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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA

AMAR BHAKTA,

Plaintiff,

v.

APPLE, INC.,

Defendant.

Case No.

PAGA COMPLAINT

First PAGA Claim - Speech Suppression

**Second PAGA Claim –Privacy Violations,
Surveillance, and Forced Patronage**

Third PAGA Claim – Wage Clawbacks

Complaint Filed: Dec.2, 2024

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INTRODUCTION

1 1. This action challenges three categories of unlawful conduct by Defendant Apple,
2 Inc. that aggrieves all Apple employees and harms all Californians: (1) Apple’s suppression of
3 employee speech through unlawful speech suppression rules and otherwise; (2) Apple’s invasion
4 of employee privacy through surveillance and forced patronage through use of their non-work
5 private data; and (3) Apple’s clawback of earned wages. These three categories of conduct each
6 give rise to distinct claims under California’s Private Attorneys General Act (“PAGA”), as set
7 forth in the First, Second, and Third Causes of Action, respectively. In other words, Plaintiff can
8 prevail by proving one PAGA violation without proving another. However, as a practical matter,
9 Apple’s unlawful conduct that underlies these PAGA violations is mutually reinforcing and
10 interrelated, as the proliferation of unlawful policies and practices may infringe on multiple labor
11 code protections.

12 2. Plaintiff Amar Bhakta brings this action under California’s Private Attorneys
13 General Act (“PAGA”), Cal. Labor Code §§ 2698 et seq. on behalf of himself and other current
14 and former employees and the State of California to recover for violations of the California
15 Labor Code.

16 3. Plaintiff also seeks appropriate injunctive relief to protect Aggrieved Employees
17 and the State of California from future violations.

18 **I. Claim One: Apple’s Systematic Suppression of Employee Speech and Competition**

19 **I.A. The California Legislature Has Determined That Policies Limiting Certain**
20 **Types of Employee Speech Are Unlawful Because Such Policies Undermine**
21 **Societal Goals of Nondiscrimination, Free Movement of Labor, Fair**
22 **Competition, and Shining a Light on Corporate Misconduct**

23 4. The California Legislature has enacted a group of laws that protect Californians’
24 rights to be free from employer interference in disclosing information about wages and working
25 conditions, reporting suspected legal violations, participating freely in our democracy through
26 the exercise of political activity, and practicing their trade or profession. California’s duly
27 elected representatives enacted these statutes to protect workers’ economic interests and personal
28

1 autonomy by empowering them to speak freely about compensation and the details of their job
2 duties and working conditions, to ensure a fair society by eliminating pay discrimination and
3 other mistreatment, and to promote a reliable economy in which businesses compete on a level
4 playing field and unfair competition is quickly rooted out. These laws, collectively, establish as
5 a minimum employment standard an employee *anti-gag rule*. *Doe. v. Google* (2020) 54
6 Cal.App.5th 948.¹

7 5. The California Legislature has enacted the following laws, all of which Apple
8 violates through the use of its Speech Suppression Policies:

- 9 a. **Labor Code §§ 232, 232.5, and 1197.5(k)**, which prohibit employers from
10 requiring employees to refrain from disclosing information about their wages
11 and their working conditions. These laws protect Californians’ right to be free
12 from discrimination.
- 13 b. **Labor Code § 1102.5 and Government Code § 12964.5**, which protect
14 workers’ rights to whistleblowing. This law protects the ability of workers to
15 raise concerns about unlawful activity, which protects all Californians who
16 can be negatively impacted by wrongdoing, such as pollution and antitrust
17 violations.
- 18 c. **Labor Code §§ 96(k), 98.6, 1101 and 1102**, which prohibit employers from
19 placing restraints upon employee political activity and their lives outside of
20 work. These laws, among other things, ensure employees may participate in
21 democracy and advocate for causes that, in their view, further the public good,
22 even if their employer disagrees.
- 23 d. **Labor Code § 432.5**, which prohibits employers from requiring an employee
24 to sign a writing it knows is prohibited by law.

25 **I.B. Apple’s Speech Suppression Policies Violate California Law in Several Ways**

26 6. **Apple imposes these policies on its workers.** As a condition of employment,
27

28 ¹ In this Complaint, Plaintiff generally uses the terms “speech suppression” or “gag rules” to refer to violations of California’s anti-gag rule.

1 Defendant Apple, Inc. (“Apple”) requires all employees, including contingent workers
2 (collectively, “Apple employees”) to comply with agreements, policies, guidelines, and practices
3 governing employee speech (“Speech Suppression Policies”) that violate California worker
4 protection laws by unlawfully restricting the employees’ speech and limiting their ability to get
5 jobs after working at Apple. Apple’s Speech Restriction Policies purport to remain in effect
6 throughout each employee’s employment and beyond, for the life of the employee.

7 **7. Apple’s Speech Suppression Policies.** Apple maintains companywide policies
8 that suppress its employees’ speech in violation of California law. Through its employment
9 agreements, written policy documents, and practice of enforcement, Apple unlawfully prohibits
10 the disclosure of information that the Labor Code empowers employees to disclose, in the
11 Legislature’s judgment. The broad definition of confidential information in Apple’s form
12 employment agreement includes “the employment and personnel information of Apple, such as
13 compensation, training, recruiting, and other human resource information.” Its Business
14 Conduct Policy expressly prohibits Apple employees from disclosing their coworkers’
15 compensation information, prohibits them from engaging in any “outside activity” that *could*
16 have an adverse effect on their ability to perform their duties at Apple, and places restraints on its
17 employees’ political activities.

