1 Daniel M. Hutchinson (SBN 239458)
   LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
2 275 Battery Street, 29th Floor
   San Francisco, CA 94111-3339
3 Telephone: 415.956.1000
   Facsimile: 415.956.1008
4 dhutchinson@lchb.com

5 Rachel Geman (*pro hac vice motion forthcoming*)
   Jessica Moldovan (*pro hac vice motion forthcoming*)
6 LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
   250 Hudson Street, 8th Floor
7 New York, NY 10013-1413
   Telephone: 212.355.9500
8 Facsimile: 212.355.9592
   rgeman@lchb.com
9 jmoldovan@lchb.com

10 Charles J. Stiegler, (SBN 245973)
    STIEGLER LAW FIRM LLC
11 318 Harrison Ave., Suite 104
    New Orleans, LA 70124
12 Telephone: 504.267.0777
    Facsimile: 504.513.3084
13 Charles@StieglerLawFirm.com

14 Robert B. Landry III (*pro hac vice motion forthcoming*)
    ROBERT B. LANDRY III, PLC
15 5420 Corporate Boulevard, Suite 204
    Baton Rouge, LA 70808
16 Telephone: 225.349.7460
    Facsimile: 225.349.7466
17 rlandry@landryfirm.com

18 *Counsel for Plaintiff and the Proposed FLSA Collective*

19   UNITED STATES DISTRICT COURT

20   NORTHERN DISTRICT OF CALIFORNIA

21   SAN JOSE DIVISION

22

23 ANTHONY P. FOREMAN, individually,   Case No. 5:22-cv-03902
    and on behalf of all persons similarly
    situated.   **COLLECTIVE ACTION COMPLAINT
24   Plaintiff,   AND JURY TRIAL DEMAND**
           vs.
25
    APPLE, INC.
26
                            Defendant.
27

28

1   Plaintiff Anthony P. Foreman ("Foreman" or "Plaintiff"), individually and on behalf of all

2 others similarly situated, brings this action against Apple, Inc. ("Apple" or "Defendant") and

3 alleges as follows:

4   **INTRODUCTION**

5   1.   This is a collective action to recover overtime wages owed under federal law

6 brought by Foreman, on behalf of all similarly situated former and current employees of Apple,

7 who worked as a Solutions Consultant within the past three years (hereinafter referred to as

8 "Plaintiffs" or the "FLSA Collective Plaintiffs").

9   2.   For at least the past three years, Apple has failed to include all statutorily required

10 forms of compensation—including commissions earned by Solutions Consultants—in

11 determining the regular rate for purposes of calculating overtime pay.

12   3.   In addition, Apple has failed to pay Solutions Consultants for all hours worked.

13 Specifically, Apple has engaged in an unlawful pattern or practice of denying earned overtime to

14 its Solutions Consultant by requiring them to begin their workday at home via online

15 videoconferences, to clock out after these videoconferences were complete, and to then travel to

16 their work site location, i.e., next job assignment, without being paid for their time in transit.

17   4.   These practices violate the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et*

18 *seq.,* and its implementing regulations.

19   5.   On behalf of himself and the FLSA Collective, Plaintiff seeks actual and liquidated

20 damages, including but not limited to damages for willful violations of the FLSA, as well as fees

21 and costs, for Apple's violations of the FLSA.

22   **JURISDICTION AND VENUE**

23   6.   The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 (federal

24 question), 28 U.S.C. § 1337 (actions arising under Acts of Congress regulating commerce) and 29

25 U.S.C. § 216(b) (the FLSA).

26   7.   The United States District Court for the Northern District of California has

27 personal jurisdiction over Defendant because Defendant has its principal place of business in this

28 District and does business in California and in this District.

8.   Venue is proper in this Court because Defendant has its principal place of business in Santa Clara County and a substantial part of the events or omissions giving rise to the claims asserted herein occurred in this judicial district. *See* 28 U.S.C. § 1391(b).

9.   Plaintiff hereby demands trial by jury.

PARTIES

10.   Foreman is an individual of the full age of majority, domiciled in Livingston Parish, Louisiana. He began working for Defendant in 2014 and resigned his employment in February 2022.

11.   Foreman's consent to file this Complaint is evidenced by his signature on the FLSA Consent Form attached as an exhibit hereto.

12.   Named a defendant herein is Apple, a California corporation with its principal place of business in Cupertino, California. Based on information and belief, Defendant employs Solutions Consultants throughout the United States.

