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Electronically
FILED

by Superior Court of California, County of San Mateo

ON

6/28/2024

By

/s/ **Haley Correa**

Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

HELIO JARCZEWSKI, JR., on behalf of the
State of California, as a private attorney
general,

Plaintiff,

vs.

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

Defendants.

Case No. **23-CIV-05025**

**SECOND AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating), and the
applicable Wage Order(s).

Plaintiff Helio Jarczewski, Jr. ("PLAINTIFF"), on behalf of the people of the State of

1 California and as an “aggrieved employee” acting as a private attorney general under the Labor
2 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
3 information and belief, except for his own acts and knowledge which are based on personal
4 knowledge, the following:

5 INTRODUCTION

6 1. PLAINTIFF brings this action against Defendant Apple Inc. (referred to as
7 “DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of all
8 current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not**
9 **seek to recover anything other than penalties as permitted by California Labor Code §**
10 **2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does
11 not seek underlying general and/or special damages for those violations, but simply the civil
12 penalties permitted by California Labor Code § 2699.

13 2. California has enacted the PAGA to permit an individual to bring an action on
14 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
15 nature of this action.

16 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s
17 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
18 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
19 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

20 THE PARTIES

21 4. Apple Inc. (“DEFENDANT”) is a Corporation that at all relevant times mentioned
22 herein conducted and continues to conduct substantial business in California.

23 5. DEFENDANT is an American multinational technology company headquartered
24 in Cupertino, California.

25 6. PLAINTIFF was employed by DEFENDANT in California from November of
26 2019 to May of 2023 and was at all times classified by DEFENDANT as a non-exempt employee,
27 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
28

1 of minimum and overtime wages due for all time worked.

2 7. PLAINTIFF, and such persons that may be added from time to time who satisfy the
3 requirements and exhaust the administrative procedures under the Private Attorney General Act,
4 brings this Representative Action on behalf of the State of California with respect to himself and
5 all individuals who are or previously were employed by DEFENDANT in California in a retail
6 store, including any employees staffed with DEFENDANT by a third party, and classified as non-
7 exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of July 25, 2022
8 until a date as determined by the Court (the "PAGA PERIOD").

9 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
10 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
11 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s
12 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7,
13 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
14 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title
15 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based
16 upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
17 within the meaning of Labor Code § 2699, *et seq.*

18 9. The true names and capacities, whether individual, corporate, subsidiary,
19 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
20 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
21 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the
22 true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
23 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
24 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible
25 in some manner for one or more of the events and happenings that proximately caused the injuries
26 and damages hereinafter alleged.

27 10. The agents, servants and/or employees of the Defendants and each of them acting
28 on behalf of the Defendants acted within the course and scope of his, her or its authority as the

1 agent, servant and/or employee of the Defendants, and personally participated in the conduct
2 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
3 Consequently, the acts of each Defendant are legally attributable to the other Defendants and all
4 Defendants are jointly and severally liable to PLAINTIFF and all the AGGRIEVED
5 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
6 agents, servants and/or employees.

7 8 **THE CONDUCT**

9 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
10 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF
13 and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under
14 DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work
15 while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
16 was from time to time interrupted by work assignments while clocked out for what should have
17 been PLAINTIFF's off-duty meal break. Further, PLAINTIFF and AGGRIEVED EMPLOYEES
18 were required to prepare for work, including storing any personal items in DEFENDANT's
19 lockers, prior to clocking in for work. Also, DEFENDANT required PLAINTIFF and
20 AGGRIEVED EMPLOYEES to respond to messages regarding work concerns and issues while
21 off-the-clock, and, thus, during time that was not recorded as time worked. DEFENDANT, as a
22 matter of established company policy and procedure, administers a uniform practice of rounding
23 the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES,
24 always to the benefit of DEFENDANT, so that during the course of their employment,
25 PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid
26 had they been paid for actual recorded time rather than "rounded" time. Additionally,
27 DEFENDANT engages in the practice of requiring PLAINTIFF and the AGGRIEVED
28 EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of

1 employment, required these employees to submit to mandatory temperature checks and symptom
2 questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping
3 system for the workday. Specifically, Defendant required PLAINTIFF and AGGRIEVED
4 EMPLOYEES to answer questions on a website, using their own internet-capable devices, show
5 the results to DEFENDANT's managerial employee, and, if accepted, submit to a temperature
6 check by the managerial employee, all before clocking in for work. As a result, PLAINTIFF and
7 the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-
8 duty meal breaks by working without their time being correctly recorded and without
9 compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF
10 and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's
11 business records.

