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Case# 1-11-CV-21457

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SANTA CLARA**

**111CV214597**

JASON HILTON, an individual, on behalf  
of himself and all persons similarly  
situated,

Plaintiff,

vs.

APPLE INC., a California corporation;  
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. \_\_\_\_\_

**CLASS ACTION COMPLAINT FOR:**

1. UNFAIR COMPETITION IN  
VIOLATION OF CAL. BUS. & PROF,  
CODE §§ 17200 *et seq.*

**DEMAND FOR A JURY TRIAL**

1 Plaintiff Jason Hilton ("PLAINTIFF"), an individual, on behalf of himself and all other  
2 similarly situated aggrieved individuals located in the United States, alleges on information and  
3 belief, except for his own acts and knowledge which are based on personal knowledge, the  
4 following:

### 5 6 INTRODUCTION

7 1. Defendant Apple Inc. ("APPLE" or "DEFENDANT") in order to service  
8 customers hires workers to answer calls from APPLE customers in regard to billing questions  
9 and technical support. The cost, as proscribed by law, of the personnel hired to answer these  
10 calls includes not only the pay and overtime pay of these employees but also the cost of training,  
11 the cost of business expenses and the cost of the employer's share of tax payments to the federal  
12 and state governments for income taxes, social security taxes, medicare insurance,  
13 unemployment insurance and payments for workers' compensation insurance ("Business Related  
14 Expenses"). To avoid the payment of these legally proscribed Business Related Expenses to the  
15 fullest extent possible, APPLE devised a scheme to place the responsibility for the payment of  
16 these costs and expenses of APPLE on the shoulders of the PLAINTIFF and other Call-Center  
17 Personnel. As employer, APPLE is legally responsible for the payment of all these Business  
18 Related Expenses. This lawsuit is brought on behalf of these Call-Center Personnel who  
19 worked for APPLE in the United States and were classified as independent contractors during  
20 the CLASS PERIOD, in order to collect the wages due them as employees of APPLE, the cost  
21 of their training, the cost of the employer's share of payments to the federal and state  
22 governments for income taxes, social security taxes, medicare insurance, unemployment  
23 insurance and payments for workers' compensation insurance, plus penalties and interest.

### 24 25 THE PARTIES

26 2. Defendant Apple Inc. is a California corporation with its principal place of  
27 business in Cupertino, California. PLAINTIFF and the other Call-Center Personnel are and  
28 were employed by APPLE. In order to avoid being classified as an employee of APPLE, the

1 PLAINTIFF and the other Call-Center Personnel are required by APPLE to each form a  
2 separate Virtual Services Corporation ("VSC") to act as a shell corporation as part of the scheme  
3 to insulate APPLE from APPLE's liability for APPLE's Business Related Expenses. APPLE  
4 requires as a condition of employment that these Call-Center Personnel must first form a  
5 corporation to work as a Call-Center employee of APPLE in order for APPLE to avoid payment  
6 of these Business Related Expenses. This scheme was first used by employers during the late  
7 1800s and early 1900s and is referred to as "Yellow Dog Contracts." APPLE applies these same  
8 Yellow Dog Contract principles to modern day contracts where, as here, the Call-Center  
9 employees employment is conditional on the premise that they form shell corporations so that  
10 APPLE can argue that these Call-Center employees cannot enforce their rights as employees  
11 of APPLE. The true facts are that these Call-Center Personnel are all employees of APPLE as  
12 APPLE controls every aspect of their work. In a transparent attempt to distance APPLE from  
13 these Call-Center employees APPLE contracts with Arise Virtual Solutions, Inc. ("Arise") to  
14 act as the hiring agency for APPLE as part of this scheme. APPLE subcontracts the hiring  
15 process and job placement functions to Arise as part of the scheme to attempt to circumvent  
16 responsibility for protections afforded to employees under federal and California laws. By and  
17 through the long term contract between APPLE and Arise, APPLE retains control of the work  
18 whereby APPLE provides the Call-Center employees with the approved script for calls, order  
19 forms, and report formats. Neither the Call-Center employees nor Arise can use any initiative  
20 or judgment in controlling the work of these Call-Center employees. All changes must be  
21 approved by APPLE. All training materials are provided to Arise by APPLE at no cost to Arise  
22 even though Arise charges the Call-Center employees for the cost of training. All of the work  
23 of the Call-Center employees is incorporated by APPLE into the organizational structure of the  
24 APPLE enterprise so that the customers reasonably believe they are dealing with APPLE  
25 employees and APPLE instructs PLAINTIFF and other Call-Center Personnel to answer  
26 customer calls as employees of APPLE. These Call-Center employees are precluded from  
27 working for APPLE's competitors and are only paid a fraction of the total sum paid by APPLE  
28 to Arise.

1           3.       APPLE designs, manufactures and markets a range of personal computers, mobile  
2 communications and media devices, and portable digital music players. Its products and  
3 services include Macintosh computers, iphone, ipad, ipod, Apple TV and the Mac OS X and  
4 iOS operating systems to name a few. The company sells its products globally through its retail  
5 stores, online stores and third-party cellular network carriers. As of September 2010, APPLE  
6 operated a total of 317 retail stores, including 233 in the United States and reported sales of over  
7 \$65 billion. Further, as of September 2011 APPLE employed over 60,000 full-time employees.

8           4.       By the use of these Yellow Dog Contracts APPLE can substantially reduce  
9 APPLE's overhead for customer service work – no office space, no office supplies, no training  
10 costs, no employer's share of payroll withholding taxes, no workers' compensation insurance  
11 premium payments, no unemployment insurance payments, no social security taxes, and much  
12 lower labor costs without any overtime payments, and without any payment for time on the job  
13 not involving "talk minutes" or "Available Call Mode" minutes. Instead of paying for all hours  
14 worked, office expenses, employers' share of payroll taxes, social security taxes, unemployment  
15 insurance and workers' compensation insurance for a Call-Center department, APPLE shifts  
16 these labor costs by means of these Yellow Dog Contracts to the PLAINTIFF and the other  
17 Call-Center Personnel. These Yellow Dog Contracts classify the shell Virtual Services  
18 Corporations ("VSCs") as "independent contractors" as part of the scheme to defraud the  
19 PLAINTIFF and the other Call-Center Personnel and the federal and state governments.  
20 APPLE's obligation to properly classify workers as employees is more than a matter of private  
21 concern between the parties. This obligation is founded on the laws of our federal and state  
22 governments that companies pay wages due for hours worked, their share of payroll taxes to our  
23 federal and state governments and Business Related Expenses of their employees.

