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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF SAN MATEO**

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

12
13 Plaintiff,

14 vs.

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

17 Defendants.
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Case No. 23-CIV-05025

**FIRST 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).

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 2/27/2024
By /s/ Una Finau
Deputy Clerk

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

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

25 5. DEFENDANT is an American multinational technology company headquartered
26 in Cupertino, California.

27 6. PLAINTIFF was employed by DEFENDANT in California from November of
28

1 2019 to May of 2023 and was at all times classified by DEFENDANT as a non-exempt
2 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
3 payment of minimum and overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to
7 himself and all individuals who are or previously were employed by DEFENDANT in
8 California, including any employees staffed with DEFENDANT by a third party, and classified
9 as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 25,
10 2022 until a date as determined by the Court (the "PAGA PERIOD").

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

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are
22 presently unknown to PLAINTIFF who therefore sues these Defendants by such fictitious
23 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
24 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when
25 they are ascertained. PLAINTIFF is informed and believes, and based upon that information
26 and belief alleges, that the Defendants named in this Complaint, including DOES 1 through
27 50, inclusive, are responsible in some manner for one or more of the events and happenings
28 that proximately caused the injuries and damages hereinafter alleged.

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

THE CONDUCT

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

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

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

19 13. The second component of PLAINTIFF’s and the AGGRIEVED
20 EMPLOYEES’ compensation is DEFENDANT’s non-discretionary incentive program that
21 paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their
22 performance for DEFENDANT. The non-discretionary incentive program provided all
23 employees paid on an hourly basis with incentive compensation when the employees met the
24 various performance goals set by DEFENDANT. However, when calculating the regular
25 rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and
26 the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
27 compensation, including, but not limited to, Hire-On Bonuses, as part of the employees’
28 “regular rate of pay” for purposes of calculating overtime pay and meal and rest break

1 premium pay. Management and supervisors described the incentive program to potential
2 and new employees as part of the compensation package. As a matter of law, the incentive
3 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be
4 included in the “regular rate of pay.” The failure to do so has resulted in a underpayment of
5 overtime compensation and meal and rest break premiums to PLAINTIFF and the
6 AGGRIEVED EMPLOYEES by DEFENDANT.

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

20 15. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED
21 EMPLOYEES were also required from time to time to work in excess of four (4) hours
22 without being provided uninterrupted ten (10) minute rest periods. Further, these employees
23 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at
24 least two (2) to four (4) hours from time to time, a first and second rest period of at least ten
25 (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to
26 time, and a first, second and third rest period of at least ten (10) minutes for some shifts
27 worked of ten (10) hours or more from time to time. PLAINTIFF and the AGGRIEVED
28 EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally,

1 the applicable California Wage Order requires employers to provide employees with off-
2 duty rest periods, which the California Supreme Court defined as time during which an
3 employee is relieved from all work related duties and free from employer control. In so
4 doing, the Court held that the requirement under California law that employers authorize
5 and permit all employees to take rest period means that employers must relieve employees
6 of all duties and relinquish control over how employees spend their time which includes
7 control over the locations where employees may take their rest period. Employers cannot
8 impose controls that prohibit an employee from taking a brief walk - five minutes out, five
9 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
10 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule
11 which states PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work
12 premises during their rest period.

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

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1 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
2 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
3 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
4 provides that every employer shall furnish each of his or her employees with an accurate
5 itemized wage statement in writing showing, among other things, gross wages earned and all
6 applicable hourly rates in effect during the pay period and the corresponding amount of time
7 worked at each hourly rate. PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on
8 an hourly basis. As such, the wage statements should reflect all applicable hourly rates
9 during the pay period and the total hours worked, and the applicable pay period in which the
10 wages were earned pursuant to California Labor Code Section 226(a). The wage statements
11 DEFENDANT provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to
12 identify such information. More specifically, the wage statements failed to identify the
13 accurate total hours worked each pay period. When the hours shown on the wage
14 statements were added up, they did not equal the actual total hours worked during the pay
15 period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in
16 this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement
17 that lists all the requirements under California Labor Code 226 *et seq.* As a result,
18 DEFENDANT from time to time provided PLAINTIFF and the AGGRIEVED
19 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

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

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

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

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

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

16 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay
17 at the regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely
18 earned non-discretionary incentive wages which increased their regular rate of pay.
19 However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFF and
20 the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as
21 required under Cal. Lab. Code Section 246.

