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6 Attorneys for Plaintiffs

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **FOR THE COUNTY OF SAN DIEGO—CENTRAL**

9 BRANDON FELCZER, individually,)
10 RYAN GOLDMAN, individually,)
11 RAMSEY HAWKINS, individually, and)
12 JOSEPH LANE CARCO, on behalf of)
themselves and all others similarly)
situated,)

13)
14) Plaintiffs,)

15 vs.)

16 APPLE INC., a California corporation;)
17 and DOES 1 through 300, inclusive.)

18) Defendants.)
19)
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21)
22)
23)
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28)

CASE NO.: 37-2011-00102593-CU-OE-CTL

**FOURTH AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES**

1. Violation of California Labor Code §§ 226.7, 512 – Failure to Provide Meal Periods;
2. Violation of California Labor Code §226.7 – Failure to Provide Rest Periods;
3. Violation of Labor Code §§201-203 – Failure to Pay all Wages Due Upon Ending of Employment;
4. California Labor Code §226 and §§1174-1175 – Failure to Provide Accurate Itemized Employee Wage Statements;
5. Violation of Business and Professions Code §§17200 et seq. – Unfair Business Practices; and
6. Violation of Labor Code §2698, et seq. – Private Attorney General Act.

DEMAND FOR JURY TRIAL

1 Plaintiffs Brandon Felczer, Ryan Goldman, Ramsey Hawkins, and Joseph Lane Carco on
2 behalf themselves and all others similarly situated, and demanding trial by jury, complain and
3 allege upon information and belief as follows:

4 **INTRODUCTION**

5 1. This is a class action brought by plaintiffs Brandon Felczer ("Felczer"), Ryan
6 Goldman ("Goldman"), Ramsey Hawkins ("Hawkins"), and Joseph Lane Carco ("Carco")
7 (collectively, "Plaintiffs"), on behalf of themselves and all others similarly situated (collectively
8 hereinafter referred to as "Plaintiff Class" or "Plaintiff Subclass Nos. 1 - 3"), who have sustained
9 injuries or damages arising out of the defendant's deliberate violations of the wage and hour laws
10 of the State of California by, *inter alia*, Apple Inc.'s ("Defendant" or "Apple") failure to properly
11 compensate employees, including, but not limited to, compensation for missed meal and rest
12 periods, for its failure to furnish accurate itemized wage statements, and for not paying upon
13 ending employment.

14 2. Plaintiffs petition this Court to allow them to represent and prosecute claims
15 against Defendant in class action proceedings on behalf of all those similarly situated who are
16 residents of the State of California.

17 18 **JURISDICTION AND VENUE**

19 3. This class action is brought pursuant to California Code of Civil Procedure section
20 382. The monetary damages and restitution sought by Plaintiffs exceed the minimal jurisdictional
21 limits of the Superior Court.

22 4. This Court has jurisdiction over this action pursuant to the California Constitution,
23 Article VI, section 10, which grants the Superior Court, "Original jurisdiction in all causes except
24 those given by statute to other courts." The statutes which this action is brought do not specify
25 any other basis for jurisdiction.

26 5. This Court has jurisdiction over Defendant because upon information and belief,
27 each party is either a citizen of California, has sufficient minimum contacts in California, or
28 otherwise intentionally avails itself of the California market so as to render the exercise of

1 jurisdiction over it by the California courts consistent with traditional notions of fair play and
2 substantial justice.

3 6. Venue as to each defendant is proper in this judicial district pursuant to California
4 Code of Civil Procedure sections 395(a) and 395.5 as a portion of the acts complained of herein
5 occurred in the County of San Diego. The injuries to Plaintiffs and several others in the Plaintiff
6 Class occurred in the County of San Diego. Each defendant either owns, maintains offices,
7 transacts business, has an agent or agents within the County of San Diego or otherwise is found
8 within the County of San Diego. Plaintiff Felczer was employed by Defendant in the County of
9 San Diego.

10 THE PARTIES

11
12 7. Plaintiffs Felczer, Goldman, Hawkins, and Carco are individuals and residents of
13 the State of California. Plaintiffs Felczer, Goldman, Hawkins, and Carco at all relevant times have
14 been non-exempt employees of Apple.

15 8. Apple is a California corporation, with its principal place of business in California.
16 It employs approximately 18,000 non-exempt employees who reside in the State of California.

17 9. The true names and capacities, whether individual, corporate, partnership, associate
18 or otherwise of defendant DOES 1 through 300, inclusive, are unknown to Plaintiffs who therefore
19 sue Defendant by such fictitious names pursuant to California Code of Civil Procedure section
20 474. Plaintiffs will either seek leave to amend this Fourth Amended Class Action Complaint or
21 file a DOE statement to allege the true names and capacities of DOES 1 through 300, inclusive,
22 when they are ascertained. Apple and DOES 1 through 300 may collectively be referred to as
23 "Defendants."

24 10. Plaintiffs are informed and believe, and based upon that information and belief
25 allege, that each of the defendants named in this Fourth Amended Class Action Complaint,
26 including DOES 1 through 300, are responsible in some manner for one or more of the events that
27 proximately caused the injuries and damages hereinafter alleged.