24           5.       Plaintiff Jason Hilton ("PLAINTIFF") has been employed by APPLE as a  
25 "Call-Center" employee since February of 2009 and continues to be employed in this position  
26 as of the filing of this Complaint.

27           6.       Upon hire, the position of a Call-Center employee was represented by APPLE to  
28 the PLAINTIFF and the other Call-Center Personnel as an independent contractor position

1 capable of paying 28 cents per talk minute. APPLE thereafter implemented a system where  
2 PLAINTIFF and the other Call-Center Personnel earn between \$12 dollars and \$15 dollars per  
3 hour while logged into APPLE's software system "Softphone." The job duties of the  
4 Call-Center Personnel cannot be performed without logging into APPLE's systems. Once  
5 logged into the APPLE system, the PLAINTIFF and the other Call-Center Personnel can receive  
6 calls and log "talk minutes." However, PLAINTIFF and the other Call-Center Personnel are  
7 compensated only for time spent in "Available Call Mode" while logged into APPLE's  
8 "Softphone" computer system and time spent actually on the phone speaking with a customer.  
9 PLAINTIFF and other Call-Center Personnel are not compensated for any of their time spent  
10 working other then the time spent in "Available Call Mode" and the time spent actually talking  
11 to a customer on the phone. The primary job of the Call-Center Personnel who perform work  
12 for APPLE was and is to provide customer support services to APPLE customers including but  
13 not limited to technical and billing support services. On a daily basis, these technical services  
14 include, among other things, researching APPLE's products in order to service their customers'  
15 needs and corresponding with their customers and APPLE through the use of e-mail. APPLE  
16 fails to pay PLAINTIFF and other Call-Center Personnel for all of their time spent researching  
17 updates on APPLE's products via "ApplePedia," a daily task APPLE requires these employees  
18 to perform in order to remain informed on recent changes and updates to APPLE's products,  
19 time spent completing APPLE's online training courses, time spent corresponding with  
20 customers and APPLE through APPLE's e-mail system, and all time spent not physically talking  
21 on the phone with a customer, or logged in under "Available Call Mode" within APPLE's  
22 "Softphone" computer system. The problem for the PLAINTIFF and other Call-Center  
23 Personnel is that to perform their job duties for APPLE, these employees cannot be logged into  
24 APPLE's Softphone computer system under "Available Call Mode" while servicing other  
25 customers by researching APPLE's products and/or corresponding through e-mail. As a result,  
26 these employees are not available to be assigned by APPLE for calls from other customers while  
27 performing uncompensated research and writing work. These employees are therefore not paid  
28 for all working hours.

1           7.       To perform their job duties, the PLAINTIFF and the other Call-Center Personnel  
2 perform work subject to the control of APPLE in that APPLE has the authority to exercise  
3 complete control over the work performed and the manner and means in which the work is  
4 performed. The Department of Labor and United States Supreme Court have established a  
5 widely-accepted test known as the "economic realities test" that helps to determine whether a  
6 person is an employee or an independent contractor. The Department of Labor found the  
7 following factors important: (1) the degree of control exercised by the alleged employer; (2) the  
8 extent of the relative investments of the alleged employee; (3) the degree to which the  
9 employee's opportunity for profit and loss is determined by the employer; (4) the skill and  
10 initiative required in performing the job; (5) the permanency of the relationship; and, (6)  
11 integration with the organization's business. The Department of Labor has determined the most  
12 significant factor to be considered in distinguishing an independent contractor from an  
13 employee is whether the employer or principal has control or the right to control the work both  
14 as to the work performed and the manner and means in which the work is performed. APPLE  
15 controls both the work performed and the manner and means in which the PLAINTIFF and the  
16 other Call-Center Personnel perform their work in that:

17                   (a)     PLAINTIFF and other Call-Center Personnel are not involved in a distinct  
18 business, but instead are provided with instructions as to how to perform their work and the  
19 manner and means in which the work is to be performed by means of APPLE's manuals, written  
20 notifications and system requirements;

21                   (b)     PLAINTIFF and other Call-Center Personnel are continuously provided  
22 with training and supervision, and receive training from APPLE as to how and in what way to  
23 service APPLE customers including but not limited to daily chat support with supervisors in that  
24 no prior advanced skill or training other than training by APPLE is required to obtain this job;

25                   (c)     APPLE sets the requirements as to what final results are expected in  
26 regards to the customer service calls handled by the PLAINTIFF and other Call-Center  
27 Personnel and APPLE implements methods for the PLAINTIFF and other Call-Center  
28 Personnel to follow in order to obtain APPLE's desired results;

1 (d) The PLAINTIFF and other Call-Center Personnel have no opportunity for  
2 profit or loss because APPLE only pays these employees based on the time spent actually on the  
3 phone with a customer and/or time spent logged in APPLE's computer system Softphone under  
4 "Available Call Mode" and APPLE controls the amount of their "talk minutes" by assigning and  
5 limiting the customer calls that the PLAINTIFF and other Call-Center Personnel can take;

6 (e) PLAINTIFF and other Call-Center Personnel perform customer service  
7 work which is part of APPLE's principal business and is closely integrated with and essential  
8 to the employer's business of providing wireless voice and data communication services and  
9 products to consumers;

10 (f) PLAINTIFF and other Call-Center Personnel perform the work themselves  
11 and do not hire others to perform their work for them;

12 (g) PLAINTIFF and other Call-Center Personnel do not have the authority to  
13 make employment-related personnel decisions;

14 (h) PLAINTIFF and other Call-Center Personnel are required to work a  
15 minimum of 20 service hours of talk minutes per week and can only choose to work from the  
16 available hours designed by APPLE;

17 (i) PLAINTIFF and other Call-Center Personnel perform their work in a  
18 particular order and sequence in accordance with APPLE company policy; and,

19 (j) PLAINTIFF and other Call-Center Personnel either resolve APPLE's  
20 customer issues in accordance with company policy or if unable to do so then transfers the  
21 customer to others to follow-up with additional work on the matter reported;

22 8. As a result, stripped of all the legal fictions and artificial barriers to an  
23 honest classification of the relationship between the PLAINTIFF and all the other Call-Center  
24 Personnel on the one hand, and APPLE on the other hand, the PLAINTIFF and all the other  
25 Call-Center Personnel are employees of APPLE and not independent contractors of APPLE and  
26 should therefore be properly classified as non-exempt, hourly employees.

