

1 Mia Farber (State Bar No. 131467)
Buck N. Haddix (State Bar No. 295334)
2 JACKSON LEWIS P.C.
725 South Figueroa Street, Suite 2500
3 Los Angeles, CA 90017
Telephone: (213) 689-0404
4 Facsimile: (213) 689-0430
Email: mia.farber@jacksonlewis.com
5 buck.haddix@jacksonlewis.com

6 Scott P. Jang (State Bar No. 260191)
JACKSON LEWIS P.C.
7 50 California Street, 9th Floor
San Francisco, CA 94111
8 Telephone: (415) 394-9400
Facsimile: (415) 394-9401
9 E-mail: scott.jang@jacksonlewis.com

10 Attorneys for Defendant
APPLE INC.

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13

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

15 Plaintiff,

16 vs.

17 APPLE, INC.,

18 Defendant.
19

Case No. 22-cv-03902 VC

**STIPULATION OF COLLECTIVE
ACTION SETTLEMENT AND RELEASE**

Complaint Filed: July 1, 2022
Trial Date: None set

1 **SETTLEMENT AGREEMENT AND RELEASE**

2 **RECITALS**

3 This Settlement Agreement and Release (the "**Settlement Agreement**") is entered into by
4 and between Plaintiff Anthony P. Foreman ("Plaintiff Foreman") and Plaintiff Amy Pflughaupt
5 ("Plaintiff Pflughaupt") (collectively, "**Plaintiffs**"), on behalf of themselves and on behalf of all
6 Putative FLSA Collective Members (as that term is defined herein), and Defendant Apple Inc.
7 ("**Apple**") (Apple and Plaintiffs are together referred to in this Settlement Agreement as the
8 "**Parties**"). This Settlement Agreement pertains to the alleged failure of Apple to (1) properly
9 include commissions when calculating the regular rate of pay for overtime for hourly paid
10 employees in the position of Apple Solutions Consultant ("ASC"); and (2) compensate ASCs for
11 travel time, including travel spent in transit between mandatory work activities.

12 WHEREAS, on July 1, 2022, Plaintiff Foreman commenced litigation under the Fair
13 Labor Standards Act (FLSA), 29 U.S.C. §§ 201 *et seq.*, in the U.S. District Court for the Northern
14 District of California in the above-captioned matter (the "**Lawsuit**") on behalf of himself and
15 hourly paid employees of Apple who held the job title of Solutions Consultant within the three
16 years prior to July 1, 2022 through the present;

17 WHEREAS, on August 31, 2022, Plaintiff Foreman filed the operative First Amended
18 Complaint asserting causes of action for: (1) the alleged failure to properly calculate the regular
19 rate of pay for overtime wages; and (2) the alleged failure to pay wages for travel time;

20 WHEREAS, on September 2, 2022, Plaintiff Pflughaupt filed an opt-in notice in the
21 Lawsuit;

22 WHEREAS, as of November 5, 2022, Apple agreed to toll the statute of limitations for
23 FLSA claims asserted by the Putative FLSA Collective Members in the Lawsuit so that the
24 Lawsuit could proceed to summary judgment on an individual basis prior to the court deciding the
25 issue of collective certification;

26 WHEREAS, the Parties determined to attempt to resolve the claims asserted in the
27 Lawsuit and retained mediator David A. Rotman, Esq. to assist in that effort. After Apple
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1 responded to written discovery and provided data and other information to Plaintiff's counsel;
2 after Plaintiffs and their counsel investigated the claims asserted in the Lawsuit; and after Plaintiff
3 Foreman and Plaintiff Pflughaupt each responded to Apple's written discovery requests, produced
4 documents to Apple, and submitted to all-day depositions; the Parties participated in two full-day
5 mediation sessions facilitated by Mr. Rotman (one session on January 30, 2023, and a second
6 session on April 17, 2023), during which the Parties discussed the claims and defenses relating to
7 the Lawsuit with Mr. Rotman;

8 WHEREAS, the Parties have made a thorough and independent investigation of the facts
9 and law relating to the allegations in the Lawsuit. In entering into this Settlement Agreement, the
10 Parties have considered: (a) the facts developed during their investigations and the law applicable
11 thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of the
12 claims alleged; and (c) the desirability of consummating this settlement according to the terms of
13 this Settlement Agreement. The Parties have each concluded that it is in their best interests to
14 settle the Lawsuit pursuant to the terms set forth herein; and

15 WHEREAS, in order to avoid the expense and burden of further litigation, the Parties
16 desire to resolve any and all suits, actions, causes of action, claims, or demands based on Apple's
17 alleged violations of the FLSA related or pertaining to Apple's alleged failure to pay Putative
18 FLSA Collective Members overtime wages at the regular rate of pay and compensable travel
19 time. The Parties further desire to resolve all claims against Apple and Releasees (as the term is
20 defined herein) for damages or penalties, interest, liquidated damages, attorneys' fees, costs,
21 expenses, and all other such amounts or any other forms of relief asserted in the Lawsuit or that
22 could have been asserted based on the facts alleged in the Lawsuit.