28 11. Plaintiffs are informed and believe, and based upon that information and belief

1 allege, that each defendant named in this Fourth Amended Class Action Complaint, including
2 DOES 1 through 300, inclusive, knowingly and willfully acted in concert, conspired and agreed
3 together among themselves and entered into a combination and systemized campaign of activity to
4 *inter alia* damage Plaintiffs, the Plaintiff Class (defined below), and the Plaintiff Subclasses
5 (defined below), and to otherwise consciously and/or recklessly act in derogation of the Plaintiff
6 Class' rights and the trust reposed by the Plaintiff Class in each of said Defendants, said acts being
7 negligently and/or intentionally inflicted. Said conspiracy, and Defendants' concerted actions,
8 were such that, to Plaintiff Class' information and belief, and to all appearances, Defendants, and
9 each of them, represented a unified body so that the actions of one defendant was accomplished in
10 concert with, and with knowledge, ratification, authorization and approval of each of the other
11 defendants.

12 12. Plaintiffs are informed and believe, and based upon that information and belief
13 allege, that each of the defendants named in this Fourth Amended Class Action Complaint,
14 including DOES 1 through 300, inclusive, are, and at all times mentioned herein were, the agent,
15 servant, alter ego, and/or employee of each of the other defendants and that each defendant was
16 acting within the course of scope of his, her, or its authority as the agent, servant and/or employee
17 of each of the other defendants. Consequently, all of the defendants are jointly and severally liable
18 to Plaintiffs, the Plaintiff Class, and the Plaintiff Subclass (as defined below) for the damages
19 incurred as a proximate result of their conduct.

20 21 **FACTUAL ALLEGATIONS**

22 13. Plaintiffs bring this Class Action against Defendants to recover for, among other
23 things, failure to provide meal and rest periods, failure to furnish accurate itemized wage
24 statements, and failure to timely pay wages on the end of employment, interest, attorneys' fees,
25 penalties, costs, and expenses on behalf of themselves, the Plaintiff Class, and the Plaintiff
26 Subclasses. Plaintiffs reserve all rights to name additional representatives.

27 14. Plaintiffs are former non-exempt employees of Apple, and DOES 1 through 300,
28 within the four (4) years preceding the filing of this action.

1 15. Plaintiff Felczer worked for Apple from approximately September 9, 2010 until
2 November 23, 2011.

3 16. Plaintiff Goldman worked for Apple from approximately December 11, 2009 until
4 January 11, 2011.

5 17. Plaintiff Hawkins worked for Apple from approximately October 2001 until
6 November 13, 2012.

7 18. Plaintiff Carco worked for Apple from approximately June 1999 until
8 approximately June 20, 2008.

9 19. At all times Plaintiffs and the Plaintiff Class were classified as “non-exempt” under
10 the applicable Industrial Wage Commission Orders, California Regulations, and the California
11 Labor Code.

12 20. Defendants’ meal period policy was facially non-compliant with the law and was
13 applied uniformly to all of its non-exempt employees. Defendants’ meal period policy caused
14 Plaintiffs to work over five straight hours without being afforded an opportunity to take a meal
15 period. Plaintiffs have never been compensated the additional hour of their regular rate of pay
16 during the occasions where they were required to work more than 5 hours without being provided
17 a meal period as required by California Labor Code section 226.7 and applicable IWC Wage
18 Orders.

19 21. Plaintiffs never waived their right to a meal period.

20 22. Each non-exempt employee is required to clock-in and clock-out during each meal
21 period; thus, verification of Defendants’ meal period violations herein alleged can be ascertained.

22 23. Defendants’ rest period policy was facially non-compliant with the law and was
23 applied uniformly to all of its non-exempt employees. Apple’s rest period policy caused Plaintiffs
24 to miss and/or take untimely rest periods for every four hours of work or major fraction thereof.
25 Plaintiffs have never been compensated the additional hour of their regular rate of pay as required
26 by California Labor Code section 226.7 and applicable IWC Wage Orders during the occasions
27 where they worked four hours or a major fraction thereof without receiving a timely rest period.

28 24. Defendant systematically failed to timely pay its employees upon separation of

1 their employment.

2 25. On January 11, 2011, Plaintiff Goldman's employment with Apple ended when he
3 was terminated. However, Apple failed to pay Plaintiff Goldman his final paycheck on January
4 11, 2011. Instead, Apple waited until February 4, 2011 to draft the check. Plaintiff did not
5 actually receive his final paycheck until February 7, 2011.

6 26. On or around June 20, 2008, Plaintiff Carco's employment with Apple ended when
7 he resigned. However, he did not receive his final paycheck until approximately July 1, 2008.

8 27. Plaintiff Felczer ended his employment with Apple on November 23, 2011.
9 Plaintiff Felczer provided more than 72 hours advance notice when he intended to end his
10 employment. However, Apple failed to pay Plaintiff Felczer his final paycheck on November 23,
11 2011. Instead, Apple paid Plaintiff Felczer his final paycheck two days later. Then, on November
12 29, 2011, Apple paid Plaintiff Felczer an inadequate amount of waiting time penalties.

