UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION 31

APPLE SOCAL, LLC d/b/a APPLEBEE'S, APPLE AMERICAN GROUP, II, LLC d/b/a APPLEBEE'S and APPLE AMERICAN GROUP, LLC **and** **SAMUEL Y. RODRIGUEZ, an Individual**	**CASE NO.: 31-CA-185387**

RESPONDENTS' MOTION FOR PARTIAL SUMMARY JUDGMENT; MEMORANDUM; DECLARATION OF NATALJA FULTON; AND EXHIBITS IN SUPPORT THEREOF

Robert D. Vogel (SBN 63091)
JACKSON LEWIS P.C.
725 S Figueroa Street, Suite 2500
Los Angeles, CA 90017
Phone: (213) 689-0404
Fax: (213) 689-0430

Attorneys for APPLE SOCAL, LLC d/b/a APPLEBEE'S, APPLE AMERICAN GROUP, II, LLC d/b/a APPLEBEE'S and APPLE AMERICAN GROUP, LLC

Respondents APPLE SOCAL, LLC d/b/a APPLEBEE'S, APPLE AMERICAN GROUP, II, LLC d/b/a APPLEBEE'S and APPLE AMERICAN GROUP, LLC ("Respondents") hereby move for partial summary judgment in the above-captioned case. In support of their motion for partial summary judgment, Respondents submit the following memorandum.

I. INTRODUCTION

Pursuant to Sections 102.24(a) and 205.50 of the National Labor Relations Board ("NLRB" or "Board") Rules and Regulations, Respondents hereby move for partial summary judgment in this case because the first unfair labor practice charge filed by Samuel Y. Rodriguez ("Charging Party") asserting the alleged violation of the National Labor Relations Act ("Act" or "NLRA") that is solely the subject of the May 30, 2018 hearing was the first amended charge filed on January 17, 2017 which was served by U.S. mail on Respondents Apple American Group II, LLC d/b/a AppleBee's and Apple American Group, LLC on January 19, 2017.

The amended charge and later filed related charges asserting the same alleged misconduct and violation of the Act should be dismissed as untimely.

II. STATEMENT OF UNDISPUTED FACTS

1. On September 29, 2016, Charging Party filed a charge against Respondents. See ¶ 3 of the Declaration of Natalja Fulton and Exhibit "1" thereto]

2. On January 17, 2017, Charging Party filed an amended charge against Respondents. In his amended charge, for the first time, Charging Party alleged Respondents violated the Act by maintaining and enforcing a mandatory arbitration agreement that limits employees' Section 7 rights by precluding or restricting individuals from filing an unfair labor practice charge or otherwise seeking access to the Board. [Fulton Decl.¶ 4 and Exhibit "2" thereto] See also ¶¶ 8(a), 8(b), 9(a) and 9(b) of the complaint, Exhibit "3" to Fulton Decl.

3. On June 29, 2017, the Regional Director of Region 31 issued a complaint and notice hearing in this case. [Fulton Decl. ¶5 and Exhibit "3" thereto]

4. On July 12, August 25 and December 27, 2017, Respondents filed their answer and first and second amended answer to the complaint. [Fulton Decl. ¶6 and Exhibit "4" thereto]

5. On July 26, 2017, the Regional Director of Region 31 issued an Order Withdrawing Portions of the Complaint, Placing Them in Abeyance and Amending Other Portions of Complaint ("Severing Order"). [Fulton Decl. ¶7 and Exhibit "5" thereto]

6. The Severing Order withdrew portions of the complaint alleging Respondents violated Section 8(a)(1) of the Act by maintaining and/or enforcing arbitration agreements that bar employees from pursuing work-related claims on a collective or class basis in any forum because those issues are currently pending before the Supreme Court in *National Labor Relations Board v. Murphy Oil, USA*, Docket No. 16-307, *Ernst & Young LLP v. Morris,* Docket No. 16-300, and *Epic Systems v. Lewis*, Docket No. 16-285. [Fulton Decl. ¶8]

7. The hearing on the remaining allegations of the complaint is currently scheduled to commence on May 30, 2018. [Fulton Decl.¶ 9 and Exhibit "6" thereto]

8. The complaint alleges Respondents engaged in acts and conduct that constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act. Specifically, the complaint alleges Respondents interfered with, restrained and coerced employees in the exercise of their Section 7 activities in violation of Section 8(a)(1) of the Act by maintaining, enforcing and applying a 2011 version of their Dispute Resolution Program Booklet ("Booklet") and Receipt of Dispute Resolution Program and Agreement to Abide by Dispute Resolution Program ("Agreement") [Fulton Decl. ¶11 and Exhibits "7" and "8" thereto.]

9. From April 2011 through sometime in 2014, Respondents generally maintained, enforced and applied the Booklet and Agreement which, if signed by employees, applied to "all those legal claims you may now or in the future have against the Company" as defined in the Agreement and required that "all legal claims or disputes covered by the Agreement must be

submitted to binding arbitration and this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute . . . any arbitration between the Company and [the employee] will be on an individual basis and not as a class or collective action." "I understand that, notwithstanding the foregoing, this Agreement did not prohibit me from pursuing an administrative claim with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from pursuing court action regarding any such claim." "I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to approve working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions." [Exhibits "7" and "8" to Fulton's Decl.]

10. On July 30, 2011, as a condition of such employment, Charging Party signed the 2011 Agreement incorporating the Booklet described above. [Fulton Decl. ¶ 12]

11. Charging Party worked at Apple SoCal, LLC d/b/a Applebee's Azusa, California restaurant from about July 29, 2011 through November 27, 2011. [Fulton Decl. ¶ 13]

12. Later, Charging Party worked at Apple SoCal, LLC d/b/a Applebee's Rancho Cucamonga, California restaurant from about December 29, 2011 through March 24, 2013. [Fulton Decl. ¶ 14]

13. Charging Party's employment with Apple SoCal, LLC d/b/a Applebee's ended on March 25, 2013. [Fulton Decl. ¶ 15]

14. Charging Party was employed by Apple SoCal, LLC who was owned by Apple American Group, LLC throughout his tenure with Respondents. [Fulton Decl. ¶ 16]

15. In 2014 and 2015, Respondents implemented and thereafter to and through the present generally maintained, enforced and applied a revised Booklet and Agreement and, as of those dates, no longer continued to generally maintain, enforce and apply the 2011 versions of

the Booklet and Agreement. As of those dates, the revised Booklet and Agreement were issued to Respondents' newly hired employees who, as a condition of employment, were obligated to sign the revised Agreement. [Fulton Decl. ¶ 17 and Exhibits "9" and "10" thereto]

16. The revised Booklet states in part "I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to improve working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions. . . . I understand that, notwithstanding the foregoing, this Agreement does not prohibit me from pursuing an administrative claim with the National Labor Relations Board, any state or federal department of labor, any federal, state or local Fair Employment Practices Agency, or the United States Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from personally pursuing court action regarding any such claim. [Exhibit "9" to Fulton Decl.]

17. Since about October 2, 2015, Respondents Apple American Group II, LLC and Apple American Group, LLC have sought to enforce the 2011 Booklet and Agreement described above that Charging Party signed on July 30, 2011 by relying upon them in class action litigation brought against Respondents by the Charging Party. [Fulton Decl. ¶ 19]

18. Specifically, on about September 28, 2015, Charging Party filed a complaint on behalf of himself, and others similarly situated, against Respondents Apple American Group II, LLC and Apple American Group, LLC alleging unlawful business practices in the Superior Court of the State of California, County of Los Angeles in Case No. BC596098 ("lawsuit") [Fulton Decl. ¶ 20]

19. On about June 9, 2016, Respondents Apple American Group II, LLC and Apple American Group, LLC, referring to themselves jointly as AAG, filed a Petition to Compel

Individual Arbitration and Stay Judicial Proceedings against Charging Party in accordance with the terms of the 2011 Booklet and Agreement described above in the lawsuit [Fulton Decl. ¶ 21]

20. On July 7, 2016, the Honorable Lisa Hart Cole, Judge, Superior Court of the State of California for the County of Los Angeles, issued an Order granting AAG's motion to compel arbitration in the lawsuit. [Fulton Decl. ¶ 22]

III. ARGUMENT AND CITATION OF AUTHORITIES

As demonstrated below, Board precedent requires the amended charge and all later amended charges related thereto be dismissed because **the 2011 Booklet and Agreement signed by Charging Party were no longer maintained or enforced by Respondents within six (6) months of the filing of the amended charge on January 17, 2017.**

A. Section 10(b) of the NLRA Requires All Charges Be Filed Within Six Months of the Alleged Misconduct.

Section 10(b) of the Act requires all charges be filed within six (6) months of the alleged misconduct. Section 10(b) provides, in pertinent part:

> Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: **Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made,** unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. . . . 29 U.S.C. § 160 (emphasis added)

Here, it is undisputed Charging Party's allegations regarding the 2011 Booklet and Agreement are beyond the six (6) month statute of limitations period. As discussed above, Respondents promulgated and maintained the 2011 Booklet and Agreement from April 2011

through sometime in 2014 and Respondents last enforced the contents of those documents against Charging Party on about October 2, 2015 when they relied upon them as a defense to class action litigation brought against Respondents by Charging Party. But it was not until January 17, 2017 – some three (3) years after Respondents permanently ceased maintaining and enforcing the 2011 Booklet and Agreement – that Charging Party first filed a charge raising allegations with respect to these agreements that are solely the subject of the pending May 30, 2018 hearing.

Even though Charging Party first filed a charge against Respondents on September 29, 2016, significantly, that charge **did not** include any allegations relating to the maintenance and enforcement of Respondents' arbitration agreement set forth in the 2011 Booklet and Agreement. [Exhibits "6" and "7" to Fulton's Decl.] Charging Party's initial charge also did not allege the agreement precluded or restricted employees in the exercise of their Section 7 rights under the Act. **Charging Party did not first raise these allegations as a claimed alternative violation of the Act until his amended charge was later filed on January 17, 2017.** [Exhibit "2" to Fulton Decl.] At the time Charging Party filed his amended charge, several years had passed since Respondents had adopted, maintained and was then enforcing a substantively new, different and modified Booklet and Agreement, the terms, conditions and application of which **are not the subject of the pending complaint.**

B. Since Respondents No Longer Maintained or Enforced the 2011 Booklet and Agreement Within Six (6) Months of the Filing of the Amended Charge, Board Precedent Mandates the Amended Charge And Later Related Charges Be Dismissed

At the time Charging Party filed his amended charge, Respondents had long stopped maintaining or enforcing the 2011 Booklet and Agreement upon which Charging Party's claims that are exclusively the subject of the May 30, 2018 hearing rely. Accordingly, Board precedent requires Charging Party's charges relying upon such allegations should be dismissed as untimely.

In CVS RX Servs., 363 NLRB No. 180 (2016), the employer implemented and maintained a mandatory arbitration agreement that required employees, as a condition of their employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial, unless employees individually opt out of the waiver. The administrative law judge ("ALJ") found the arbitration agreement violated the Act because it limited employees' section 7 rights.

The employer filed exceptions to the ALJ's ruling arguing the complaint was time-barred because the unfair labor practice charge was filed and served more than six (6) months after the employer implemented the arbitration agreement. The Board rejected the argument the maintenance of the arbitration agreement was time-barred because the employer continued to maintain the unlawful arbitration program during the six (6) month period preceding the filing of the charge but concluded the component of the charge relating to the implementation of the arbitration agreement was time-barred under Section 10(b) of the Act.

Similarly, in Adecco USA, Inc., 364 NLRB No. 9 (2016), the General Counsel sought summary judgment on the grounds the employer violated the Act by promulgating, maintaining and enforcing an agreement that prohibited its employees from participating in collective or class litigation in all forums the employees would reasonably believe barred or restricted their right to file unfair labor practice charges with the Board. The employer alleged the complaint was time-barred under Section 10(b) of the Act.

The Board found that regardless of when an unlawful rule is first promulgated, a violation takes place when the rule is maintained or enforced during the six (6) month period prior to the filing of a charges. The Board found the arbitration agreement was promulgated outside the 10(b) period because the employee had signed it almost one (1) year before filing a charge. As a result, the Board dismissed the unlawful promulgation of the rule allegation.

Here, Charging Party filed an amended charge in January 2017 in which he alleged for the first time Respondents maintained and enforced the 2011 Booklet and Agreement violated the Act .which had ceased to be maintained and enforced, at the latest, as of January 2016.

As discussed above, the last time Respondents enforced the 2011 arbitration agreement against Charging Party was on about October 2, 2015 when they relied upon the 2011 Agreement and Booklet the Charging Party signed at the commencement of his employment by then asserting it as a defense in class action litigation brought against Respondents by Charging Party. Clearly, the 2011 Booklet and Agreement was not in effect, applied, maintained or enforced at any time during the six (6) month period prior to the filing of Charging Party's January 2017 amended charge.

Accordingly, the 2011 Booklet and Agreement were not promulgated, implemented and/or maintained within the 10(b) period of the filing of the amended charge on January 17, 2017.

Charging Party's amended charge and all later charges related thereto are time-barred by Section 10(b) of the Act and Board precedent. Therefore, as a matter of law, the merits of these charges which are solely the subject of the May 30, 2018 hearing should not proceed and these charges should be dismissed.

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IV. CONCLUSION

For the reasons raised above, Respondents respectfully request the Board dismiss Charging Party's amended charge and all later related charges that rely upon the same allegations because they were untimely filed.

Respectfully submitted,

Dated: May 1, 2018

JACKSON LEWIS P.C.