23 NOW, THEREFORE, in consideration of the foregoing premises and the mutual promises
24 hereinafter set forth, the Parties agree as follows:

25 DEFINITIONS

26 **1. Definitions.** The following terms used in this Settlement Agreement shall have the meanings
27 ascribed to them below:

- 1 a. “ASC” means Apple Solutions Consultant. The terms ASC does not include persons
2 who held the position of Lead Apple Solutions Consultant.
- 3 b. “Court” means the U.S. District Court for the Northern District of California.
- 4 c. “Putative FLSA Collective” means the individuals employed by Apple who (a) at any
5 time from July 1, 2019 through April 17, 2023 held the position of ASC; and (b) did not
6 enter into an arbitration agreement with Apple in connection with their employment
7 with Apple. Each such individual shall be a “Putative FLSA Collective Member.” The
8 Parties estimate that the Putative FLSA Collective includes approximately 243 Putative
9 FLSA Collective Members.
- 10 d. “FLSA Collective” means those Putative FLSA Collective Members who consent to
11 join this settlement by completing and returning a valid and timely claim form. Each
12 such individual shall be an “FLSA Collective Member.”
- 13 e. “Releasees” means Apple and/or each of Apple’s past and present parent companies,
14 subsidiaries, predecessors, affiliates, divisions, supervisory employees, agents,
15 managers, owners, members, shareholders, officers, directors, partners, investors, legal
16 representatives, accountants, trustees, executors, administrators, real or alleged alter
17 egos, predecessors, successors, transferees, assigns, attorneys, and insurers.
- 18 f. “Plaintiffs’ Counsel” or “Collective Counsel” means LIEFF CABRASER HEIMANN &
19 BERNSTEIN, LLP, STIEGLER LAW FIRM LLC, and ROBERT B. LANDRY III, PLC.
- 20 g. “Releasees’ Counsel” means JACKSON LEWIS P.C.
- 21 h. “Settlement Administrator” refers to Simpluris, the third-party settlement administrator,
22 mutually agreed upon by the Parties, which will be retained to perform at least the
23 following duties: (i) mailing notice and claim forms to Putative FLSA Collective
24 Members; (ii) mailing settlement payments to FLSA Collective Members; (iii) notifying
25 the Parties of Putative FLSA Collective Members who join this settlement; (iv) mailing
26 appropriate tax forms to FLSA Collective Members; and (v) calculating individual
27 settlement awards.

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NON-ADMISSION OF LIABILITY

2. No Admission of Liability or Concession as to the Merits. Releasees deny the allegations made in the Lawsuit and deny that they engaged in any wrongdoing or violation of law. Releasees are entering into this Settlement Agreement because it will eliminate the burden, risk, and expense of further litigation. Except for purposes of this settlement, neither this Settlement Agreement, nor any document referred to herein, nor any action taken to carry out this Settlement Agreement, may be construed in any way as an admission, concession, or indication by or against Releasees of any fault, wrongdoing, or liability whatsoever.

RELEASE

3. Release. In consideration of the benefits to be received by Plaintiffs and the FLSA Collective Members under this settlement, Plaintiffs and the FLSA Collective Members shall be deemed to have released and forever discharged Releasees from all FLSA claims asserted in the Lawsuit, as well as all FLSA claims that could have been asserted based on the facts alleged in the Lawsuit, for the period of July 1, 2019 through the date the Court enters an order approving the Settlement, including without limitation (a) all claims under the FLSA for statutory damages, liquidated damages, penalties, interest, costs and attorneys’ fees, and any other relief relating to properly including commissions in the calculation of the regular rate for payment of overtime; and (b) all claims under the FLSA for statutory damages, liquidated damages, penalties, interest, costs and attorneys’ fees, and any other relief relating to compensation for time in transit, including any time in transit between mandatory work activities.

SETTLEMENT IMPLEMENTATION

4. Approval of Settlement.

a. All terms of this Settlement Agreement are contingent upon the approval of the settlement and certification by a court of the FLSA Collective for settlement purposes only.

- 1 b. Plaintiffs shall file a motion for approval of this settlement with the Court and for
2 dismissal of the Lawsuit with prejudice.
- 3 c. Releasees may join in the motion and shall not oppose a motion made under this section
4 unless any provision is inconsistent with this Settlement Agreement.
- 5 d. Provided the Court approves this settlement, Collective Counsel and Releasees' Counsel
6 shall cooperate to secure the approval and dismissal with prejudice of the Lawsuit.
- 7 e. The Parties agree that if the Court requires any changes to this Settlement Agreement
8 before it will grant approval of the settlement, the Parties agree to meet and confer in
9 good faith and, if necessary, re-engage Mr. Rotman to resolve any issues identified in
10 the Court's Order to resubmit an agreement to the Court for approval.
- 11 f. Upon the Court approving the settlement and the expiration of the claims period
12 prescribed in Paragraph 8(d) below, the stipulation entered in the Lawsuit regarding the
13 tolling of the statute of limitations (as referenced in the recitals above) shall terminate.

14 **5. Stipulation for Certification.**

- 15 a. The Parties hereby stipulate, for settlement purposes only, to the following:
- 16 i. Certification of the Putative FLSA Collective, as defined herein, pursuant to 29
17 U.S.C. § 216(b);
- 18 ii. Notification of the settlement to the Putative FLSA Collective, as defined herein,
19 pursuant to 29 U.S.C. § 216(b), in the form of the notice and claim form attached
20 hereto as **Exhibit A** (the "**Notice of Settlement**" and "**Claim Form**,"
21 respectively);
- 22 iii. The appointment of Plaintiff Foreman and Plaintiff Pflughaupt as Claims
23 Representatives on behalf of the FLSA Collective; and
- 24 iv. The appointment of Plaintiffs' Counsel as Collective Counsel.
- 25 b. If the settlement is not approved by the Court, Releasees' stipulations pursuant to
26 Section 5 shall be null and void and may not be used or relied upon by anyone for any
27 purpose whatsoever in any lawsuit or any other judicial, administrative, or arbitral
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1 proceeding. For the avoidance of doubt, in the event the settlement described in this
2 Settlement Agreement is not approved by the Court or the Effective Date described in
3 Section 6 does not occur, Releasees do not waive—and expressly reserve—their right
4 to challenge the propriety of certification of any FLSA collective. The Parties further
5 agree that, other than to effectuate the settlement of the Lawsuit, the certification of the
6 FLSA Collective for settlement purposes and all documents related thereto, including
7 this Settlement Agreement and its accompanying exhibits and all orders entered by the
8 Court in connection with this Settlement Agreement, shall not be admissible in any
9 judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other
10 proceeding, including without limitation any wage and hour litigation against
11 Releasees.

