Defendant asserts a general denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests the Court to require Plaintiff to prove each of his claims, charges, and allegations by a preponderance of the evidence or clear and convincing evidence as required by the Constitution and the laws of the State of Texas. Defendant respectfully requests that it be allowed to plead further and additional defenses in this cause as the facts surrounding this matter are developed.

II.
SPECIAL EXCEPTIONS

Defendant specially excepts to Plaintiff’s Original Petition under TEX. R. CIV. P. 47 because it asserts a claim for unliquidated damages. Defendant moves this Court to require that Plaintiff’s claim for unliquidated damages specify the maximum amount of damages sought so that Defendant has fair notice of the damages being sought against it and the ability to properly prepare its defenses. *Cruz v. Morris*, 877 S.W.2d 45, 47-48 (Tex. App.—Houston [14th Dist.] 1994, no writ). Defendant moves the Court to sustain this special exception and order Plaintiff to

replead and cure his pleading defects, and that, if Plaintiff fails or refuses to amend, to dismiss this action.

III.
AFFIRMATIVE AND OTHER DEFENSES

Without waiving the foregoing general denial, Defendant asserts the following affirmative and other defenses, and reserves the right to assert additional defenses that may become apparent during the defense of this case.

FIRST DEFENSE

Defendant alternatively pleads that Plaintiff has failed to state, in whole or in part, a claim upon which relief may be granted.

SECOND DEFENSE

Defendant alternatively pleads that Plaintiff's claims are barred, in whole or in part, by the applicable statutes of limitation.

THIRD DEFENSE

Defendant alternatively pleads that Plaintiff has failed to exhaust administrative remedies.

FOURTH DEFENSE

Defendant alternatively pleads that Plaintiff was an at-will employee, as that term is defined under the common law of Texas, and he could be terminated at any time for any reason, not specifically prohibited by state or federal law, with or without cause.

FIFTH DEFENSE

Defendant alternatively pleads that any actions taken concerning Plaintiff were done for legitimate, non-discriminatory business reasons.

SIXTH DEFENSE

Defendant alternatively pleads that Plaintiff has failed to mitigate his alleged damages, in whole or in part, and Defendant is entitled to an offset to the extent of any mitigation by Plaintiff.

SEVENTH DEFENSE

Defendant alternatively pleads that Plaintiff's damages, if any, are limited by the specific limitations on damages contained in 29 U.S.C. § 216, Texas Labor Code sect. 21.2585, and all other statutory limitations on damages.

EIGHTH DEFENSE

Defendant alternatively pleads, upon information and belief, that Plaintiff's alleged damages are limited by the doctrine of after-acquired evidence.

NINTH DEFENSE

Defendant alternatively pleads that the employment actions about which Plaintiff complains were taken for reasons other than Plaintiff's age or any other alleged protected status held by Plaintiff.

TENTH DEFENSE

Defendant alternatively pleads, without waiver of Plaintiff's burden to prove that his termination was motivated by an impermissible factor, assuming *arguendo* that an impermissible factor was a motivating factor for any employment practice, that Defendant would have taken the same action regardless of Plaintiff's protected status.

ELEVENTH DEFENSE

Defendant alternatively pleads that any actions that may have been taken by its agents in violation of federal or state law were taken contrary to Defendant's policies and good faith efforts to comply with the law.

TWELFTH DEFENSE

Defendant alternatively pleads that all actions taken against Plaintiff were taken in good faith.

THIRTEENTH DEFENSE

Defendant alternatively pleads that Plaintiff has failed to allege facts sufficient to state a claim for punitive or liquidated damages.

FOURTEENTH DEFENSE

Defendant alternatively pleads that Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

FIFTEENTH DEFENSE

Defendant alternatively pleads that Plaintiff lacks standing to bring all or some of the claims alleged in the Complaint.

IV.
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff take nothing herein and that Defendant have judgment for its costs and for such further relief, at law or in equity, to which it may be justly entitled.

Dated: September 21, 2011

Respectfully submitted,

/s/ Suzanne M. Potter-Padilla

Kim Rives Miers

State Bar No. 24041482

kmiers@littler.com (E-Mail)

LITTLER MENDELSON, P.C.

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Suzanne M. Potter-Padilla

State Bar No. 24056158

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LITTLER MENDELSON, P.C.

1301 McKinney Street, Suite 1900

Houston, Texas 77010

713.951.9400 (Telephone)

713.951.9212 (Facsimile)

ATTORNEYS FOR DEFENDANT

APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to counsel of record by certified mail, return receipt requested, on this the 21st day of September 2011, addressed as follows:

Wylie E. Kumlar
MELTON & KUMLER, L.L.P.
2705 Bee Cave Road, Suite 220
Austin, Texas 78746

ATTORNEY FOR PLAINTIFF

/s/ Suzanne M. Potter-Padilla
Suzanne M. Potter-Padilla