13 28. The class members are trained not to discuss anything about Apple or its policies
14 other than what is on **www.Apple.com** – Apple's public website.

15 29. The restriction from discussing anything about Apple or its policies is reinforced on
16 Apple's labor policies themselves. The majority, if not all, of Apple's employment policies, make
17 it clear that Plaintiffs are not allowed to discuss Apple's working conditions. To wit, at the bottom
18 of each labor policy it states the following:

19 HRWeb is for the business use of employees, temporary agency
20 workers, and independent contractors of Apple, Inc. and its
21 subsidiaries, and should not be distributed or discussed outside of
Apple, Inc.

22 30. The published restriction from discussing anything about Apple or its policies,
23 described in paragraph 30, *supra*, allowed Apple to invoke fear into the class members that if they
24 so much as discuss the various labor policies, they run the risk of being fired, sued, or disciplined.

25 31. In perpetrating the acts and omissions alleged herein, Defendants, and each of
26 them, acted pursuant to, and in furtherance of, a policy and practice of (i) not paying Plaintiffs an
27 extra hour of pay for occasions where they worked more than 5 hours without a meal period, (ii)
28 not paying Plaintiffs an extra hour of pay for occasions that they worked more than 4 hours or

1 major fraction thereof without a rest period; (iii) not properly compensating Plaintiffs upon the last
2 day of employment, and (iv) furnishing inaccurate wage statements to Plaintiffs in violation of
3 Industrial Welfare Commission Orders, California Code of Regulations, and California Labor
4 Code sections 201, 202, 203, 212, 226, 226.7, 232.5, 512, and 2698, *et seq.*

5 32. Plaintiffs are informed, believe, and thereon allege that the acts and omissions
6 alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents
7 and/or employees, and/or under the direction and control of each of the other Defendants, and that
8 said acts and failures to act were within the course and scope of said agency, employment and/or
9 direction and control.

10 33. As a direct and proximate result of Defendants' unlawful actions, Plaintiffs, the
11 Plaintiff Class, and the Plaintiff Subclasses have been denied wages and have otherwise been
12 damaged.

13 CLASS ALLEGATIONS

14 34. This class action is properly brought pursuant to the provisions of California Code
15 of Civil Procedure section 382, and the procedural provisions of Rule 23 of the Federal Rules of
16 Civil Procedure, which have been adopted by the California Supreme Court for use by the trial
17 courts of this State. Plaintiffs bring this class action on behalf of themselves and all others
18 similarly situated, with Plaintiffs proceeding as the representative members of the proposed class
19 defined as follows:

20 All current, former, or prospective non-exempt employees in the State of California
21 who have worked for Apple from December 16, 2007 up to and including the time
22 of trial for this matter without receiving compensation for missed or late meal
23 periods in violation of the California Labor Code and applicable wage orders.
24 ("Plaintiff Class.")

25 Plaintiffs also seek certification of the following subclass:

26 All current, former, or prospective non-exempt employees in the State of California
27 who have worked for Apple from December 16, 2007 up to and including the time
28 of trial for this matter without receiving compensation for missed rest periods in
violation of the California Labor Code and applicable wage orders. ("Plaintiff
Subclass No. 1.")

1 Plaintiffs, Felczer, Goldman, and Hawkins also seek certification of the following
2 subclass:

3 All current, former, or prospective non-exempt employees in the State of California
4 who have worked for Apple from December 16, 2008 up to and including the time
5 of trial for this matter who were not timely paid all wages due to them upon
6 separation, in violation of California Labor Code sections. ("Plaintiff Subclass No.
7 2.")

8 Plaintiffs also seek certification of the following subclass:

9 All current, former, or prospective non-exempt employees in the State of California
10 who have worked for Apple from December 16, 2007 up to and including the time
11 of trial for this matter who were furnished an itemized wage statement that was not
12 in compliance with the California Labor Code and applicable wage orders.
13 ("Plaintiff Subclass No. 3.")

14 Plaintiffs reserve the right under California Rules of Court, Rule 3.765 to amend or modify
15 the Class description with greater specificity or further division into subclasses or limitation to
16 particular issues.

17 35. This action has been brought and may properly be maintained as a class action,
18 pursuant to the provisions of California Code of Civil Procedure section 382, because there is a
19 well-defined community of interest in the litigation and because the proposed class is easily
20 ascertainable, and for the other reasons explained in this Fourth Amended Class Action
21 Complaint.

22 36. The persons who comprise the Plaintiff Class are so numerous that joinder of all
23 such persons would be unfeasible and impracticable. The membership of the entire Plaintiff Class
24 is approximately 18,000.

25 37. There are common questions of fact and law arising out of Defendants' conduct, as
26 described in this Fourth Amended Class Action Complaint, as well as its continued practice of
27 engaging in illegal payroll, wage and hour and break policies as to all members of the Plaintiff
28 Class. The action focuses on the Defendants' systematic course of illegal payroll practices or
policies, which was applied to all non-exempt employees in violation of the California Industrial

1 Welfare Commission Wage Orders, California Code of Regulations, the California Labor Code,
2 and the California Business and Professions Code which prohibits unfair business practices arising
3 from such violations.