By: _____

Robert D. Vogel

Attorneys for APPLE AMERICAN GROUP II, LLC d/b/a APPLEBEE'S AND APPLE AMERICAN GROUP, LLC

DECLARATION OF NATALJA FULTON

I, NATALJA M. FULTON, declare and state as follows:

1. I am currently employed as employment counsel for Flynn Restaurant Group LP ("Group") and its various corporations, subsidiaries and divisions. The following is based on my personal knowledge, except where otherwise indicated and, if called as a witness, I can and would testify competently thereto.

2. I have personally caused an investigation to be internally conducted within Group to accurately ascertain who employed and the circumstances under which Samuel W. Rodriguez ("Rodriguez") worked for Group restaurants in California.

3. On September 29, 2016, Charging Party filed a charge against Respondents, a true and complete copy of which is attached hereto as Exhibit "1".

4. On January 17, 2017, Charging Party filed an amended charge against Respondents. In his amended charge, for the first time, Charging Party alleged Respondents violated the Act by maintaining and enforcing a mandatory arbitration agreement that limits employees' Section 7 rights by precluding or restricting individuals from filing an unfair labor practice charge or otherwise seeking access to the Board. A true and complete copy of the amended charge is attached hereto as Exhibit "2".

5. On June 29, 2017, the Regional Director of Region 31 issued a complaint and notice hearing in this case, a true and complete copy of which is attached hereto as Exhibit "3".

6. On July 12, August 25 and December 27, 2017, Respondents filed their answer and first and second amended answer to the complaint, true and complete copies of which are collectively attached hereto as Exhibit "4".

7. On July 26, 2017, the Regional Director of Region 31 issued an Order Withdrawing Portions of the Complaint, Placing Them in Abeyance and Amending Other Portions of Complaint ("Severing Order"), a true and complete copy of which is attached hereto as Exhibit "5".

8. The Severing Order withdrew portions of the complaint alleging Respondents violated Section 8(a)(1) of the Act by maintaining and/or enforcing arbitration agreements that bar employees from pursuing work-related claims on a collective or class basis in any forum because those issues are currently pending before the *Supreme Court in National Labor Relations Board v. Murphy Oil, USA, Docket No. 16-307, Ernst & Young LLP v. Morris,* Docket No. 16-300, and *Epic Systems v. Lewis,* Docket No. 16-285.

9. The hearing on the remaining allegations of the complaint is currently scheduled to commence on May 30, 2018. A true and complete copy of the Order Resetting Hearing in this case is attached hereto as Exhibit "6".

10. The complaint alleges Respondents engaged in acts and conduct that constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act. Specifically, the complaint alleges Respondents interfered with, restrained and coerced employees in the exercise of their Section 7 activities in violation of Section 8(a)(1) of the Act by maintaining, enforcing and applying a 2011 version of their Dispute Resolution Program Booklet ("Booklet") and Receipt of Dispute Resolution Program and Agreement to Abide by Dispute Resolution Program ("Agreement"), true and complete copies of which are attached hereto collectively as Exhibits "7" and "8".

11. From April 2011 through sometime in 2014, Respondents generally maintained, enforced and applied the Booklet and Agreement which, if signed by employees, applied to "all those legal claims you may now or in the future have against the Company" as defined in the Agreement and required that "all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute . . . any arbitration between the Company and [the employee] will be on an individual basis and not as a class or collective action." "I understand that, notwithstanding the foregoing, this Agreement did not prohibit me from pursuing an administrative claim with the Department of Fair Employment and

Housing or the Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from pursuing court action regarding any such claim." "I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to approve working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions."

12. On July 30, 2011, as a condition of his employment described hereafter, Charging Party signed the 2011 Agreement incorporating the Booklet described above.

13. Charging Party worked at Apple SoCal, LLC d/b/a Applebee's Azusa, California restaurant from about July 29, 2011 through November 27, 2011.

14. Later, Charging Party worked at Apple SoCal, LLC d/b/a Applebee's Rancho Cucamonga, California restaurant from about December 29, 2011 through March 24, 2013.

15. Charging Party's employment with Apple SoCal, LLC d/b/a Applebee's ended on March 25, 2013.

16. Charging Party was employed by Apple SoCal, LLC who was owned by Apple American Group, LLC throughout his tenure with Respondents.

17. In 2014 and 2015, Respondents implemented and thereafter to and through the present generally maintained, enforced and applied a revised Booklet and Agreement and, as of those dates, no longer continued to generally maintain, enforce and apply the 2011 versions of the Booklet and Agreement. As of those dates, the revised Booklet and Agreement were issued to Respondents' newly hired employees who, as a condition of employment, were obligated to sign the revised Agreement. True and complete copies of the revised Booklet and Agreement are attached hereto collectively as Exhibits "9 and "10".

18. The revised Booklet states in part "I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to improve

working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions. . . . I understand that, notwithstanding the foregoing, this Agreement does not prohibit me from pursuing an administrative claim with the National Labor Relations Board, any state or federal department of labor, any federal, state or local Fair Employment Practices Agency, or the United States Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from personally pursuing court action regarding any such claim.

19. Since about October 2, 2015, Respondents Apple American Group II, LLC and Apple American Group, LLC have sought to enforce the 2011 Booklet and Agreement described above that Charging Party signed on July 30, 2011 by relying upon them in class action litigation brought against Respondents by the Charging Party.

20. Specifically, on about September 28, 2015, Charging Party filed a complaint on behalf of himself, and others similarly situated, against Respondents Apple American Group II, LLC and Apple American Group, LLC alleging unlawful business practices in the Superior Court of the State of California, County of Los Angeles in Case No. BC596098 ("lawsuit").

21. On about June 9, 2016, Respondents Apple American Group II, LLC and Apple American Group, LLC, referring to themselves jointly as AAG, filed a Petition to Compel Individual Arbitration and Stay Judicial Proceedings against Charging Party in accordance with the terms of the 2011 Booklet and Agreement described above in the lawsuit.

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22. On July 7, 2016, the Honorable Lisa Hart Cole, Judge, Superior Court of the State of California for the County of Los Angeles, issued an Order granting AAG's motion to compel arbitration in the lawsuit.

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

Executed this 1st day of May, 2018 at San Francisco, California.

NATALJA M. FULTON

4846-1143-4339, v. 1

EXHIBIT "1"

FORM EXEMPT UNDER 44 U.S.C 3512

INTERNET FORM NLRB-501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE

Case	Date Filed
31-CA-185387	09/29/2016

INSTRUCTIONS:
File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer
Apple American Group II, LLC d/b/a Applebee's
Apple American Group, LLC

b. Tel. No. (415) 835-0226

c. Cell No.

f. Fax No.

d. Address *(Street, city, state, and ZIP code)*
10709 E. Foothill Blvd Rancho Cucamonga, CA 91730 and 377 N. Citrus Ave, Azusa, CA 91702

e. Employer Representative
Attorney: Melissa L. Griffin

g. e-Mail

h. Number of workers employed
200

i. Type of Establishment *(factory, mine, wholesaler, etc.)*
Restaurant

j. Identify principal product or service
Bar & Grill Restaurant

k. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and *(list subsections)* Section 7 of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge *(set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)*
I was employed by Apple American Group II, LLC d/b/a Applebee's ("Applebee's") and Apple American Group, LLC from July 2011 to March 2013. During my employment, all employees were required, as a condition of employment, to agree to a mandatory arbitration provision which included a class action waiver. Subsequent to my employment I attempted to bring a class action. Applebee's moved to compel individual arbitration pursuant to the terms of the agreement. Applebee's maintains that the agreement prohibits class arbitration. It is my understanding that Applebee's still requires all employees, as a condition of employment, to sign a mandatory arbitration agreement. Prohibition of class and representative actions is an unfair labor practice pursuant to NLRA Section 7 and 8(a)(1). Applebee's mandatory arbitration provision applies to all employees and also violates NLRA Section 7 and 8 (a)(1) as it applies to these employees.

3. Full name of party filing charge *(if labor organization, give full name, including local name and number)*
Samuel Y. Rodriguez

4a. Address *(Street and number, city, state, and ZIP code)*
c/o Matern Law Group, PC
1230 Rosecrans Ave, Suite 200
Manhattan Beach, CA 90266

4b. Tel. No. (310) 531-1900

4c. Cell No.

4d. Fax No. (310) 531-1901

4e. e-Mail
mmatern@maternlawgroup.co

5. Full name of national or international labor organization of which it is an affiliate or constituent unit *(to be filled in when charge is filed by a labor organization)* N/A

6. DECLARATION
I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.

By _____ Matthew J. Matern, Attorney
(signature of representative or person making charge) *(Print/type name and title or office, if any)*

Address 1230 Rosecrans Ave, Suite 200, Manhattan Beach, CA 90266 09/28/16 *(date)*

Tel. No. (310) 531-1900

Office, if any, Cell No.

Fax No. (310) 531-1901

e-Mail
mmatern@maternlawgroup.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

GC Exhibit 1(a)

EXHIBIT "2"

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

FIRST AMENDED CHARGE AGAINST EMPLOYER

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
31-CA-185387	01/17/17

INSTRUCTIONS:

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Apple American Group II, LLC, d/b/a Applebee's, Apple American Group, LLC		b. Tel. No. c. Cell No. (415)835-0226
d. Address (street, city, state ZIP code) 10709 E. Foothill Blvd, Rancho Cucamonga, CA 91730-3858 377 N. Citrus Ave, Azusa, CA 91702	e. Employer Representative Melissa Griffin	f. Fax No. g. e-Mail h. Dispute Location (City and State) Azusa, CA
i. Type of Establishment (factory, nursing home, hotel) Restaurant	j. Principal Product or Service Bar & Grill Restaurant	k. Number of workers at dispute location 200

l. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (*set forth a clear and concise statement of the facts constituting the alleged unfair labor practices*)

Within the past six months, the Employer maintained and enforced an arbitration agreement that precludes employees from collective action in all forums, arbitral and judicial, that employees would interpret to prohibit access to the Board.

3. Full name of party filing charge (*if labor organization, give full name, including local name and number*)
Samuel Y. Rodriguez

4a. Address (street and number, city, state, and ZIP code) c/o Matern Law Group, 1230 Rosecrans Ave, Suite 200, MANHATTAN BEACH, CA 90266	4b. Tel. No. (310)531-1900 4c. Cell No. 4d. Fax No. (310)531-1901 4e. e-Mail mmatern@maternlawgroup.com

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (*to be filled in when charge is filed by a labor organization*)

6. DECLARATION **I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.**	Tel. No. (310)531-1900
By: (signature of representative or person making charge) Matthew Matern Attorney Print Name and Title	Office, if any, Cell No.
Address: Matern Law Group, 1230 Rosecrans Ave, Suite 200, MANHATTAN BEACH, CA 90266 Date: 1/13/17	Fax No. (310)531-1901 e-Mail mmatern@maternlawgroup.com

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 *et seq.* The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

EXHIBIT "3"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

and **Case 31-CA-185387**

SAMUEL Y. RODRIGUEZ, an Individual

COMPLAINT AND NOTICE OF HEARING

This Complaint and Notice of Hearing is based on a charge filed by Samuel Y. Rodriguez, an Individual (Charging Party). It is issued pursuant to Section 10(b) of the National Labor Relations Act (the Act), 29 U.S.C. § 151 et seq., and Section 102.15 of the Rules and Regulations of the National Labor Relations Board (the Board) and alleges that Apple SoCal, LLC d/b/a Applebee's (Apple SoCal), Apple American Group II, LLC d/b/a Applebee's (Apple American Group II), and Apple American Group, LLC (Apple American Group) (collectively, Respondents) have violated the Act as described below.

1. (a) The charge in this proceeding was filed by the Charging Party on September 29, 2016, and a copy was served on Respondent Apple American Group II and Respondent Apple American Group by U.S. mail on October 5, 2016.

(b) The first amended charge in this proceeding was filed by the Charging Party on January 17, 2017, and a copy was served on Respondent Apple American Group II and Respondent Apple American Group by U.S. mail on January 19, 2017.

(c) The second amended charge in this proceeding was filed by the Charging Party on March 30, 2017, and a copy was served on Respondent Apple American Group II and Respondent Apple American Group by U.S. mail on April 4, 2017.

(d) The third amended charge in this proceeding was filed by the Charging Party on April 26, 2017, and a copy was served on Respondents by U.S. mail on May 8, 2017.

2. (a) At all material times, Apple SoCal, a Delaware corporation with facilities throughout the United States, including facilities in Rancho Cucamonga, California and Azusa, California, has been engaged in the operation of public restaurants selling food and beverages throughout the country.

(b) In the past calendar year, Apple SoCal has derived gross revenue in excess of $500,000.

(c) In the past calendar year, Apple SoCal purchased and received at its Rancho Cucamonga and Azusa, California facilities goods and services valued in excess of $50,000 from entities located outside the State of California.

3. At all material times, Apple SoCal has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. (a) At all material times, Apple American Group, a Delaware corporation with facilities throughout the United States, including facilities in Rancho Cucamonga, California and Azusa, California, has been engaged in the operation of public restaurants selling food and beverages throughout the country.

(b) In the past calendar year, Apple American Group has derived gross revenue in excess of $500,000.

(c) In the past calendar year, Apple American Group purchased and received at its Rancho Cucamonga and Azusa, California facilities goods and services valued in excess of $50,000 from entities located outside the State of California.

5. At all material times, Apple American Group has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

6. (a) At all material times, Apple American Group II, a Delaware corporation with facilities throughout the United States, including facilities in Rancho Cucamonga, California and Azusa, California, has been engaged in the operation of public restaurants selling food and beverages throughout the country.

