

1 BETH FRUECHTENICHT ANEY (SBN 208847)
2 **APPLE AMERICAN GROUP, LLC**
3 225 Bush Street, Suite 1800
4 San Francisco, California 94104
5 Telephone: (415) 912-1152
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7 Attorneys for Defendant,
8 Apple American Group, LLC

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
08/18/2015
Clerk of the Court
BY:WILLIAM TRUPEK
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA

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COUNTY OF SAN FRANCISCO

10 JERAE RUSSELL,) Case No.: CGC-15-543480
11 Plaintiff,)
12 vs.)
13 APPLE AMERICAN GROUP, LLC,)
14 and DOES 1-20,)
15 Defendants.)
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DEFENDANT APPLE AMERICAN
GROUP, LLC'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT OF
DEMURRER TO FIRST AMENDED
COMPLAINT AND MOTION TO
STRIKE
Date: December 17, 2015
Time: 9:30 a.m.
Dept.: 302
Reservation Number: 08121217-11
Action Filed: 1/2/15

19 Defendant APPLE AMERICAN GROUP, LLC ("Defendant") respectfully requests that,
20 pursuant to California Evidence Code §452, the Court take judicial notice of the following
21 pleadings and documents filed in the instant action entitled *Russell v. Apple American Group,*
22 *LLC*, San Francisco County Superior Court Case No. CGC-15-543480, true and correct copies
23 of which are attached hereto:

- 24 1. Exhibit A - Plaintiff's Complaint
25 2. Exhibit B - Plaintiff's First Amended Complaint
26 3. Exhibit C - Order Sustaining Demurrer with Leave to Amend dated June 29, 2015

1 Dated: August 1, 2015

APPLE AMERICAN GROUP, LLC

By:

BETH FRUECHTENICHT ANEY
Attorneys for Defendant
APPLE AMERICAN GROUP, LLC

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN FRANCISCO

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 225 Bush Street, Suite 1800, San Francisco, CA 94104.

On August 1, 2015, I caused the following documents:

- DEFENDANT'S REQUEST FOR JUDICIAL NOTICE

to be served on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Stephen Jaffe, Esq.
The Jaffe Law Firm
101 California Street, Ste. 2710
San Francisco, CA 94111
Tel (415) 618-0100
Attorneys for Plaintiff

(BY MAIL) I caused such envelope(s) fully prepaid to be placed in the United States Mail at San Francisco, California. I am "readily familiar" with the firm's practice of collection and processing correspondence or mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Francisco, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 1, 2015, at San Francisco, California.

BETH FRUECHTENICHT ANEY

EXHIBIT “A”

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Stephen R. Jaffe (SBN: 49539) Bailey K. Bifoss (SBN: 278392) THE JAFFE LAW FIRM 150 California Street, 21st Floor, San Francisco, 94111 TELEPHONE NO. (415) 618-0100 FAX NO. (415) 618-0080 EMAIL ADDRESS (Optional): bailey.k.bifoss@jaffetriallaw.com ATTORNEY FOR (Name): Jerae Russell	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco STREET ADDRESS: 400 McAllister Street MAILING ADDRESS: CITY AND ZIP CODE: San Francisco, 94102 BRANCH NAME: PLAINTIFF: Jerae Russell DEFENDANT: Apple American Group, LLC ("AAG")	
<input checked="" type="checkbox"/> DOES 1 TO 20 COMPLAINT—Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number):	
Type (check all that apply):	
<input type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):	
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited	
CASE NUMBER: CGC-15-543480	

1. Plaintiff (name or names): Jerae Russell

alleges causes of action against defendant (name or names):

American Apple Group, LLC ("AAG")

2. This pleading, including attachments and exhibits, consists of the following number of pages: 4

3. Each plaintiff named above is a competent adult

a. except plaintiff (name):

- (1) a corporation qualified to do business in California
- (2) an unincorporated entity (describe):
- (3) a public entity (describe):
- (4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) other (specify):

(5) other (specify):

b. except plaintiff (name):

- (1) a corporation qualified to do business in California
- (2) an unincorporated entity (describe):
- (3) a public entity (describe):
- (4) a minor an adult

(a) for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 (b) other (specify):

(6) other (specify):

Information about additional plaintiffs who are not competent adults is shown in Attachment 3.