12 c. The settlement is contingent upon Court certification of the FLSA Collective and Court
13 approval of the notification to the Putative FLSA Collective Members, as defined in
14 this Settlement Agreement, in the form of the Notice of Settlement. If the FLSA
15 Collective is not certified by the Court or if notification of the settlement to the FLSA
16 Collective or the Putative FLSA Collective in the form of the Notice of Settlement is
17 not approved by the Court and/or is materially modified in any way, the Settlement
18 Agreement may be voided at either Party’s option.

19 **6. Effective Date.** The settlement shall become effective when all the following events have
20 occurred:

- 21 a. This Agreement has been executed by Plaintiffs and Releasees; and
- 22 b. The Court in the Lawsuit has approved the settlement, including by certifying the
23 FLSA Collective and approving the notification to the Putative FLSA Collective, as
24 defined in this Settlement Agreement, in the form of the Notice of Settlement.

25 **SETTLEMENT FUNDS AND AWARD CALCULATION**

26 **7. Settlement Amount.**

- 1 a. **Gross Settlement Amount.** The total settlement amount is \$500,000.00 to settle the
2 Lawsuit (the “**Gross Settlement Amount**”). The Gross Settlement Amount shall cover
3 the entirety of the amount to settle the Lawsuit, including the amounts claimed by the
4 FLSA Collective Members, the attorneys’ fees and costs approved by the Court, the
5 Service Awards approved by the Court, and the Administrative Costs (as the term is
6 defined herein) approved by the Court. Under no circumstances will Releasees be
7 required to pay more than \$500,000.00 as settlement of the Lawsuit.
- 8 b. **Funding of Settlement.** Within 45 calendar days of the Settlement Administrator
9 notifying the Parties of the amounts claimed pursuant to Paragraph 8(e) below,
10 Releasees shall cause to be deposited into an interest-bearing escrow account
11 designated as a Qualified Settlement Fund pursuant to the Internal Revenue Code (the
12 “**QSF**”) designated by Plaintiffs and under the control of the Settlement Administrator
13 (1) the amount claimed by FLSA Collective Members; (2) the attorneys’ fees and costs
14 approved by the Court; (3) the Service Awards approved by the Court; and (4) the costs
15 of administration (collectively, the “**Collective Settlement Amount**”).
- 16 c. **Settlement Awards.** Each of the FLSA Collective Members shall be paid a settlement
17 award from the Collective Settlement Amount (each a “**Settlement Award**”). The
18 formula for distribution of the Collective Settlement Amount is set forth in **Exhibit B**.
- 19 d. **No Additional Benefits.** All Settlement Awards to FLSA Collective Members shall be
20 deemed to be paid to such individual solely in the year in which such payments actually
21 are received by the individual. It is expressly understood and agreed that the receipt of
22 such individual settlement awards will not entitle any FLSA Collective Members to
23 additional compensation or benefits under any company bonus, contest or other
24 compensation or benefit plan or agreement in place during the period covered by the
25 Settlement, nor will it entitle any FLSA Collective Members to any increased
26 retirement, 401K benefits or matching benefits, or deferred compensation benefits. It is
27 the intent of this Settlement Agreement that the individual settlement awards provided
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1 for in this Settlement Agreement are the sole payments to be made by Apple or
2 Releasees to the FLSA Collective Members, and that the FLSA Collective Members
3 are not entitled to any new or additional compensation or benefits as a result of having
4 received the individual settlement awards (notwithstanding any contrary language or
5 agreement in any benefit or compensation plan document that might have been in effect
6 during the period covered by this Settlement Agreement).

7 **8. Process for Mailing the Notice of Settlement and Claim Form and Settlement Checks to**
8 **Putative FLSA Collective Members.**

9 a. Within 15 calendar days after the Court's order approving the settlement, Releasees
10 shall provide the Settlement Administrator with a list, in Microsoft Excel or Comma
11 Separated Value format, of the full names, most recent email, mailing addresses,
12 telephone numbers, and Social Security numbers of all Putative FLSA Collective
13 Members ("**Collective List**"), the respective number of workweeks each Putative
14 FLSA Collective Member worked during the period of July 1, 2019 through the date
15 the Court enters an order approving the Settlement, and any other relevant information
16 needed so that the Settlement Administrator can process and mail the Notice of
17 Settlement and Claim Form to all Putative FLSA Collective members. The Parties
18 agree and acknowledge that, except for identifying the total number of Putative FLSA
19 Collective Members contained therein, the Collective List, including but not limited to
20 identification and contact information, is confidential and shall not be shared with
21 Plaintiffs or Plaintiffs' Counsel, unless Apple consents to the disclosure or unless the
22 Court orders the disclosure.

23 b. Within 10 calendar days of the Settlement Administrator's receipt of the Collective
24 List, the Settlement Administrator shall issue the Notice of Settlement and Claim Form
25 to all Putative FLSA Collective Members by both email and USPS first class mail. The
26 Settlement Administrator shall provide the Notice of Settlement and Claim Form to the
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1 Parties' counsel for their approval prior to emailing and mailing, and certify in writing
2 to the Parties' counsel the date that such emailing and mailing have been made.

3 c. Prior to emailing and mailing, the Settlement Administrator will use all standard skip
4 tracing devices to verify the accuracy of all physical addresses in the Collective List to
5 ensure, to the extent reasonably practicable, the Notice of Settlement and Claim Form
6 are sent to all Putative FLSA Collective Members at the physical addresses most likely
7 to result in receipt of the Notice of Settlement and Claim Form. This will include
8 running the addresses through the National Change of Address database. It will be
9 conclusively presumed that if an envelope so mailed containing the Notice of
10 Settlement and Claim Form has not been returned within 30 days of the mailing that the
11 Putative FLSA Collective Member received the mailing. With respect to returned
12 envelopes, the Settlement Administrator will use reasonable diligence to obtain a
13 current address and re-mail the envelope to such address within 10 calendar days of
14 receipt of the returned envelope. Any envelopes returned undeliverable shall be traced
15 up to two times to obtain a new address and be re-mailed by First Class U.S. Mail.