18 **8. Speech that facilitates workers’ ability to get a job.** Apple’s conduct also
19 violates California law by prohibiting restraints on trade. *See* California Business & Professions
20 Code §§ 16600 *et seq.* The overbroad confidentiality restriction in Apple’s employment
21 agreement limits employees’ freedom to speak about their work and Apple’s business, which
22 restricts them from using their own skills and knowledge, developed at Apple, both in a job
23 search and after hire. *See* Jodi L. Short, Killing the Messenger: The Use of Nondisclosure
24 Agreements to Silence Whistleblowers, 60 U. Pitt. L. Rev. 1207, 1220 (1999) (noting that
25 agreements restricting disclosure make it more difficult for individuals to obtain new
26 employment in the same field, because “[t]he skills and industry knowledge an employee learns
27 at one job often constitute her most valuable assets in seeking and obtaining a subsequent job”).
28 The employment agreement’s express language prohibiting departing Apple employees from

1 soliciting other Apple employees or contractors after they leave employment with Apple also
2 unlawfully restricts trade. Apple’s conduct not only violates speech and worker mobility
3 protections but also undermines legislative intent underlying those protections to combat
4 discriminatory pay disparities and improve worker mobility.

5 **9. Speech that protects against discrimination.** Apple’s conduct violates
6 California Labor Code provisions that explicitly protect employees who disclose or discuss their
7 wages and working conditions, either with coworkers or outsiders. Labor Code § 232 provides
8 that no employer may “[r]equire, as a condition of employment, that an employee refrain from
9 disclosing the amount of his or her wages.” § 232(a). Section 232(b) also prohibits requiring an
10 employee to sign a “waiver or other document” that purports to deny the right to disclose one’s
11 wages. Labor Code § 232.5 extends similar protections to other aspects of the employment
12 relationship, providing that no employer may “[r]equire, as a condition of employment, that an
13 employee refrain from disclosing information about the employer’s working conditions.” Labor
14 Code § 1197.5(k), which is part of the California Equal Pay Act, states that “an employer shall
15 not prohibit an employee from disclosing the employee’s own wages, discussing the wages of
16 others, inquiring about another’s wages, or aiding or encouraging any other employee to exercise
17 his or her rights under this section.” The legislative history underlying these Labor Code
18 provisions emphasizes how employer policies prohibiting disclosures about wages exacerbate
19 discriminatory pay disparities. *See, e.g.*, 2015 Cal. Legis. Serv. Ch. 546 (SB 358 § 1(d)) (“Pay
20 secrecy also contributes to the gender wage gap, because women cannot challenge wage
21 discrimination that they do not know exists.”); *Doe v. Google, Inc.* (2020) 54 Cal.App.5th 948,
22 958 (stating Labor Code § 1197.5(k) was enacted “at the urging of women’s groups to protect
23 employees sharing information necessary to the enforcement of laws against sex discrimination”)
24 (citing Sen. Com. on Industrial Relations, Staff Analysis of Assem. Bill No. 3193 (1983–1984
25 Reg. Sess.)).

26 **10. Whistleblower Speech That Protects Against Corporate Wrongdoing.**
27 Apple’s conduct also violates California’s whistleblower protections. For example, Labor Code
28 § 1102.5 protects an employee’s right to disclose, both within a company and externally,

1 employer conduct the employee has a reasonable cause to believe constitutes a legal violation.
2 The broad purview of this whistleblower protection to cover employee disclosures regarding any
3 legal violation was an express purpose of the legislature in its enactment. *See* 2013 Cal. Legis.
4 Serv. Ch. 732 (AB 263 § 1(g)) (“No employee should have to fear adverse action, whether it
5 involves threats to cut hours, move a worker to night shift, or contact law enforcement agencies,
6 simply for engaging in rights the State of California has deemed so important that they are
7 protected by law.”).

8 11. **Speech That Allows Employees to Participate in Democracy and Advocate**
9 **for the Public Good.** Apple’s conduct violates sections of the Labor Code that prohibit
10 employers from placing restraints upon employee political activity and their lives outside of
11 work. Labor Code §§ 1101 and 1102 prohibit employers from adopting a rule or policy
12 “[c]ontrolling or directing, or tending to control or direct the political activities or affiliations of
13 employees” and prohibit employers from “coerc[ing] or influenc[ing] or attempt[ing] to coerce
14 or influence his employees through or by means of threat of discharge or loss of employment to
15 adopt or follow or refrain from adopting or following any particular course or line of political
16 action or political activity.” Labor Code §§ 96(k) and 98.6 prohibit employer restraints on the
17 nonwork aspects of its employees’ lives, as well as restraints on the exercise of Labor Code
18 rights.

19 12. **Signatures on Unlawful Policies.** The unlawful provisions of Apple’s
20 employment agreement additionally violate Labor Code § 432.5, which prohibits an employer
21 from requiring an employee to sign a writing that it knows is prohibited by law.

22 13. **Lifetime effect.** Apple’s Speech Suppression Policies purport to remain in effect
23 throughout each employee’s employment and beyond, for the life of the employee.