27 9. PLAINTIFF brings this Class Action on behalf of himself and a nationwide class,  
28 defined as all individuals who were paid directly or indirectly by APPLE by and through

1 APPLE agents to provide customer service and technical support by handling inbound customer  
2 calls of APPLE customers and who performed this work for APPLE away from APPLE offices  
3 and who are or were directly or indirectly classified by APPLE as an independent contractor of  
4 APPLE in the United States (the "CLASS") at any time during the period beginning four (4)  
5 years prior to the filing of this Complaint and ending on the date as determined by the Court (the  
6 "CLASS PERIOD").

7 10. The training schedule for the PLAINTIFF and the CLASS Members is set by  
8 APPLE. Generally, upon hire, the CLASS Members are required to pay for and attend APPLE's  
9 mandatory training Monday through Friday for more than four (4) hours each day, not including  
10 the time spent studying for the next day's activities. APPLE's mandatory training lasts more  
11 than three (3) weeks for which no compensation is paid.

12 11. APPLE has willfully engaged in this pattern and practice of violating the  
13 provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §201, et seq., by uniformly  
14 designating certain employees as "independent contractors" without regard to APPLE's realistic  
15 expectations and actual overall requirements of the job. This is done in an illegal attempt to  
16 avoid payment of minimum wages and other benefits in violation of the Fair Labor Standards  
17 Act ("FLSA"), 29 U.S.C. §201, et seq., the United States Internal Revenue Code ("IRS  
18 CODE"), and the Code of Federal Regulations requirements.

19 12. As a matter of company policy, practice and procedure, APPLE has unlawfully,  
20 unfairly and/or deceptively classified every CLASS Member as "independent contractors" by  
21 means of the use of Yellow Dog Contracts in order to unlawfully avoid compliance with all  
22 applicable federal and state laws that require payment for all hours at work, business expenses,  
23 training expenses and the employer's share of payroll taxes and mandatory insurance.

24 13. The true names and capacities, whether individual, corporate, associate or  
25 otherwise of the Defendants sued here as DOES 1 through 50, inclusive, are presently unknown  
26 to the PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant to  
27 Cal. Civ. Proc. Code § 474. PLAINTIFF is informed and believes, and based thereon, alleges  
28 that each of the Defendants designated herein is legally responsible in some manner for the



1 unlawful acts referred to herein. PLAINTIFF will seek leave of Court to amend this Complaint  
2 to reflect the true names and capacities of the Defendants when they have been ascertained and  
3 become known.

4 14. The agents, servants and/or employees of the Defendants and each of them  
5 acting on behalf of the Defendants acted within the course and scope of his, her or its authority  
6 as the agent, servant and/or employee of the Defendants, and personally participated in the  
7 conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein.  
8 Consequently, the acts of each Defendant are legally attributable to the other Defendants and  
9 all Defendants are jointly and severally liable to the PLAINTIFF and the other members of the  
10 CLASS, for the loss sustained as a proximate result of the conduct of the Defendants' agents,  
11 servants and/or employees.

### 12 13 THE CONDUCT

14 15. The primary job duty required of the PLAINTIFF and the other CLASS Members  
15 as defined by DEFENDANT is executed by them through the performance of non-exempt labor  
16 within a defined elementary skill set of answering inbound APPLE customer calls in order to  
17 provide telephonic APPLE customer service and technical support to APPLE customers.

18 16. Although the PLAINTIFF and the other CLASS Members perform elementary  
19 level non-exempt labor subject to APPLE's complete control over the manner and means of  
20 performance, APPLE instituted a blanket classification policy, practice and procedure by which  
21 all of these CLASS Members are classified as "independent contractors" exempt from  
22 compensation for all hours worked, overtime compensation, reimbursement for Business  
23 Related Expenses and payment for training time and expenses. By reason of this uniform  
24 misclassification, the CLASS Members are required to pay APPLE's share of payroll taxes, the  
25 cost of training, and mandatory insurance premiums. As a result of this uniform  
26 misclassification practice, policy and procedure applicable to the PLAINTIFF and the other  
27 CLASS Members who perform this work for DEFENDANT, DEFENDANT committed acts  
28 of unfair competition in violation of the California Unfair Competition law, Cal. Bus. & Prof.

1 Code § 17200 (the "UCL"), by engaging in a company-wide policy, practice and procedure  
2 which uniformly fails to properly classify the PLAINTIFF and the other CLASS Members as  
3 employees in accordance with the requirements of the IRS Code and thereby fails to pay them  
4 minimum wage for all hours worked, overtime wages for overtime hours worked,  
5 reimbursement of Business Related Expenses, payment for training time and expenses, and for  
6 the employer's share of payroll taxes and mandatory insurance in uniform violation of the Fair  
7 Labor Standards Act ("FLSA"), 29 U.S.C. §201, et seq., and the United States Internal Revenue  
8 Code ("IRS CODE"). The proper classification of these employees is DEFENDANT's burden.

9 17. DEFENDANT, as a matter of law, has the burden of proving that employees are  
10 properly classified and that DEFENDANT otherwise complies with applicable laws.  
11 DEFENDANT, as a matter of corporate policy, erroneously and unilaterally classified all the  
12 CLASS Members as independent contractors.