SHORT TITLE:	CASE NUMBER:
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4. Plaintiff (name):
Is doing business under the fictitious name (specify):
and has complied with the fictitious business name laws.
5. Each defendant named above is a natural person
- a. except defendant (name): Apple American Group c. except defendant (name):
(1) a business organization, form unknown (1) a business organization, form unknown
(2) a corporation (2) a corporation
(3) an unincorporated entity (describe): (3) an unincorporated entity (describe):
(4) a public entity (describe): (4) a public entity (describe):
(5) other (specify): (5) other (specify):
Limited Liability Company
- b. except defendant (name):
(1) a business organization, form unknown (1) a business organization, form unknown
(2) a corporation (2) a corporation
(3) an unincorporated entity (describe): (3) an unincorporated entity (describe):
(4) a public entity (describe): (4) a public entity (describe):
(5) other (specify): (5) other (specify):
- d. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):
(4) a public entity (describe):
(5) other (specify):
- Information about additional defendants who are not natural persons is contained in Attachment 5.
6. The true names of defendants sued as Does are unknown to plaintiff.
- a. Doe defendants (specify Doe numbers): 1-10 were the agents or employees of other named defendants and acted within the scope of that agency or employment.
- b. Doe defendants (specify Doe numbers): 11-20 are persons whose capacities are unknown to plaintiff.
7. Defendants who are joined under Code of Civil Procedure section 382 are (names):
8. This court is the proper court because
- a. at least one defendant now resides in its jurisdictional area.
b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
c. Injury to person or damage to personal property occurred in its jurisdictional area.
d. other (specify):
9. Plaintiff is required to comply with a claims statute, and
- a. has complied with applicable claims statutes, or
b. is excused from complying because (specify):

SHORT TITLE:	CASE NUMBER:
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10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):
- Motor Vehicle
 - General Negligence
 - Intentional Tort
 - Products Liability
 - Premises Liability
 - Other (specify):
11. Plaintiff has suffered
- wage loss
 - loss of use of property
 - hospital and medical expenses
 - general damage
 - property damage
 - loss of earning capacity
 - other damage (specify): emotional damages
12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are
- listed in Attachment 12.
 - as follows:
13. The relief sought in this complaint is within the jurisdiction of this court.
14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for
- (1) compensatory damages
 - (2) punitive damages
- The amount of damages is (in cases for personal injury or wrongful death, you must check (1)):
- (1) according to proof
 - (2) in the amount of: \$
15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Date: December 8, 2014 *1/2/15*

Bailey K. Bifoss

(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE: Russell v. AAG	CASE NUMBER:
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1 **CAUSE OF ACTION—General Negligence** Page 4
 (number)

ATTACHMENT TO Complaint Cross - Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Jerae Russell

alleges that defendant (name): Apple American Group

Does 1 to 20

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): April 9, 2014

at (place): Applebee's Fisherman Wharf, 2770 Taylor Street, San Francisco 94133

(description of reasons for liability):

Russell, a 28 week pregnant waitress at Applebee's, drank a smoothie prepared by a co-worker while at work. After she drank half the smoothie, Russell discovered the smoothie contained shards of glass. Russell suffered damage to her throat, severe anxiety and stress due to possible complications of ingesting glass and the effect on her pregnancy.

EXHIBIT “B”

1 Stephen R. Jaffe 49539
2 The Jaffe Law Firm
3 101 California Street
4 Suite 2710
5 San Francisco, CA 94111
6 415.618.0100
7 stephen.r.jaffe@jaffetriallaw.com
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SUPERIOR COURT OF CALIFORNIA

SAN FRANCISCO COUNTY

JERAE RUSSELL,
vs.
APPLE AMERICAN GROUP, LLC, DOE 1-10,
inclusive.
DEFENDANTS

Case No.: CGC-15-543480

FIRST AMENDED COMPLAINT FOR
PERSONAL INJURIES

Plaintiff alleges:

FIRST CAUSE OF ACTION NEGLIGENCE

1. Plaintiff is a natural individual.
2. Defendant is a limited liability corporation.
3. Plaintiff is unaware of the identity or form of existence of DOE 1 through DOE 10 and therefore sues them under fictitious names. Plaintiff will amend this complaint when the same as ascertained.
4. At all relevant times herein, defendant operated a restaurant and bar facility located at 2770 Taylor Street, San Francisco, CA 94133.

- 1 5. On April 9, 2014, while 28 weeks pregnant, while on defendant's premises defendant
2 prepared and served plaintiff a non-alcoholic smoothie for her consumption. The
3 smoothie prepared and served to plaintiff by defendant contained ground and shattered
4 glass.
- 5 6. Plaintiff was reasonably unaware the smoothie prepared and served to her by defendant
6 contained ground and shattered glass and therefore began to consume it.
- 7 7. Upon discovering shards of broken and splintered glass in the smoothie, plaintiff stopped
8 consuming the beverage and immediately sought medical treatment.
- 9 8. At all times, defendant was under a duty to adequately supervise its employees to prevent
10 the inclusion of dangerous foreign objects in food products and beverages served for
11 human consumption.
- 12 9. Notwithstanding the foregoing duty, the defendant breached that duty by preparing and
13 serving the smoothie beverage to plaintiff containing ground and shattered glass.
- 14 10. As the direct and proximate result of defendant's negligence, plaintiff was injured in her
15 person and body in an amount in excess of \$25,000 to be proved at the time of trial.
16 These injuries include, but are not limited to, physical injuries to plaintiff and emotional
17 distress damages to plaintiff on account of plaintiff's fear the ingestion of the glass has
18 harmed plaintiff's baby.
- 19 11. As the further direct and proximate result of defendant's negligence, the plaintiff incurred
20 medical, hospital and psychotherapist fees and expenses in an amount to be proved at
21 trial.
- 22 12. The events alleged herein did not occur while plaintiff was performing any service
23 growing out of or incidental to employment and not while plaintiff was acting within the
24 course of employment.
- 25 13. The injuries alleged herein to have been suffered and sustained by plaintiff were not
26 proximately caused by plaintiff's employment.

