

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@jaffetrialaw.com

ELECTRONICALLY
FILED
*Superior Court of California,
County of San Francisco*
07/17/2015
Clerk of the Court
BY: VANESSA WU
Deputy Clerk

8
9 SUPERIOR COURT OF CALIFORNIA
10 SAN FRANCISCO COUNTY

11
12 JERAE RUSSELL,

13 PLAINTIFF,

14 vs.

15 APPLE AMERICAN GROUP, LLC, DOE 1-10,
16 inclusive, .

17 DEFENDANTS

Case No.: CGC-15-543480

FIRST AMENDED COMPLAINT FOR
PERSONAL INJURIES

18
19 Plaintiff alleges:

20 **FIRST CAUSE OF ACTION NEGLIGENCE**

- 21 1. Plaintiff is a natural individual.
- 22 2. Defendant is a limited liability corporation.
- 23 3. Plaintiff is unaware of the identity or form of existence of DOE 1 through DOE 10 and
24 therefore sues them under fictitious names. Plaintiff will amend this complaint when
25 the same as ascertained.
- 26 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.

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

4 **SECOND CAUSE OF ACTION – STRICT LIABILITY**

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

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

9 **THIRD CAUSE OF ACTION – BATTERY**

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

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

14 **PRAYER**

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

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

22
23 Dated: July 17, 2015

THE JAFFE LAW FIRM

24
25
26 By


STEPHEN R. JAFFE
ATTORNEYS FOR PLAINTIFF

1
2
3 **PROOF OF SERVICE**

Russell v Apple American Group LLC.

Case No. CGC-15-543480

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

7 On **July 17** 2015, I served the foregoing

8 **FIRST AMENDED COMPLAINT**

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

11 ☒ **BY MAIL** By placing true and correct copies thereof in the United
12 States mail at San Francisco, California, with postage fully prepaid, addressed as
13 set forth below.

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

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

21 ☐ **BY OVERNIGHT EXPRESS** By placing true and correct copies thereof
22 in a sealed envelope and delivering the same to an overnight courier service
23 addressed as set forth below

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28
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.

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