22 23. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF
23 and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time
24 penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and
25 believes and based thereon alleges that such failure to pay sick pay at regular rate was
26 willful, such that the AGGRIEVED EMPLOYEES whose employment has separated are
27 entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.
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1 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any
2 employer to collect or receive from an employee any part of wages theretofore paid by said
3 employer to said employee." DEFENDANT failed to pay all compensation due to
4 PLAINTIFF and the AGGRIEVED EMPLOYEES, made unlawful deductions from
5 compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to
6 disclose all aspects of the deductions from compensation payable to PLAINTIFF and the
7 AGGRIEVED EMPLOYEES, and thereby failed to pay these employees all wages due at
8 each applicable pay period and upon termination.

9 25. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
10 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred
11 by the PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of
12 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
13 2802, employers are required to indemnify employees for all expenses incurred in the course
14 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
15 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of his or her duties, or of his or her
17 obedience to the directions of the employer, even though unlawful, unless the employee, at
18 the time of obeying the directions, believed them to be unlawful."

19 26. In the course of their employment PLAINTIFF and the AGGRIEVED
20 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
21 personal cellular phones and personal vehicles as a result of and in furtherance of their job
22 duties as employees for DEFENDANT but are not reimbursed or indemnified by
23 DEFENDANT for the cost associated with the use of their personal cellular phones or
24 personal vehicles for DEFENDANT's benefit. Specifically, PLAINTIFF and the
25 AGGRIEVED EMPLOYEES were required by DEFENDANT to use their personal cellular
26 phones for purposes such as clocking in and out for work via an application DEFENDANT
27 required PLAINTIFF and AGGRIEVED EMPLOYEES download to their personal devices,
28 recording responses to DEFENDANT's COVID-19 questionnaire, and communicating with

1 management and colleagues during hours off-the-clock regarding work concerns and issues.
2 Further, PLAINTIFF and AGGRIEVED EMPLOYEES were, at times, required to use their
3 own personal vehicles for business purposes, such as training events or staff coverage at
4 DEFENDANT's various stores. As a result, in the course of their employment with
5 DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred unreimbursed
6 business expenses which included, but were not limited to, costs related to the use of their
7 personal cellular phones and personal vehicles all on behalf of and for the benefit of
8 DEFENDANT.

9 27. In violation of the applicable sections of the California Labor Code and the
10 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
11 DEFENDANT as a matter of company policy, practice and procedure, intentionally,
12 knowingly and systematically failed to provide PLAINTIFF and the other AGGRIEVED
13 EMPLOYEES suitable seating when the nature of these employees' work reasonably
14 permitted sitting. Specifically, DEFENDANT did not permit PLAINTIFF and AGGRIEVED
15 EMPLOYEES to sit at any time on the sales floor, at the registers, or at the "Genius Bar,"
16 with the sole exception of when PLAINTIFF or the AGGRIEVED EMPLOYEES had an
17 appointment with a patron at the Genius Bar, PLAINTIFF and the AGGRIEVED
18 EMPLOYEES were permitted to sit at the Genius Bar for the length of the appointment.

19 28. DEFENDANT knew or should have known that PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit
21 when it did not interfere with the performance of their duties, and that DEFENDANT did
22 not provide suitable seating and/or did not allow them to sit when it did not interfere with
23 the performance of their duties.