14. The injuries alleged herein to have been suffered and sustained by plaintiff arose from plaintiff's voluntary acceptance of the smoothie beverage in question from the defendant and were outside of and not related to any of plaintiff's work-related duties.

SECOND CAUSE OF ACTION – STRICT LIABILITY

15. Plaintiff re-alleges Paragraphs 1-14 herein as fully set forth herein.

16. Defendant is strictly liable to plaintiff for all injuries sustained by plaintiff by the service of the smoothie beverage to plaintiff containing ground of broken and splintered shards of glass.

THIRD CAUSE OF ACTION – BATTERY

17. Plaintiff re-alleges Paragraphs 1-16 herein as fully set forth herein.

18. Defendant's conduct as alleged herein constitutes a battery against the person of the plaintiff. In addition to the damages plaintiff has alleged are due her, plaintiff is therefore entitled to receive punitive damages from defendant as may be allowable by law.

PRAYER

Wherefore, plaintiff prays for a judgment against defendant as follows:

1. General damages in excess of \$25,000 and according to proof;
 2. Special damages according to proof;
 3. Punitive damages as available under the law;
 4. Reasonable attorney fees;
 5. Prejudgment and post judgment interest on all of the foregoing;
 6. Such other relief as may be just and proper.

Dated: July 17, 2015

THE JAFFE LAW FIRM

Rv

STEPHEN R. JAFFE
ATTORNEYS FOR PLAINTIFF

PROOF OF SERVICE

Russell v Apple American Group LLC
Case No. CGC-15-543480

The undersigned, states as follows: I am a citizen of the United States over the age of 18 years and not a party to the above-entitled proceeding. My business address is 101 California Street, Suite 2710 San Francisco, CA 94111.

On July 17 2015, I served the foregoing

FIRST AMENDED COMPLAINT

on the following person(s) by delivering (or causing to be delivered) true and correct copies thereof as follows:

[xx] BY MAIL. By placing true and correct copies thereof in the United States mail at San Francisco, California, with postage fully prepaid, addressed as set forth below.

[] BY HAND By placing true and correct copies thereof in a sealed envelope and delivering or causing to be hand delivered to the address(es) set forth below.

[] BY FACSIMILE TRANSMISSION By sending true and correct copies thereof by facsimile transmission to the following telephone number: xxx-xxx-xxxx and thereafter mailing true and correct copies thereof by United States mail to the address(es) listed below

[] BY OVERNIGHT EXPRESS By placing true and correct copies thereof in a sealed envelope and delivering the same to an overnight courier service addressed as set forth below

Beth F. Aney, Esquire
225 Bush Street, Suite 1800
San Francisco, CA 94104

I declare the foregoing to be true under the penalty of perjury of the laws of the State of California. Executed July 17, 2015 at San Francisco, California.

Susan D. Jaffe
Susan D. Jaffe

Susan D. Jaffee

EXHIBIT “C”

1 BETH FRUECHTENICHT ANEY (SBN 208847)
2 **APPLE AMERICAN GROUP, LLC**
3 225 Bush Street, Suite 1800
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5 Telephone: (415) 912-1152
6 Facsimile: (415) 835-9702

7 Attorneys for Defendant,
8 Apple American Group, LLC

FILED
Superior Court of California
County of San Francisco

JUN 29 2015

CLERK OF THE COURT
BY: *Sam Rose*
Deputy Clerk

9
10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF SAN FRANCISCO

12 JERAE RUSSELL,
13 Plaintiff,
14 vs.
15 APPLE AMERICAN GROUP, LLC,
16 and DOES 1-20,
17 Defendants.

18) Case No.: CGC-15-543480
19) *Al*
20) [PROPOSED] ORDER SUSTAINING
21) DEFENDANT APPLE AMERICAN
22) GROUP, LLC'S DEMURRER TO
23) PLAINTIFF's COMPLAINT
24) Date: June 29, 2015
25) Time: 9:30 a.m.
26) Dept.: 302
27) Reservation Number: 012215-06
28) Action Filed: 1/2/15

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Defendant APPLE AMERICAN GROUP, LLC'S Demurser is hereby SUSTAINED with
10 days leave to amend. No opposition was filed.

DATED: *June 29, 2015*

Joseph M. Quinn
JUDGE OF THE SUPERIOR COURT
Joseph M. Quinn