16 d. Putative FLSA Collective Members shall have 60 calendar days from the date of
17 mailing to submit their completed Claim Forms, which must be either submitted
18 electronically on the settlement website, postmarked by, or e-mailed and received by
19 the Claims Administrator on or before, the 60th day. To the extent any mailed envelope
20 is returned as undeliverable, such person shall be permitted 60 calendar days from any
21 re-mailing of the Notice to submit their Claim Form.

22 e. After the claims period prescribed in subsection (d) has expired, the Claims
23 Administrator shall calculate the individual Settlement Awards claimed by FLSA
24 Collective Members and notify counsel for each Party the amounts claimed within 7
25 calendar days of the claims period expiring. The Claims Administrator shall, at each
26 FLSA Collective Member's election, either submit an electronic payment or mail all
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1 Settlement Award checks to FLSA Collective Members within 14 calendar days of the
2 claims period expiring.

3 f. Each Settlement Award check shall be valid for 180 calendar days after issuance. In the
4 event that a check expires, the FLSA Collective Member to whom that check was
5 issued may request, at any time within the following 180 days, that a replacement
6 check be issued. Within 21 calendar days of a request for reissuance, a check for the
7 amount of the expired check shall be issued to the requesting FLSA Collective
8 Member, which shall be valid for 180 calendar days after issuance. Within 14 calendar
9 days of the last possible day for an FLSA Collective Member to cash a check (*i.e.*,
10 within 14 calendar days of 381 calendar days of the issuance of all checks), the
11 Settlement Administrator shall provide a full accounting to Collective Counsel and
12 Releasees' Counsel of the value of any uncashed checks and revert the value of any
13 uncashed checks back to Apple.

14 g. All fees and costs incurred by the Settlement Administrator in administering this
15 settlement, which shall include but not be limited to all fees and costs for: reproducing
16 the Notice of Settlement and Claim Form; producing checks for FLSA Collective
17 Members; purchasing postage to send the Notice of Settlement and Claim Form and
18 settlement checks to FLSA Collective Members; notifying the Putative FLSA
19 Collective Members of the Lawsuit; mailing appropriate tax forms to FLSA Collective
20 Members; and other fees reasonably incurred by the Settlement Administrator and
21 approved by the Parties (the "**Administration Costs**") shall be paid to the Settlement
22 Administrator by Releasees from the Gross and Collective Settlement Amount.

23 **9. Treatment of Settlement Awards.**

24 a. For tax purposes, half of the Settlement Award for each FLSA Collective Member will
25 constitute liquidated damages and half will constitute back wages.

26 b. Payments treated as back wages shall be made net of all applicable employment taxes,
27 including, without limitation, federal, state and local income tax withholding and the
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1 employee share of the FICA tax, and shall be reported to the Internal Revenue Service
2 (“IRS”) and the payee under the payee’s name and Social Security number on an IRS
3 Form W-2.

4 c. Payments treated as liquidated damages, interest, and other non-wage relief shall be
5 made without withholding and shall be reported to the IRS and the payee, to the extent
6 required by law, under the payee’s name and Social Security number on an IRS Form
7 1099.

8 d. The employee portion of all applicable income and payroll taxes will be the sole
9 responsibility of the individual FLSA Collective Member.

10 e. Apple makes no representations as to the taxability of any portions of the settlement
11 payments to any FLSA Collective Members. The FLSA Collective Members assume
12 responsibility and liability for any employee taxes owed on their respective Settlement
13 Awards.

14 **10. Collective Counsel’s Attorneys’ Fees and Costs.**

15 a. Plaintiffs and/or Collective Counsel will petition the Court for an award of attorneys’
16 fees in conjunction with the Parties’ settlement based on the lodestar method, plus
17 reasonable out-of-pocket expenses. Releasees reserve the right to oppose the amount of
18 attorneys’ fees and expenses requested. Any award of attorneys’ fees and expenses
19 approved by the Court shall be taken from the Gross Settlement Amount.

20 b. The funds for the payment of approved attorneys’ fees and expenses shall be paid to
21 Collective Counsel by the Settlement Administrator pursuant to the timing outlined in
22 Paragraph 8(e) above.

23 c. The attorneys’ fees and costs paid by the FLSA Collective, through Releasees, shall
24 constitute full satisfaction of Releasees’ obligations to pay amounts to any person,
25 attorney, or law firm for attorneys’ fees or costs in the Lawsuit on behalf of Plaintiffs
26 and FLSA Collective Members, and shall relieve Releasees from any other claims or
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1 liability to any other attorney or law firm for any attorneys' fees or costs to which any
2 of them may claim to be entitled on behalf of Plaintiffs and FLSA Collective Members.

3 d. An IRS Form 1099 shall be provided to Collective Counsel for the payment of
4 attorneys' fees and expenses made to Collective Counsel through Releasees. Each firm
5 constituting Collective Counsel shall be solely and legally responsible to pay applicable
6 taxes on the payment made to that firm.

7 **11. Service Awards.**

8 a. Plaintiff Foreman and Plaintiff Pflughaupt each will seek approval of a service award
9 not to exceed \$5,000.00 respectively for their service as Claims Representatives.
10 Releasees reserve the right to oppose the amount of such application. Any service
11 award approved by the Court will be in addition to the amounts Plaintiffs may receive
12 as part of their respective Settlement Awards. Any service award shall be treated as
13 non-wage penalties and liquidated damages, to be reported on an IRS Form 1099 (box
14 3), and the service award shall not be subject to FICA and FUTA withholding taxes.
15 Any service award shall be paid from the Collective Settlement Amount

16 b. Within 7 business days of the Effective Date, Plaintiffs Foreman and Pflughaupt agree
17 to immediately destroy under the supervision of Releasees' Counsel any of Apple's
18 documents in their possession, custody, or control, including without limitation all
19 storage locations such as cloud-based email accounts, or cloud-based storage accounts.

