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F I L E D
Clerk of the Superior Court
SEP 06 2013
By: LEE RYAN, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

BRANDON FELCZER, individually,	)	CASE NO.: 37-2011-00102593-CU-OE-CTL
RYAN GOLDMAN, individually,)	
RAMSEY HAWKINS, individually, and)	)	ORDER GRANTING DISMISSAL WITHOUT
JOSEPH LANE CARCO, on behalf of )	)	PREJUDICE OF PLAINTIFFS' INDIVIDUAL
themselves and all others similarly )	)	AND CLASS CLAIMS WITH RESPECT TO
situated )	)	THE FIFTH CAUSE OF ACTION
)	)	(VIOLATION OF LABOR CODE § 212)
Plaintiffs,)	
)	)	"IMAGED FILE"
vs.)	
)	)	Judge: Hon. Ronald S. Prager
)	)	Dept: C-71
APPLE INC., a California corporation; )	)	Action Filed: December 16, 2011
and DOES 1 through 300, inclusive. )	)	Trial Date: Not Set
))	
Defendants.)	

Pursuant to California Rule of Court 3.770, Plaintiffs' respectfully request Dismissal Without Prejudice of Plaintiffs' Individual and Class Claims with respect to the Fifth Cause of Action (violation of Labor Code § 212). This request is based on the Declaration of Jeffrey L. Hogue, and for good cause shown.

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ORDER GRANTING DISMISSAL WITHOUT PREJUDICE OF PLAINTIFFS' INDIVIDUAL AND CLASS CLAIMS WITH RESPECT TO THE FIFTH CAUSE OF ACTION (VIOLATION OF LABOR CODE § 212)

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IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiffs' Fifth Cause of Action for violation of Labor Code § 212 is hereby dismissed without prejudice.
2. The class claims alleged in Plaintiffs' Third Amended Complaint with respect to Plaintiffs' Fifth Cause of Action for violation of Labor Code § 212 are hereby dismissed without prejudice.
3. Pursuant to California Rule of Court 3.770(c), the parties need not send notice to the unnamed putative class members of this dismissal.

IT IS SO ORDERED.

Dated: September SEP 06 2013

RONALD S. PRAGER

HON. JUDGE RONALD S. PRAGER
Judge of the San Diego County Superior Court

1 Jeffrey L. Hogue, Esq. (SBN 234557)
Tyler J. Belong, Esq. (SBN 234543)
2 Bryce A. Dodds, Esq. (SBN 283491)
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4 Tel: (619) 238-4720
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F I L E D
Clerk of the Superior Court
SEP 06 2013
By: LEE RYAN, Deputy

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

9 BRANDON FELCZER, individually,) CASE NO.: 37-2011-00102593-CU-OB-CTL
RYAN GOLDMAN, individually,)
10 RAMSEY HAWKINS, individually, and) **DECLARATION OF JEFFREY L. HOGUE**
JOSEPH LANE CARCO, on behalf of) **ISO OF ORDER GRANTING**
11 themselves and all others similarly) **DISMISSAL WITHOUT PREJUDICE OF**
situated) **PLAINTIFFS' INDIVIDUAL AND CLASS**
12) **CLAIMS WITH RESPECT TO THE FIFTH**
13 Plaintiffs,) **CAUSE OF ACTION (VIOLATION OF**
) **LABOR CODE § 212)**
14 vs.)
15) **"IMAGED FILE"**
16 APPLE INC., a California corporation;) Judge: Hon. Ronald S. Prager
and DOES 1 through 300, inclusive.) Dept.: C-71
17)
18 Defendants.) Action Filed: December 16, 2011
) Trial Date: None set

19
20
21 I, JEFFREY L. HOGUE, declare as follows:

22 1. I am an attorney at law, duly licensed to practice law in the State of California. I am a
23 partner of the law firm of HOGUE & BELONG, APC, attorneys of record for Plaintiffs. I make
24 this declaration from my personal knowledge except as to those matters, if any, stated upon
25 information and belief, and if called as a witness, I could and would competently testify thereto.