13 18. During their employment with DEFENDANT, the PLAINTIFF and the CLASS  
14 Members perform elementary level customer services and technical support by requiring only  
15 the answering of inbound customer calls from APPLE customers.

16 19. PLAINTIFF and all the CLASS Members are and were uniformly classified and  
17 treated by DEFENDANT as independent contractors at the time of hire and thereafter,  
18 DEFENDANT failed to take proper steps to determine whether the PLAINTIFF and the CLASS  
19 Members are properly classified under applicable laws. In addition, DEFENDANT acted  
20 deceptively by falsely and fraudulently classifying the PLAINTIFF and each CLASS Member  
21 as independent contractors when DEFENDANT knew or should have known that this  
22 classification was false and not based on known facts. DEFENDANT also acted deceptively  
23 by violating the IRS Code and the FLSA, and as a result of this policy and practice,  
24 DEFENDANT also violated the UCL. In doing so, DEFENDANT cheated the competition by  
25 paying the CLASS less than the amount competitors paid who complied with the law and  
26 cheated the CLASS by not paying them in accordance with federal and state law.

27 20. By reason of this uniform conduct applicable to the PLAINTIFF and all the  
28 CLASS Members, DEFENDANT committed acts of unfair competition in violation of the

1 California Unfair Competition law, Cal. Bus. & Prof. Code § 17200 (the "UCL"), by engaging  
2 in a company-wide policy, practice and procedure which fails to correctly classify the  
3 PLAINTIFF and the CLASS Members as employees as required by the IRS Code and the  
4 FLSA. The proper classification of these employees is DEFENDANT's burden. As a result of  
5 DEFENDANT's intentional disregard of the obligation to meet this burden, DEFENDANT fails  
6 to pay all required minimum wage compensation for work performed by the PLAINTIFF and  
7 other CLASS Members in violation of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §  
8 206(a) and DEFENDANT also violated provisions of the IRS Code and regulations  
9 promulgated thereunder. As a result, PLAINTIFF and the other CLASS Members are all  
10 entitled to disgorgement of DEFENDANT's ill gotten gains into a common fund and restitution  
11 of all funds paid by the CLASS Members for DEFENDANT's benefit and restitution of funds  
12 withheld by DEFENDANT still owed to the CLASS Members

13 21. Specifically as to PLAINTIFF, he began his employment with DEFENDANT in  
14 February of 2009 as a Call-Center agent and was classified as an "independent contractor" upon  
15 hire and at all times remained classified as an independent contractor. As such, DEFENDANT  
16 failed and still fails to pay PLAINTIFF for any work performed outside of the time spent  
17 engaged with a customer over the phone and/or time spent in "Available Call Mode." Upon  
18 being hired by APPLE in February of 2009, PLAINTIFF was required by DEFENDANT to  
19 attend DEFENDANT's mandatory training seminars that lasted for three (3) weeks, Monday  
20 through Friday, for at least four (4) hours each workday without pay. At all times,  
21 DEFENDANT failed and still fails to pay PLAINTIFF for any of his time spent during  
22 DEFENDANT's mandatory training seminars that DEFENDANT required PLAINTIFF to  
23 attend. Although PLAINTIFF was and still is classified as an independent contractor of  
24 DEFENDANT, in reality, and at all times relevant, PLAINTIFF was and is actually an  
25 employee of APPLE under the IRS Code and is not exempt from the minimum wage provisions  
26 of the Fair Labor Standards Act ("FLSA").

27  
28 **THE CLASS**

1           22.    PLAINTIFF brings the First Cause of Action for Unfair, Unlawful and  
2 Deceptive Business Practices pursuant to Cal. Bus. & Prof. Code §§ 17200 et seq. (the "UCL")  
3 as a Class Action, pursuant to Cal. Code of Civ. Proc. § 382, on behalf of a nationwide class,  
4 defined as all individuals who were paid directly or indirectly by APPLE by and through  
5 APPLE agents to provide customer service and technical support by handling inbound customer  
6 calls of APPLE customers and who performed this work for APPLE away from APPLE offices  
7 and who are or were directly or indirectly classified by APPLE as an independent contractor of  
8 APPLE in the United States (the "CLASS") at any time during the period beginning four (4)  
9 years prior to the filing of this Complaint and ending on the date as determined by the Court (the  
10 "CLASS PERIOD").

11           23.    To the extent equitable tolling operates to toll claims by the CLASS against  
12 DEFENDANT, the CLASS PERIOD should be adjusted accordingly.

13           24.    All CLASS Members who performed and continue to perform this work for  
14 APPLE during the CLASS PERIOD are similarly situated in that they are subject to APPLE's  
15 uniform policy and systematic practice that requires them to perform work without  
16 compensation as required by law.

17           25.    DEFENDANT, as a matter of corporate, policy, practice and procedure, and in  
18 violation of the IRS Code and the applicable provisions of the FLSA, intentionally, knowingly  
19 and willfully engaged in a practice whereby DEFENDANT unfairly, unlawfully and deceptively  
20 instituted a practice to ensure that all individuals employed as independent contractors are not  
21 properly classified as non-exempt employees.

22           26.    During the CLASS PERIOD, DEFENDANT uniformly violated the rights of the  
23 PLAINTIFF and the CLASS Members, without limitation, in the following manners:

24           (a)    Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
25 §§ 17200 et seq. the ("UCL"), in that APPLE, while acting as employer, devised and  
26 implemented a scheme by and through its agents whereby the PLAINTIFF and the CLASS  
27 Members are forced to unlawfully, unfairly and deceptively shoulder the cost of APPLE's wages  
28 for all unpaid work time, all unpaid overtime hours worked, Business Related Expenses,

1 training time and expenses, and APPLE's share of employment taxes, social security taxes,  
2 unemployment insurance and workers' compensation insurance;

3 (b) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
4 §§ 17200 et seq. the ("UCL"), by unlawfully, unfairly and/or deceptively having in place  
5 company policies, practices and procedures that uniformly misclassified the PLAINTIFF and  
6 the CLASS Members as independent contractors;