12 12. State law provides that employees must be paid overtime and meal and rest break
13 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the
14 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
15 to specific elements of an employee's performance.

16 13. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES'
17 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
18 the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT.
19 The non-discretionary incentive program provided all employees paid on an hourly basis with
20 incentive compensation when the employees met the various performance goals set by
21 DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and
22 meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES,
23 DEFENDANT failed to include the incentive compensation, including, but not limited to, Hire-
24 On Bonuses, as part of the employees' "regular rate of pay" for purposes of calculating overtime
25 pay and meal and rest break premium pay. Management and supervisors described the incentive
26 program to potential and new employees as part of the compensation package. As a matter of
27 law, the incentive compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES
28 must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment

1 of overtime compensation and meal and rest break premiums to PLAINTIFF and the
2 AGGRIEVED EMPLOYEES by DEFENDANT.

3 14. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and
5 were not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED
6 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
7 for more than five (5) hours during some shifts without receiving a meal break or, after a meal
8 break was initiated, was interrupted by DEFENDANT, via management or patrons. Further,
9 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES
10 with a second off-duty meal period for some workdays in which these employees were required
11 by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice
12 of rounding the meal period times to avoid paying penalties to PLAINTIFF and the
13 AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED EMPLOYEES therefore
14 forfeit meal breaks without additional compensation and in accordance with DEFENDANT's
15 corporate policy and practice.

16 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES
17 were also required from time to time to work in excess of four (4) hours without being provided
18 uninterrupted ten (10) minute rest periods. Further, these employees were denied their first rest
19 periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours
20 from time to time, a first and second rest period of at least ten (10) minutes for some shifts
21 worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest
22 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to
23 time. PLAINTIFF and the AGGRIEVED EMPLOYEES were also not provided with one hour
24 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
25 to provide employees with off-duty rest periods, which the California Supreme Court defined as
26 time during which an employee is relieved from all work related duties and free from employer
27 control. In so doing, the Court held that the requirement under California law that employers
28 authorize and permit all employees to take rest period means that employers must relieve

1 employees of all duties and relinquish control over how employees spend their time which
2 includes control over the locations where employees may take their rest period. Employers
3 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
4 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
5 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which
6 states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during
7 their rest period.

8 16. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
9 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees
10 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
11 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning
12 the time during which an employee was subject to the control of an employer, including all the
13 time the employee was permitted or suffered to permit this work. DEFENDANT required these
14 employees to work off the clock without paying them for all the time they were under
15 DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFF
16 and the AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result,
17 PLAINTIFF and the AGGRIEVED EMPLOYEES forfeited time worked by working without
18 their time being accurately recorded and without compensation at the applicable minimum wage
19 and overtime wage rates. To the extent that the time worked off the clock does not qualify for
20 overtime premium payment, DEFENDANT failed to pay minimum wages for the time worked
21 off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

22 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
23 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
24 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
25 every employer shall furnish each of his or her employees with an accurate itemized wage
26 statement in writing showing, among other things, gross wages earned and all applicable hourly
27 rates in effect during the pay period and the corresponding amount of time worked at each hourly
28 rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such,

1 the wage statements should reflect all applicable hourly rates during the pay period and the total
2 hours worked, and the applicable pay period in which the wages were earned pursuant to
3 California Labor Code Section 226(a). The wage statements DEFENDANT provided to
4 PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More
5 specifically, the wage statements failed to identify the accurate total hours worked each pay
6 period. When the hours shown on the wage statements were added up, they did not equal the
7 actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside,
8 from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF
9 an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
10 As a result, DEFENDANT from time to time provided PLAINTIFF and the AGGRIEVED
11 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

12 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
13 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
14 paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab.
15 Code § 210 provides:

16 [I]n addition to, and entirely independent and apart from, any other penalty provided in
17 this article, every person who fails to pay the wages of each employee as provided in
18 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
19 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
20 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
21 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

22 19. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
23 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal.
24 Lab. Code § 204(d), including but not limited to the “Hourly” regular wage payments.