FACTUAL ALLEGATIONS

Background

13.   Foreman worked for Apple as a "Solutions Consultant" in Baton Rouge, Louisiana. Solutions Consultants promote the sales of Apple solutions and products in the Apple section of retail store locations. During the times relevant to this lawsuit, Foreman's work location was in a Best Buy retail store in Baton Rouge, where he worked as a liaison between Apple and Best Buy (or Best Buy customers).

14.   At all material times, Foreman and the other FLSA Collective Plaintiffs were "engaged in commerce" within the meaning of § 6 and § 7 of the FLSA, and subject to the individual coverage of the FLSA.

15.   At all material times, the FLSA Collective Plaintiffs were the "employees" of Apple within the meaning of the FLSA.

16.   At all material times, Defendant was and is an "enterprise engaged in commerce" within the meaning of the FLSA.

17.   Defendant's annual sales made or business done was in excess of $500,000 during all years relevant to this action.

18.   Foreman and the other FLSA Collective Plaintiffs were paid on an hourly basis.

19.   Foreman and the other FLSA Collective Plaintiffs regularly work forty or more hours per week.   However, they were not paid overtime for all hours worked over forty in a workweek and, when paid overtime, they were not paid at the correct rate.

__Overtime Violation – Regular Rate__

20.   Defendant did not properly calculate Plaintiffs' regular rate for purposes of determining overtime pay for Solutions Consultants, thereby dramatically underpaying them for overtime worked.

21.   Foreman and the FLSA Collective Plaintiffs were paid on an hourly basis.

22.   Foreman and the FLSA Collective Plaintiffs were also separately paid commissions.

23.   In calculating Foreman's and Plaintiffs' regular rate for purposes of determining overtime pay, however, Defendant did not incorporate commission payments. As a result, the overtime rate was only one and one-half times Plaintiffs' hourly rate—not the combination of Plaintiffs' hourly rate and commission payments. The overtime rate was therefore lower than it should have been.

__Overtime Violation – Travel Time__

24.   Defendant also did not compensate Plaintiff and the other FLSA Collective Plaintiffs for time they spent in transit between mandatory work activities.

25.   Two or three times a week, Plaintiff's manager scheduled a videoconference work meeting with Foreman and the other Solutions Consultants in his Region (the Region included parts of Texas, Louisiana, and stretched into Florida). These work meetings took place early in the morning, and the Solutions Consultants attended the meeting while at home.

26.   These work meetings constituted an integral and indispensable part of Defendant's business, as the Solutions Consultants discussed new technologies and received mandatory instructions and required job information from their supervisors and the Regional Manager.

27.   The time spent on these work meetings, at which attendance was mandatory, was more than *de minimis*.

28.   Apple instructed Plaintiff (and all FLSA Collective Plaintiffs) to clock in for these meetings, which generally lasted about an hour. However, when the meeting ended, Apple instructed Plaintiff and the other FLSA Collective Plaintiffs to clock out before they immediately travelled on site to continue their workdays. Only upon arrival at their work sites were Plaintiff and the other FLSA Collective Plaintiffs told to clock back in.

29.   This policy or practice was temporarily suspended during the coronavirus shutdown, due to work-from-home policies in effect at the time. However, in 2021, when the work-from-home policies ended, Defendant once again returned to the same practice of requiring Solutions Consultants to clock out after the videoconference work meetings and clock back in only upon arrival at their work sites, thereby not accounting for the time spent in transit.

COLLECTIVE ACTION ALLEGATIONS

30.   Plaintiff re-alleges and incorporates by reference all allegations in all preceding paragraphs.

31.   Foreman brings this case as a collective action under the FLSA to recover unpaid overtime compensation, liquidated damages, statutory penalties, attorney's fees and costs, and all other damages owed to him and all similarly situated employees of Defendant. The Collective is defined as:

> All hourly paid employees of Apple Inc., holding the job title of
> Solutions Consultant, who worked within the three years prior to the
> date of filing of this Complaint.

32.   There are numerous members of the FLSA Collective who have been affected by Defendant's improper policies and practices as alleged herein.

33.   The precise number of FLSA Collective Plaintiffs can be readily identified and located using Defendant's timesheets, payroll, and personnel records. Given the composition and size of the FLSA Collective Plaintiffs, potential opt-in class members may be informed of the pendency of this Collective Action by direct mail, text message, and email.

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