4 38. Furthermore, these common questions of law and fact predominate over questions
5 affecting only individual members, including (without limitation):

- 6 a. Whether Apple's meal period policy was facially compliant under California
7 law;
- 8 b. Whether Apple's rest period policy was facially compliant under California
9 law;
- 10 c. Whether Apple's final paycheck policy was facially compliant under California
11 law;
- 12 d. Whether Apple had a common scheduling practice that made taking timely
13 meal periods extremely difficult;
- 14 e. Whether Apple had a practice of pressuring the Plaintiff Class to take late meal
15 periods;
- 16 f. Whether Apple had a practice of pressuring Plaintiff Subclass No. 1 to forgo
17 rest periods;
- 18 g. Whether Apple had a practice of pressuring Plaintiff Subclass No. 1 to take
19 untimely rest periods;
- 20 h. The number of hours per week the Plaintiff Class was expected to work, and
21 whether or not that was reasonable;
- 22 i. The number of hours per day the Plaintiff Class was expected to work, and
23 whether or not that was reasonable;
- 24 j. The allocation of the number of hours per day that the Plaintiff Class was
25 expected to work, and whether or not that was reasonable;
- 26 k. Whether the Plaintiff Class ever worked more than 5 hours for Apple without a
27 30-minute meal period;
- 28 l. Whether Apple failed to provide the Plaintiff Class with meal period penalty
payments pursuant to Labor Code section 226.7 for all occasions where meal
periods were not received until after 5 hours into their shifts;
- m. Whether Apple failed to provide Plaintiff Subclass No. 1 with statutory penalty
payments pursuant to Labor Code section 226.7 for all shifts where they did not
receive a rest period every four hours or major fraction thereof;

- 1
- 2 n. Whether Apple failed to issue timely payments to the Plaintiff Class in
- 3 violation of California Labor Code section 202;
- 4 o. Whether Apple failed to issue timely payments to the Plaintiff Class in
- 5 violation of California Labor Code section 201; and
- 6 p. Whether Apple's labor policies violate California Labor Code section 232.5.

7 39. The defenses of Defendants, to the extent that any such defense is applied, are

8 applicable generally to the whole Plaintiff Class and are not distinguishable in individual claims.

9 40. The claims of Plaintiffs herein are typical of the claims for the members of the

10 Plaintiff Class as a whole, all of whom have incurred and/or will incur damages, including

11 irreparable harm, as a proximate or legal result of the common course of the conduct of

12 Defendants as complained of in this Fourth Amended Class Action Complaint. The claims of

13 Plaintiffs are typical of Plaintiff Class because Defendants subjected all of its non-exempt

14 employees to the identical violations of the California Industrial Welfare Commission Wage

15 Orders, California Code of Regulations, the California Labor Code, and the California Business

16 and Professions Code, which prohibit unfair business practices arising from such violations.

17 41. Plaintiffs, on behalf of themselves and all others similarly situated, will fairly and

18 adequately protect the interests of all members of the Plaintiff Class, in connection with which

19 they have retained attorneys. Plaintiffs are able to fairly and adequately protect the interests of all

20 members of the Plaintiff Class because it is in their best interests to prosecute the claims alleged

21 herein to obtain full compensation due to them for all services rendered and hours worked.

22 Further, Plaintiffs' counsel are adequate class counsel as they have previously certified, litigated,

23 and tried many other wage and hour class actions.

24 42. Under the facts and circumstances set forth above, class action proceedings are

25 superior to any other methods available for both fair and efficient adjudication of the rights of each

26 class member who has, or in the past was, a non-exempt employee, inasmuch as *joinder of*

27 individual members of the Plaintiff Class is not practical and, if the same were practical, said

28 Plaintiff Class members could not individually afford the litigation, such that individual litigation

would be inappropriately burdensome, not only to said citizens, but also the courts of the nation.

1 43. To process individual cases would increase both the expenses and the delay not
2 only to class members, but also to Defendants and the Court. In contrast, a class action of this
3 matter will avoid case management difficulties and provide multiple benefits to the litigating
4 parties, including efficiency, economies of scale, unitary adjudication with consistent results, and
5 equal protection of the rights of each class member, all by way of the comprehensive and efficient
6 supervision of the litigation by a single court.

7 44. There is a community of interest in obtaining appropriate legal and equitable relief
8 for the common law and statutory violations and other improprieties, and in obtaining adequate
9 compensation for the damages and injuries which Defendants' actions have inflicted upon the
10 Plaintiff Class.

11 45. There is a community of interest in ensuring that the combined assets and available
12 insurance of the Defendants are sufficient to adequately compensate the members of Plaintiff
13 Class for the injuries sustained.

14 46. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses are entitled to the monies
15 unlawfully withheld from them. Further, the public is entitled to restitution and restitutionary
16 disgorgement of those funds being improperly withheld by Defendants, and each of them. This
17 action is brought as a representative action under the Unfair Competition Law and the Private
18 Attorney General Act for the benefit of the public.