(b) In the past calendar year, Apple American Group II has derived gross revenue in excess of $500,000.

(c) In the past calendar year, Apple American Group II purchased and received at its Rancho Cucamonga and Azusa, California facilities goods and services valued in excess of $50,000 from entities located outside the State of California.

7. At all material times, Apple American Group II has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

8. (a) Since at least July 30, 2011 and at all material times, Respondents have maintained a "Dispute Resolution Program" booklet (Booklet) (see attached Exhibit A) which reads in relevant part:

> THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DISPUTES BETWEEN YOU AND THE COMPANY MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY
>
> The parties also agree that any arbitration between the employee and the Company is of their individual claim and that any claim subject to arbitration will not be arbitrated on a collective or class-wide basis.

The Company is engaged in transactions involving interstate commerce and your employment involves such commerce; therefore, the parties agree that the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings under the Dispute Resolution Program.

This program will prevent you from filing a lawsuit in Court for individual, class, or collective relieve for a legal claim subject to arbitration.

(b) Since at least July 30, 2011 and at all material times, Respondents have maintained a "Receipt of Dispute Resolution Program and Agreement to Abide by Dispute Resolution Program" (Agreement) (see attached Exhibit B) which reads in relevant part:

MUTUAL PROMISE TO RESOLVE CLAIMS BY BINDING ARBITRATION. In signing this Agreement, both the Company and I agree that all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute. We also agree that any arbitration between the Company and me will be on an individual basis and not as a class or collective action.

This is an agreement to arbitrate all legal claims. Those claims include: claims for wages or other compensation; claims for breach of any contract, covenant or warranty (expressed or implied); tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims); claims for wrongful termination; sexual harassment; discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability, whether under federal, state or local law); claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans); whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance; claims for a violation of any other civil federal, state or other governmental law, statute, regulation or ordinance; and claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers compensation law or regulation, except as required by law.

I understand and agree that the only claims or disputes not subject to arbitration are as follows: (1) any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure; (2) any statutory workers compensation claim; and (3) unemployment insurance claims.

(c) Since at least July 30, 2011, Respondents required employees, including Charging Party, to sign the Agreement, which incorporates the Booklet, as a condition of employment.

9. (a) Since about June 9, 2016, Apple American Group and Apple American Group II jointly enforced the Booklet and Agreement described above in Paragraphs 8(a) and 8(b) to compel individual arbitration by asserting them in a class action litigation brought against Respondents by the Charging Party and others similarly situated. Specifically, on June 9, 2016, Apple American Group and Apple American Group II, referring to themselves jointly as AAG, filed a "Petition to Compel Individual Arbitration and Stay Judicial Proceedings" (Petition to Compel Individual Arbitration) in Charging Party's class action suit in Los Angeles Superior Court Case No. BC596098.

(b) On about July 7, 2016, the Honorable Lisa Hart Cole granted AAG's Petition to Compel Individual Arbitration pursuant to the arbitration provisions described above in Paragraphs 8(a) and 8(b).

10. At all material times, employees would reasonably conclude that the Booklet and Agreement described above in Paragraphs 8(a) and 8(b) preclude them from, or restrict them in, filing unfair labor practice charges with the Board.

11. By the conduct described above in paragraphs 8(a) through 8(c), Respondent Apple SoCal has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

12. By the conduct described above in paragraphs 8(a) through 8(c) and 9(a) through 9(b), Respondents Apple American Group and Apple American Group II have been interfering

with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

13. The unfair labor practices of Respondent described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that Respondents:

(i) Rescind the unlawful provisions of the Booklet and Agreement and notify all employees subject to the Booklet and Agreement of the rescission and that they may bring collective and class action claims in arbitration; and

(ii) Reimburse the Charging Party for any litigation expenses directly related to opposing Respondent's Petition to Compel Individual Arbitration (or opposing any other legal action taken by Respondents to enforce the Booklet and Agreement so as to preclude collective legal action); and

(iii) Move the Los Angeles Superior Court in Case No. BC596098, jointly with Charging Party upon request, to vacate its order compelling the Charging Party to individual arbitration as noted above in paragraph 9(b), if a motion to vacate can still be timely filed.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged above.

ANSWER REQUIREMENT

Respondent is notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, it must file an answer to the complaint. The answer must be **received by this office on or before July 13, 2017, or postmarked on or before July 12, 2017**. Respondent

should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

An answer may also be filed electronically through the Agency's website. To file electronically, go to www.nlrb.gov, click on **E-File Documents,** enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon (Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the complaint are true.

NOTICE OF HEARING

PLEASE TAKE NOTICE THAT on **August 29, 2017, 9:00 a.m., at 11500 W. Olympic Blvd., Suite 600, Los Angeles, CA 90064**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondent and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: June 29, 2017

MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

Attachments

EXHIBIT "4"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

Case 31-CA-185387

and

SAMUEL Y. RODRIGUEZ, an Individual

RESPONDENTS' ANSWER TO COMPLAINT

Apple SoCal, LLC d/b/a Applebee's, Apple American Group II, LLC d/b/a Applebee's and Apple American Group, LLC (collectively "Respondents") hereby answer and respond to the complaint filed against them in this case as follows.

1. Respondents admit each allegation contained in paragraph 1 of the complaint.

2. Respondents admit the allegations contained in paragraph 2 of the complaint.

3. Respondents admit the allegations contained in paragraph 3 of the complaint.

4. Respondents admit the allegations contained in paragraph 4 of the complaint.

5. Respondents admit the allegations contained in paragraph 5 of the complaint.

6. Respondents deny the allegations contained in paragraph 6(a) and (c) of the complaint.

7. Respondents admit the allegations contained in paragraph 6(b) of the complaint.

8. Respondents admit the allegations contained in paragraph 7 of the complaint.

9. Answering paragraphs 8(a) and (b) of the complaint, Respondents submit that the Dispute Resolution Program Booklet ("Booklet") and Agreement to Abide by Dispute

Resolution Program and Receipt of Dispute Resolution Program ("Agreement") are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny the Booklet and Agreement selectively quoted in these paragraphs and attached thereto were in effect "at all material times." Rather, true and complete copies of the Booklet and Agreement in effect at all material times are attached hereto as Exhibits "1" and "2" respectively.

10. Respondents deny the allegations contained in paragraph 8(c) of the complaint.

11. Answering paragraph 9(a) of the complaint, Respondents submit the court pleadings referenced therein are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny all other allegations contained in the paragraph.

12. Answering paragraph 9(b) of the complaint, Respondents admit that on or about July 7, 2016, the Honorable Lisa Hart Cole granted Apple American Group II, LLC's and Apple American Group, LLC's motion to compel arbitration. Respondents deny all other allegations contained in the paragraph.

13. Respondents deny the allegations contained in paragraph 10 of the complaint.

14. Respondents deny the allegations contained in paragraph 11 of the complaint.

15. Respondents deny the allegations contained in paragraph 12 of the complaint.

16. Respondents deny the allegations contained in paragraph 13 of the complaint.

17. Respondents deny the general counsel is entitled to any of the remedies or relief sought in the complaint.

AFFIRMATIVE AND OTHER DEFENSES

Respondents assert the following affirmative and other defenses to the allegations of the complaint without assuming any burden of production or proof that they would not otherwise have, each of which is a bar to charging party's and/or the general counsel's allegations.

Respondents also reserve the right to assert additional defenses as they may become known during the course of their investigation or otherwise.

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense of the complaint, Respondents allege the complaint fails to state a claim upon which relief can and should be granted.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense, Respondents assert they are parties to an informal agreement with the National Labor Relations Board ("Board") which presently precludes and estops the Board from litigating the allegations and claims asserted in paragraphs 11-13 of the complaint.

THIRD AFFIRMATIVE DEFENSE

As and for a third affirmative defense, Respondents allege that as to paragraph 10 of the complaint, assuming, *arguendo*, they, and each of them, violated the Act in the manner described therein, the Board is not entitled to the remedy and relief requested in the complaint.

FOURTH AFFIRMATIVE DEFENSE

The complaint is barred by the doctrine of election of remedies because charging party elected to file his referenced civil action in court rather than first filing an unfair labor practice charge with the Board.

FIFTH AFFIRMATIVE DEFENSE

The complaint is barred because it is based on the Board's decisions in *D. R. Horton, Inc.*, 337 NLRB No. 184 (2012), and *Murphy Oil USA Inc.*, 361 NLRB No. 72 (2014), which are contrary to recent decisions rendered by the United States Supreme Court holding that arbitration agreements must be enforced according to their terms, including *AT&T Mobility LLC v.*

Concepcion, 131 S. Ct. 1740 (2012); *CompuCredit Corp. v. Greenwood,* 132 S. Ct. 665 (2012); *Marmet Health Care Ctr. v. Brown,* 132 S. Ct. 1201 (2012); and *American Express Co. v. Italian Colors Restaurant,* 131 S. Ct. 1740 (2011). Because the National Labor Relations Act does not expressly permit the Board to invalidate employment arbitration agreements containing class/collective action waivers, whether entered into voluntarily or as a mandatory term and condition of employment, such waivers are valid and enforceable.

SIXTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party was not and is not employed by Respondent Apple American Group II, LLC d/b/a Applebee's as defined by Section 2(3) of the National Labor Relations Act.

SEVENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks the authority to rule the National Labor Relations Act prevails over the strong federal policy favoring the enforcement of arbitration agreements according to their terms as manifested by the Federal Arbitration Act and the United States Supreme Court's construction of the Federal Arbitration Act.

EIGHTH AFFIRMATIVE DEFENSE

The complaint is barred because the Federal Arbitration Act vests in the courts the exclusive jurisdiction to enforce arbitration agreements. Consequently, the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

NINTH AFFIRMATIVE DEFENSE

The complaint is barred because its allegations and the remedies it seeks violate Respondents' First Amendment right to defend itself in a lawsuit initiated by charging party by

taking well-grounded and reasonably-based positions in the litigation and it is contrary to the decisions rendered by the United States Supreme Court in *Bill Johnson's Restaurants, Inc. v. NLRB,* 103 S. Ct. 2161 (1983) and *BE&K Construction Company v. NLRB,* 122 S. Ct. 2390 (2002).

TENTH AFFIRMATIVE DEFENSE

The complaint is barred because it seeks remedies inconsistent with, or incompatible with, the ruling of the court in charging party's referenced civil action.

ELEVENTH AFFIRMATIVE DEFENSE

The complaint is barred to the extent it seeks to require Respondents to rescind their Booklet and/or Agreement not only with respect to Respondents' employees covered by the National Labor Relations Act but also with respect to supervisors, managers and other employees not covered by the Act over which the Board has no jurisdiction.

TWELFTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

THIRTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to take actions, or not take actions, with respect to litigation initiated by charging party.

FOURTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to reimburse charging party for litigation expenses he incurred in connection with charging party's referenced civil action wherein the court has not ordered such reimbursement.

FIFTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to move a Los Angeles Superior Court Judge to vacate its order compelling arbitration in connection with charging party's referenced civil action.

SIXTEENTH AFFIRMATIVE DEFENSE

The complaint is barred by reason of the statute of limitations in Section 10(b) of the National Labor Relations Act because charging party first filed a charge more than six (6) months after he voluntarily agreed to the Booklet and Agreement.

SEVENTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party acted alone and for his own benefit in filing his referenced civil action and by such conduct did not engage or seek to engage in protected, concerted activity under the National Labor Relations Act.

WHEREFORE, Respondents pray:

1. The complaint be dismissed with prejudice;
2. The Board be ordered precluded and estopped from presently litigating the allegations and claims asserted in paragraphs 11-13 of the complaint and seek any relief or remedy associated therewith;
3. They, and each of them, be declared and determined to have not violated the Act as described in paragraph 10 of the complaint; and
4. For such other and further relief as is deemed justified and appropriate.

Respectfully submitted,

Dated: July 12, 2017

JACKSON LEWIS P.C.

By:

Robert D. Vogel

Attorneys for Respondents
APPLE SOCAL, LLC D/B/A
APPLEBEE'S, APPLE AMERICAN
GROUP II, LLC D/B/A APPLEBEE'S, and
APPLE AMERICAN GROUP, LLC

CERTIFICATE OF SERVICE

I, Irene Miranda, do hereby certify that on July 12, 2017, I caused a true and correct copy of Respondents' Answer to Complaint to be served upon the following parties via electronic mail:

Mori Rubin
Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753

Matthew J. Matern, Attorney at Law
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Tagore Subramaniam, Esq.
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Samuel Y. Rodriguez
c/o Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Dated this 12th day of July, 2017

Irene Miranda

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

Case 31-CA-185387

and

SAMUEL Y. RODRIGUEZ, an Individual

RESPONDENTS' AMENDED ANSWER TO COMPLAINT

Apple SoCal, LLC d/b/a Applebee's, Apple American Group II, LLC d/b/a Applebee's and Apple American Group, LLC (collectively "Respondents") hereby amend their answer and respond to the complaint filed against them in this case as follows.