26 2. I submit this declaration pursuant to California Rule of Court, Rule 3.770, in order to seek
27 court approval for the dismissal of the fifth cause of action (Labor Code § 212) without prejudice.

28 -1-

**DECLARATION OF JEFFREY L. HOGUE ISO REQUEST FOR DISMISSAL OF
PLAINTIFFS' FIFTH CAUSE OF ACTION (LABOR CODE § 212) WITHOUT
PREJUDICE**

1 3. Rule of Court 3.770(a) requires court approval of the dismissal of a class action, or cause
2 of action thereof and requires a declaration setting forth the facts and whether consideration is
3 given for the dismissal. Rule of Court 3.770(b) allows the court to grant the dismissal without a
4 hearing. Rather than litigate the class issues with respect to the fifth cause of action, resulting in a
5 waste of valuable court resources and the litigants' time and expense, Plaintiffs' move to dismiss
6 the fifth cause of action without prejudice. This claim has been thoroughly litigated and with
7 recently received discovery, Plaintiffs now believe the fifth cause of action (Labor Code § 212) is
8 tenuous and Plaintiffs are unlikely to prevail on the merits of that claim.

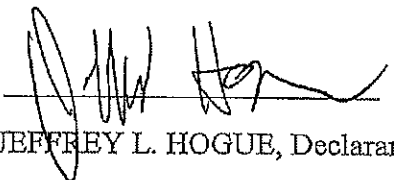
9 4. Pursuant to Rule of Court 3.770(c), the action may be dismissed prior to class certification
10 without notice to the class members if the court finds that the dismissal will not prejudice them.

11 5. The putative class members will not be prejudiced by dismissal without prejudice of the
12 class action allegations because putative class members can bring their own claims or on a
13 representative basis if they choose, irrespective of the dismissal herein. Because the case has yet
14 to be certified as a class action, there is no res judicata effect on any member.

15 6. No consideration, direct or indirect is being given for this dismissal.

16
17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

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20 Executed this 4th day of September, 2013, at San Diego, California.

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23 JEFFREY L. HOGUE, Declarant

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PROOF OF SERVICE

Felczer v. Apple Inc., et al.

Case No.: 37-2011-00102593-CU-OE-CTL

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is HOGUE & BELONG (the "firm"), 430 Nutmeg Street, Second Floor, San Diego, CA 92103.

I am readily familiar with the firm's practice of collection and processing of correspondence for mailing with the United States Postal Service the same day that it is collected and processed; such correspondence would be deposited with the United States Postal Service that same day in the ordinary course of the firm's business.

On September 10, 2013, I served the foregoing documents described as

- **ORDER GRANTING DISMISSAL WITHOUT PREJUDICE OF PLAINTIFFS' INDIVIDUAL AND CLASS CLAIMS WITH RESPECT TO THE FIFTH CAUSE OF ACTION (VIOLATION OF LABOR CODE § 212) and**
- **DECLARATION OF JEFFREY L. HOGUE ISO OF ORDER GRANTING DISMISSAL WITHOUT PREJUDICE OF PLAINTIFFS' INDIVIDUAL AND CLASS CLAIMS WITH RESPECT TO THE FIFTH CAUSE OF ACTION (VIOLATION OF LABOR CODE § 212)**

on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST.

By Mail

I placed such envelope for deposit with the United States Postal Service by placing it for collection and mailing at my business address on the date stated, following the firm's ordinary business practice.

By Personal Delivery


I personally delivered a copy of the document(s) listed above to the person(s) at the address(es) set forth on the following page.

By Electronic Mail

I transmitted a true and correct copy of the above-entitled document(s) to recipients noted via electronic service at the recipient's office. The recipient(s) has agreed to accept service by electronic mail. This service complies with C.C.P. § 1010.6.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 10, 2013, at San Diego, California.


Courtney Weissinger

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SERVICE LIST

Felczer v. Apple Inc., et al.

Case No.: 37-2011-00102593-CU-OE-CTL

Julie A. Dunne, Esq.

Attorneys for Defendant APPLE INC.

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