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Attorneys for Plaintiff and Others Similarly Situated
**Pro Hac Vice forthcoming*

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Francis Costa, individually and on behalf of
others similarly situated,

Plaintiff,

v.

Apple, Inc.,

Defendant.

Case No. ____

**COLLECTIVE ACTION COMPLAINT
FOR DAMAGES AND OTHER RELIEF**

PRELIMINARY STATEMENT

1. Francis Costa (“Plaintiff”) brings this action under the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. §§ 201, *et seq.* (“FLSA”) on behalf himself and all current and former non-exempt employees who worked for Apple, Inc. (“Apple” or “Defendant”) in the United States at any time from three years prior to the filing of this Action through the date of judgment, who

1 were awarded restricted stock units that vested at any time during that period (the “Collective” or
2 “Collective Action Members”).

3 2. Apple employs Collective Action Members at locations nationwide, pays them on
4 an hourly basis, and classifies them as non-exempt from the FLSA’s overtime compensation
5 requirements.

6 3. Pursuant to a uniform, companywide policy and practice, Apple violated the FLSA
7 when it failed to include the value of vested restricted stock unit compensation in Plaintiff and the
8 Collective Action Members’ regular rates of pay to calculate overtime pay. Plaintiff and the
9 Collective Action Members are entitled to unpaid overtime compensation at the correct rate from
10 Apple for all hours worked by them in excess of forty hours in a workweek.

11 4. Plaintiff seeks relief for himself and for the Collective Action Members under the
12 FLSA to remedy Apple’s failure to pay appropriate overtime compensation.

13 **THE PARTIES**

14 ***Plaintiff***

15 5. Plaintiff, a resident of North Charleston, South Carolina, was employed by Apple in
16 Orlando, Florida from approximately June 2015 to September 2019 and in North Charleston, South
17 Carolina from approximately September 2019 to May 2022.

18 6. Plaintiff’s written Consent to Join this action is attached as **Exhibit A**.

19 ***Defendant***

20 7. Apple, Inc. is a California corporation with its principal place of business located in
21 Cupertino, California.

22 8. Apple employed Plaintiff and other similarly situated current and former Collective
23 Action Members and, at all material times, directly and/or indirectly, jointly or severally, controlled
24 and directed Plaintiff’s and the Collective Action Members’ terms of employment and
25 compensation.
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9 **JURISDICTION AND VENUE**

12 12. In addition, the Court has jurisdiction over Plaintiff's claims under the FLSA, 29
13 U.S.C. § 201 *et seq.*, pursuant to 29 U.S.C. § 216(b).

16 14. Apple is subject to personal jurisdiction in California as a California corporation.

21 **FACTUAL ALLEGATIONS**

25 17. Plaintiff and the Collective Action Members are or were hourly-paid, non-exempt
26 employees eligible for overtime pay.

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1 and, upon information and belief, Collective Action Members, compensation in the form of
2 restricted stock units.

3 19. The FLSA requires covered employers, such as Apple, to compensate all non-
4 exempt employees such a Plaintiff, and others similarly situated, at a rate of not less than 1.5 times
5 their regular rate of pay for work performed in excess of forty hours per workweek.

6 20. Under the FLSA, an employee's "regular rate" of pay is not limited to an employee's
7 hourly rate. The "regular rate" also includes an hourly rate derived from other non-excludable
8 compensation.

9 21. For purposes of federal law, the regular rate is determined by dividing the non-
10 excludable pay by the total number of hours worked during the period in which that compensation
11 was earned. Overtime is due at one-half that rate for all overtime hours worked that period. This
12 overtime pay is in addition to the overtime pay based on the employee's hourly rate.

13 22. Apple maintains a common corporate policy not to include the value of vested
14 restricted stock unit compensation in the regular rates of pay of Plaintiff and Collective Action
15 Members.

16 23. As such, Apple unlawfully underpaid the overtime rates of pay of Plaintiff and
17 Collective Action Members.

18 24. Restricted stock units compensation appear on Plaintiff's payroll record. However,
19 Plaintiff's payroll records do not reflect that the value of the vested restricted stock units was
20 included in Plaintiff's overtime rate of pay. Plaintiff's payroll records reflect that Plaintiff worked
21 hours over 40 hours in several workweeks but do not reflect any true-up payment for the increase
22 to the overtime rate of pay due to the vested restricted stock unit compensation.

23 25. Apple has intentionally, willfully, and regularly engaged in a company-wide policy,
24 pattern, or practice of violating the FLSA, with respect to Plaintiff and the Collective Action
25 Members, which policy, pattern or practice was authorized, established, promulgated, and/or
26 ratified by Apple. This policy, pattern or practice includes but is not limited to:
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- 1 (a) willfully failing to include restricted stock unit compensation in the regular rates
2 of pay of the Plaintiff and the Collective Action Members; and
3 (b) willfully failing to keep accurate payroll records as required by the FLSA.

4 **COLLECTIVE ACTION ALLEGATIONS**

5 26. Plaintiff brings FLSA overtime claims on behalf of himself and all similarly situated
6 persons who work or have worked for Apple as Collective Action Members.

7 27. Apple is liable under the FLSA for failing to properly compensate Plaintiff and the
8 Collective Action Members for all overtime hours worked at the correct overtime rates of pay.

9 28. There are many similarly situated current and former Collective Action Members
10 who have been underpaid in violation of the FLSA and who would benefit from the issuance of a
11 court-supervised notice of the present lawsuit and the opportunity to join.

12 29. Those similarly situated Collective Action Members are known to Apple, are readily
13 identifiable, and can be located through Apple's records.

14 30. Notice should be sent to the Collective Action Members pursuant to 29 U.S.C. §
15 216(b).

16 **FIRST CAUSE OF ACTION**

17 **Violation of the FLSA**

18 **Failure to Pay Overtime Wages**

19 **(By Plaintiff on Behalf of FLSA Collective)**

20 31. Plaintiff realleges and incorporates by reference all preceding paragraphs and
21 allegations.

22 32. Apple is an employer of Plaintiff and the Collective Action Members and is engaged
23 in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§
24 206(a) and 207(a).

25 33. Plaintiff and the Collective Action Members were employees within the meaning of
26 29 U.S.C. §§ 203(e) and 207(a).

27 34. The FLSA requires all covered employers, such as Apple, to compensate all non-
28 exempt employees at a rate of not less than one and one-half times their regular rate of pay for work
performed in excess of forty hours per work week.

1 as well as Defendant's share of FICA, FUTA, state unemployment insurance and any other required
2 employment taxes;

3 C. Pre and post-judgment interest;

4 D. Attorneys' fees and costs of the action, including expert fees;

5 E. Leave to add additional plaintiffs by motion, the filing of written consent forms,
6 or other method approved by the Court;

7 F. Leave to add state law claims; and

8 G. Any other relief as this Court deems just and proper.

9 Dated: 3/23/23

10 By: s/ Daniel Brome
11 Daniel Brome

12 *Attorneys for Plaintiff and the Putative Collective*
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