24 14. **The harm from Apple’s Speech Suppression Policies.** Apple’s Speech
25 Suppression Policies have harmed – and continue to harm – Apple’s employees and the State of
26 California just as the Legislature feared. For example, Apple prohibited Plaintiff Bhakta from
27 speaking about his work experience on podcasts and instructed Bhakta to remove information
28 about his working conditions and work experiences from his LinkedIn profile. On information

1 and belief, Apple’s Speech Suppression Policies limit Apple employees’ ability to describe their
2 job responsibilities, accomplishments, and professional growth to a potential future employer
3 when exploring new opportunities, and they prohibit or restrain Apple employees from
4 disclosing – or using – all of the skills, knowledge, connections, and overall experience they
5 developed at Apple when working for a subsequent employer. Apple’s Speech Suppression
6 Policies prohibit or restrain Apple employees from speaking with each other or outsiders (like
7 friends, family members, reporters, etc.) about potential problems at work, such as unfair
8 treatment, harassment, discrimination, retaliation, or even sexual assault. Similarly, Apple’s
9 Speech Suppression Policies prohibit Apple employees from bringing to light compensation
10 issues, including underpayment or under-leveling of people of color, women, older workers, or
11 any other group. The secrecy permits the wrongdoing to continue. This is a real and ongoing
12 concern. Two women recently filed a proposed class and PAGA action against Apple on behalf
13 of all women in the Engineering, Marketing, and AppleCare divisions, alleging that Apple
14 systematically underpays women in violation of the Equal Pay Act. *Jong v. Apple, Inc.*, Case
15 No. CGC-24-615363 (San Francisco Superior Court).

16 15. Apple’s Speech Suppression Policies are contrary to the laws described herein
17 and are contrary to the interests of the State of California.

18 **II. Claim Two: Apple’s Systematic Invasion of Employee Privacy and Forced**
19 **Patronage Violates California Law**

20 16. More than 50 years ago, the People of California amended their Constitution to
21 include the inalienable right of all people to privacy. The moving force behind this amendment
22 was “the accelerating encroachment on personal freedom and security caused by increased
23 surveillance and data collection activity in contemporary society.” At its most basic, this right
24 recognizes and protects individual autonomy. It encompasses the right to *decide* “to what extent
25 [a person’s] thoughts, sentiments, and emotions are communicated to others.” It provides
26 “immunity from suspicious and jealous observation.” And it grants *to the individual* “the ability
27 to control the circulation of personal information.”

28 17. The California Legislature also has enacted employment laws that protect

1 employee autonomy and privacy. Labor Code §§ 96(k) and 98.6 prohibit employer attempts “to
2 control the nonwork aspects of their employees’ lives.” Labor Code § 450 prohibits employers
3 from requiring their employees’ patronage, or to pay for their job, with consideration *of any type*,
4 including their nonwork private data. Labor Code § 432.5 prevents employers from requiring
5 their employees to sign contracts and other writings known to be prohibited by law.

6 18. In violation of these laws, Apple requires employees to waive their inalienable
7 right to privacy and autonomy, and to patronize Apple, as a condition of their employment.
8 Apple requires the use of Apple devices, software, and services for work, including personal
9 iCloud accounts. Whether owned by Apple or the employee, these devices collect and use the
10 valuable personal data of Apple employees, and those with whom they interact, when the
11 employees are engaged in the “life” side of the work/life balance, i.e., during nonwork periods
12 and while away from Apple’s premises (“Private Life Data.”) Apple also requires employees to
13 agree that they have no right to privacy in their Private Life Data (including location data), that
14 Apple can engage in physical, video, and electronic surveillance of them and that it can, as it
15 wishes, search both Apple and non-Apple devices and other property while an employee is on
16 “company premises.” which – according to one Apple policy – can include an employee’s *home*
17 office.

18 19. For Apple’s employees, the Apple ecosystem is not a walled garden. It is a
19 prison yard. A panopticon where employees, both on and off duty, are ever subject to Apple’s
20 all-seeing eye.

21 **III. Claim Three: Apple’s Illegal Clawback Policies and Practices Violate California**
22 **Law**

23 20. Finally, the California Legislature has enacted laws intended to ensure that
24 employees are actually paid the wages they earn. Labor Code § 221 prohibits an employer from
25 clawing back earned wages – including Restricted Stock Units (RSUs). Labor Code § 206.5
26 states that an employer shall not require the execution of a release of a claim or right on account
27 of wages to become due unless the wages have already been paid.

28 21. Despite these laws, Apple conditions the payment of vested Restricted Stock

1 Units – wages that will become due – on a release of their right to these vested RSUs if Apple
2 “reasonably determines” the employee has, among other things, engaged in the unauthorized
3 disclosure of “confidential information,” or “materially breached” their employment agreement,
4 which, as detailed below, requires compliance with Apple’s unlawful Speech Suppression
5 Policies rules and surveillance practices.

6 **PARTIES**

7 22. Plaintiff Amar Bhakta is a current Apple employee and agent of the State of
8 California within the meaning of PAGA. Among other things, and as further detailed below, he
9 was and is subject to Apple’s unlawful employment agreements, policies, and practices. He is
10 aggrieved by one or more of Apple’s violations of the Labor Code.

11 23. Apple, Inc. is a California corporation doing business in California and
12 maintaining corporate headquarters in Santa Clara County.

13 24. At all relevant times, Apple was Plaintiff’s employer within the meaning of the
14 Labor Code.

15 **JURISDICTION AND VENUE**

16 25. The Court has jurisdiction over this action because the action involves issues of
17 state law. Venue is proper in this judicial district pursuant to section 395.5 of the California
18 Code of Civil Procedure, because Apple’s principal place of business is situated in Santa Clara
19 County.

20 **STATEMENT OF FACTS**

21 **I. Apple’s Speech Suppression Policies Have Violated Bhakta’s Rights As an Apple
22 Employee**

23 26. According to its website, Apple employs 80,000 individuals in the United States.
24 In California, it has more than 36,000 employees, 53 retail stores, and numerous corporate
25 offices. Its employment agreements, policies, procedures, and practices are, by necessity,
26 standardized. Accordingly, and on information and belief, Bhakta’s experience and encounters
27 with Apple’s Labor Code violations, including its restraints on speech and individual autonomy,
28 is emblematic of all Apple employees.