1. Respondents admit each allegation contained in paragraph 1 of the complaint.

2. Respondents admit the allegations contained in paragraph 2 of the complaint.

3. Respondents admit the allegations contained in paragraph 3 of the complaint.

4. Respondents admit the allegations contained in paragraph 4 of the complaint.

5. Respondents admit the allegations contained in paragraph 5 of the complaint.

6. Respondents deny the allegations contained in paragraph 6(a) and (c) of the complaint.

7. Respondents admit the allegations contained in paragraph 6(b) of the complaint.

8. Respondents admit the allegations contained in paragraph 7 of the complaint.

9. Answering paragraphs 8(a) and (b) of the complaint, Respondents submit that the Dispute Resolution Program Booklet ("Booklet") and Agreement to Abide by Dispute

Resolution Program and Receipt of Dispute Resolution Program ("Agreement") are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny the Booklet and Agreement selectively quoted in these paragraphs and attached thereto were in effect "at all material times." Rather, true and complete copies of the Booklet and Agreement in effect at all material times are attached hereto as Exhibits "1" and "2" respectively.

10. Respondents deny the allegations contained in paragraph 8(c) of the complaint.

11. Answering paragraph 9(a) of the complaint, Respondents submit the court pleadings referenced therein are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny all other allegations contained in the paragraph.

12. Answering paragraph 9(b) of the complaint, Respondents admit that on or about July 7, 2016, the Honorable Lisa Hart Cole granted Apple American Group II, LLC's and Apple American Group, LLC's motion to compel arbitration. Respondents deny all other allegations contained in the paragraph.

13. Respondents deny the allegations contained in paragraph 10 of the complaint.

14. Respondents deny the allegations contained in paragraph 11 of the complaint.

15. Respondents deny the allegations contained in paragraph 12 of the complaint.

16. Respondents deny the allegations contained in paragraph 13 of the complaint.

17. Respondents deny the general counsel is entitled to any of the remedies or relief sought in the complaint.

AFFIRMATIVE AND OTHER DEFENSES

Respondents assert the following affirmative and other defenses to the allegations of the complaint without assuming any burden of production or proof that they would not otherwise have, each of which is a bar to charging party's and/or the general counsel's allegations.

Respondents also reserve the right to assert additional defenses as they may become known during the course of their investigation or otherwise.

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense of the complaint, Respondents allege the complaint fails to state a claim upon which relief can and should be granted.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense, Respondents assert they are parties to an informal agreement with the National Labor Relations Board ("Board") which presently precludes and estops the Board from litigating the allegations and claims asserted in paragraphs 11-13 of the complaint.

THIRD AFFIRMATIVE DEFENSE

As and for a third affirmative defense, Respondents allege that as to paragraph 10 of the complaint, assuming, *arguendo*, they, and each of them, violated the Act in the manner described therein, the Board is not entitled to the remedy and relief requested in the complaint.

FOURTH AFFIRMATIVE DEFENSE

The complaint is barred by the doctrine of election of remedies because charging party elected to file his referenced civil action in court rather than first filing an unfair labor practice charge with the Board.

FIFTH AFFIRMATIVE DEFENSE

The complaint is barred because it is based on the Board's decisions in *D. R. Horton, Inc.*, 337 NLRB No. 184 (2012), and *Murphy Oil USA Inc.*, 361 NLRB No. 72 (2014), which are contrary to recent decisions rendered by the United States Supreme Court holding that arbitration agreements must be enforced according to their terms, including *AT&T Mobility LLC v.*

Concepcion, 131 S. Ct. 1740 (2012); *CompuCredit Corp. v. Greenwood,* 132 S. Ct. 665 (2012); *Marmet Health Care Ctr. v. Brown,* 132 S. Ct. 1201 (2012); and *American Express Co. v. Italian Colors Restaurant,* 131 S. Ct. 1740 (2011). Because the National Labor Relations Act does not expressly permit the Board to invalidate employment arbitration agreements containing class/collective action waivers, whether entered into voluntarily or as a mandatory term and condition of employment, such waivers are valid and enforceable.

SIXTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party was not and is not employed by Respondent Apple American Group II, LLC d/b/a Applebee's as defined by Section 2(3) of the National Labor Relations Act.

SEVENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks the authority to rule the National Labor Relations Act prevails over the strong federal policy favoring the enforcement of arbitration agreements according to their terms as manifested by the Federal Arbitration Act and the United States Supreme Court's construction of the Federal Arbitration Act.

EIGHTH AFFIRMATIVE DEFENSE

The complaint is barred because the Federal Arbitration Act vests in the courts the exclusive jurisdiction to enforce arbitration agreements. Consequently, the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

NINTH AFFIRMATIVE DEFENSE

The complaint is barred because its allegations and the remedies it seeks violate Respondents' First Amendment right to defend itself in a lawsuit initiated by charging party by

taking well-grounded and reasonably-based positions in the litigation and it is contrary to the decisions rendered by the United States Supreme Court in *Bill Johnson's Restaurants, Inc. v. NLRB,* 103 S. Ct. 2161 (1983) and *BE&K Construction Company v. NLRB,* 122 S. Ct. 2390 (2002).

TENTH AFFIRMATIVE DEFENSE

The complaint is barred because it seeks remedies inconsistent with, or incompatible with, the ruling of the court in charging party's referenced civil action.

ELEVENTH AFFIRMATIVE DEFENSE

The complaint is barred to the extent it seeks to require Respondents to rescind their Booklet and/or Agreement not only with respect to Respondents' employees covered by the National Labor Relations Act but also with respect to supervisors, managers and other employees not covered by the Act over which the Board has no jurisdiction.

TWELFTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

THIRTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to take actions, or not take actions, with respect to litigation initiated by charging party.

FOURTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to reimburse charging party for litigation expenses he incurred in connection with charging party's referenced civil action wherein the court has not ordered such reimbursement.

FIFTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to move a Los Angeles Superior Court Judge to vacate its order compelling arbitration in connection with charging party's referenced civil action.

SIXTEENTH AFFIRMATIVE DEFENSE

The complaint is barred by reason of the statute of limitations in Section 10(b) of the National Labor Relations Act because charging party first filed a charge more than six (6) months after he voluntarily agreed to the Booklet and Agreement.

SEVENTEENTH AFFIRMATIVE DEFENSE

The complaint is barred by reason of the statute of limitations in Section 10(b) of the National Labor Relations Act because the Booklet and Agreement, which the Board contends was issued to the charging party and in effect during his employment and who would reasonably conclude such language precluded or prevented him from generally filing an unfair labor practice charge, were later substantively amended and sufficiently remedied in 2014 after charging party left his employment with Respondents and more than six (6) months thereafter elapsed before the charging party filed his first amended charge in this case almost four (4) years later on January 23, 2017 contending the prior Agreement and Booklet provided to him violated the Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party acted alone and for his own benefit in filing his referenced civil action and by such conduct did not engage or seek to engage in protected, concerted activity under the National Labor Relations Act.

WHEREFORE, Respondents pray:

1. The complaint be dismissed with prejudice;

2. The Board be ordered precluded and estopped from presently litigating the allegations and claims asserted in paragraphs 11-13 of the complaint and seek any relief or remedy associated therewith;

3. They, and each of them, be declared and determined to have not violated the Act as described in paragraph 10 of the complaint; and

4. For such other and further relief as is deemed justified and appropriate.

Respectfully submitted,

Dated: August 25, 2017

JACKSON LEWIS P.C.

By: _____

Robert D. Vogel

Attorneys for Respondents
APPLE SOCAL, LLC D/B/A
APPLEBEE'S, APPLE AMERICAN
GROUP II, LLC D/B/A APPLEBEE'S, and
APPLE AMERICAN GROUP, LLC

CERTIFICATE OF SERVICE

I, Sherry Shapiro do hereby certify that on August 25, 2017, I caused a true and correct copy of Respondents' Answer to Complaint to be served upon the following parties via electronic mail:

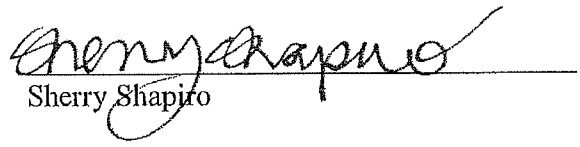
Mori Rubin
Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753

Matthew J. Matern, Attorney at Law
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Tagore Subramaniam, Esq.
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Samuel Y. Rodriguez
c/o Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Dated this 25th day of August, 2017



Sherry Shapiro

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

Case 31-CA-185387

and

SAMUEL Y. RODRIGUEZ, an Individual

RESPONDENTS' SECOND AMENDED ANSWER TO COMPLAINT

Apple SoCal, LLC d/b/a Applebee's, Apple American Group II, LLC d/b/a Applebee's and Apple American Group, LLC (collectively "Respondents") hereby amend their amended answer and respond to the complaint filed against them in this case as follows.

1. Respondents admit each allegation contained in paragraph 1 of the complaint.

2. Respondents admit the allegations contained in paragraph 2 of the complaint.

3. Respondents admit the allegations contained in paragraph 3 of the complaint.

4. Answering paragraph 4(a) of the complaint, Respondents admit that Apple American Group owned facilities in Rancho Cucamonga and Azusa, California and all other unrelated allegations contained in the paragraph.

5. Answering paragraph 4(b) of the complaint, Respondents admit that at all material times, Apple American Group II owned facilities in Rancho Cucamonga and Azusa, California and all other unrelated allegations contained therein.

6. Respondents admit the allegations contained in paragraph 5 of the complaint.

7. Answering paragraph 6(a), Respondents admit that Apple American Group II at all material times owned facilities in Rancho Cucamonga and Azusa, California and all other unrelated allegations contained therein.

8. Respondents admit allegations contained in paragraphs 6(b) and (c) of the complaint.

9. Respondents admit the allegations contained in paragraph 7 of the complaint.

10. Answering paragraphs 8(a) and (b) of the complaint, Respondents submit that the Dispute Resolution Program Booklet ("Booklet") and Agreement to Abide by Dispute Resolution Program and Receipt of Dispute Resolution Program ("Agreement") are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny the Booklet and Agreement selectively quoted in these paragraphs and attached thereto were in effect "at all material times." Rather, true and complete copies of the Booklet and Agreement in effect at all material times are attached hereto as Exhibits "1" and "2" respectively.

11. Respondents deny the allegations contained in paragraph 8(c) of the complaint.

12. Answering paragraph 9(a) of the complaint, Respondents submit the court pleadings referenced therein are the best evidence of their terms and conditions and refer to such in response thereto. Respondents deny all other allegations contained in the paragraph.

13. Answering paragraph 9(b) of the complaint, Respondents admit that on or about July 7, 2016, the Honorable Lisa Hart Cole granted Apple American Group II, LLC's and Apple American Group, LLC's motion to compel arbitration. Respondents deny all other allegations contained in the paragraph.

14. Respondents deny the allegations contained in paragraph 10 of the complaint.

15. Respondents deny the allegations contained in paragraph 11 of the complaint.

16. Respondents deny the allegations contained in paragraph 12 of the complaint.

17. Respondents deny the allegations contained in paragraph 13 of the complaint.

18. Respondents deny the general counsel is entitled to any of the remedies or relief sought in the complaint.

AFFIRMATIVE AND OTHER DEFENSES

Respondents assert the following affirmative and other defenses to the allegations of the complaint without assuming any burden of production or proof that they would not otherwise have, each of which is a bar to charging party's and/or the general counsel's allegations.

Respondents also reserve the right to assert additional defenses as they may become known during the course of their investigation or otherwise.

FIRST AFFIRMATIVE DEFENSE

As and for a first affirmative defense of the complaint, Respondents allege the complaint fails to state a claim upon which relief can and should be granted.

SECOND AFFIRMATIVE DEFENSE

As and for a second affirmative defense, Respondents assert they are parties to an informal agreement with the National Labor Relations Board ("Board") which presently precludes and estops the Board from litigating the allegations and claims asserted in paragraphs 11-13 of the complaint.

THIRD AFFIRMATIVE DEFENSE

As and for a third affirmative defense, Respondents allege that as to paragraph 10 of the complaint, assuming, *arguendo*, they, and each of them, violated the Act in the manner described therein, the Board is not entitled to the remedy and relief requested in the complaint.

FOURTH AFFIRMATIVE DEFENSE

The complaint is barred by the doctrine of election of remedies because charging party elected to file his referenced civil action in court rather than first filing an unfair labor practice charge with the Board.

FIFTH AFFIRMATIVE DEFENSE

The complaint is barred because it is based on the Board's decisions in *D. R. Horton, Inc.*, 337 NLRB No. 184 (2012), and *Murphy Oil USA Inc.*, 361 NLRB No. 72 (2014), which are contrary to recent decisions rendered by the United States Supreme Court holding that arbitration agreements must be enforced according to their terms, including *AT&T Mobility LLC v. Concepcion,* 131 S. Ct. 1740 (2012); *CompuCredit Corp. v. Greenwood,* 132 S. Ct. 665 (2012); *Marmet Health Care Ctr. v. Brown,* 132 S. Ct. 1201 (2012); and *American Express Co. v. Italian Colors Restaurant,* 131 S. Ct. 1740 (2011). Because the National Labor Relations Act does not expressly permit the Board to invalidate employment arbitration agreements containing class/collective action waivers, whether entered into voluntarily or as a mandatory term and condition of employment, such waivers are valid and enforceable.

SIXTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party was never and is not presently employed by Respondents Apple American Group II, LLC d/b/a Applebee's and/or Apple American Group, LLC as defined by Section 2(3) of the National Labor Relations Act.

SEVENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks the authority to rule the National Labor Relations Act prevails over the strong federal policy favoring the enforcement of arbitration agreements according to their terms as manifested by the Federal Arbitration Act and the United States Supreme Court's construction of the Federal Arbitration Act.