20 **12. No Claim Based upon Distributions or Payments in Accordance with this Settlement**
21 **Agreement.** No person shall have any claim against Plaintiffs, any FLSA Collective
22 Member, Releasees, the Settlement Administrator, Collective Counsel, or Releasees'
23 Counsel based on distributions or payments made in accordance with this Settlement
24 Agreement.

25 **MISCELLANEOUS**

26 **13. Releasees' Legal Fees.** Releasees' legal fees, costs, and expenses in the Lawsuit shall be
27 borne by Releasees.

1 **14. Nullification of the Settlement Agreement.** In the event the settlement does not become
2 final for any reason, this Settlement Agreement shall be null and void, and the Parties shall
3 be returned to their respective statuses as of the date immediately prior to the execution of
4 this Settlement Agreement. If this occurs, the Parties shall proceed in all respects as if the
5 Settlement Agreement had not been executed.

6 **15. Severability.** If for any reason any term or provision of this Settlement Agreement is held to
7 be invalid or unenforceable to any extent, then (a) such term or provision will be interpreted,
8 construed, or reformed to the extent reasonably required to render the same valid,
9 enforceable, and consistent with the original intent underlying such provision; (b) such term
10 or provision will remain in effect to the extent that it is not invalid or unenforceable; and
11 (c) such invalidity or unenforceability will not affect any other term or provision of this
12 Settlement Agreement; provided, however, that the paragraphs entitled Release, Gross
13 Settlement Amount, and Collective Settlement Amount are material terms and their inclusion
14 is essential to this Settlement Agreement. If any part of those terms or paragraphs is held to
15 be invalid or unenforceable to any extent, or if any of those provisions are edited or reformed
16 in any way, then this Settlement Agreement may be voided at either Party's option. The
17 Parties agree to cooperate to address and resolve any such issues as they arise and to use
18 reasonable, good faith efforts to uphold the settlement reached by the Parties.

19 **16. Inadmissibility of Settlement Agreement.** Except for purposes of settling the Lawsuit or
20 enforcing this Settlement Agreement, neither this Settlement Agreement; nor its terms; nor
21 any document, statement, proceeding or conduct related to this Settlement Agreement; nor
22 any reports or accounts thereof, shall be construed as, offered or admitted in evidence as,
23 received as, or deemed to be evidence for any purpose adverse to the Parties, including,
24 without limitation, evidence of a presumption, concession, indication, or admission by any of
25 the Parties of any liability, fault, wrongdoing, omission, concession or damage.

26 **17. Computation of Time.** For purposes of this Settlement Agreement, if the prescribed time
27 period in which to complete any required or permitted action expires on a Saturday, Sunday,
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1 or legal holiday (as defined by Federal Rule of Civil Procedure 6(a)(6)), such time period
2 shall be continued to the following business day.

3 **18. Amendment or Modification.** This Settlement Agreement may be amended or modified
4 only by a written instrument signed by the Parties or their successors in interest, or by duly
5 authorized counsel for such persons or entities. Any such amendment or modification will
6 only become effective upon approval by the Court.

7 **19. Entire Settlement Agreement.** This Settlement Agreement constitutes the entire agreement
8 between the Parties, and no oral or written representations, warranties or inducements have
9 been made to any Party concerning this Settlement Agreement other than the representations,
10 warranties, and covenants contained and memorialized in this Settlement Agreement. All
11 prior or contemporaneous negotiations, memoranda, agreements, understandings, and
12 representations, whether written or oral, are expressly superseded hereby and are of no
13 further force and effect. Each of the Parties acknowledges that, in entering into this
14 Settlement Agreement, they have not relied on any promise, representation, or warranty—
15 express or implied—not contained in this Agreement.

16 **20. Binding on Successors and Assigns.** This Agreement shall be binding upon, and inure to
17 the benefit of, the Plaintiffs, the FLSA Collective, Releasees, and each of their heirs,
18 beneficiaries, executors, administrators, successors, transferees, successors, or assigns.

19 **21. Counterparts.** This Settlement Agreement may be executed in one or more counterparts,
20 including by electronic signature, facsimile, or email. All executed counterparts shall be
21 deemed to be one and the same instrument.

22 **22. Cooperation and Drafting.** The Parties have cooperated in the drafting and preparation of
23 this Settlement Agreement; hence the drafting of this Settlement Agreement shall not be
24 construed against any of the Parties. The Parties agree that the terms and conditions of this
25 Settlement Agreement were negotiated at arm's-length and in good faith by the Parties
26 and/or their counsel, and the terms and conditions reflect a settlement that was reached
27 voluntarily based upon adequate information and sufficient discovery and after consultation
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1 with experienced legal counsel (or the full and unimpeded opportunity to consult with such
2 legal counsel).

3 **23. Bona Fide Dispute.** The Parties agree this Settlement Agreement is a bona fide resolution of
4 disputed claims. Nothing in this Settlement Agreement is a concession that Releasees
5 violated any law.

6 **24. Captions.** The captions or headings of the sections and paragraphs of this Settlement
7 Agreement have been inserted for convenience of reference only and shall have no effect on
8 the construction or interpretation of any part of this Settlement Agreement.

9 **25. Authority of Releasees' Signatories.** By executing this Settlement Agreement, each
10 Releasee represents and warrants that it is a business entity, existing and in good standing
11 under the laws of its state of formation, and that the person executing this Settlement
12 Agreement on its behalf is fully authorized to bind it. The person executing this Settlement
13 Agreement on each entity's behalf likewise represents and warrants that they have been
14 authorized to execute and enter into this Settlement Agreement on behalf of the respective
15 entity.