19 47. Notice of the pendency and any result or resolution of the litigation can be provided
20 to Plaintiff Class and Subclass members by the usual forms of publication or such other methods
21 of notice as deemed appropriate by the Court.

22 48. Without class certification, the prosecution of separate actions by individual
23 members of the Plaintiff Class and Subclasses would create a risk of:

- 24 a. Inconsistent or varying adjudications with respect to individual members of the
25 Plaintiff Class and Subclasses that would establish incompatible standards of
26 conduct for Defendants; or
27 b. Adjudications with respect to the individual members of the Plaintiff Class and
28 Subclasses that would, as a practical matter, be disparities of the interests of the
other members not parties to the adjudication, or would substantially impair or
impede their ability to protect their interest.

FIRST CAUSE OF ACTION

FOR FAILURE TO PROVIDE MEAL PERIODS

(Against All Defendants)

[California Labor Code §§ 226.7, 512]

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2
3
4 49. Plaintiffs and Plaintiff Class re-allege and incorporate by reference, as though fully
5 set forth herein, all of the preceding paragraphs of this Fourth Amended Class Action Complaint.

6 50. This cause of action is brought by Plaintiffs and Plaintiff Class. This cause of
7 action is pled against Defendants.

8 51. Applicable IWC Wage Orders and California Code of Regulations require that
9 employers authorize and permit all employees to take a duty free meal period of at least thirty (30)
10 minutes within the first five (5) hours worked.

11 52. California Labor Code section 512 provides that no employer shall employ any
12 person for a work period of more than five (5) hours without a duty free meal period of not less
13 than 30 minutes.

14 53. Applicable IWC Wage Orders and California Code of Regulations provide that if
15 an employer fails to provide an employee a duty free meal period in accordance with this section,
16 the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
17 compensation for each workday that the meal period is not provided.

18 54. Further, Plaintiffs are entitled to damages under California Labor Code section
19 226.7 of one additional hour of pay at the employee's regular rate of pay for each duty free meal
20 period that was not provided.

21 55. Defendants, and each of them, have intentionally and improperly denied meal
22 periods to Plaintiffs and the Plaintiff Class in violation of all applicable Wage Orders, California
23 Regulations, and California Labor Code sections.

24 56. For at least four years preceding the filing of this action, Defendants failed to
25 provide Plaintiffs and the Plaintiff Class meal periods as required by law.

26 57. By virtue of Defendants' unlawful failure to provide timely meal periods to the
27 Plaintiff Class, they have incurred, and will continue to incur, damages in amounts which are
28 presently unknown to the Plaintiff Class, but which exceed the jurisdictional limits of this Court

1 and which will be ascertained according to proof at trial.

2 58. The Plaintiff Class is informed, believes, and based upon that information and
3 belief alleges that Defendants, and each of them, purposely and knowingly elected not to
4 compensate Plaintiffs and the Plaintiff Class an additional hour of their regular rate of pay during
5 the occasions that they worked more than 5 straight hours.

6 59. Defendants, and each of them, acted intentionally, oppressively and maliciously
7 toward the Plaintiffs and the Plaintiff Class with a conscious disregard of their rights, or the
8 consequences to Plaintiffs and the Plaintiff Class, with the intent of depriving its non-exempt
9 employees of property and legal rights and otherwise causing the Plaintiffs and the Plaintiff Class
10 injury. Additionally, Plaintiffs and Plaintiff Class are entitled to seek and recover reasonable
11 attorneys' fees and costs pursuant to California Labor Code sections 218.5, 218.6, and 1198, and
12 penalties pursuant to California Labor Code sections 203, 226.7, and 558.

13
14 **SECOND CAUSE OF ACTION**

15 **FOR FAILURE TO PROVIDE REST PERIODS**

16 (Against All Defendants)

17 [California Labor Code § 226.7]

18 60. Plaintiffs and Plaintiff Subclass No. 1 re-allege and incorporate by reference, as
19 though fully set forth herein, all of the preceding paragraphs of this Fourth Amended Class Action
20 Complaint.

21 61. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 1. This
22 cause of action is pled against Defendants.

23 62. Applicable IWC Wage Orders and California Code of Regulations require that
24 employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes
25 for every four (4) hours of work, or major fraction thereof.

26 63. Applicable IWC Wage Orders and California Code of Regulations provide that if
27 an employer fails to provide an employee rest periods in accordance with this section, the
28 employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each workday that the rest period is not provided. This remedies are codified
2 under California Labor Code section 226.7.

3 64. Defendants, and each of them, have intentionally and improperly denied rest
4 periods to Plaintiffs and to members of Plaintiff Subclass No. 1 in violation of the applicable IWC
5 Wage-Orders and California Code of Regulations..

6 65. For at least four years preceding the filing this action, Defendants failed to provide
7 Plaintiffs and the Plaintiff Subclass No. 1 rest periods as required by law.

8 66. By virtue of the Defendants' unlawful failure to provide rest periods to Plaintiffs
9 and Plaintiff Subclass No. 1, Plaintiffs and Plaintiff Subclass No. 1 have incurred, and will
10 continue to incur, damages in amounts which are presently unknown to Plaintiffs and Plaintiff
11 Subclass No. 1, but which exceed the jurisdictional limits of this Court and which will be
12 ascertained according to proof at trial.