EIGHTH AFFIRMATIVE DEFENSE

The complaint is barred because the Federal Arbitration Act vests in the courts the exclusive jurisdiction to enforce arbitration agreements. Consequently, the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

NINTH AFFIRMATIVE DEFENSE

The complaint is barred because its allegations and the remedies it seeks violate Respondents' First Amendment right to defend itself in a lawsuit initiated by charging party by taking well-grounded and reasonably-based positions in the litigation and it is contrary to the decisions rendered by the United States Supreme Court in *Bill Johnson's Restaurants, Inc. v. NLRB,* 103 S. Ct. 2161 (1983) and *BE&K Construction Company v. NLRB,* 122 S. Ct. 2390 (2002).

TENTH AFFIRMATIVE DEFENSE

The complaint is barred because it seeks remedies inconsistent with, or incompatible with, the ruling of the court in charging party's referenced civil action.

ELEVENTH AFFIRMATIVE DEFENSE

The complaint is barred to the extent it seeks to require Respondents to rescind their Booklet and/or Agreement not only with respect to Respondents' employees covered by the National Labor Relations Act but also with respect to supervisors, managers and other employees not covered by the Act over which the Board has no jurisdiction.

TWELFTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks authority to invalidate lawful individual arbitration agreements voluntarily entered into by an employer and its employees.

THIRTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to take actions, or not take actions, with respect to litigation initiated by charging party.

FOURTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to reimburse charging party for litigation expenses he incurred in connection with charging party's referenced civil action wherein the court has not ordered such reimbursement.

FIFTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because the Board lacks jurisdiction to order Respondents to move a Los Angeles Superior Court Judge to vacate its order compelling arbitration in connection with charging party's referenced civil action.

SIXTEENTH AFFIRMATIVE DEFENSE

The complaint is barred by reason of the statute of limitations in Section 10(b) of the National Labor Relations Act because charging party first filed a charge more than six (6) months after he voluntarily agreed to the Booklet and Agreement.

SEVENTEENTH AFFIRMATIVE DEFENSE

The complaint is barred by reason of the statute of limitations in Section 10(b) of the National Labor Relations Act because the Booklet and Agreement, which the Board contends was issued to the charging party and in effect during his employment and who would reasonably conclude such language precluded or prevented him from generally filing an unfair labor practice charge, were later substantively amended and sufficiently remedied in 2014 after charging party left his employment with Respondents and more than six (6) months thereafter elapsed before the charging party filed his first amended charge in this case almost four (4) years later on January 23, 2017 contending the prior Agreement and Booklet provided to him violated the Act.

EIGHTEENTH AFFIRMATIVE DEFENSE

The complaint is barred because charging party acted alone and for his own benefit in filing his referenced civil action and by such conduct did not engage or seek to engage in protected, concerted activity under the National Labor Relations Act.

NINETEENTH AFFIRMATIVE DEFENSE

The complaint is barred consistent with the recent decision rendered in The Boeing Company, 365 NLRB No. 154 (2017), because the facially neutral policy provisions at issue herein are not encompassed in any of the categories enumerated in that decision.

WHEREFORE, Respondents pray:

1. The complaint be dismissed with prejudice;
2. The Board be ordered precluded and estopped from presently litigating the allegations and claims asserted in paragraphs 11-13 of the complaint and seek any relief or remedy associated therewith;
3. They, and each of them, be declared and determined to have not violated the Act as described in paragraph 10 of the complaint; and
4. For such other and further relief as is deemed justified and appropriate.

Respectfully submitted,

Dated: December 21, 2017

JACKSON LEWIS P.C.

By: _____

Robert D. Vogel

Attorneys for Respondents
APPLE SOCAL, LLC D/B/A
APPLEBEE'S, APPLE AMERICAN
GROUP II, LLC D/B/A APPLEBEE'S, and
APPLE AMERICAN GROUP, LLC

CERTIFICATE OF SERVICE

I, Irene Miranda do hereby certify that on December 27, 2017, I caused a true and correct copy of Respondents' Second Amended Answer to Complaint to be served upon the following parties via electronic mail:

Mori Rubin
Regional Director
National Labor Relations Board, Region 31
11500 W. Olympic Blvd., Suite 600
Los Angeles, CA 90064-1753

Matthew J. Matern, Attorney at Law
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Tagore Subramaniam, Esq.
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Samuel Y. Rodriguez
c/o Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266

Dated this 27th day of December, 2017

Irene Miranda

EXHIBIT "5"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

and **Case 31-CA-185387**

SAMUEL Y. RODRIGUEZ

ORDER WITHDRAWING PORTIONS OF COMPLAINT, PLACING THEM IN ABEYANCE AND AMENDING OTHER PORTIONS OF COMPLAINT

A Complaint and Notice of Hearing issued in the above-captioned matter on June 29, 2017.

The Complaint alleges, among other things, that Respondents Apple SoCal, LLC D/B/A Applebee's, Apple American Group II, LLC D/B/A Applebee's, and Apple American Group, LLC ("Respondents") have maintained a "Dispute Resolution Program booklet" (Booklet) and corresponding "Receipt of Dispute Resolution Program and Agreement to Abide by Dispute Resolution Program" (Agreement) that prohibits class or collective legal claims in all forums, arbitral and judicial, and have required employees, as a condition of employment, to sign the Agreement to be bound to the terms of the Booklet. The Complaint further alleges that Respondents Apple American group II, LLC D/B/A Applebee's, and Apple American Group, LLC have enforced the Agreement by asserting it in litigation in Los Angeles Superior Court Case No. BC596098.

On January 13, 2017, the Supreme Court of the United States granted the petition for a writ of *certiorari* in *National Labor Relations Board v. Murphy Oil, USA*, Docket No. 16-307, *Ernst & Young LLP v. Morris,* Docket No. 16-300, and *Epic Systems v. Lewis*, Docket No. 16-285 and consolidated the cases for oral argument in the Court's October 2017 term. The issue before the Court is whether arbitration agreements with individual employees that bar them from pursuing work-related claims on a collective or class basis in any forum are prohibited as an unfair labor practice under 29 U.S.C. § 158(a)(1), because they limit the employees' right under the National Labor Relations Act to engage in "concerted activities" in pursuit of their "mutual aid or protection," 29 U.S.C. § 157, and are therefore unenforceable under the savings clause of the Federal Arbitration Act, 9 U.S.C. § 2. Certain allegations in the Complaint regarding Respondent's Agreement and Booklet will be directly impacted by the Supreme Court in its decision in *Murphy Oil, et al.*

IT IS ORDERED that paragraphs 8 (c) and 9 (a)-(b), of the Complaint are withdrawn and the allegations contained in those paragraphs placed in administrative abeyance pending the outcome of the Supreme Court's decision in *Murphy Oil, et al.*

IT IS FURTHER ORDERED that existing paragraph 10 of the Complaint is renumbered paragraph 9.

IT IS FURTHER ORDERED that existing paragraph 11 of the Complaint is renumbered paragraph 10 and is amended to read as follows:

10. By the conduct described above in paragraphs 8(a) through 8(b), Respondent Apple SoCal has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

IT IS FURTHER ORDERED that existing paragraph 12 of the Complaint is renumbered paragraph 11 and amended to read as follows:

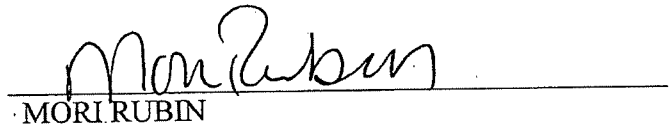
11. By the conduct described above in paragraphs 8(a) through 8(b), Respondents Apple American Group and Apple American Group II have been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

IT IS FURTHER ORDERED that existing paragraph 13 of the Complaint is renumbered paragraph 12.

IT IS FINALLY ORDERED that the "WHEREFORE" paragraph of the Consolidated Complaint is amended to read as follows:

> WHEREFORE, as part of the remedy for the unfair labor practices alleged above, the General Counsel seeks an Order requiring that Respondents:
>
> (i) Rescind the unlawful provisions of the Booklet and Agreement and notify all employees subject to the Booklet and Agreement of the rescission; and
>
> (ii) Post the Notice to Employees at all locations where its Booklet and Agreement have been or are in effect.
>
> The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged above.

Dated: July 26, 2017



MORI RUBIN
REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

EXHIBIT "6"

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 31

APPLE SOCAL, LLC D/B/A APPLEBEE'S, APPLE AMERICAN GROUP II, LLC D/B/A APPLEBEE'S, AND APPLE AMERICAN GROUP, LLC

and

Case 31-CA-185387

SAMUEL Y. RODRIGUEZ

ORDER RESETTING HEARING

IT IS HEREBY ORDERED that the hearing in the captioned matter is reset to May 30, 2018 at 9:00AM at 11500 W. Olympic Blvd, Suite 600, Los Angeles, CA 90064-1524. The hearing will continue on consecutive days until concluded.

Dated: March 21, 2018

BRIAN GEE
ACTING REGIONAL DIRECTOR
NATIONAL LABOR RELATIONS BOARD
REGION 31
11500 W Olympic Blvd Ste 600
Los Angeles, CA 90064-1753

EXHIBIT "7"

APPLE
AMERICAN
GROUP

DISPUTE RESOLUTION PROGRAM

PROGRAM BOOKLET

DISPUTE RESOLUTION PROGRAM

This Dispute Resolution Program is adopted for Apple American Group LLC and all subsidiaries1 or affiliated entities, and all successors and assigns of any of them, all of which are collectively hereinafter referred to as the "Company."

The Company is committed to building a strong relationship between the Company and all of our employees - a relationship that is based on trust and open communication. The Company is an equal opportunity employer and strives to maintain an atmosphere of mutual trust and open, honest communication. By working together, we can reach any goal we set for ourselves. We do not and will not tolerate harassment or discrimination by any employee, regardless of their status with the Company, and no employee will be retaliated against for using this Program.

We understand, however, that problems and disagreements are unavoidable when people with different viewpoints spend a lot of time together. We cannot entirely eliminate disagreements, but we can provide a process for resolving them when they do occur by taking prompt constructive action.

Based on these beliefs and values, we developed this DISPUTE RESOLUTION PROGRAM (the "Program"). The Program is a four-step process for resolving workplace problems quickly and fairly. This policy describes the steps that both you and the Company must take to resolve many types of workplace problems. The Company is also obligated to follow the Program and will also be bound by arbitration. The types of problems covered by the Program are explained in detail in this policy.

THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DISPUTES BETWEEN YOU AND THE COMPANY MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY.

When you have a work-related problem, follow the steps listed below in this policy.

Step 1: UTILIZE THE OPEN DOOR POLICY

In any relationship, when a disagreement occurs, keeping emotions bottled up inside only causes the problem to get bigger. At the Company we want to encourage open communication so we can solve the problem with the least amount of stress for those involved. To do this, we have developed an Open-Door Policy that encourages you to talk with your manager to get your concerns addressed quickly.

1. **Talk directly to your immediate manager.** If you have a problem, first discuss it with your Manager or General Manager soon as possible after the problem arises.
2. **Talk to a higher level of management.** Sometimes, you may not be able to resolve the issue with your Manager or General Manager. If this is the case, take your concern to your Area Director or up to the Market President to get the answers you need.
3. **Talk with Human Resources.** If you have tried the above steps and are not satisfied, or if you are not comfortable talking to your managers for any reason, you can contact your Human Resources Generalist to get the help you need.
4. **Talk with Support Center.** If for any reason you are uncomfortable with following the prior steps, you should feel free to contact the Support Center Human Resource Dept at 216.525.2775 or Employee Hotline at 800.837.3667 x1300 and ask for help.

Step 2: EXECUTIVE REVIEW

If you have tried the Open Door Policy and are not satisfied, you may request the Executive Review Step. In this step, the Company's President or his designee (the "Executive") will review the issue or problem and attempt to resolve the issue or problem to your satisfaction and to the satisfaction of your Manager and the Company. Failing that, the Executive will make a decision.
Here is how you obtain access to the Executive Review Step:

1. **Request review.** As soon as possible after your exhaustion of the Open Door Policy Step process, you can start the Executive Review process by contacting the Company's Employee Relations department. The Employee Relations department can be reached at 216.525.2775 or you can call the Employee Hotline at 800.837.3667 x1300 and ask for help.
2. **Submit information.** In order to access the Executive Review Step, you should provide a written statement that contains as much of the following information as is reasonably available to you:
   a. Describe in detail, to the best of your ability, the factual basis on which your claim is made.
   b. Describe the measures you have taken at the Communication Step to resolve the issue including the supervisors you have spoken with about the problem.
   c. Describe the nature and extent of any remedy or relief you believe you should have.

   *You can obtain a copy of a form to use for this purpose from the Human Resources Department.

---

1 Subsidiaries of Apple American Group LLC include Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple Ohio LLC, Apple New Jersey LLC, Apple Delaware LLC, Apple Minnesota LLC, Apple Nevada LLC, Apple NorCal LLC, Apple Pennsylvania LLC, Apple SoCal LLC, Apple Washington LLC, B.T. Woodlipp, Inc., and Wine Country Apple LLC.

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3. **The Review.** The Company's Executive will review the problem and make whatever investigation he believes is appropriate under the circumstances. This may include, in all likelihood, a discussion with you and your Manager and a review of all relevant documents.
4. **The Solution.** The Executive will attempt to find a way to resolve the problem to the satisfaction of all the parties involved in the situation. However, if the problem cannot be resolved in this manner, the Executive will make a decision. That decision will be made in writing, generally within thirty (30) days of your request for executive review.
5. **Non-Legal Claims.** If your claim is not a statutory or common law claim ("legal claim"), Executive Review is the final step in the Dispute Resolution Program. (Only legal claims may proceed to mediation or arbitration). For example, mediation and arbitration are not available to review performance evaluations, job elimination or lay-off decisions, Company work rules, policies and pay rates, or increases or decreases in benefits, except to the extent such matters relate to statutory or common law claims.