16 **26. Signature.** An electronic or facsimile signature shall be deemed to be an original for all
17 purposes.

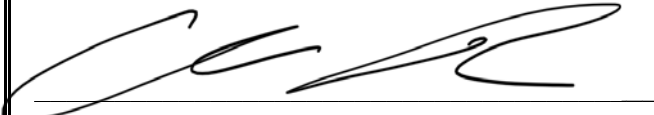
18 **27. Choice of Law and Venue of Disputes.** This Settlement Agreement shall be construed
19 under California law, without regard to any choice of law principles, except to the extent any
20 law of the United States governs any matter set forth, in which case federal law shall govern.
21 Any dispute arising under this Settlement Agreement shall have venue exclusively in the
22 court chosen by the Parties where the new lawsuit will be filed.

23 **28. Acknowledgment.** Each Party executing this Settlement Agreement confirms it is doing so
24 voluntarily and that it has read this Settlement Agreement, understood it, and entered into it
25 after being advised by its respective counsel or after having complete opportunity to consult
26 counsel.

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:



Date: 8/16/23

Anthony P. Foreman

individually and on behalf of the Putative FLSA Collective

Date: _____

Amy Pflughaupt

individually and on behalf of the Putative FLSA Collective

Date: _____

Apple Inc.

Deborah Rice

Senior Director, Global Labor and Employment Law

1 after being advised by its respective counsel or after having complete opportunity to consult
2 counsel.

3

4 IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:

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_____ Date: _____

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Anthony P. Foreman


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individually and on behalf of the Putative FLSA Collective

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DocuSigned by:

48DA18E16D4D478...

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Date: 08/11/23 | 8:17 AM PDT

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Amy Pflughaupt

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individually and on behalf of the Putative FLSA Collective

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_____ Date: _____

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Apple Inc.

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Kwang Kim

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Senior Director, Employment Law

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IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as follows:

Date: _____

Anthony P. Foreman

individually and on behalf of the Putative FLSA Collective

Date: _____

Amy Pflughaupt

individually and on behalf of the Putative FLSA Collective

Date: August 16, 2023

Apple Inc.

Deborah Rice

Deborah Rice

Senior Director, Global Labor and Employment Law

EXHIBIT A

NOTICE OF SETTLEMENT AND CLAIM FORM

NOTICE OF PENDENCY OF SETTLEMENT OF WAGE CLAIMS FOR EMPLOYEES OF APPLE INC.

To all current and former hourly paid individuals employed by Apple Inc. ("Apple") in the position of Apple Solutions Consultant ("ASC") from July 1, 2019 through April 17, 2023, who did not enter into an arbitration agreement with Apple in connection with their employment with Apple.

PLEASE READ THIS NOTICE CAREFULLY

IT MAY AFFECT YOUR LEGAL RIGHT TO COLLECT APPROXIMATELY <<INSERT AMOUNT>> (AFTER ANY APPLICABLE PARYOLL DEDUCTIONS) IN CONNECTION WITH THE SETTLEMENT OF A COLLECTIVE ACTION LAWSUIT.

A. WHAT IS THIS NOTICE ABOUT?

A settlement agreement (the "Settlement") has been reached between Apple and Plaintiffs Anthony P. Foreman and Amy Pflughaupt ("Plaintiffs") in a lawsuit that was filed against Apple pending in the U.S. District Court for the Northern District of California (the "Court"). The case is pending in the Court as *Anthony P. Foreman v. Apple, Inc.*, Case No. 3:22-cv-03902 VC (the "Lawsuit"). Plaintiffs are pursuing the Lawsuit on behalf of themselves and individuals employed by Apple who (a) at any time from July 1, 2019 through April 17, 2023 held the position of ASC; and (b) did not enter into an arbitration agreement with Apple in connection with their employment with Apple ("Putative FLSA Collective Member").

The Court overseeing the Lawsuit has approved the Settlement, which pays money to those Putative FLSA Collective Members who timely consent to join this Settlement ("FLSA Collective"). The Court appointed Loeff Cabraser Heimann & Bernstein, LLP, Stiegler Law Firm LLC, and Robert B. Landry III, PLC to serve as Collective Counsel. In making this appointment and approving the Settlement, the Court gave these Collective Counsel firms the authority to represent and bind Plaintiffs and the FLSA Collective regarding the Settlement.

You have received this Notice because you were identified from Apple's records as an employee who worked for Apple in the position of ASC at some point during the time period of July 1, 2019 through April 17, 2023, did not sign an arbitration agreement in connection with your employment at Apple, and who is eligible to recover money from the Settlement. In order to recover money, you must join the Settlement. If you do not join the Settlement, you will not receive any money. This Notice is designed to provide you with a brief description of the Lawsuit, inform you of the terms of the Settlement, and discuss your rights in connection with the Settlement.

The Court has not determined that Apple is liable or did anything wrong. Instead, Plaintiffs and Apple reached this Settlement to resolve the case.

B. WHAT IS THIS LAWSUIT ABOUT?

The Lawsuit was filed by an employee of Apple who alleges that his and other employees' pay was affected by the alleged failure to properly calculate the regular rate of pay for overtime wages and the alleged failure to pay wages for travel time under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.* The Lawsuit claims that Apple did not include commissions when calculating the regular rate of pay for overtime wages for ASCs and did not compensate ASCs for travel time, including travel spent in transit between mandatory work activities.

Apple denies all of these allegations. Apple maintains that it accurately included commissions when calculating the regular rate of pay for overtime for ASCs, paid ASCs all compensable travel time, and that

Plaintiffs are not entitled to any penalties or any other remedies under the FLSA. After lengthy settlement negotiations with the assistance of a respected mediator, Plaintiffs and Apple agreed to settle the Lawsuit. The Parties and their counsel have concluded that the Settlement is advantageous, considering the risks and uncertainty to each side of continued litigation.