13 67. Plaintiffs and members of Plaintiff Subclass No. 1 are informed and believe, and
14 based upon that information and belief allege, that Defendants, and each of them, knew or should
15 have known that Plaintiffs and Plaintiff Subclass No. 1 were entitled to rest periods and purposely
16 elected not to provide rest periods.

17 68. Defendants, and each of them, acted intentionally, oppressively and maliciously
18 toward Plaintiffs and Plaintiff Subclass No. 1 with a conscious disregard of their rights, or the
19 consequences to Plaintiffs and Plaintiff Subclass No. 1, with the intent of depriving Plaintiffs and
20 Plaintiff Subclass No. 1 of property and legal rights and otherwise causing Plaintiffs and Plaintiff
21 Subclass No. 1 harm.

22 69. Plaintiffs, themselves, and on behalf of employees similarly situated, request
23 recovery of rest period compensation pursuant to all applicable IWC Wage Orders, California
24 Code of Regulations, as well as the assessment of any statutory penalties against these
25 Defendants, and each of them, in a sum as provided by the California Labor Code and/or other
26 statutes.

27 70. Further, Plaintiffs and Plaintiff Subclass No. 1 are entitled to seek and recover
28 reasonable attorneys' fees and costs pursuant to California Labor Code sections 218.5 and 1194,

1 and penalties pursuant to California Labor Code sections 203, 226, and 558.

2 **THIRD CAUSE OF ACTION**

3 **FOR FAILURE TO PAY ALL WAGES DUE UPON ENDING EMPLOYMENT**

4 (Against all Defendants)

5 [Violation of California Labor Code §§ 201, 202, and 203]

6 71. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses re-allege and incorporate by
7 reference, as though fully set forth herein, all of the preceding paragraphs of this Fourth Amended
8 Class Action Complaint.

9 72. This cause of action is brought by Plaintiff Felczer, Plaintiff Goldman, Plaintiff
10 Hawkins, and Plaintiff Subclass No. 2. This cause of action is pled against Defendants.

11 73. California Labor Code section 201 requires an employer remit payment of wages
12 earned and unpaid immediately upon discharge.

13 74. California Labor Code section 202 requires that if an employee quits his or her
14 employment, his or her wages shall become due and payable not later than 72 hours thereafter,
15 unless the employee has given 72 hours previous notice of his or her intention to quit, in which
16 case the employee is entitled to his or her wages at the time of quitting. Code section 202 requires
17 that an employer remit payment to an employee who quits no later than 72 hours thereafter.

18 75. Violations of California Labor Code sections 201 and 202 is a violation of
19 California Labor Code section 203.

20 76. Plaintiffs Felczer, Goldman, Hawkins, and Plaintiff Subclass No. 2 quit or were
21 discharged from their employment and not paid timely. Since Defendants failed to timely pay
22 wages due, Plaintiff Felczer, Plaintiff Goldman, Plaintiff Hawkins, and Plaintiff Subclass No. 2
23 are owed penalties pursuant to California Labor Code section 203.

24 77. Defendants failed to pay said employees any premium payments or timely payment
25 pursuant to California Labor Code sections 201 and 202. Thus, Defendants are liable for waiting
26 time penalties. Defendants' failure to pay said wages within the required time was willful within
27 the meaning of California Labor Code section 203.

28 78. Therefore, each of these employees is entitled to one day's wages for each day he

1 or she was not timely paid all said wages due, up to a maximum of thirty days' wages for each
2 employee. Because none of said employees were ever compensated for meal periods they missed,
3 and were never paid other wages referred to in this Fourth Amended Class Action Complaint,
4 Plaintiff Felczer and Goldman, and each member of Plaintiff Subclass No. 2 is entitled to thirty
5 days' wages.

6 79. Plaintiffs Felczer, Goldman, and members of Plaintiff Subclass No. 2, therefore
7 request waiting time penalties for all Class Members no longer in Defendants' employ at the time
8 of Judgment.

9
10 **FOURTH CAUSE OF ACTION**

11 **FAILURE TO PROVIDE ACCURATE ITEMIZED EMPLOYEE WAGE STATEMENTS**

12 (Against All Defendants)

13 [IWC Wage Order 4-2001(7)(A); California Code of Regulations, Title 8, § 11040(7)(A);
14 California Labor Code §§ 226, 1174–1175]

15 80. Plaintiffs and Plaintiff Subclass No. 3 re-allege and incorporate by reference, as
16 though fully set forth herein, all of the preceding paragraphs of this Fourth Amended Class Action
17 Complaint.

18 81. This cause of action is brought by Plaintiffs and Plaintiff Subclass No. 3. This
19 cause of action is pled against Defendants.

20 82. Applicable IWC Wage Orders, California Code of Regulations and California
21 Labor Code section 226(a) each require Defendants to provide their employees with accurate
22 itemized wage statements containing various categories of information. By virtue of Defendants'
23 unlawful pay practices of not compensating Plaintiffs, Plaintiff Class, and Plaintiff Subclass No. 1
24 for missed meal and rest periods, Defendants have inaccurately recorded gross wages earned and
25 net wages earned.