27 27. In or around July 2020, Apple offered Bhakta a job as a Digital Ad
28 Tech/Operations Manager. A graduate of Colgate University, Bhakta has years of experience in

1 the creation, management, monitoring, and analysis of digital ad campaigns. His past employers
2 include Hulu, Merkle, and AOL. His past clients include Disney, Facebook, Target, Warner
3 Brothers, and Amazon. Apple hired Bhakta because of his experience, skill, knowledge,
4 network, and expertise.

5 28. Apple designated Bhakta's offer letter, which includes information about
6 Bhakta's working conditions and wages, as "Apple Confidential." On information and belief,
7 Apple uses a standard offer letter, which requires, as a condition of employment, that Apple
8 employees sign Apple's Intellectual Property Agreement (IPA) and agree to comply with the
9 terms of Apple's Business Conduct Policy. Apple routinely stamps its offer letters "Apple
10 Confidential." On information and belief, these documents are boilerplate documents used on a
11 widespread basis throughout the company.

12 29. As a condition of employment, the offer letter further required Bhakta to sign
13 Apple's Intellectual Property Agreement (IPA) and agree to comply with the terms of Apple's
14 Business Conduct Policy. Bhakta, as a condition of working for Apple, signed the offer letter
15 and the IPA.

16 30. Apple's offer to Bhakta detailed information about his own wages and Apple's
17 working conditions. It said his compensation would likely include an RSU award that was
18 subject to the terms and conditions of Apple's Employee Stock Plan and RSU award agreement.
19 It said his employment was conditioned upon, among other things, Bhakta's written agreement to
20 (1) the terms of the offer letter, (2) Apple's Intellectual Property Agreement (IPA); and (2) the
21 terms of Apple's Business Conduct Policy (BCP).

22 31. On or around July 15, 2020, Bhakta signed the offer letter and IPA. These
23 agreements remain in full force and effect. Bhakta has also completed, reviewed, and certified --
24 through annual Business Conduct training -- his acknowledgement and agreement to the BCP.

25 32. As further detailed below, Apple's standard offer letter, IPA, BCP, and equity
26 plans and agreements place unlawful restraints on employee speech, competition, wage rights,
27 autonomy, and privacy.

28

1 **II. Apple’s Speech Suppression Policies Are Evident in Multiple Documents and**
2 **Through Various Actions Taken by the Company**

3 33. Apple seeks – through confidentiality designations, employee agreements,
4 policies, threats, directives, requirements, and other practices – to monopolize information *about*
5 or *related to* Apple, including information about Apple wages, working conditions, illegal
6 conduct, or public policy. Examples of this conduct include the following.

7 **II.A. Apple’s Intellectual Property Agreement (“IPA”)**

8 34. As noted above, on or around July 15, 2020, Bhakta signed Apple’s Intellectual
9 Property Agreement. The IPA violates California’s anti-gag rule and contains other unlawful
10 restraints on activity.

11 **II.A.1. Information Restraints**

12 35. The IPA prohibits employees “during or after employment, from using or
13 disclosing, or permitting any other person or entity to use or disclose, any Proprietary
14 Information without the written consent of Apple, except as necessary to perform duties as an
15 Apple employee.”

16 36. The IPA defines Apple’s “Proprietary Information,” as “all information not
17 generally known outside Apple and/or kept confidential by Apple including for example but not
18 limited to” “information relating to the business operations or affairs of Apple or persons or
19 companies dealing with Apple” as well as “the employment and personnel information of Apple,
20 such as compensation, training, recruiting, and other human resource information.”

21 37. The IPA does not include appropriate carve-outs for protected activity. It does
22 not permit the disclosure of information about unlawful conduct, disclosures to the SEC, or the
23 notice of immunity required by the Defends Trade Secret Act.

24 38. The IPA requires, upon termination of employment, that employees return – “all
25 documents and materials of any kind pertaining to [his] work at Apple,” *and* “any documents,
26 materials, or copies thereof, whether on paper or any other medium, containing any Proprietary
27 information.”

28 39. The above prohibitions, by their plain terms, prohibit the disclosure or use of
information about wages, working conditions, an employee’s general knowledge, skills, and

1 experience learned through their Apple employment, information available to others through
2 normal competitive means, and reasonably suspected illegal conduct.

3 **II.A.2. Other Restraints of Trade**

4 40. The IPA also prohibits solicitation. It provides, “to the fullest extent permitted by
5 applicable law, during your employment and for a period of one (1) year following your
6 termination” “you will not, directly or indirectly, on your own behalf or on behalf of any person
7 or entity, solicit, recruit, or take any action intended to induce Apple employees or contractors to
8 terminate their relationship with Apple.”

9 41. The IPA requires employees to agree that they will not “plan or engage” in any
10 activity competitive with or related to Apple’s business or products or engage in any other
11 activities that conflict with any “employment obligations” to Apple.

12 42. The IPA assigns to Apple ownership of all “inventions,” including ideas and
13 materials “made, created, or reduced to practice” by employees if the “invention” was: (1)
14 developed using any Apple equipment; (2) “suggested” by work performed while at Apple; or
15 (3) “conceived” during employment with Apple and related to any aspect of any past, present, or
16 future Apple business or product. The IPA further requires employees to assign to Apple -- for
17 free and for forever - the rights to all inventions that would otherwise belong to them and to
18 waive any personal rights to such inventions both during and after their termination from
19 employment with Apple.

20 43. On information and belief, Apple requires all of its California employees to sign a
21 form IPA substantially similar to the IPA signed by Bhakta. Bhakta remains subject to the terms
22 of the IPA.

23 **II.B. Apple’s Business Conduct Policy (“BCP”)**

24 44. Apple’s BCP also contains unlawful restraints on employee activity.