The Settlement represents a compromise of disputed claims. Nothing in the Settlement is intended to be or will be construed as an admission by Apple that Plaintiffs' claims in the Lawsuit have merit or that Apple did not include commissions when calculating the regular rate of pay for overtime wages for ASCs and did not compensate ASCs for travel time, including travel spent in transit between mandatory work activities, or that collective members are entitled to any penalties under the FLSA or any other law. On the contrary, Apple does not agree it did anything wrong, believes you were paid correctly and fairly during your employment, and denies any liability.

C. HOW MUCH WILL I RECEIVE AND HOW DO I GET THE MONEY OFFERED?

The settlement payment for which you are eligible is based on your employment records with Apple, the number of workweeks you worked as an ASC during the relevant period, the amount you were paid by Apple, and any applicable payroll deductions. Based on this reconciliation, each employee, including you, was classified as an alleged underpaid employee. If you were classified as an alleged underpaid employee and you complete the claim form to join this settlement, you will receive one check representing wages and alleged liquidated damages, based on the amount in the settlement fund. **Your net settlement payment is expected to be approximately <<INSERT AMOUNT>>, after any applicable payroll deductions.**

D. SUMMARY OF THE SETTLEMENT PAYMENTS

- 1. Gross Settlement Amount:** Apple will pay \$500,000.00 as the total settlement amount to settle the Lawsuit (the "**Gross Settlement Amount**"). The Gross Settlement Amount will cover the entirety of the amount to settle the Lawsuit, including the amounts claimed by the FLSA Collective Members, the attorneys' fees and costs approved by the Court, the Service Awards approved by the Court, and the Administration Costs approved by the Court. Apple will separately pay the employer's portion of any payroll taxes arising from the settlement.
- 2. Service Awards:** Plaintiffs will seek approval from the Court for a payment for their time and effort in prosecuting the Lawsuit on behalf of the Putative FLSA Collective Members and for their signing a general release of all claims ("Service Awards"). The Service Awards will be paid out of the Gross Settlement Amount to Plaintiffs not to exceed \$5,000.00 respectively for their service as Claims Representatives.
- 3. Collective Counsel's Attorneys' Fees and Costs:** Plaintiffs and/or Collective Counsel may petition the Court for an award of attorneys' fees and expenses in conjunction with the Parties' Settlement and efforts litigating this Lawsuit, which Apple reserves the right to oppose, plus reasonable out-of-pocket expenses, subject to the terms of the Settlement. Any award of attorneys' fees and expenses approved by the Court will be taken from the Gross Settlement Amount.
- 4. Administration Costs:** All fees and costs of administering the settlement will be paid from the Gross Settlement Amount. Administrative costs include the cost associated with mailing notice of the Settlement to the Putative FLSA Collective Members and processing the settlement payments to the FLSA Collective Members. The Court has appointed Simpluris to act as an independent Settlement Administrator for purposes of administering this settlement.

5. **Net Settlement Amount:** The Net Settlement Amount means the Gross Settlement Amount less (1) the attorneys’ fees and costs approved by the Court; (2) the Service Awards approved by the Court; and (3) the costs of administration approved by the Court.
6. **Settlement Award:** Each of the FLSA Collective Members will be paid a settlement award from the Net Settlement Amount. Each Putative FLSA Collective Member’s share of the Net Settlement Amount will be based on the Putative FLSA Collective Member’s number of workweeks worked as an ASC during the period of July 1, 2019 through April 17, 2023 in comparison to the total number of workweeks worked by all Putative FLSA Collective Members during the period of July 1, 2019 through April 17, 2023. The Settlement Administrator will issue to each FLSA Collective Member an IRS W2 and Form 1099.

E. WHAT ARE MY RIGHTS AS A PUTATIVE FLSA COLLECTIVE MEMBER?

You have two options:

To join the settlement: COMPLETE THE CLAIM FORM	If you choose to be included in the Settlement, all you need to do is complete the attached Consent to Join Settlement Form and return it to the Settlement Administrator by the due date. After the period to join the Settlement ends, you will receive a settlement check for your share.	Deadline: «Date»
To stay out of the settlement: DO NOTHING	If you do not want a payment or other benefits from this settlement and you want to retain the right to sue Apple on your own about any of the wage claims that were settled in this Lawsuit, then <u>do not</u> complete the Consent to Joint Settlement Form. By doing nothing, you give up the possibility of getting money from the settlement of this Lawsuit.	No deadline

If you complete the claim form, you agree to the following:

You will be acknowledging that you are represented by the Collective Counsel and that you will be bound by the terms of the attorney-client agreement signed by Plaintiffs Anthony P. Foreman and Amy Pflughaupt. You will **not** have to pay the Collective Counsel any money directly. Apple is paying attorneys’ fees and costs as part of the settlement as a percentage of the overall recovery.

You will be releasing Releasees from the claims under the Fair Labor Standards Act (FLSA) asserted in the Lawsuit, as well as all FLSA claims that could have been asserted based on the facts alleged in the Lawsuit, for the period of July 1, 2019 through April 17, 2023, including without limitation (a) all claims under the FLSA for statutory damages, liquidated damages, penalties, interest, costs and attorneys’ fees, and any other relief relating to properly including commissions in the calculation of the regular rate for payment of overtime; and (b) all claims under the FLSA for statutory damages, liquidated damages, penalties, interest, costs and attorneys’ fees, and any other relief relating to compensation for time in transit, including any time in transit between mandatory work activities.

Releasees means Apple and/or each of its past and present parent companies, subsidiaries, predecessors, affiliates, divisions, supervisory employees, agents, managers, owners, members, shareholders, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, attorneys, and insurers.