26 83. Defendants knowingly and intentionally omitted this information for Plaintiffs and
27 Plaintiff Subclass No. 3. Defendants' failure to comply with California Labor Code section 226
28 caused injury to Plaintiffs and Plaintiff Subclass No. 3 in an amount currently unascertainable.

84. California Labor Code section 1174 requires Defendants to maintain and preserve,

1 in a centralized location, among other items, records showing the names and addresses of all
2 employees employed, payroll records showing the hours worked daily by and the wages paid to its
3 employees. Defendants have failed to comply with California Labor Code section 1174.

4 Defendants' failure to comply with California Labor Code section 1174 is a violation of California
5 Labor Code section 1175.

6 85. Because Defendants have knowingly and intentionally failed to comply with
7 California Labor Code section 226, Plaintiffs and Plaintiff Subclass No. 3 are entitled to receive
8 the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
9 occurred and one hundred dollars (\$100) per employee for each violation in a subsequent pay
10 period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), for one year
11 preceding the filing of this action, and is entitled to an award of costs and reasonable attorney's
12 fees pursuant to California Labor Code section 226(e).

13 **FIFTH CAUSE OF ACTION**
14 **FOR UNFAIR COMPETITION.**

15 (Against All Defendants)

16 [California Business & Professions Code §§ 17200, *et. seq.*]

17 87. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses re-allege and incorporate by
18 reference, as though fully set forth herein, all of the preceding paragraphs of this Fourth Amended
19 Class Action Complaint.

20 88. This cause of action is brought by Plaintiffs, the Plaintiff Class, and the Plaintiff
21 Subclasses. This cause of action is pled against Defendants.

22 89. By and through the conduct described above, Plaintiffs, members of the Plaintiff
23 Class and the Plaintiff Subclasses, and all persons similarly situated have been deprived and
24 injured.

25 90. Violation of the California Labor Code is an "Unfair Business Practice."

26 91. By and through their unfair, unlawful and/or fraudulent business practices
27 described herein, Defendants have obtained valuable property, money, and services from
28 Plaintiffs, members of the Plaintiff Class and the Plaintiff Subclasses, and all persons similarly

1 situated, and have deprived Plaintiffs and members of the Plaintiff Class and Plaintiff Subclasses,
2 and all persons similarly situated of valuable rights and benefits guaranteed by law, all to their
3 detriment.

4 92. All of the acts described herein as violations of, among other things, the California
5 Labor Code, California Code of Regulations, and Industrial Welfare Commission Wage Orders,
6 are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive,
7 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
8 practices in violation of California Business and Professions Code sections 17200, *et seq.*

9 93. Plaintiffs, the Plaintiff Class, the Plaintiff Subclasses, and all persons in interest,
10 are entitled to, and do seek such relief as may be necessary to disgorge the profits which
11 Defendants have acquired, or of which Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses
12 have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business
13 practices.

14 94. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses are further entitled to and
15 do seek a declaration that the above described business practices are unfair, unlawful and/or
16 fraudulent, and injunctive relief restraining Defendants, and each of them, from engaging in any of
17 the above-described unfair, unlawful and/or fraudulent business practices in the future.

18 95. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses have no plain, speedy,
19 and/or adequate remedy at law to redress the injuries which they have suffered as a consequence
20 of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair,
21 unlawful and/or fraudulent business practices described above, the Plaintiffs, the Plaintiff Class,
22 and the Plaintiff Subclasses have suffered and will continue to suffer irreparable harm unless
23 Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful
24 and/or fraudulent business practices.

25 96. Plaintiffs, Plaintiff Class, and the Plaintiff Subclasses also allege that if Defendants
26 are not enjoined from the conduct set forth herein above, Defendants will continue to fail to
27 compensate their non-exempt employees for missed meal and rest periods, and will continue to
28 provide their employees with unlawful wage statements.

97. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses request that the Court issue a

1 preliminary and permanent injunction prohibiting Defendants, and each of them, from requiring
2 Plaintiffs and Plaintiff Class to work more than five hours without a duty free meal period and
3 without compensating them with one hour of pay at their regular rate of pay for each workday that
4 the meal or rest period is not provided within the five hour work period.

5 98. Plaintiffs Felczer, Goldman, Hawkins, and Plaintiff Subclass Number 2 request that
6 the Court issue a preliminary and permanent injunction prohibiting Defendants, and each of them,
7 from continuing to issue untimely payments to any employees whose employment has ended.

8 99. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request that the
9 Court order the Defendants to, as restitution, disgorge all illegally obtained monies from failing to
10 pay taxes, state disability insurance premiums, and unemployment taxes, obtained by way of their
11 violation of California Business & Professions Code sections 17200, *et seq.*

12 100. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request an order that
13 Defendants identify, locate and make restitution to affected members of the general public
14 nationwide, and specifically subscribers to the registry, all funds and the value of all things or
15 property acquired by the acts of unfair competition and deceptive practices set forth above, and all
16 additional orders necessary to accomplish this purpose, pursuant to California Business &
17 Professions Code section 17203.