25 45. The BCP expressly provides, “You should never share a coworker or prospective
26 employee’s personal information. This includes information regarding their employment history,
27 personal contact information, *compensation*, health information, or performance and disciplinary
28 matters.”

1 46. The BCP provides that employees should, “[n]ever disclose confidential,
2 operational, financial, trade-secret, *or other business information* without verifying with your
3 manager whether such disclosure is appropriate.”

4 47. The BCP prohibits employees from public or outside speaking engagements that
5 relate to Apple’s business without Apple’s approval.

6 48. The BCP requires employees to refer all inquiries from the media, industry, or
7 financial analyst community to Apple’s Corporate Communications or Investor Relations.

8 49. The BCP prohibits employees from contributing material to publications
9 (including blogs) that relate to Apple’s business or products, or that “could be seen as a conflict
10 of interest,” without Apple’s approval.

11 50. The BCP prohibits employees from engaging in any activity that “may damage
12 Apple’s reputation” or “gives the appearance of impropriety or divided loyalty.”

13 51. The BCP prohibits employees from engaging in any “outside activity” that *could*
14 have an adverse on their ability to perform their duties at Apple.

15 52. The BCP prohibits employees from using Apple work time, equipment, or
16 resources for political activities.

17 53. The BCP prohibits employees from using time at work *or* Apple’s workspaces,
18 phones, computers, internet access *or* any Apple assets or services, for any “outside activity”
19 (meaning non-work activity).

20 54. The BCP asserts that Apple “owns” all records and information in any form that is
21 created or received during the course of doing Apple’s business. It also asserts that Apple
22 “owns” its employees’ personnel records.

23 55. Apple’s BCP applies to all full and part-time employees of Apple and its
24 subsidiaries.

25 **II.C. Apple’s Security Policies**

26 56. Apple’s Security and Information Classification Policies and Standards further
27 evidence Apple’s restraints on employee speech and activity. Apple classifies information – not
28 on the basis of any positive law (e.g. privacy or trade secrets) – but rather “based upon the

1 impact that an event compromising the security, integrity, or availability of the information
2 [would have] on Apple’s operations, performance, brand, or regulatory/legal obligations.” Put
3 more plainly, Apple classifies information based on how bad it thinks disclosure would be for
4 Apple. There are four classification tiers: Prohibited (Tier 0), Highly Confidential (Tier 1),
5 Confidential (Tier 2), Internal (Tier 3), and Public (Tier 4).

6 57. Apple defines information about wages, benefits, job titles, work performance,
7 employment dates, employment status, and reporting relations as Confidential, Highly
8 Confidential, or Prohibited. Even “Internal” information at Apple is restricted to users with a
9 business need. According to Apple’s classification standards, Public (Tier 4) Information is
10 limited to “Information that may be broadly distributed *without causing damage to Apple.*”

11 **II.D. Apple’s Enforcement Practices**

12 58. Apple implements and enforces its unlawful agreements, policies, and practices
13 through the designation of information, the surveillance and interrogation of employees,
14 dedicated security and policy teams, management directives, and the discipline and termination
15 of employees. Among other things:

16 59. On information and belief, in 2018, Apple issued a memo threatening Apple
17 employees with termination or criminal consequences if they leaked information. The memo
18 warned employees that it had caught 29 leakers in the previous year, and that 12 were arrested.
19 The memo also warned Apple employees to be wary of press, analysts, and bloggers who may
20 target or befriend them on social media.

21 60. On information and belief, in 2021, Apple refused a shareholder request to add
22 the following language in their employment agreements: “Nothing in this agreement prevents
23 you from discussing or disclosing information about unlawful acts in the workplace, such as
24 harassment or discrimination or any other conduct that you have reason to believe is unlawful.”
25 (This language is required by Government Code § 12964.5.)

26 61. Apple responded to other employee discussions about wages, working
27 conditions, and suspected unlawful corporate conduct with warnings, terminations, and
28 crackdowns intended to restrain employee speech.

1 **II.E. Bhakta’s Experience**

2 62. Bhakta’s personal experience with Apple confirms its written instruments –
3 including the IPA, BCP, and Apple’s security policies – violate California law. In accordance
4 with Apple’s policy, he asked for permission to engage in public speaking about his area of
5 expertise: Digital Advertising. Apple forbade it. Apple also required that he remove and edit
6 unprotected information about his working conditions and work at Apple from his LinkedIn
7 profile. The limited his visibility and attractiveness in the job market, thus harming both Bhakta
8 and competitors for Bhakta’s services.

9 63. *Privacy* in speech is a necessary condition of *free* speech. Apple’s surveillance
10 policies and practices chill, and thus also unlawfully restrain, employee whistleblowing,
11 competition, freedom of employee movement in the job market, and freedom of speech, all in
12 violation of California’s employee anti-gag rule. These surveillance policies violate other laws
13 as well.

14 **III. Apple Invades Its Employees’ Privacy and Compels Their Patronage**

15 64. In marketing materials, Apple declares that it respects human rights, including the
16 right to privacy. Apple does not extend this respect to its own employees. Instead, Apple
17 subjects its employees to surveillance and forces their patronage through the monetization of
18 employee personal data as a condition of their employment.

19 **III.A. Apple’s Collection and Use of The Privacies of Life**

20 65. “Modern cell phones are not just another technological convenience. With all
21 they contain, and all they may reveal, they hold for many Americans ‘the privacies of life.’”
22 *Riley v. California* (2014) 573 U.S. 373, 403. As Chief Justice Roberts further explains in *Riley*:

23 66. “The storage capacity of cell phones has several interrelated consequences for
24 privacy. First, a cell phone collects in one place many distinct types of information—an address,
25 a note, a prescription, a bank statement, a video—that reveal much more in combination than any
26 isolated record. Second, a cell phone's capacity allows even just one type of information to
27 convey far more than previously possible. The sum of an individual's private life can be
28 reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the

1 same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on
2 a phone can date back to the purchase of the phone, or even earlier. A person might carry in his
3 pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his
4 communications with Mr. Jones for the past several months, as would routinely be kept on a
5 phone.”