Step 3: MEDIATION
If you believe you have a legal claim that was not solved through the Open Door Policy or Executive Review, the next step is Mediation. In Mediation, an objective, independent third party tries to help the parties reach a mutually agreeable solution. .

When you or the Company request Mediation, the Company will contact the American Arbitration Association (AAA) or a similar organization specializing in dispute resolution. The agency will assign a professional mediator to mediate the dispute. The mediator will listen, work to open communication lines, and offer creative solutions. But the mediator does not make a final decision. It is up to you and the Company to reach agreement. The goal of mediation is to develop a solution that satisfies both parties involved.

Here is how to put the Mediation Step to work for you:

1. **Advise the Employee Relations department that you request Mediation.** You should request Mediation as soon as possible, generally within sixty (60) days from the date you complete the Executive Review Step, so that the issues will be fresh in your mind. You will be requested to complete a Request for Mediation form, which will be furnished.
2. **Select mediator.** When either you or the Company request Mediation, the parties will select an outside, independent neutral mediator to handle the mediation process. The Company will pay the fees of the mediator and the mediation agency.
3. **You, the mediator and the Company representative meet.** The mediator will schedule a meeting between you and the Company representative. The mediator will guide the discussion and help resolve the problem. However, it is up to both you and the Company to reach agreement. The mediator does not make the final decision.
4. **Written agreement.** If appropriate, after you and the Company have agreed upon a solution, a written agreement will be signed by the parties.

Step 4: ARBITRATION
If you have a work-related problem that involves one of your legally protected rights, which has not been resolved through the earlier steps, you may request Arbitration.

In Arbitration, an outside neutral expert, called an "arbitrator", becomes involved in the resolution process. He or she listens to the facts, then makes a final binding decision and awards any damages, just like a judge in a court of law. Arbitration is less formal than conventional court litigation but is clearly established and governed by rules and standards of conduct, which are designed to assure due process of law is fully protected. The goal of Arbitration is to provide effective and efficient problem resolution

Here is how the Arbitration process works:

1. **Request Arbitration.** If you believe you have a legal claim, you may request that your claim go to Arbitration. Simply complete an Arbitration Request Form (provided upon request) and return it to the Company at its Cleveland, Ohio addressed to the attention of the Apple American Group Employee Relation Department, 6200 Oak Tree Blvd, Suite 250, Independence, Ohio 44131. The form can be obtained from your Human Resources Generalist. The Arbitration will be conducted by the AAA or any similar organization mutually acceptable to you and the Company. The arbitration will be conducted under the AAA's "National Rules for the Resolution of Employment Disputes", which are in effect at the time the demand for arbitration is filed. The rules can be obtained from the AAA's website at ADR.org or from the Company upon request.

The arbitration agency selected (the "agency") will then bill you and the Company each a filing fee. Your portion of that fee is limited to $125.00. The Company will pay the balance of the agency's initial filing fee and will pay the arbitrator's fee. If you establish that you cannot pay the filing fee, the Company will pay your portion of the fee.

2. **Choose an arbitrator.** Once the agency receives your request to begin Arbitration, it will send both you and the Company a list of approved arbitrators with a brief biography on each. Once you receive the list, you and the Company each remove the names of any arbitrators that you do not want to hear the case, list in order of preference the remaining arbitrators, and then return the list to the

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agency. The arbitrator who has received the highest ranking in order of preference from both lists shall be assigned. If this process does not result in the selection of an arbitrator, the agency will appoint an arbitrator.

3. **A hearing is set.** The arbitrator will schedule a date, time and place for a hearing. During this hearing, both you and the Company present the pertinent facts, documents, and witnesses. You may hire a lawyer to participate in the Arbitration hearing with you. The hearing will be conducted in the community where you are employed or in another mutually agreeable location.

4. **A decision is made.** Based on the information presented and the facts gathered, the arbitrator will make a final binding decision in writing that will set forth the essential findings and conclusions on which the award is based. The decision of arbitrator shall have a final and binding effect in any related litigation. If you win, the arbitrator can award you anything you might seek through a court of law. By using Arbitration, your rights are protected and damages can be paid if those rights have been violated. It is only the process that is different.

PROGRAM RULES

CLAIMS SUBJECT TO ARBITRATION

Claims and disputes subject to arbitration include **all those legal claims you may now or in the future have against the Company** or against its officers, directors, shareholders, employees or agents, including claims related to any Company employee benefit program or against its fiduciaries or administrators (in their personal or official capacity), and all claims that the Company may now or in the future have against you, whether or not arising out of your employment or termination, except as expressly excluded under the "Claims Not Subject to Arbitration" section below.

The legal claims subject to arbitration include, but are not to be limited to:

- claims for wages or other compensation;
- claims for breach of any contract, covenant or warranty (expressed or implied);
- tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims);
- claims for wrongful termination;
- claims for sexual or other illegal harassment or discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability whether under federal, state or local law);
- claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans);
- "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance;
- claims for a violation of any other non-criminal federal, state or other governmental law, statute, regulation or ordinance; and
- claims for retaliation under any law, statute, regulation or ordinance.

Notwithstanding the foregoing, your agreement to adhere to this Dispute Resolution Program does not prohibit you from pursuing an administrative claim with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. This Agreement, does, however, preclude you from pursuing court action regarding any such claim.

Additionally, nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

CLAIMS NOT SUBJECT TO ARBITRATION

The only claims or disputes not subject to arbitration are as follows:

- any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure;
- any statutory workers compensation claim; and
- unemployment insurance claims.

The parties also agree that any arbitration between the employee and the Company is of their individual claim and that any claim subject to arbitration will not be arbitrated on a collective or class-wide basis.

Also, any non-legal dispute is not subject to arbitration. Examples include disputes over a performance evaluation, issues with co-workers, or complaints about your work site or work assignment which do not allege a legal violation.

Neither the employee nor the Company has to submit the items listed under this "Claims Not Subject to Arbitration" caption to arbitration under this Program and may seek and obtain relief from a court or the appropriate administrative agency.

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REQUIRED NOTICE OF ALL CLAIMS
When seeking arbitration, the claimant must file the Request for Arbitration form and give written notice of any claim to the other party within one year of the act complained of or within the applicable statute of limitations period, whichever is longer. Subject to any exceptions under applicable law, the day the act complained of occurred shall be counted for purposes of determining the applicable period.

Use the Request for Arbitration form when submitting a claim for arbitration. Identify and describe the nature of all claims asserted and the facts on which your claims are based. Send this written notice by certified or registered mail, return receipt requested. If the Company wishes to invoke Arbitration, it will also complete a Request for Arbitration form identifying and describing the nature of all claims asserted and the facts on which the claims are based and send this written notice to you at the last address recorded in the Company's payroll records.

ARBITRATION PROCEDURES
You must use the Mediation Step explained in this policy before requesting Arbitration. The agency will administer any Arbitration under the AAA's "National Rules for the Resolution of Employment Disputes" and in conformity with this Dispute Resolution Program. Go to ADR.org to obtain a copy of the rules or request a copy from the Company. The rules in effect on the date a demand is made shall control.

The arbitration will be before a neutral arbitrator who is licensed to practice law and who has significant experience in the employment law area. The arbitration shall apply the substantive law and the laws of remedies, if applicable, of the state in which the claim arose, or federal law or both, depending upon the claims asserted. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise.

The arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold a pre-hearing conference by telephone or in person, as the arbitrator deems necessary. The arbitrator shall have the authority to rule on a motion to dismiss and/or a motion for summary judgment by any party and, in doing so, must apply the standards governing such motion under the Federal Rules of Civil Procedure.

PRE-HEARING PROCEDURES
You and the Company each have the right to take the deposition of individuals and expert witnesses designated by another party. Depositions and other pre-trial discovery will be taken in accordance with the order of the arbitrator selected under the Program, who shall allow adequate discovery. You and the Company have the right to subpoena witnesses to the Arbitration in accordance with the Federal Rules of Civil Procedure. At least thirty (30) days before the Arbitration, you and the Company must exchange lists of witnesses, including any experts, and copies of all exhibits to be used at the Arbitration.

ARBITRATION FEES AND COSTS
There are two types of administrative fees and costs associated with Arbitration; a filing fee with the arbitration agency selected and payment to the arbitrator for his or her services and expenses. Such fees and other expenses shall be allocated as follows:

1. The party requesting Arbitration must pay a $125.00 filing fee to the agency to request Arbitration. If you request Arbitration the Company will pay the balance of the initial filing fee, and will pay the entire fee if it requests Arbitration.

2. Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of the Arbitration proceedings.

3. Each party shall be responsible for its own attorneys' fees and related litigation expenses, if any; however, if any party prevails on a statutory claim, which allows the prevailing party to be awarded attorneys' fees, or if there is a written agreement providing for fees, the arbitrator may award reasonable fees to the prevailing party.

4. The arbitrator may assess attorneys' fees against a party upon showing by the other party that the first party's claim is frivolous or unreasonable or factually groundless.

5. If either party pursues a legal claim covered by the Dispute Resolution Program in court or by any means other than Arbitration, the responding party shall be entitled to stay or dismissal of such action, the remand of such action to Arbitration, and the recovery of all costs and attorneys' fees and expenses related to such action.

MULTI-STATE BUSINESS
The Company is engaged in transactions involving interstate commerce and your employment involves such commerce; therefore, the parties agree that the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings under the Dispute Resolution Program.

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PROGRAM PROVISIONS/ENFORCEMENT

The provisions of the Program document are severable and, should any provision be held unenforceable, all others will remain valid and binding. No provision of the Program document will be held unenforceable if such provision can be reasonably interpreted in a manner that results in such provision being enforceable. The arbitrators, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of the agreement to arbitrate including, but not limited to, any claim that all or any part of the agreement to arbitrate is void and voidable.

If a court should determine that Arbitration under this Program is not the exclusive, final, and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of a party's claim(s), the party must submit the claim(s) to Arbitration and pursue the Arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

PROGRAM STEPS

While we encourage you to use all of the steps in the Program in the order outlined, we realize that in some cases it may not be appropriate to use the preliminary steps. Accordingly, if your claim involves a legal claim that is subject to Arbitration hereunder, you may proceed directly to Step 3, Mediation, without first using Step 1, Open Door Policy or Step 2, Executive Review. The Company may skip Steps 1 and 2 if a legal claim is involved.

NOT AN EMPLOYMENT CONTRACT/EXCLUSIVE REMEDY

While this Program constitutes a binding promise between you and the Company to resolve all disputes pursuant to the process outlined herein, this Program is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Program in any way alter the "at will" status of any employment.

This Program will prevent you from filing a lawsuit in Court for individual, class, or collective relief for a legal claim subject to arbitration.

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EXHIBIT "8"

RECEIPT OF DISPUTE RESOLUTION PROGRAM AND AGREEMENT TO ABIDE BY DISPUTE RESOLUTION PROGRAM

I have reviewed a copy of the Dispute Resolution Program of Apple American Group LLC and its subsidiaries (the "Company") and have read and understood its contents. I also understand that I am employed only by the particular entity that actually provides my employment, and not by any other subsidiary of the company.[1] I understand that consent to this Dispute Resolution Program does not affect my employment status as "at will" and my employment may be terminated at the will of either party, with or without notice or cause.

I recognize that differences may arise between the Company and me during or following my employment with the Company, and that those differences may or may not be related to employment. I understand and agree that any such differences will be resolved solely as provided in the Dispute Resolution Policy.

MUTUAL PROMISE TO RESOLVE CLAIMS BY BINDING ARBITRATION. In signing this Agreement, both the Company and I agree that all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute. We also agree that any arbitration between the Company and me will be on an individual basis and not as a class or collective action.

I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to improve working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions.

This is an agreement to arbitrate all legal claims. Those claims include: claims for wages or other compensation; claims for breach of any contract, covenant or warranty (expressed or implied); tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims); claims for wrongful termination; sexual harassment; discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability, whether under federal, state or local law); claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans); "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance; claims for a violation of any other civil federal, state or other governmental law, statute, regulation or ordinance; and claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers compensation law or regulation, except as required by law.

I understand that, notwithstanding the foregoing, this Agreement does not prohibit me from pursuing an administrative claim with the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from pursuing court action regarding any such claim.

Additionally, I understand that nothing in this Agreement is intended to prevent either me or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

I understand and agree that the only claims or disputes not subject to arbitration are as follows: (1) any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure; (2) any statutory workers compensation claim; and (3) unemployment insurance claims.

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[1] Subsidiaries of Apple American Group LLC include Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple Ohio LLC, Apple New Jersey LLC, Apple Delaware LLC, Apple Minnesota LLC, Apple Nevada LLC, Apple NorCal LLC, Apple Pennsylvania LLC, Apple SoCal LLC, Apple Washington LLC, B.T. Woodlipp, Inc., and Wine Country Apple LLC.

I understand and agree that by entering into this Agreement, I anticipate gaining the benefits of a speedy, impartial dispute resolution procedure. This procedure is explained in the Dispute Resolution Program Booklet, which I acknowledge I have received and have read or have had an opportunity to read.

I understand that by entering into this Agreement, I am giving up my right to have my legal claims against the Company decided in court by a judge or jury.

MULTI-STATE BUSINESS. I understand and agree the Company is engaged in transactions involving interstate commerce and that my employment involves such commerce. I agree that the Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings under this Agreement.