7 (c) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
8 §§ 17200 et seq. the ("UCL"), by unlawfully, unfairly and/or deceptively failing to have in place  
9 a company policy, practice and procedure that accurately determined the amount of working  
10 time spent by the PLAINTIFF and the CLASS Members performing non-exempt employee  
11 labor;

12 (d) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
13 §§ 17200 et seq. the ("UCL"), by violating 26 U.S.C. §§ 3102(a), 3111(a), 3402(a) and 3403(a),  
14 by failing to pay the Internal Revenue Service the required federal employment tax consisting  
15 of the income tax required to be withheld from employee's wages, the employee's social security  
16 tax, and the employer's social security tax;

17 (e) Violating the California Unfair Competition laws, Cal. Bus. & Prof. Code  
18 §§ 17200 et seq. the ("UCL"), by violating the Fair Labor Standards Act ("FLSA"), 29 U.S.C.  
19 §201, et seq., by failing to pay the minimum wages to the PLAINTIFF and the members of the  
20 CLASS who are improperly classified as independent contractors as legally required by the  
21 FLSA, and retaining the unpaid wages to the benefit of DEFENDANT.

22 27. As a result of APPLE's uniform policies, practices and procedures, there are  
23 numerous questions of law and fact common to all CLASS Members who worked for APPLE  
24 during the CLASS PERIOD. These questions include, but are not limited, to the following:

25 (a) Whether PLAINTIFF and other CLASS Members are being misclassified  
26 as independent contractors by APPLE;

27 (b) Whether the DEFENDANT is estopped as a result of their own misconduct  
28 from asserting the existence of the VSCs as a defense to the CLASS Members' claims for

1 unpaid minimum wages, for unpaid overtime wages, unpaid business expenses, unpaid training  
2 time and expenses, and paid expenses including but not limited to the employer's share of  
3 payroll taxes and mandatory insurance;

4 (c) Whether the existence of the VSCs can be ignored as a legal fiction as the  
5 VSCs are nothing more than the alter egos of the DEFENDANT required to exist at the  
6 direction of DEFENDANT in order to insulate DEFENDANT from liability to the CLASS  
7 Members as employees of APPLE;

8 (d) Whether DEFENDANT's policies, practices and pattern of conduct  
9 described in this Complaint was and is unlawful;

10 (e) Whether DEFENDANT unlawfully failed to pay their share of federal  
11 employment taxes as required by federal tax laws;

12 (f) Whether DEFENDANT unlawfully failed to accurately pay the CLASS  
13 Members for hours worked, and/or minimum wages in violation of the Fair Labor Standards Act  
14 ("FLSA"), 29 U.S.C. § 201, et seq.;

15 (g) Whether DEFENDANT's policy, practice and procedure of classifying the  
16 CLASS Members as independent contractors exempt from minimum wage laws, hourly wages  
17 laws for all hours worked and failing to pay the CLASS Members all amounts due violates  
18 applicable provisions of federal law;

19 (h) Whether DEFENDANT has engaged in unfair competition by the  
20 above-listed conduct; and,

21 (i) Whether DEFENDANT's conduct was willful.

22 28. This Class Action meets the statutory prerequisites for the maintenance of a Class  
23 Action as set forth in Cal. Code of Civ. Proc. § 382, in that:

24 (a) The persons who comprise the CLASS are so numerous that the joinder  
25 of all such persons is impracticable and the disposition of their claims as a class will benefit the  
26 parties and the Court;

27 (b) Nearly all factual, legal, statutory, declaratory and injunctive relief issues  
28 that are raised in this Complaint are common to the CLASS and will apply uniformly to every

1 CLASS Member:

2 (c) The claims of the representative PLAINTIFF are typical of the claims of  
3 each member of the CLASS. PLAINTIFF, like all the CLASS Members, was classified as an  
4 independent contractor upon hiring based on the defined corporate policies and practices and  
5 labors under DEFENDANT's systematic procedure that fails to properly classify the  
6 PLAINTIFF and the CLASS Members. PLAINTIFF sustained economic injury as a result of  
7 DEFENDANT's employment practices. PLAINTIFF and the CLASS Members were and are  
8 similarly or identically harmed by the same unlawful, unfair, deceptive and persuasive pattern  
9 of misconduct engaged in by DEFENDANT by deceptively telling all the CLASS Members that  
10 they are not entitled to minimum wages, wages for all hours worked, overtime wages, the  
11 employer's share of payment of payroll taxes and mandatory insurance, and reimbursement for  
12 training time and training expenses based on the defined corporate policies and practices, and  
13 unfairly fails to pay these employees who are improperly classified as independent contractors;  
14 and,

15 (d) The representative PLAINTIFF will fairly and adequately represent and  
16 protect the interest of the CLASS, and has retained counsel who is competent and experienced  
17 in Class Action litigation. There are no material conflicts between the claims of the  
18 representative PLAINTIFF and the CLASS Members that would make class certification  
19 inappropriate. Counsel for the CLASS will vigorously assert the claims of all employees in the  
20 CLASS.

21 29. In addition to meeting the statutory prerequisites to a Class Action, this Action  
22 is properly maintained as a Class Action pursuant to Cal. Code of Civ. Proc. § 382, in that:

23 (a) Without class certification and determination of declaratory, injunctive,  
24 statutory and other legal questions within the class format, prosecution of separate actions by  
25 individual members of the CLASS will create the risk of:

26 (i) Inconsistent or varying adjudications with respect to individual  
27 members of the CLASS which would establish incompatible standards of conduct for the parties  
28 opposing the CLASS; and/or,

1 (ii) Adjudication with respect to individual members of the CLASS  
2 which would as a practical matter be dispositive of the interests of the other members not party  
3 to the adjudication or substantially impair or impeded their ability to protect their interests.

4 (b) The parties opposing the CLASS have acted on grounds generally  
5 applicable to the CLASS making appropriate class-wide relief with respect to the CLASS as a  
6 whole in that DEFENDANT uniformly classified and treats the CLASS Members as  
7 independent contractors and, thereafter, uniformly fails to take proper steps to determine  
8 whether the CLASS Members are properly classified as independent contractors, and thereby  
9 denies these employees wages and payments for business expenses, training expenses and the  
10 employer's share of payroll taxes and mandatory insurance as required by law.