F. HOW LONG DO I HAVE TO MAKE A DECISION?

The deadline to join the settlement is 60 days after this notice was sent, which is «DATE».

G. WHAT HAPPENS AFTER THE DECISION PERIOD ENDS?

After the deadline to join the Settlement passes, the Settlement Administrator will perform a final accounting and process the settlement payments for all the employees in the Settlement. The Settlement Administrator will then mail checks or submit electronic payment to all the employees who joined the Settlement.

If you wish to receive your settlement payment through electronic payment, you will need to provide the Settlement Administrator with the requested information for processing the payment in the Consent to Join Settlement Form. If you receive a check, you will be able to deposit or cash the settlement check within 180 days of the date it is issued. If you lose or damage the check during that 180-day period, you can contact the Settlement Administrator to request a replacement check be issued. Any reissued replacement check will be valid for 180 days after the date it is issued.

H. GETTING MORE INFORMATION

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, or if you have questions about the Settlement, please see the Settlement available at <<WEB ADDRESS>>, contact the Settlement Administrator (see below contact information), contact Collective Counsel (see below contact information), or access the Court docket in this case, for a fee, through the Court's PACER system at <https://ecf.cand.uscourts.gov>, or visit the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, California, 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

Daniel M. Hutchinson
LIEFF CABRASER HEIMANN
& BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, CA 94111
phone 415.956.1000 | fax 415.956.1008
dhutchinson@lchb.com

Charles J. Stiegler
STIEGLER LAW FIRM LLC
318 Harrison Ave., Suite 104
New Orleans, LA 70124
phone 504.267.0777 | fax 504.513.3084
Charles@StieglerLawFirm.com

Robert B. Landry III
ROBERT B. LANDRY III, PLC
5420 Corporate Boulevard, Suite 303
Baton Rouge, LA 70808
phone 225.349.7460 | fax 225.349.7466
rlandry@landryfirm.com

[Insert Settlement Administrator]

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

CONSENT TO JOIN SETTLEMENT OF WAGE CLAIM LAWSUIT AGAINST APPLE INC. FORM

Printed Name: _____

1. I have received and read the Notice regarding the settlement of the lawsuit filed against Apple Inc. ("Apple") in *Anthony P. Foreman v. Apple, Inc.*, United States District Court for the Northern District of California, Case No. 3:22-cv-03902 VC ("the Lawsuit"). I understand that the Lawsuit was brought under the Fair Labor Standards Act. I understand the case was settled and the Settlement Agreement ("Settlement") was approved by the Court.
2. I consent to join the Settlement. I understand I will receive a proportional share of the Net Settlement Amount totaling approximately **\$\$<<INSERT AMOUNT>>**, after any applicable payroll deductions.
3. I understand that, in exchange for this payment, all FLSA claims against Apple asserted in the Lawsuit, as well as all FLSA claims I may have that could have been asserted based on the facts alleged in the Lawsuit will be fully and finally settled.
4. I consent to be bound by the Court's decisions.

Signature

Date

By signing, you designate Lief Cabraser Heimann & Bernstein, LLP, Stiegler Law Firm LLC, and Robert B. Landry III, PLC as your attorneys for your wage claims that will be settled in the Lawsuit . The information below will not be included on any public court filing:

Email Address

Cell Phone Number

Address

City / State / Zip

TO JOIN, RETURN THIS FORM BY MAIL OR EMAIL:
Anthony P. Foreman v. Apple Inc.
ADMINISTRATOR
Administrator's Address
Administrator's Phone / Fax
Administrator's Email

OR COMPLETE ONLINE:
«hyperlink»

QUESTIONS? You can contact the attorneys for the group of Apple employees:

Daniel M. Hutchinson
 LIEFF CABRASER HEIMANN
 & BERNSTEIN, LLP
 275 Battery Street, 29th Floor
 San Francisco, CA 94111
 phone 415.956.1000 | fax 415.956.1008
 dhutchinson@lchb.com

Charles J. Stiegler
 STIEGLER LAW FIRM LLC
 318 Harrison Ave., Suite 104
 New Orleans, LA 70124
 phone 504.267.0777 | fax 504.513.3084
 Charles@StieglerLawFirm.com

Robert B. Landry III
 ROBERT B. LANDRY III, PLC
 5420 Corporate Boulevard, Suite 303
 Baton Rouge, LA 70808
 phone 225.349.7460 | fax 225.349.7466
 rlandry@landryfirm.com

The deadline to submit this form is **DATE. Forms submitted after this date **WILL NOT** be valid.**

EXHIBIT B
FORMULA FOR DISTRIBUTION OF SETTLEMENT

The Net Settlement Amount shall be available for allocation to the Putative FLSA Collective Members as their Settlement Award as follows:

1. Each Putative FLSA Collective Member shall be eligible for a pro-rata share of the Net Settlement Amount based on the Putative FLSA Collective Member's number of workweeks worked as an ASC during the period of July 1, 2019 through April 17, 2023 in comparison to the total number of workweeks worked by all Putative FLSA Collective Members during the period of July 1, 2019 through April 17, 2023. For example, if a Putative FLSA Collective Member's workweeks worked as an ASC during the time period of July 1, 2019 through April 17, 2023 amounts to 5% of the total number of workweeks worked by all Putative FLSA Collective Members during the period of July 1, 2019 through April 17, 2023, that Putative FLSA Collective Member's will be eligible to receive 5% of the Net Settlement Amount if the Putative FLSA Collective Member properly consents to join the settlement and is deemed an FLSA Collective Member.

2. Putative FLSA Collective Members or FLSA Collective Members who choose not to participate in the Settlement will not receive their pro-rata share of the Gross Settlement Amount. Nor shall Apple be required to disburse from the Gross Settlement Amount any sums other than those claimed by Putative FLSA Collective Members or FLSA Collective Members, or approved by the Court for distribution as attorneys' fees and costs, administration costs, and service awards.