24 29. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
25 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage
26 Order 4-2001, Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties
27 on behalf of PLAINTIFF and other AGGRIEVED EMPLOYEES as provided herein.
28 Providing suitable seating is the DEFENDANT's burden. As a result of DEFENDANT's

1 intentional disregard of the obligation to meet this burden, DEFENDANT violated the
2 California Labor Code and regulations promulgated thereunder as herein alleged.

3 30. The employment of PLAINTIFF and some AGGRIEVED EMPLOYEES has
4 terminated and DEFENDANT has not tendered payment of all wages owed as required by
5 law. Additionally, at all times during the term of PLAINTIFF's employment with
6 DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued
7 vested vacation and holiday time on the date of their termination pursuant to
8 DEFENDANT's uniform vacation policies and applicable California law. The amount of
9 vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES earned and
10 accumulated is evidenced by DEFENDANT's business records. Additionally,
11 DEFENDANT also underpaid accrued vested vacation wages to PLAINTIFF and other
12 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay and
13 more specifically the final rate of pay that included all non-discretionary incentive
14 compensation. Rather than pay vacation wages at the regular rate of pay, DEFENDANT
15 underpaid vacation wages to PLAINTIFF and other AGGRIEVED EMPLOYEES at their
16 base rates of pay, instead of including all of PLAINTIFF's and other AGGRIEVED
17 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
18 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
19 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
20 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
21 practice, policy and procedure to deny paying the PLAINTIFF and other AGGRIEVED
22 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay the
23 PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as wages due
24 upon employment termination, in violation of the California Labor Code, Sections 201, 202,
25 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to PLAINTIFF
26 and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of
27 PLAINTIFF's and other AGGRIEVED EMPLOYEES' non-discretionary compensation into
28 the waiting time penalty calculations. This failure by DEFENDANT is believed to be the

1 result of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for
2 earned, accrued and vested vacation and holiday time, as well as the corresponding waiting
3 time penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and
4 deceptive practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.
5 DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
6 EMPLOYEES for all vested vacation and holiday time accumulated at employment
7 termination violated and continues to violate Section 227.3 of the California Labor Code.

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

13 **JURISDICTION AND VENUE**

14 32. This Court has jurisdiction over this Action pursuant to California Code of
15 Civil Procedure, Section 410.10.

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

21 **FIRST CAUSE OF ACTION**

22 **For Violation of the Private Attorneys General Act**

23 **[Cal. Lab. Code §§ 2698, *et seq.*]**

24 **(By PLAINTIFF and Against All Defendants)**

25 34. PLAINTIFF realleges and incorporates by this reference, as though fully set
26 forth herein, the prior paragraphs of this Complaint.
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1 35. PAGA is a mechanism by which the State of California itself can enforce state
2 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
3 the state's labor law enforcement agencies. An action to recover civil penalties under
4 PAGA is fundamentally a law enforcement action designed to protect the public and not to
5 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,
6 but to create a means of "deputizing" citizens as private attorneys general to enforce the
7 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
8 public interest to allow aggrieved employees, acting as private attorneys general to recover
9 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
10 claims cannot be subject to arbitration.

11 36. PLAINTIFF, and such persons that may be added from time to time who
12 satisfy the requirements and exhaust the administrative procedures under the Private
13 Attorney General Act, brings this Representative Action on behalf of the State of California
14 with respect to himself and all individuals who are or previously were employed by
15 DEFENDANT in California, including any employees staffed with DEFENDANT by a third
16 party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the
17 time period of July 25, 2022 until a date as determined by the Court (the "PAGA PERIOD").

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

27 38. The policies, acts and practices heretofore described were and are an unlawful
28 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the

1 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
2 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
3 (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for
4 required expenses, (f) failed to provide wages when due, and (g) failed to provide suitable
5 seating, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201,
6 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2),
7 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
8 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure
9 to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to civil
10 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
11 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
12 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
13 and the AGGRIEVED EMPLOYEES.

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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 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.

10
11 Dated: February 27, 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

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

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**WRITERS E-MAIL:
Nick@bamlawca.com**

**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.