11 (i) With respect to the First Cause of Action, the final relief on behalf  
12 of the CLASS sought does not related exclusively to restitution because through this claim the  
13 PLAINTIFF seeks declaratory relief holding that DEFENDANT's policies and practices  
14 constitute unfair competition, along with incidental equitable relief as may be necessary to  
15 remedy the conduct declared to constitute unfair competition.

16 (c) Common questions of law and fact exist as to members of the CLASS with  
17 respect to the practices and violations of California and federal law as listed above, and  
18 predominate over any question affecting only individual members, and a Class Action is  
19 superior to other available methods for the fair and efficient adjudication of the controversy,  
20 including consideration of:

21 (i) The interest of the CLASS Members in individually controlling the  
22 prosecution or defense of separate actions;

23 (ii) The extent and nature of any litigation concerning the controversy  
24 already commenced by or against members of the CLASS;

25 (iii) In the context of wage litigation because as a practical matter a  
26 substantial number of individual CLASS members will avoid asserting their legal rights out of  
27 fear of retaliation by DEFENDANT, which may adversely affect an individual's job with  
28 DEFENDANT or with a subsequent employer, the Class Action is the only means to assert their



1 claims through a representative;

2 (iv) The desirability or undesirability of concentration the litigation of  
3 the claims in the particular forum;

4 (v) The difficulties likely to be encountered in the management of a  
5 Class Action; and,

6 (vi) The basis of DEFENDANT's policies and practices uniformly  
7 applied to all the CLASS Members.

8 30. The Court should permit this Action to be maintained as a Class Action pursuant  
9 to Cal. Code of Civ. Proc. § 382 because:

10 (a) The questions of law and fact common to the CLASS predominate over  
11 any question affecting only individual members;

12 (b) A Class Action is superior to any other available method for the fair and  
13 efficient adjudication of the claims of the members of the CLASS;

14 (c) The CLASS Members are so numerous that it is impractical to bring all  
15 CLASS Members before the Court;

16 (d) PLAINTIFF, and the CLASS Members, will not be able to obtain effective  
17 and economic legal redress unless the action is maintained as a Class Action;

18 (e) There is a community of interest in obtaining appropriate legal and  
19 equitable relief for the acts of unfair competition, statutory violations and other improprieties,  
20 and in obtaining adequate compensation for the damages and injuries which DEFENDANT's  
21 actions have inflicted upon the CLASS;

22 (f) There is a community of interest in ensuring that the combined assets and  
23 available insurance of DEFENDANT are sufficient to adequately compensate the CLASS  
24 Members for any injuries sustained;

25 (g) DEFENDANT has acted or has refused to act on grounds generally  
26 applicable to the CLASS, thereby making final class-wide relief appropriate with respect to the  
27 CLASS as a whole;

28 (h) The members of the CLASS are readily ascertainable from the business

1 records of DEFENDANT. The CLASS consists of all DEFENDANT's Call-Center Personnel  
2 employed during the CLASS PERIOD and subjected to DEFENDANT's policies, practices and  
3 procedures as herein alleged; and,

4 (i) Class treatment provides manageable judicial treatment calculated to bring  
5 an efficient and rapid conclusion to all litigation of all wage and hour related claims arising out  
6 of DEFENDANT's conduct as to the CLASS Members.

7 31. DEFENDANT maintains records from which the Court can ascertain and identify  
8 by name and job title, each of DEFENDANT's employees who have been systematically,  
9 intentionally and uniformly subjected to DEFENDANT's corporate policies, practices and  
10 procedures as herein alleged. PLAINTIFF will seek leave to amend the complaint to include  
11 any additional job titles of similarly situated employees when they have been identified.

12  
13 **JURISDICTION AND VENUE**

14 32. This Court has jurisdiction over this Action pursuant to California Code of Civil  
15 Procedure, Section 410.10 and California Business & Professions Code, Section 17203.  
16 PLAINTIFF brings this Class Action pursuant to Cal. Code of Civ. Proc. § 382 on his own  
17 behalf, and on behalf of all persons within CLASS.

18 33. Venue is proper in this Court pursuant to Cal. Code of Civ. Proc. Sections 395  
19 and 395.5, because the DEFENDANT (i) currently maintains and at all relevant times  
20 maintained its principal offices and facilities in this County and/or conducts substantial business  
21 in this County, and (ii) committed the wrongful conduct herein alleged in this County against  
22 members of the CLASS.

23  
24 **FIRST CAUSE OF ACTION**

25 **For Unlawful, Unfair and Deceptive Business Practices**

26 **[Cal. Bus. & Prof. Code §§ 17200 et seq.]**

27 **(By PLAINTIFF and the CLASS and Against All Defendants)**

28 34. PLAINTIFF and the CLASS Members reallege and incorporate by this reference,

1 as though fully set forth herein, paragraphs 1 through 33 of this Complaint.

2 35. DEFENDANT is a "person" as that term is defined under Cal. Bus. & Prof. Code  
3 § 17021.

4 36. Section 17200 of the California Business & Professions Code defines unfair  
5 competition as any unlawful, unfair or fraudulent business act or practice. Section 17200  
6 applies to violations of labor laws in the employment context. Section 17203 authorizes  
7 injunctive, declaratory and/or other equitable relief with respect to unfair competition as  
8 follows:

9 Any person who engages, has engaged, or proposes to engage in unfair  
10 competition may be enjoined in any court of competent jurisdiction. The court  
11 may take such orders or judgments, including the appointment of a receiver, as  
12 may be necessary to prevent the use or employment by any person of any practice  
which constitutes unfair competition, as defined in this chapter, or as may be  
necessary to restore to any person in interest any money or property, real or  
personal, which may have been acquired by means of such unfair competition.