18 101. Plaintiffs, the Plaintiff Class, and the Plaintiff Subclasses also request an order that
19 Defendants disgorge any profits arising from acts of unfair competition.

20 102. For the four (4) years preceding the filing of this action, as a result of Defendants'
21 unfair business practices, Plaintiffs, the Plaintiff Class, and Plaintiff Subclasses have incurred
22 damages, and request damages and/or restitution of all monies and profits to be disgorged from
23 Defendants in an amount according to proof at time of trial.

24 **SIXTH CAUSE OF ACTION**

25 **PRIVATE ATTORNEY GENERAL ACT**

26 (As against all Defendants)

27 [California Labor Code §§ 2698, *et. seq.*]

28 103. Plaintiffs, Plaintiff Class, and Plaintiff Subclasses re-allege and incorporate by

1 reference, as though fully set forth herein, all of the preceding paragraphs of this Fourth Amended
2 Class Action Complaint.

3 104. Pursuant to California Labor Code section 2699, any civil penalties for violations
4 of the California Labor Code may be assessed by the Labor and Workplace Development Agency
5 (“LWDA”). As an alternative, any former or current employee may notify the LWDA in writing
6 of the alleged labor code violations. If no notice from the LWDA is received after a period of 33
7 days, a civil action may be commenced by any current and certain former employees.

8 105. Plaintiff Hawkins has brought this action on behalf of himself, the Plaintiff Class,
9 and Plaintiff Subclass No. 1, for Apple's failure to provide meal and rest breaks. Plaintiff Hawkins
10 also brings this action on behalf of himself, and on behalf of all other aggrieved non-exempt
11 employees due to Apple’s prohibition to distribute or discuss anything about their working
12 conditions at Apple.

13 106. Pursuant to California Labor Code section 512, Defendants had to make a 30
14 minute duty free meal period available for Plaintiffs and Plaintiff Class. California Labor Code
15 section 226.7 provides that the failure to do so obligates an employer to compensate that employee
16 an extra hour of pay at his or her regular rate of pay. Defendants have not complied with this
17 provision.

18 107. Plaintiffs Felczer and Hawkins have brought this claim after complying with the
19 provisions of California Labor Code section 2699.3.

20 108. Plaintiffs Felczer and Hawkins, and Plaintiff Class are entitled to civil penalties
21 under California Labor Code section 2699(f), except if a penalty is already set forth in the
22 California Labor Code. California Labor Code section 232.5 do not prescribe any civil penalties.
23 Therefore, Plaintiffs Felczer and Hawkins represent, as private attorneys general, all current and
24 former non-exempt employees of Apple within the State of California who are entitled to civil
25 penalties under California Labor Code section 2699(f) as a result of each violation alleged in this
26 Cause of Action.

27 109. Additionally, as a result of the foregoing violations by Defendants, Plaintiffs, the
28 Plaintiff Class, and Plaintiff Subclass No. 1, are entitled to reasonable attorneys’ fees and costs,
pursuant to California Labor Code section 2699(g)(1).

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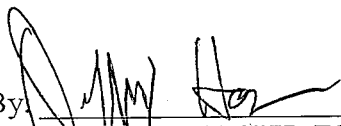
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the Plaintiff Class, and the Plaintiff Subclasses pray for judgment as follows:

1. that the Court determine that this action may be maintained as a class action;
2. that judgment be entered for wages for Plaintiffs and each member of Plaintiff Class and Plaintiff Subclasses;
3. For nominal damages;
4. For compensatory damages;
5. For restitution of all monies due to Plaintiffs, Plaintiff Class, and Plaintiff Subclasses, and disgorged profits from the unlawful business practices of Defendants;
6. For penalties pursuant to California Labor Code sections 202, 203, 218.5, 218.6, 221, 225.5, 226, 226.7, 512, 558, and 2699(f);
7. For Declaratory relief as described herein;
8. For Injunctive relief as described herein;
9. For interest accrued to date;
10. For costs of suit and expenses incurred herein pursuant to California Labor Code sections 218.5, 226, and 1194;
11. For reasonable attorneys' fees pursuant to California Labor Code sections 218.5, 226, 1194; and 2699(g); and
12. For all such other and further relief the Court may deem just and proper.

Dated: September 11, 2013

HOGUE & BELONG

By 
JEFFREY L. HOGUE, ESQ.
TYLER J. BELONG, ESQ.
BRYCE A. DODDS, ESQ.
Attorneys for Plaintiffs

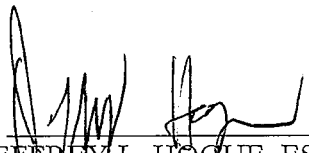
DEMAND FOR JURY TRIAL

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Plaintiffs hereby demand a jury trial.

Dated: September 11, 2013

HOGUE & BELONG

By: 

JEFFREY L. HOGUE, ESQ.
TYLER J. BELONG, ESQ.
BRYCE A. DODDS, ESQ.
Attorneys for Plaintiffs