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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ANTHONY P. FOREMAN, individually,
and on behalf of all persons similarly
situated.

Plaintiff,

vs.

APPLE, INC.

Defendant.

Case No. 5:22-cv-03902

**COLLECTIVE ACTION COMPLAINT
AND JURY TRIAL DEMAND**

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.

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

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

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

7 **Overtime Violation – Regular Rate**

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

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

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

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

19 **Overtime Violation – Travel Time**

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

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

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

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

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

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

13 **COLLECTIVE ACTION ALLEGATIONS**

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

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

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

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

24 33. The precise number of FLSA Collective Plaintiffs can be readily identified and
25 located using Defendant's timesheets, payroll, and personnel records. Given the composition and
26 size of the FLSA Collective Plaintiffs, potential opt-in class members may be informed of the
27 pendency of this Collective Action by direct mail, text message, and email.
28

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