13 California Business & Professions Code § 17203.

14 37. By the conduct alleged herein, DEFENDANT has engaged and continues to  
15 engage in a business practice which violates federal law, including but not limited to the  
16 regulations of the Department of Labor, the opinions of the Department of Labor Standards  
17 Enforcement, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et seq., the Code of  
18 Federal Regulations, and other federal tax laws, in particular, 26 U.S.C. §§ 3102(a), 3111(a),  
19 3402(a) and 3403(a), for which this Court should issue declaratory, injunctive, and other  
20 equitable relief, pursuant to Cal. Bus. & Prof § 17203, as may be necessary to prevent and  
21 remedy the conduct held to constitute unfair competition, including restitution of wages  
22 wrongfully withheld and out-of-pocket expenses paid by the CLASS on behalf of  
23 DEFENDANT.

24 38. By the conduct alleged herein, DEFENDANT's practices were unfair in that these  
25 practices violate public policy, are immoral, unethical, oppressive, unscrupulous or substantially  
26 injurious to employees, and are without valid justification or utility, for which this Court should  
27 issue equitable and injunctive relief, pursuant to Section 17203 of the California Business &  
28 Professions Code, including restitution of wages wrongfully withheld, and payment of

1 DEFENDANT's Business Related Expenses and employer's share of income taxes, social  
2 security taxes, unemployment insurance and workers' compensation insurance.

3 39. The term "employee" is defined in each of the statutes pertaining to the three types  
4 of taxes employers are required to withhold from the salaries of their employees. PLAINTIFF  
5 and other members of the CLASS are "employees" as that term is defined under 26 U.S.C. §§  
6 3121(d), 3306(i), and 3401(c).

7 40. DEFENDANT was and is required to pay the required federal employment tax.  
8 Under the Internal Revenue Code employers must withhold federal income tax as well as social  
9 security tax from the wages they pay to employees. In addition, employers must pay social  
10 security taxes on behalf of their employees. The federal employment tax consists of three parts;  
11 income tax required to be withheld from the employee's wages, the employee's social security  
12 tax, and the employer's social security tax. 26 U.S.C. §§ 3102(a), 3111(a), 3402(a) and 3403(a).  
13 Where, as here, an employer incorrectly classifies an employee as an independent contractor,  
14 the employer is fully liable for the employer's social security tax, and liable for the employee's  
15 social security tax and income tax in at a slightly lower rate in accordance with 26 U.S.C. §  
16 3509(a).

17 41. DEFENDANT is estopped from claiming protection under the "safety valve"  
18 provision found in § 530 of the Revenue Act of 1978 because DEFENDANT's classification  
19 of PLAINTIFF and other members of the CLASS as independent contractors was not in good  
20 faith and DEFENDANT cannot assert that a reasonable basis existed to classify these workers  
21 as such. Further, DEFENDANT cannot meet the substantive consistency element of the "safety  
22 valve" provision because DEFENDANT in fact treated other call-center workers who held a  
23 substantially similar position as PLAINTIFF and members of the CLASS as employees. These  
24 workers that DEFENDANT classified as employees performed identical job duties as the  
25 PLAINTIFF and the CLASS, including, but not limited to, answering phone calls from  
26 DEFENDANT's customers in regard to billing questions and technical support. The only  
27 difference in regards to the treatment of the PLAINTIFF and members of the CLASS by  
28 DEFENDANT is that DEFENDANT determined that PLAINTIFF and the members of the

1 CLASS should have to shoulder the burden of the DEFENDANT's share of the federal  
2 employment tax, without any help from DEFENDANT.

3 42. Further, DEFENDANT is engaged in communication, business, and transmission  
4 between the states, and is, therefore, engaged in commerce within the meaning of 29 U.S.C. §  
5 203(b).

6 43. 29 U.S.C. § 206(a)(1)(A-C) provides in pertinent part:

7 Every employer shall pay to each of his employees who in any workweek is  
8 engaged in commerce or in the production of goods for commerce, or is employed  
9 in an enterprise engaged in commerce or in the production of goods for  
10 commerce, wages at the following rates: except as otherwise provided in this  
section, not less than - (A) \$5.85 an hour, beginning on the 60th day after May  
25, 2007; (B) \$6.55 an hour, beginning 12 months after that 60th day; and (C)  
\$7.25 an hour, beginning 24 months after that 60th day.

11 44. PLAINTIFF and other CLASS Members were each paid wages less than those  
12 required by 29 U.S.C. § 206(a) during the first three (3) workweeks that they were employed  
13 by DEFENDANT because DEFENDANT failed to pay PLAINTIFF and other CLASS  
14 Members for any of their time spent working in DEFENDANT's introductory mandatory  
15 training seminars. The PLAINTIFF and other CLASS Members were also each paid wages less  
16 than those required by 29 U.S.C. § 206(a) during certain pay periods that they were employed  
17 by DEFENDANT because DEFENDANT failed to pay PLAINTIFF and other CLASS  
18 Members for their time spent working in DEFENDANT's mandatory training seminars.

19 45. DEFENDANT has willfully engaged in a widespread pattern and practice of  
20 violating the provisions of the FLSA, as detailed above, by uniformly designating certain  
21 employees as "independent contractors," without regard to DEFENDANT's realistic  
22 expectations and actual overall requirements of the job, including the PLAINTIFF and the other  
23 members of the CLASS who worked on the production side of DEFENDANT's business  
24 enterprise. This was done in an illegal attempt to avoid payment of minimum wages and other  
25 benefits in violation of the FLSA and Code of Federal Regulations requirements.

26 46. Pursuant to the Fair Labor Standards Act, 29 U.S.C. § 201, et seq., the  
27 PLAINTIFF and the other members of the CLASS are entitled to minimum wage compensation  
28 for all hours actually worked, including the hours spent working during DEFENDANT's

1 mandatory training seminars, at a rate not less than the rates prescribed under § 206(a) of the  
2 FLSA. DEFENDANT's failure to pay minimum wages as required by federal law was willful  
3 and not in good faith.

4 47. At all relevant times, DEFENDANT failed to pay the PLAINTIFF, and other  
5 members of the CLASS, minimum wage compensation for the hours they have worked as  
6 required by section 206(a) of the FLSA, even though the PLAINTIFF, and the other members  
7 of the CLASS, were and are regularly required to work, and did in fact work, hours during  
8 DEFENDANT's mandatory training seminars.