DIFFERENT PARTS OF AGREEMENT. I understand and agree that the provisions of the Agreement and the Dispute Resolution Program are severable and, should any provision of either be held unenforceable, all others will remain valid, binding and fully enforceable. I agree that the arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable. If a court should determine that arbitration under this Program is not the exclusive, final, and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of an employee's claims, an employee must submit his or her claim to arbitration and pursue the arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

REQUIREMENTS FOR CHANGE IN AGREEMENT. This Agreement to arbitrate shall survive the termination of my employment. It can only be revoked or modified by mutual consent evidenced by a writing signed by both parties that specifically states the intent to revoke or modify this Agreement.

SOLE AND ENTIRE AGREEMENT. This Agreement and the Dispute Resolution Program Booklet are the complete agreement of the parties on the subject of arbitration of disputes. This Agreement takes the place of any other verbal or written understanding on this subject. No party is relying on any statements, oral or written, on the subject of arbitration or the effect, enforceability or meaning of this Agreement, except as specifically stated in this Agreement.

NOT AN EMPLOYMENT CONTRACT. While this Agreement is a binding promise between the Company and me to arbitrate all claims in dispute described in the Program Booklet, this Agreement is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Agreement in any way alter the "at-will" status of my employment. My with the Company can be terminated, with or without cause, and with or without notice, at any time, by me or by the Company.

VOLUNTARY AGREEMENT. I acknowledge that I have carefully read this Agreement, I understand its terms, that all understandings and agreements between the Company and me relating to the subjects covered in this Agreement are contained in it, and that I have entered into the Agreement voluntarily and not in reliance on any other promises or representations by the Company other than those in the Agreement itself and the Dispute Resolution Program.

I further acknowledge and agree that I have been given the opportunity to discuss this Agreement with my own private lawyer and have used that opportunity to the extent that I wish to do so. This Agreement shall apply to me, my representatives, executors, administrators, guardians, heirs and assigns in any action where a claim could be brought.

Employee Signature: _____ *Date:* 8/30/11

Employee Print Name: Samuel Rodriguez

Employee Parent or Guardian if Employee is Minor: _____

Company Representative Signature:

DB Pettinger

Company Representative Print Name:

D. Brad Pettinger, Authorized Officer for Apple American Group LLC, Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple Ohio LLC, Apple New Jersey LLC, Apple Delaware LLC, Apple Minnesota LLC, Apple Nevada LLC, Apple NorCal LLC, Apple Pennsylvania LLC, Apple SoCal LLC, Apple Washington LLC, B.T. Woodlipp, Inc., Wine Country Apple LLC, Apple Minnesota LLC and all subsidiaries or affiliated entities and all successors and assigns of any of them.

EXHIBIT "9"

DISPUTE RESOLUTION PROGRAM BOOKLET

[2004EDR Systems, LLC/All Rights Reserved/Revised 2015]

This Dispute Resolution Program is adopted for Apple American Group LLC and all subsidiaries or affiliated entities, and all successors and assigns of any of them, all of which are collectively hereinafter referred to as the "Company."

The Company is committed to building a strong relationship between the Company and all of our employees - a relationship that is based on trust and open communication. The Company is an equal opportunity employer and strives to maintain an atmosphere of mutual trust and open, honest communication. By working together, we can reach any goal we set for ourselves. We do not and will not tolerate harassment or discrimination by any employee, regardless of their status with the Company, and no employee will be retaliated against for using this Program.

We understand, however, that problems and disagreements are unavoidable when people with different viewpoints spend a lot of time together. We cannot entirely eliminate disagreements, but we can provide a process for resolving them when they do occur by taking prompt constructive action.

Based on these beliefs and values, we developed this DISPUTE RESOLUTION PROGRAM (the "Program"). The Program is a four- step process for resolving workplace problems quickly and fairly. This policy describes the steps that both you and the Company must take to resolve many types of workplace problems. The Company is also obligated to follow the Program and will also be bound by arbitration. The types of problems covered by the Program are explained in detail in this policy.

THIS PROGRAM IS A CONDITION OF YOUR EMPLOYMENT AND IS THE MANDATORY AND EXCLUSIVE MEANS BY WHICH DISPUTES BETW EEN YOU AND THE COMPANY MAY BE RESOLVED, SO READ THE INFORMATION IN THIS PROGRAM BOOKLET CAREFULLY.

When you have a work-related problem, follow the steps listed below in this policy.

Step 1: UTILIZE THE OPEN DOOR POLICY

In any relationship, when a disagreement occurs, keeping emotions bottled up inside only causes the problem to get bigger. At AAG we want to encourage open communication so we can solve the problem with the least amount of stress for those involved. To do this, we have developed an open-door policy that encourages you to talk with your supervisor to get your concern addressed quickly.

Option 1. Talk directly to your immediate supervisor. If you have a problem, first discuss it with your supervisor as soon as possible after the problem arises.

Option 2. Talk to a higher level of management. If you are not able to resolve the issue with your supervisor, or if you are not comfortable discussing the issue with your supervisor, you should take your concern to your Area Director and even the level of Director of Operations get the answers you need. Follow the chain of command as high as you need to go to resolve the problem.

Option 3. Talk with Human Resources. If you have tried the above steps and are not satisfied, or if you are not comfortable talking to management for any reason, you can contact your Human Resources Manager to get the help you need. This number is found on the Open Door posting in your restaurant.

Option 4. Talk with Support Center. Contact the Support Center Human Resources Department at 216.525.2775 or Employee Hotline at 800.837.3667, ext. 1300, and ask for help.

Step 2: EXECUTIVE REVIEW

If you have tried the Open Door Policy and are not satisfied, you may request the Executive Review Step. In this step, the Company's President or his designee (the "Executive") will review the issue or problem and attempt to resolve the issue or problem to your satisfaction and to the satisfaction of your Manager and the Company. Failing that, the Executive will make a decision.

Here is how you obtain access to the Executive Review Step:

1. **Request review.** As soon as possible after your exhaustion of the Open Door Policy Step process, you can start the Executive Review process by contacting the Company's Employee Relations department. The Employee Relations department can be reached at 216.525.2775 or you can call the Employee Hotline at 800.837.3667 x1300 and ask for help.
2. **Submit information.** In order to access the Executive Review Step, you should provide a written statement* that contains as much of the following information as is reasonably available to you:

a. Describe in detail, to the best of your ability, the factual basis on which your claim is made.
b. Describe the measures you have taken at the Communication Step to resolve the issue including the supervisors you have spoken with about the problem.
c. Describe the nature and extent of any remedy or relief you believe you should have.

*You can obtain a copy of a form to use for this purpose from the Human Resources Department.

3. **The Review.** The Company's Executive will review the problem and make whatever investigation she believes is appropriate under the circumstances. This may include, in all likelihood, a discussion with you and your supervisor and a review of all relevant documents.
4. **The Solution.** The Executive will attempt to find a way to resolve the problem to the satisfaction of all the parties involved in the situation. However, if the problem cannot be resolved in this manner, the Executive will make a decision. That decision will be made in writing, generally within thirty (30) days of your request for executive review.
5. **Non-Legal Claims.** If your claim is not a statutory or common law claim ("legal claim"), Executive Review is the final step in the Dispute Resolution Program. (Only legal claims may proceed to mediation or arbitration). For example, mediation and arbitration are not available to review performance evaluations, job elimination or lay-off decisions, Company work rules, policies and pay rates, or increases or decreases in benefits, except to the extent such matters relate to statutory or common law claims.

Step 3: MEDIATION

If you believe you have a legal claim that was not solved through the Open Door Policy or Executive Review, the next step is Mediation. In Mediation, an objective, independent third party tries to help the parties reach a mutually agreeable solution.

When you or the Company wishes to request Mediation, the requesting party should contact the American Arbitration Association (AAA) (www.adr.org) or, if the parties agree in advance, a similar organization or professional specializing in dispute resolution. If using AAA or a similar agency, the agency will assign a professional mediator to mediate the dispute. The mediator will listen, work to open communication lines, and offer creative solutions. But the mediator does not make a final decision. It is up to you and the Company to reach agreement. The goal of mediation is to develop a solution that satisfies both parties involved.

Here is how to put the Mediation Step to work for you:

1. **Advise the Employee Relations department that you request Mediation.** You should request Mediation as soon as possible, generally within sixty (60) days from the date you complete the Executive Review Step, so that the issues will be fresh in your mind. Despite the mediation process, you must file a demand for arbitration within the appropriate statute of limitations. In other words: the mediation process does not toll the statute of limitations on any claim, so speedy mediation is a must.
2. **Select mediator.** When either you or the Company request Mediation, the parties will select an outside, independent neutral mediator to handle the mediation process. The Company will pay the fees of the mediator and the mediation agency, if one is used.
3. **You, the mediator and the Company representative meet.** The mediator will schedule a meeting between you and the Company representative. The mediator will guide the discussion and help resolve the problem. However, it is up to both you and the Company to reach agreement. The mediator does not make the final decision.
4. **Written agreement.** If appropriate, after you and the Company have agreed upon a solution, a written agreement will be signed by the parties.

Step 4: ARBITRATION

If you have a work-related problem that involves one of your legally protected rights, which has not been resolved through the earlier steps, you may request Arbitration. In Arbitration, an outside neutral expert chosen and agreed upon by you and the Company, called an "arbitrator", becomes involved in the resolution process. He or she listens to the facts, then makes a final binding decision and awards any damages, just like a judge in a court of law. Arbitration is less formal than conventional court litigation but is clearly established and governed by rules and standards of conduct, which are designed to assure due process of law is fully protected. The goal of Arbitration is to provide effective and efficient problem resolution.

Here is how the Arbitration process works:

Request Arbitration. If you believe you have a legal claim, you may request that your claim go to Arbitration. Note that your request for arbitration must be made within the applicable statute of limitations for your underlying claim. The arbitration will be conducted by the AAA or any similar organization mutually acceptable to you and the Company. The arbitration will be conducted under the AAA's "National Rules for the Resolution of Employment Disputes", which are in effect at the time the demand for arbitration is filed. The rules can be obtained from the AAA's website at www.ADR.org or from the Company upon request.

The arbitration agency selected (the "agency") will then bill you and the Company each a filing fee. Your portion of that fee is limited to $125.00. The Company will pay the balance of the agency's initial filing fee and will pay the arbitrator's fee. If you establish that you cannot pay the filing fee, the Company will pay your portion of the fee.

1. **A hearing is set.** The arbitrator will schedule a date, time and place for a hearing. During this hearing, both you and the Company present the pertinent facts, documents, and witnesses. You may hire a lawyer to participate in the Arbitration hearing with you. The hearing will be conducted in the community where you were/are employed or in another mutually agreeable location.

2. **A decision is made.** Based on the information presented and the facts gathered, the arbitrator will make a final binding decision in writing that will set forth the essential findings and conclusions on which the award is based. The decision of arbitrator shall have a final and binding effect in any related litigation. If you win, the arbitrator can award you anything you might seek through a court of law. By using Arbitration, your rights are protected and damages can be paid if those rights have been violated.

PROGRAMRULES

CLAIMS SUBJECT TO ARBITRATION

Claims and disputes subject to arbitration include all those legal claims you may now or in the future have against the Company or against its officers, directors, shareholders, employees or agents, including claims related to any Company employee benefit program or against its fiduciaries or administrators (in their personal or official capacity), and all claims that the Company may now or in the future have against you, whether or not arising out of your employment or termination, except as expressly excluded under the "Claims Not Subject to Arbitration" section.

Legal claims that are subject to arbitration include, but are not limited to:

- claims for wages or other compensation;
- claims for breach of any contract, covenant or warranty(expressed or implied);
- tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims);
- claims for wrongful termination;
- claims for sexual or other illegal harassment or discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability whether under federal, state or local law);
- claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans);
- "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance;
- claims for a violation of any other non-criminal federal, state or other governmental law, statute, regulation or ordinance; and
- claims for retaliation under any law, statute, regulation or ordinance.

CLAIMS NOT SUBJECT TO ARBITRATION

Claims or disputes not subject to arbitration are as follows:

- any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure;
- any statutory workers compensation claim; and
- unemployment insurance claims;
- any non-legal dispute is not subject to arbitration. Examples include disputes over a performance evaluation, issues with co-workers, or complaints about your work site or work assignment that does not allege a legal violation

Your agreement to adhere to this Dispute Resolution Program does not prohibit you from pursuing an administrative claim with any state or federal department of labor, state or local Fair Employment Practice Agencies, or the United States Equal Employment Opportunity Commission (and for non-exempt employees, the National Labor Relations Board). This Agreement, does, however, preclude you from personally pursuing court action regarding any such claim.

Additionally, nothing in this Agreement is intended to prevent either you or the Company from obtaining injunctive relief in

court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

The parties also agree that any arbitration between the employee and the Company is of their individual claim and that any claim subject to arbitration will not be arbitrated on a collective, representative or class-wide basis.

REQUIRED NOTICE OF ALL CLAIMS
When seeking arbitration, the claimant must request arbitration from the AAA or other mutually-agreed-upon dispute resolution agency within one year of the act complained of or within the applicable statute of limitations period, whichever is longer. Subject to any exceptions under applicable law, the day the act complained of occurred shall be counted for purposes of determining the applicable period. Note that neither the Executive Review process nor Mediation tolls the applicable statute of limitations.

ARBITRATION PROCEDURES
Unless the parties mutually agree to waive Mediation, you must use the Mediation Step explained in this policy before requesting Arbitration. Once in the arbitration process, the agency will administer any Arbitration under the AAA's "National Rules for the Resolution of Employment Disputes" and in conformity with this Dispute Resolution Program. Go to ADR.org to obtain a copy of the rules or request a copy from the Company. The rules in effect on the date a demand is made shall control.