25 20. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
26 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
27 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
28 discretionary remuneration, including, but not limited to, incentives, shift differential pay, and
bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
to PLAINTIFF and the AGGRIEVED EMPLOYEES at their base rates of pay.

1 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
2 employees be calculated by dividing the employee's total wages, not including overtime premium
3 pay, by the employee's total hours worked in the full pay periods of the prior 90 days of
4 employment.

5 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
6 the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
7 discretionary incentive wages which increased their regular rate of pay. However, when sick pay
8 was paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED
9 EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab.
10 Code Section 246.

11 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and
12 the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties
13 pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based
14 thereon alleges that such failure to pay sick pay at regular rate was willful, such that the
15 AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time
16 penalties pursuant to Cal. Lab. Code Sections 201-203.

17 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
18 collect or receive from an employee any part of wages theretofore paid by said employer to said
19 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the
20 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to
21 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions
22 from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby
23 failed to pay these employees all wages due at each applicable pay period and upon termination.

24 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by
26 the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their
27 duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are
28 required to indemnify employees for all expenses incurred in the course and scope of their

1 employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
2 her employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
5 believed them to be unlawful."

6 26. In the course of their employment PLAINTIFF and the AGGRIEVED
7 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
8 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
9 employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the
10 cost associated with the use of their personal cellular phones or personal vehicles for
11 DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were
12 required by DEFENDANT to use their personal cellular phones for purposes such as clocking in
13 and out for work via an application DEFENDANT required PLAINTIFF and AGGRIEVED
14 EMPLOYEES download to their personal devices, recording responses to DEFENDANT's
15 COVID-19 questionnaire, and communicating with management and colleagues during hours off-
16 the-clock regarding work concerns and issues. Further, PLAINTIFF and AGGRIEVED
17 EMPLOYEES were, at times, required to use their own personal vehicles for business purposes,
18 such as training events or staff coverage at DEFENDANT's various stores. As a result, in the
19 course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED
20 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
21 to, costs related to the use of their personal cellular phones and personal vehicles all on behalf of
22 and for the benefit of DEFENDANT.

23 27. In violation of the applicable sections of the California Labor Code and the
24 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
25 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
26 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
27 suitable seating when the nature of these employees' work reasonably permitted sitting.
28 Specifically, DEFENDANT did not permit PLAINTIFF and AGGRIEVED EMPLOYEES to sit

1 at any time on the sales floor, at the registers, or at the “Genius Bar,” with the sole exception of
2 when PLAINTIFF or the AGGRIEVED EMPLOYEES had an appointment with a patron at the
3 Genius Bar, PLAINTIFF and the AGGRIEVED EMPLOYEES were permitted to sit at the
4 Genius Bar for the length of the appointment.

5 28. DEFENDANT knew or should have known that PLAINTIFF and other
6 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
7 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
8 suitable seating and/or did not allow them to sit when it did not interfere with the performance
9 of their duties.

10 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
11 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
12 2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of
13 PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable
14 seating is the DEFENDANT’s burden. As a result of DEFENDANT’s intentional disregard of
15 the obligation to meet this burden, DEFENDANT violated the California Labor Code and
16 regulations promulgated thereunder as herein alleged.