9 48. For employment practices of DEFENDANT were and are uniform throughout the  
10 United States in all respects material to the claims asserted in this Complaint.

11 49. There are no minimum wage exemptions applicable to the PLAINTIFF and/or to  
12 members of the CLASS.

13 50. As a result of DEFENDANT's failure to pay minimum wage compensation for  
14 all hours worked, as required by the FLSA, the PLAINTIFF and the members of the CLASS  
15 were damaged in an amount to be proved at trial.

16 51. Therefore, the PLAINTIFF demands that he and the members of the CLASS be  
17 paid minimum wage compensation as required by the FLSA for every hour worked in any  
18 workweek for which they were not compensated, plus interest and statutory costs as provided  
19 by law.

20 52. By the conduct alleged herein, DEFENDANT's practices are deceptive and  
21 fraudulent in that DEFENDANT's uniform misclassification practice is to represent to the  
22 CLASS Members that they are not entitled to minimum wages, payment for payroll taxes  
23 including, but not limited to, the income tax required to be withheld from the employee's wages,  
24 the employee's social security tax, and the employer's social security tax, and/or mandatory  
25 insurance and other benefits as required by federal law, when in fact these representations are  
26 false and likely to deceive, for which this Court should issue equitable and injunctive relief,  
27 pursuant to Section 17203 of the California Business & Professions Code, including restitution  
28 of wages wrongfully withheld.

1           53. By the conduct alleged herein, DEFENDANT's practices are also unfair and  
2 deceptive in that DEFENDANT's uniform misclassification caused the PLAINTIFF and the  
3 CLASS Members to be underpaid for each pay period they were employees of DEFENDANT.

4           54. Therefore, the PLAINTIFF demands on behalf of himself and on behalf of each  
5 member of the CLASS, all minimum wages due and reimbursement for and payment of all of  
6 employer's share of payroll taxes including, but not limited to, the income tax required to be  
7 withheld from the employee's wages, the employee's social security tax, and the employer's  
8 social security tax, and/or mandatory insurance and other benefits as required by federal law.

9           55. By and through the unfair and unlawful business practices described herein,  
10 DEFENDANT has obtained valuable property, money and services from the PLAINTIFF and  
11 the CLASS Members, and has deprived them of valuable rights and benefits guaranteed by law  
12 and contract, all to the detriment of the employees and all to the benefit of DEFENDANT so  
13 as to allow DEFENDANT to unfairly compete against competitors who comply with the law.

14           56. All the acts described herein as violations of, among other things, the regulations  
15 of the Department of Labor, the opinions of the Department of Labor Standards Enforcement,  
16 the FLSA, the Code of Federal Regulations, and other federal tax laws, in particular, 26 U.S.C.  
17 §§ 3102(a), 3111(a), 3402(a) and 3403(a), are unlawful, are in violation of public policy, are  
18 immoral, unethical, oppressive, unscrupulous and are deceptive and likely to deceive employees,  
19 and thereby constitute unlawful, unfair and deceptive business practices in violation of Cal. Bus.  
20 & Prof. Code §§ 17200 et seq.

21           57. PLAINTIFF and the CLASS Members are entitled to, and do, seek such relief as  
22 may be necessary to restore to them the property and money which DEFENDANT has acquired,  
23 or of which the PLAINTIFF, and the CLASS Members, have been deprived, by means of the  
24 described unlawful and unfair business practices.

25           58. PLAINTIFF and the CLASS Members are further entitled to, and do, seek a  
26 declaration that the described business practices are unlawful and unfair and that an injunctive  
27 relief should be issued restraining DEFENDANT from engaging in any unlawful and unfair  
28 business practices in the future.

1 59. PLAINTIFF and the CLASS Members have no plain, speedy and/or adequate  
2 remedy at law that will end the unlawful and unfair business practices of DEFENDANT.  
3 Further, the practices herein alleged presently continue to occur unabated. As a result of the  
4 unlawful and unfair business practices described herein, the PLAINTIFF, and the CLASS  
5 Members, have suffered and will continue to suffer irreparable harm unless DEFENDANT is  
6 restrained from continuing to engage in these unfair and unlawful business practices.

7  
8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
10 severally, as follows:

11 1. On behalf of the CLASS:

12 A) That the Court certify the First Cause of Action asserted by the CLASS as a Class  
13 Action pursuant to Cal. Code of Civ. Proc. § 382;

14 B) An order temporarily, preliminarily and permanently enjoining and restraining  
15 DEFENDANT from engaging in similar unlawful conduct as set forth herein;

16 C) An order requiring DEFENDANT to correctly calculate and pay all wages, all  
17 expenses incurred, and all sums unlawfully withheld from compensation due to the  
18 misclassification of PLAINTIFF and the other members of the CLASS as independent  
19 contractors;

20 D) Restitutionary disgorgement of DEFENDANT's ill-gotten gains into a fluid fund  
21 for restitution of the sums incidental to DEFENDANT's violations due to PLAINTIFF and to  
22 the other members of the CLASS; and,

23 E) Issue a declaratory finding that DEFENDANT's acts, policies, practices and  
24 procedures complained of herein violated provisions of the Fair Labor Standards Act and other  
25 Federal laws.

26 2. On all claims:

27 A) An award of interest, including prejudgment interest at the legal rate;

28 B) Such other and further relief as the Court deems just and equitable; and,




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C) An award of costs of suit as allowable under the law. Neither this prayer nor any other allegation or prayer in this Complaint is to be construed as a request, under any circumstance, that would result in a request for attorneys' fees or costs available under Cal. Lab. Code § 218.5.

Dated: December 5, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By:   
Norman B. Blumenthal  
Attorneys for Plaintiff


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**DEMAND FOR JURY TRIAL**

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: December 5, 2011

BLUMENTHAL, NORDREHAUG & BHOWMIK

By:   
Norman B. Blumenthal  
Attorneys for Plaintiff