6 67. “Although the data stored on a cell phone is distinguished from physical records
7 by quantity alone, certain types of data are also qualitatively different. An Internet search and
8 browsing history, for example, can be found on an Internet-enabled phone and could reveal an
9 individual's private interests or concerns—perhaps a search for certain symptoms of disease,
10 coupled with frequent visits to WebMD. Data on a cell phone can also reveal where a person has
11 been. Historic location information is a standard feature on many smart phones and can
12 reconstruct someone's specific movements down to the minute, not only around town but also
13 within a particular building. . . . ‘GPS monitoring generates a precise, comprehensive record of a
14 person's public movements that reflects a wealth of detail about her familial, political,
15 professional, religious, and sexual associations.’”

16 68. “Mobile application software on a cell phone, or ‘apps,’ offer a range of tools for
17 managing detailed information about all aspects of a person's life. There are apps for Democratic
18 Party news and Republican Party news; apps for alcohol, drug, and gambling addictions; apps for
19 sharing prayer requests; apps for tracking pregnancy symptoms; apps for planning your budget;
20 apps for every conceivable hobby or pastime; apps for improving your romantic life. There are
21 popular apps for buying or selling just about anything, and the records of such transactions may
22 be accessible on the phone indefinitely. There are over a million apps available in each of the
23 two major app stores; the phrase “there's an app for that” is now part of the popular lexicon. The
24 average smart phone user has installed 33 apps, which together can form a revealing montage of
25 the user's life.”

26 69. A “cell phone search would typically expose to [an employer] far *more* than the
27 most exhaustive search of a house: A phone not only contains in digital form many sensitive
28 records previously found in the home; it also contains a broad array of private information never

1 found in a home in any form – unless the phone is.”

2 70. In addition, the private data contained on an iPhone extends well beyond the
3 user’s information. It extends to those with whom the user (or the iPhone) interacts. If a child
4 texts his father that he prefers Batman to Spiderman, or a wife sends a racy date night calendar
5 invite to her husband, then the child’s and the wife’s information is also contained on the iPhone.
6 Indeed, personal data is collected by Apple even without any voluntary action by the user or the
7 third party. For example, Apple’s FindMy and Journal apps rely on Bluetooth beacons and other
8 technology to determine the proximity of Apple devices to one another. As Apple’s iCloud
9 consumer agreement explains:

10 Apple and its partners and licensors may provide certain features
11 or services that rely upon device-based location information using
12 GPS (or similar technology, where available) and crowdsourced
13 Wi-Fi access points and cell tower locations. To provide such
14 features or services, where available, Apple and its partners and
15 licensors must collect, use, transmit, process and maintain your
16 location data, including but not limited to the geographic location
17 of your device and information related to your Account and any
18 devices registered thereunder, including but not limited to your
19 Apple ID, device ID and name, and device type.

20 71. The personal data contained on an iPhone or other digital devices is more than
21 private. It is also valuable. Personal data is the fuel of surveillance capitalism. As explained by
22 Professor Ermita Shoshanna Zuboff: “Forget the cliché that if it’s free, ‘You are the product.’
23 You are not product; you are the abandoned carcass. The “product” derives from the surplus that
24 is ripped from your life.” See, S. Zuboff, The Age of Surveillance Capitalism: The Fight for a
25 Human Future at the New Frontier of Power (Profile Books 2018).

26 72. Apple, like other surveillance capitalists, commodifies the human experience –
27 including the nonwork aspects of its employees’ lives – and uses it for business purposes.

28 73. In order to use an Apple device, an individual must enter into a variety of
agreements with Apple, including software licensing agreements. Personal data is part (or
sometimes all) of the consideration an individual pays to become or remain an Apple consumer.
Like all surveillance capital firms, Apple collects and uses this personal data – including the

1 Private Life Data of its own employees – for business purposes. These purposes include to
2 “power its services” (e.g., improve its offerings or data analysis), “security and fraud prevention
3 (e.g., to protect Apple), and to “personalize” Apple’s services (e.g., to sell businesses, and/or
4 serve consumers, with targeted advertisements).

5 **III.B. Apple Owned vs Apple Managed**

6 74. Apple employees must be reachable for work and have access to Apple’s network
7 while on and off duty. Apple also requires its employees to use only Apple devices for work.
8 To satisfy these two requirements, employees must enter into consumer agreements with Apple
9 and must carry an iPhone or other Apple device on their person. This condition of employment –
10 particularly in combination with other Apple policies, practices, and requirements – has profound
11 implications for their individual privacy, the privacy of their loved ones, and their individual
12 autonomy.

13 75. Absent an exception, Apple places limits on the use of an “Apple-owned” iPhone
14 for personal reasons. By Apple’s design, most employees instead use a personal iPhone for work
15 reasons. In order to do so, Apple requires the employee to consent to Apple installing software,
16 including an “electronic sim card” (eSIM) and/or a Virtual Private Network (VPN), on the
17 personal device. Apple converts the personal device into an “Apple-managed” device.