17 30. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
18 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.
19 Additionally, at all times during the term of PLAINTIFF’s employment with DEFENDANT,
20 PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued vested vacation and
21 holiday time on the date of their termination pursuant to DEFENDANT’s uniform vacation
22 policies and applicable California law. The amount of vacation pay PLAINTIFF and the other
23 AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANT’s business
24 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to
25 PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the regular
26 rate of pay and more specifically the final rate of pay that included all non-discretionary incentive
27 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
28 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base

1 rates of pay, instead of including all of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
2 non-discretionary incentive compensation into the vacation wage payment calculations.
3 DEFENDANT failed to specify in DEFENDANT's written vacation policy the rate at which
4 PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation upon leaving
5 employment with DEFENDANT. As a result of DEFENDANT's unlawful practice, policy and
6 procedure to deny paying the PLAINTIFF and other AGGRIEVED EMPLOYEES all of their
7 vested vacation and holiday time, DEFENDANT failed to pay the PLAINTIFF and other
8 AGGRIEVED EMPLOYEES all vested vacation time as wages due upon employment
9 termination, in violation of the California Labor Code, Sections 201, 202, 203 and 227.3.
10 Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF and other
11 AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of PLAINTIFF's
12 and other AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time
13 penalty calculations. This failure by DEFENDANT is believed to be the result of
14 DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned,
15 accrued and vested vacation and holiday time, as well as the corresponding waiting time penalties
16 that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive practice to the
17 detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES. DEFENDANT's uniform
18 practice and policy of failing to pay the AGGRIEVED EMPLOYEES for all vested vacation and
19 holiday time accumulated at employment termination violated and continues to violate Section
20 227.3 of the California Labor Code.

21 31. All of the conduct and violations alleged herein occurred during the PAGA
22 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
23 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
24 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
25 AJDAR 12157 (Certified for Publication 12/19/18).

26 **JURISDICTION AND VENUE**
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32. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

33. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395.5 and 393, because DEFENDANT operates in locations across California, employs AGGRIEVED EMPLOYEES across California, including in this County, and committed the wrongful conduct herein alleged in this County against AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq.*]

(By PLAINTIFF and Against All Defendants)

34. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

35. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

36. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California in a retail store, including any employees staffed with DEFENDANT by a third party, and classified as non-

1 exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 25, 2022
2 until a date as determined by the Court (the "PAGA PERIOD").

3 37. On July 25, 2023, PLAINTIFF gave written notice by electronic mail to the Labor
4 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
5 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3.
6 See **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only*
7 *without draft complaint*). The statutory waiting period for PLAINTIFF to add these allegations
8 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
9 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the
10 State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

11 38. The policies, acts and practices heretofore described were and are an unlawful
12 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
13 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
14 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
15 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
16 expenses, (f) failed to provide wages when due, and (g) failed to provide suitable seating, all in
17 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et*
18 *seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198,
19 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California
20 Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable
21 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF
22 hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney
23 General Act of 2004 as the representative of the State of California for the illegal conduct
24 perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

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28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

6 A) Recovery of civil penalties as prescribed by the Labor Code Private
7 Attorneys General Act of 2004; and,

8 B) An award of attorneys' fees and cost of suit, as allowable under the
9 law, including, but not limited to, pursuant to Labor Code §2699.

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11 Dated: June 28, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW
12 LLP

13 By: /s/Nicholas J. De Blouw

14 Norman B. Blumenthal
15 Kyle R. Nordrehaug
16 Nicholas J. De Blouw

17 *Attorneys for Plaintiff*
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EXHIBIT 1

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WRITERS EXT:

1004

July 25, 2023

CA2996

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Apple Inc.

Certified Mail #9589071052700182373012

CT Corporation System

AMANDA GARCIA

330 N BRAND BLVD, Suite 700

GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Apple Inc. in California, including any employees staffed with Apple Inc. by a third party, and classified as non-exempt employees during the time period of July 25, 2022 until a date as determined by the Court. Our offices represent Plaintiff Helio Jarczewski (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Apple Inc. (“Defendant”). Plaintiff was employed from November of 2019 to May of 2023 by Defendant in California. Plaintiff was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v.*

Stoneledge Furniture, LLC, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.