The arbitration will be before a neutral arbitrator who is licensed to practice law and who has significant experience in the employment law area. The arbitration shall apply the substantive law and the laws of remedies, if applicable, of the state in which the claim arose, or federal law or both, depending upon the claims asserted. The decision of the arbitrator shall be in writing and shall provide the reasons for the award unless the parties agree otherwise.

The arbitrator shall have jurisdiction to hear and rule on pre-hearing disputes and is authorized to hold a pre-hearing conference by telephone or in person, as the arbitrator deems necessary. The arbitrator shall have the authority to rule on a motion to dismiss and/or a motion for summary judgment by any party and, in doing so, must apply the standards governing such motion under the Federal Rules of Civil Procedure.

PRE-HEARING PROCEDURES
You and the Company each have the right to take the deposition of individuals and expert witnesses designated by another party. Depositions and other pre-trial discovery will be taken in accordance with the order of the arbitrator selected under the Program, who shall allow adequate discovery. You and the Company have the right to subpoena witnesses to the Arbitration in accordance with the Federal Rules of Civil Procedure. At least thirty (30) days before the Arbitration, you and the Company must exchange lists of witnesses, including any experts, and copies of all exhibits to be used at the Arbitration.

ARBITRATION FEES AND COSTS
There are two types of administrative fees and costs associated with Arbitration; a filing fee with the arbitration agency selected and payment to the arbitrator for his or her services and expenses. Such fees and other expenses shall be allocated as follows:

1. The party requesting Arbitration must pay a $125.00 filing fee to the agency to request Arbitration. If you request Arbitration the Company will pay the balance of the initial filing fee, and will pay the entire fee if it requests Arbitration. Either party, at its expense, may arrange for and pay the cost of a court reporter to provide a stenographic record of the Arbitration proceedings.
2. Each party shall be responsible for its own attorneys' fees and related litigation expenses, if any; however, if any party prevails on a statutory claim, which allows the prevailing party to be awarded attorneys' fees the arbitrator may award reasonable fees to the prevailing party.
3. Where permitted by law, the arbitrator may assess attorneys' fees against a party upon showing by the other party that the first party's claim is frivolous or unreasonable or factually groundless.
4. If either party pursues a legal claim covered by the Dispute Resolution Program in court or by any means other than Arbitration, the responding party shall be entitled to stay or dismissal of such action, the remand of such action to Arbitration, and the recovery of all costs and attorneys' fees and expenses related to such action.

MULTI-STATE BUSINESS
The Company is engaged in transactions involving interstate commerce and your employment involves such commerce; therefore, the parties agree that the Federal Arbitration Act shall govern the interpretation, enforcement and proceedings under the Dispute Resolution Program.

PROGRAM PROVISIONS/ENFORCEMENT

The provisions of the Program document are severable and, should any provision be held unenforceable, all others will remain valid and binding. No provision of the Program document will be held unenforceable if such provision can be reasonably interpreted in a manner that results in such provision being enforceable. The arbitrators, and not any federal, state, or local court or agency, shall have exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of the agreement to arbitrate including, but not limited to, any claim that all or any part of the agreement to arbitrate is void and voidable.

If a court should determine that Arbitration under this Program is not the exclusive, final, and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of a party's claim(s), the party must submit the claim(s) to Arbitration and pursue the Arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

PROGRAM STEPS

While we encourage you to use all of the steps in the Program in the order outlined, we realize that in some cases it may not be appropriate to use the preliminary steps. Accordingly, if your claim involves a legal claim that is subject to Arbitration hereunder, you may proceed directly to Step 3, Mediation, without first using Step 1, Open Door Policy or Step 2, Executive Review. The Company may also skip Steps 1 and 2 if a legal claim is involved.

NOT AN EMPLOYMENT CONTRACT/EXCLUSIVE REMEDY

While this Program constitutes a binding promise between you and the Company to resolve all disputes pursuant to the process outlined herein, this Program is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Program in any way alter the "at will" status of any employment.

This Program will prevent you from filing a lawsuit in Court for individual, class, representative or collective relief for a legal claim subject to arbitration.

[2004EDRSystems,LLC/AllRightsReserved/Revised2015

Apple American Group (Apple American Group LLC and Apple American Group II LLC) includes the following subsidiaries and affiliates: Apple Delaware LLC, Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple New Jersey LLC, Apple NorCal LLC, Wine Country Apple LLC, Apple Ohio LLC, Apple Pennsylvania LLC, B.T. Woodlipp, Inc., Apple Washington LLC, Apple Washington II LLC, Apple SoCal LLC, Apple SoCal II LLC, Apple Nevada LLC, Apple Bama LLC, Apple Colorado LLC, Apple Georgia LLC, Apple Idaho LLC, Apple MidCal LLC, Apple MidCal II LLC, Apple New Mexico LLC, Apple Oregon LLC, Apple Minnesota LLC and Apple New England LLC and all subsidiaries or affiliated entities and all successors and assigns of any of them.

EXHIBIT “10”

AGREEMENT TO ABIDE BY DISPUTE RESOLUTION PROGRAM AND RECEIPT OF DISPUTE RESOLUTION PROGRAM BOOKLET

[2004EDR Systems, LLC/All Rights Reserved/Revised 2014]

I have reviewed a copy of the Dispute Resolution Program of Apple American Group (Apple American Group LLC and Apple American Group II LLC) and its subsidiaries (the "Company") and have read and understood its contents. I also understand that I am employed only by the particular entity that actually provides my employment, and not by any other subsidiary of the company. I understand that consent to this Dispute Resolution Program does not affect my employment status as "at will" and my employment may be terminated at the will of either party, with or without notice or cause.

I recognize that differences may arise between the Company and me during or following my employment with the Company, and that those differences may or may not be related to employment. I understand and agree that any such differences will be resolved solely as provided in the Dispute Resolution Program, which I have read and reviewed and is expressly incorporated herein.

MUTUAL PROMISE TO RESOLVE CLAIMS BY BINDING ARBITRATION. In signing this Agreement, both the Company and I agree that all legal claims or disputes covered by the Agreement must be submitted to binding arbitration and that this binding arbitration will be the sole and exclusive final remedy for resolving any such claim or dispute. We also agree that any arbitration between the Company and me will be on an individual basis and not as a class, representative or collective action.

I also understand that I have not waived my rights under the National Labor Relations Act to join other employees in a collective action to improve working conditions. Further, I will not be subject to adverse employment action if I challenge the validity of this arbitration agreement or its provisions.

This is an agreement to arbitrate all legal claims. Claims subject to arbitration include: claims for wages or other compensation; claims for breach of any contract, covenant or warranty (expressed or implied); tort claims (including, but not limited to, claims for physical, mental or psychological injury, but excluding statutory workers compensation claims); claims for wrongful termination; sexual harassment; discrimination (including, but not limited to, claims based on race, sex, sexual orientation, religion, national origin, age, medical condition or disability, whether under federal, state or local law); claims for benefits or claims for damages or other remedies under any employee benefit program sponsored by the Company (after exhausting administrative remedies under the terms of such plans); "whistleblower" claims under any federal, state or other governmental law, statute, regulation or ordinance; claims for a violation of any other non-criminal federal, state or other governmental law, statute, regulation or ordinance; and claims for retaliation under any law, statute, regulation or ordinance, including retaliation under any workers compensation law or regulation, except as required by law.

I understand that, notwithstanding the foregoing, this Agreement does not prohibit me from pursuing an administrative claim with the National Labor Relations Board, any state or federal department of labor, any federal, state or local Fair Employment Practices Agency, or the United States Equal Employment Opportunity Commission. I agree, however, that this Agreement does preclude me from personally pursuing court action regarding any such claim.

Additionally, I understand that nothing in this Agreement is intended to prevent either me or the Company from obtaining injunctive relief in court to prevent irreparable harm pending the conclusion of any arbitration conducted hereunder and either of us may apply to the appropriate state or federal court for a temporary restraining order, preliminary injunction, or other interim or conservatory relief, as necessary, without breach of this arbitration agreement and without abridgement of the powers of the arbitrator.

I understand and agree that the only other claims or disputes not subject to arbitration are as follows: (1) any claim by an employee for benefits under a plan or program which provides its own binding arbitration procedure; (2) any statutory workers compensation claim; and (3) unemployment insurance claims.

I understand and agree that by entering into this Agreement, I anticipate gaining the benefits of a speedy, impartial dispute resolution procedure. This procedure is explained in the Dispute Resolution Program Booklet, which I acknowledge I have received and have read or have had an opportunity to read. The provisions of the Dispute Resolution Booklet are incorporated into this agreement as if fully set forth herein.

*****SAVE IN I-9 BINDER*****

I understand that by entering into this Agreement, I am giving up my right to have my legal claims against the Company decided in court by a judge or jury

MULTI-STATE BUSINESS. I understand and agree the Company is engaged in transactions involving interstate commerce and that my employment involves such commerce. I agree that the Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings under this Agreement.

DIFFERENT PARTS OF AGREEMENT. I understand and agree that the provisions of the Agreement and the Dispute Resolution Program are severable and, should any provision of either be held unenforceable, all others will remain valid, binding and fully enforceable. I agree that the arbitrator, and not any federal, state, or local court or agency, shall have the exclusive authority to resolve any dispute relating to the interpretation, arbitrability, applicability, enforceability or formation of this Agreement including, but not limited to, any claim that all or any part of this Agreement is void or voidable. If a court should determine that arbitration under this Program is not the exclusive, final, and binding method for the Company and its employees to resolve disputes and/or that the decision and award of the arbitrator is not final and binding as to some or all of an employee's claims, an employee must submit his or her claim to arbitration and pursue the arbitration to conclusion before filing or pursuing any legal, equitable, or other legal proceeding for any eligible claim in a court of competent jurisdiction.

REQUIREMENTS FOR CHANGE IN AGREEMENT. This Agreement to arbitrate shall survive the termination of my employment. It can only be revoked or modified by mutual consent evidenced by a writing signed by both parties that specifically states the intent to revoke or modify this Agreement.

SOLE AND ENTIRE AGREEMENT. This Agreement and the Dispute Resolution Program Booklet are the complete agreement of the parties on the subject of arbitration of disputes. This Agreement takes the place of any other verbal or written understanding on this subject. No party is relying on any statements, oral or written, on the subject of arbitration or the effect, enforceability or meaning of this Agreement, except as specifically stated in this Agreement.

NOT AN EMPLOYMENT CONTRACT. While this Agreement is a binding promise between the Company and me to arbitrate all claims in dispute described in the Program Booklet, this Agreement is not and shall not be construed to create any contract of employment, expressed or implied. Nor does this Agreement in any way alter the "at-will" status of my employment. My employment with the Company can be terminated, with or without cause, and with or without notice, at any time, by me or by the Company.

VOLUNTARY AGREEMENT. I acknowledge that I have carefully read this Agreement, I understand its terms, that all understandings and agreements between the Company and me relating to the subjects covered in this Agreement are contained in it, and that I have entered into the Agreement voluntarily and not in reliance on any other promises or representations by the Company other than those in the Agreement itself and the Dispute Resolution Program.

I further acknowledge and agree that I have been given the opportunity to discuss this Agreement with my own private lawyer and have used that opportunity to the extent that I wish to do so. This Agreement shall apply to me, my representatives, executors, administrators, guardians, heirs and assigns in any action where a claim could be brought.

Print Name	Signature	Date

Company Representative Signature: DB Pettinger

D. Brad Pettinger, Authorized Officer for Apple American Group (Apple American Group LLC and Apple American Group II LLC) Apple Delaware LLC, Apple Indiana I LLC, Apple Indiana II LLC, Apple Indiana III LLC, Apple Minnesota LLC, Apple Nevada LLC, Apple New Jersey LLC, Apple NorCal LLC, Wine Country Apple LLC, Apple Ohio LLC, Apple Pennsylvania LLC, B.T. Woodlipp, Inc, Apple SoCal LLC, Apple Washington LLC, Apple Bama LLC, Apple Colorado LLC, Apple Georgia LLC, Apple Idaho LLC, Apple Mid Cal LLC, Apple Mid Cal II LLC, Apple New England LLC, Apple New Mexico LLC, Apple Oregon LLC, Apple Washington II LLC and all subsidiaries or affiliated entities and all successors and assigns of any of them.

*****SAVE IN I-9 BINDER*****

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2018, I caused the foregoing *Respondents' Motion for Partial Summary Judgment; Memorandum; Declaration of Natalja Fulton; And Exhibits In Support Thereof* to be filed with the Office of the Executive Secretary, using the CM/ECF system.

I further certify that I caused a copy to be served via electronic mail upon the following:

Ms. Mori Pam Rubin
Regional Director
National Labor Relations Board
Region 31
11150 West Olympic Blvd., Suite 700
Los Angeles, CA 90064-1825
Mori.Rubin@nlrb.gov

Ms. Angelica Blanco
On Behalf of the General Counsel
National Labor Relations Board
Region 31
11150 West Olympic Blvd., Suite 700
Los Angeles, CA 90064-1825
Angelica.Blanco@nlrb.gov

Matthew J. Matern, Attorney at Law
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266
MMatern@maternlawgroup.com

Tagore Subramaniam, Esq.
Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266
tagore@maternlawgroup.com

Samuel Y. Rodriguez
c/o Matern Law Group
1230 Rosecrans Ave., Suite 200
Manhattan Beach, CA 90266
MMatern@maternlawgroup.com

Irene Miranda