18 76. Apple then claims the right to access, search and use all the Private Life Data
19 contained on the Apple devices Apple compels its employees to use. As Apple’s iCloud@Apple
20 policy explains:

21 any data stored on an Apple-managed or Apple-owned device is
22 accessible by Apple in the event of a security search of the device,
23 or in the event your data is included in a corporate backup service.
24 *This means that if you use your personal account on an Apple-*
25 *managed or Apple-owned iPhone, iPad, or computer, any data*
stored on the device (including emails, photos, videos, notes, and
more), are subject to search by Apple.

26 77. Apple’s Technology Asset Management Policy further requires that it know the
27 “logical (e.g., IP address) and physical attributes (e.g., geographic location)” of every Apple-
28 owned or managed device at all times. Consistent with this policy, Apple employees cannot

1 disable the Apple surveillance apps on their Apple owned or managed devices. If – as required –
2 an Apple employee has physical possession of an Apple device, then Apple knows where they
3 are.

4 **III.C. iCloud@Apple**

5 78. Apple also requires its employees to use Apple’s collaboration tools to perform
6 their work (e.g., Apple email, Pages, Numbers, and Keynote). These tools in turn require an
7 iCloud account. Apple thus requires its employees to use an iCloud account – and enter into or
8 continue with an iCloud consumer agreement – as a condition of employment. Apple does not
9 reimburse its employees for its use of their personal iCloud account.

10 79. Apple only allows one primary iCloud account per device. Thus, employees who
11 use their *personal* phone for work are required to associate their *personal* iCloud with their work
12 account. The personal iCloud account, like the personal iPhone, also becomes “Apple
13 managed.” Upon making this association, Apple makes unilateral configuration changes to the
14 personal iCloud account. For example, it unilaterally adds a “work folder.” Apple actively
15 discourages the use of a work-only iCloud account even for those employees who use an Apple
16 owned device.

17 80. The Private Life Data accessible through an iCloud account can easily dwarf the
18 Private Life Data contained on a single device. The iCloud can include all the information
19 gathered by all the synched devices, including family member devices and including non-Apple
20 devices. This data can include email, contacts, reminders, entire photo libraries, internet
21 browsing data, health data, messages, “smart home” data, passwords, apps, files, documents
22 calendars, notes, and backups.

23 81. One Apple policy claims that Apple will not access or use the Private Life Data in
24 its employees’ personal iCloud account, *except* as provided in other instruments like the iCloud
25 consumer agreement and Employee Privacy Notice. This is deceptive and does not lessen the
26 privacy invasion. The other instruments, including the iCloud consumer agreement, already
27 grant Apple an unfettered right to access, use, preserve, prescreen, move, modify, disclose, or
28 remove any and all content that is generated or encountered through use of the iCloud service.

1 Apple also declares the right to access, search, and use the Private Life Data on the Apple owned
2 or managed [personal] devices *synced* with the personal iCloud account, and the syncing of
3 devices is a primary purpose of an iCloud account.

4 **III.D. Apple's Surveillance**

5 82. According to Apple's BCP, as a condition of initial and continuing employment,
6 Apple's employees must agree that Apple can: (1) Access, search, monitor, and archive *all* data
7 and messages sent, accessed, viewed, or stored (including those from iCloud, Messages, *or other*
8 *personal accounts*); and (2) Conduct physical, video, or electronic surveillance, search [its
9 employees'] workspace (e.g., file cabinets, desk drawers, and offices, even if locked), review
10 phone records, or search any non-Apple property (e.g., backpacks, handbags) while on company
11 premises. Apple's "Workplace Searches and Privacy" Policy goes further and suggests that
12 Apple also has the right to search its employees' *home* offices.

13 83. Apple's message to employees – plainly described in its BCP – is unambiguous.
14 Apple employees "should not have any expectation about the privacy of content or personal
15 information on Apple systems or networks."

16 **III.E. No Escape**

17 84. It is neither possible nor practical for Apple employees to avoid Apple's
18 surveillance, collection, or use their Private Life Data. Among other things:

19 85. As one Apple document explains, some employees – e.g., those "who need to be
20 able to 'live on' [Apple's] products with real personal data for testing or product development
21 purposes" -- are required to either use their personal device for work or an Apple owned device
22 for personal reasons.

23 86. Even if it was practicable for an employee to carry two smartphones at all times
24 (e.g., an Apple owned device and a purely personal device), *they would still be carrying the*
25 *Apple-owned device*. The Apple-owned device collects off-duty Private Life Data for Apple's
26 use (e.g., location data) simply by being in the employee's possession.

27 87. As noted above, Apple declares the right to access, monitor, and use the data on
28 purely personal devices and that employees should have no expectation of privacy in personal

1 information connected to an Apple system or network. *All* Apple devices, even purely personal
2 ones, are connected to an Apple system or network.

3 88. The cost to employees of switching to a non-Apple device for purely personal
4 reasons is too high. In its recent antitrust complaint against Apple, the United States of America
5 and sixteen states, including California, allege the following: Apple has monopoly power in the
6 smartphone market in the United States. Its market share exceeds 70%. Nearly 90% of iPhone
7 users in the United States replace their iPhone with another iPhone. Apple's employees, even
8 more so than Apple's consumers, are trapped in Apple's prison yard.

9 **III.F. Bhakta's Experience**

10 89. Consistent with the above, and upon beginning his employ, Apple gave Bhakta
11 the "choice" of using either an Apple-owned or his personal iPhone for work. Bhakta used a
12 personal phone and Apple installed an eSIM and VPN. Apple also required Bhakta to use his
13 personal iCloud account to collaborate with his colleagues. Apple has not reimbursed Bhakta for
14 its use of his iCloud account.

15 90. Apple, through the conduct described above and otherwise has compelled and
16 coerced Bhakta to become and remain an Apple consumer. Apple required and requires that he
17 patronize Apple, and that he pays for his job with his Private Life Data and personal iCloud
18 account. Apple used, and continues to use, Bhakta's Private Life Data to further its business
19 interests.

20 91. Apple, through the conduct described above and otherwise, has required Bhakta
21 to waive his and his family's unwaivable privacies of life as a condition of initial and continued
22 employment.

23 92. Apple, through the conduct described above and otherwise, has sought to control
24 the nonwork aspects of his life.

25 93. On information and belief, all of Apple's California-based employees are subject
26 to the same or substantially similar invasions of their rights.

27 ///

28 ///

1 **IV. Apple’s Illegal Clawback Policies and Practices**

2 **IV.A. Apple’s Forfeiture Provisions**

3 94. Apple also enforces its illegal Speech Suppression Policies through forfeiture
4 provisions in its equity plans and agreements. For example, Apple pays certain employees with
5 Restricted Stock Units (RSUs) that vest over time. The agreements and plans governing these
6 RSUs, however, purport to permit Apple to claw back vested (meaning earned) RSUs – as well
7 as any profit arising from their sale – if “during the Employment Period or any time thereafter,
8 the [employee] has committed or engaged in a breach of confidentiality, or an unauthorized
9 disclosure or use of inside information, customer lists, trade secrets, or other confidential
10 information of the Company or any of its Subsidiaries.” As detailed above, the only information
11 about Apple that Apple does not consider confidential is “information that may be broadly
12 distributed *without causing damage to Apple.*”

13 95. The illegal forfeiture provisions in Apple’s equity plans and agreements are not
14 limited to violations of Apple’s Speech Suppression Policies. Apple’s agreements assert it can
15 claw back vested RSUs for other reasons as well, including a “material breach of *any* agreement
16 to which the [employee] is a party with the Company or any of its Subsidiaries.” This includes,
17 by its plain language, the many consumer agreements between employees and Apple.

18 **IV.B. Bhakta’s Experience**

19 96. Bhakta, like most other Apple employees, is paid compensation in the form of
20 equity. Apple has thus repeatedly required him to sign equity agreements with illegal forfeiture
21 provisions.

22 **V. Apple’s “Carveout” Provisions**

23 97. Certain of Apple’s agreements and policies contain carveouts for some employee
24 speech. For example, the IPA includes a footnote which provides, “Nothing in this Agreement
25 restricts your rights to speak freely about your wages, hours, and working conditions.” This
26 carveout is legally inadequate because: (1) it is limited to “speak[ing],” which strongly implies
27 that employees are permitted to orally communicate but prohibited from communicating in other
28 forms (e.g., sharing documents or writing); (2) it is limited to “your” information, which strongly

1 implies that employees are prohibiting from discussing or disclosing *others*’ information; (3) it is
2 buried in the IPA, as the definition of Proprietary Information is on the first page of the IPA,
3 whereas the footnote is on the sixth and final page; (4) it is contradicted by the IPA (which
4 expressly defines information about compensation as “confidential,” as well as the offer letter
5 which is also classified as “confidential; (5) the carveout is limited to the terms of the IPA, but
6 other Apple agreements, policies, and standards (including its security policies and standards)
7 plainly prohibit such speech; and (6) any ambiguity created by the carveouts also has the purpose
8 and effect of restraining employee rights.

9 98. Apple’s occasional and inadequate carveouts and disclaimers do not save Apple’s
10 illegal policies or practices.

11 **VI. Administrative Exhaustion**

12 99. Plaintiff provided written notice to the LWDA on April 29, 2024 by online filing
13 and to Defendants via certified mail on May 1, 2024 of the facts, legal claims and theories of
14 their claims in this case. The LWDA did not respond to the letter. Based on these allegations
15 and others, Plaintiff asserts all separate and distinct causes of action described in the following
16 claims.

17 100. To the extent any of the facts, claims, or theories alleged in this Complaint are not
18 encompassed by the April 29, 2024 notice, Plaintiff identifies them here for informational
19 purposes only. Plaintiff will file an amended complaint after the exhaustion period of the PAGA
20 notice filed contemporaneous with this Complaint has expired.

21 **FIRST CAUSE OF ACTION**
22 **Private Attorneys General Act, Cal. Lab. Code §§ 2698 et seq.**
23 **Speech Suppression, Which Restrains Competition, Speech and Whistle Blowing**

24 101. Labor Code §§ 232(a) and (b) and 1197.5 prohibit actual or purported restraints
25 on the disclosure of information about, or the discussion of, employee wages.

26 102. Labor Code § 232.5(a) and (b) prohibit actual or purported restraints on the
27 disclosure of information about employer working conditions.
28

1 aggrieved. Other aggrieved employees include those whose wages were actually clawed back
2 (or who were faced with a clawback threat) in accordance with Apple's equity agreements and
3 plans.

4 120. Plaintiff, on behalf of himself, the State, and the aggrieved employees, seeks
5 penalties as provided by the Labor Code. Plaintiff also seeks appropriate injunctive relief.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff requests the following relief:

8 A. Civil penalties provided, per violation, in accordance with the California Private
9 Attorneys General Act, California Labor Code §§ 2698, *et seq.*;

10 B. Prejudgment and post-judgment interest, as provided by law;

11 C. Attorneys' fees pursuant to Labor Code § 2699(g)(1) and all other bases for fees
12 in the Labor Code;

13 D. Costs of suit, including expert fees and costs;

14 E. A reasonable service award for Plaintiff for his service as a PAGA
15 representative;

16 F. Injunctive relief; and

17 G. Such other relief as the Court may deem just and proper.

18 Dated: December 1, 2024

Respectfully submitted,

19
20 By: 

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27 *other Aggrieved Employees, and for the State*
28 *of California*