

1 Yosef Peretz (SBN 209288)
yperetz@peretzlaw.com
2 Shane Howarter (SBN 311970)
showarter@peretzlaw.com
3 PERETZ & ASSOCIATES
22 Battery Street, Suite 200
4 San Francisco, CA 94111
Telephone: 415.732.3777
5 Facsimile: 415.732.3791

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6 Attorneys for Plaintiff TRIEU PHAM

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

9 TRIEU PHAM,

Case No. 19-CV-361037

10 Plaintiff,

**FIRST AMENDED COMPLAINT AND
DEMAND FOR JURY TRIAL**

11 v.

12
13 APPLE, INC., a California corporation
and DOES 1 through 10, inclusive,

14 Defendants.
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1. Discrimination Based on Political Affiliation in Violation of Labor Code §§ 98.6, 1101, and 1102;
2. Retaliation Based on Political Affiliation in Violation of Labor Code §§ 98.6, 1101, and 1102;
3. Discrimination Based on National Origin in Violation of FEHA: Disparate Treatment;
4. Discrimination Based on Medical Condition in Violation of FEHA;
5. Harassment Based on of National Origin and Medical Condition in Violation of FEHA;
6. Retaliation in Violation of FEHA;
7. Failure to Prevent Harassment, Discrimination, or Retaliation in Violation of FEHA;
8. Wrongful Termination in Violation of Public Policy; and
9. Unlawful, Unfair, and/or Fraudulent Business Practices in Violation of Business and Professions Code §§ 17200, *et seq.*

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1 Plaintiff TRIEU PHAM (“Pham”) alleges as follows:

2 **I. INTRODUCTION**

3 1. This is an action brought by Pham against Defendant APPLE, INC. (“Apple”) and
4 DOES 1-10 (collectively, “Defendants”) in connection with claims arising from Pham’s
5 employment with Apple, including wrongful termination.

6 2. Defendants discriminated and retaliated against, harassed, and finally wrongfully
7 terminated Pham for political reasons, his national origin, and medical condition.

8 3. Pham therefore seeks compensatory damages, general damages, punitive
9 damages, and the cost of suit, including attorneys’ fees, for the harm caused to him by the
10 wrongful conduct of Defendants.

11 **II. PARTIES**

12 4. Pham is an American man of Vietnamese national origin and ancestry. Pham is a
13 resident of the County of Santa Clara, California. Pham worked for Apple as an iOS App
14 Reviewer in Cupertino, California from October 13, 2014 until he was wrongfully terminated on
15 March 18, 2019.

16 5. Apple is a California corporation headquartered in Cupertino, California, which is
17 authorized to and has conducted business in the State of California at all times relevant to this
18 action. Apple was and still is an employer within the meaning of the California Fair Employment
19 and Housing Act (“FEHA”), California Government Code (“Gov’t Code”) § 12926, *et seq.*

20 6. Defendants DOES 1 through 10 are sued herein under fictitious names pursuant to
21 Code of Civil Procedure (“CCP”) § 474. Pham is informed, believes, and thereon alleges that
22 each of the Defendants designated as a Doc is responsible in some manner for the events and
23 happenings herein, and that his injuries and damages as hereinafter set forth were proximately
24 caused by said Defendants. Pham does not at this time know the true names or capacities of said
25 unnamed Defendants, but he prays that the same may be inserted herein when ascertained. These
26 said defendants are in some way liable for the damages sustained by Pham.

27 7. Upon information and belief, Defendants DOES 1 through 10 acted with and on
28 behalf of named Defendants in the alleged violations. Pham is informed, believes, and thereon
alleges that at all times herein mentioned, each of the Defendants sued herein was the agent and/or
employee of each of the remaining Defendants, and each of them, was at all times acting within
the purpose and scope of such agency and/or employment.

1 **III. JURISDICTION AND VENUE**

2 8. Jurisdiction and venue are proper because Pham’s claims and causes of action
3 arose in the County of Santa Clara where Pham was employed by Apple, because the alleged
4 conduct took place in Santa Clara County, because records relating to the claims made in this
5 action are located in Santa Clara County, because numerous percipient witnesses and employees
6 of Apple live in Santa Clara County, and because Apple is headquartered in and regularly does
7 business in Santa Clara County.

8 9. In response to Defendants’ unlawful conduct, Pham filed a Complaint of
9 Discrimination against Defendants with the California Department of Fair Employment and
10 Housing (“DFEIH”) on December 31, 2019. That same day, the DFEIH issued a Right-To-Sue
11 Notice under Gov’t Code § 12965(b), permitting Pham to file a civil action under FEHA. A true
12 and correct copy of said Complaint and Notice of Right-to-Sue is attached hereto as **Exhibit 1**.

13 **IV. FACTUAL ALLEGATIONS**

14 **A. Pham’s Success and the Pace of Work at Apple**

15 10. On September 23, 2014, Apple offered Pham the position of iOS App Reviewer
16 (“App Reviewer”). Pham accepted the position and began work for Apple on October 13, 2014.

17 11. Upon beginning work for Apple, Pham earned a wage of \$31.25 per hour, plus
18 additional benefits and compensation that were provided to him as part of his compensation
19 including medical and dental insurance, vacation and holiday pay, retirement benefits, and the
20 option of participating in Apple’s Employee Stock Purchase Program.

21 12. The App Reviewers at Apple work with Apple’s Marketing Department. As an
22 App Reviewer, Pham was responsible for determining whether software applications (“Apps”) were
23 reliable, performed as expected, and were free of offensive material. Pham reviewed Apps
24 based on a pre-set of technical, content, and design criteria provided by Apple; and he determined
25 whether to accept, reject, or hold each App.

26 13. Developers who disagree with an App Reviewer’s decision to reject their App can
27 appeal that decision to Apple’s App Review Board, which has the authority to overrule the
28 decision of the lower-level App Reviewer. If a rejected App is subject to continued appeals, it
29 may end up before Apple’s Executive Review Board, which has final say on all App decisions.

30 14. The Executive Review Board is also responsible for handling Apps that fall into
31 the “gray area” within Apple’s policies, such as Apps that are publicly sensitive, those that could
32 result in negative publicity for Apple, or those that may impact the company’s business

relationships.

1
2 15. Apple imposes daily quotas on App Reviewers to accept, reject, or hold between
3 50 and 100 Apps each day. A daily quota of 80 App reviews was imposed upon Pham, which
4 equates to approximately one App review every 6 minutes over the course of an 8-hour shift.
5 Apple tracks each App Reviewer's rate of review using software called "Watchtower," and
6 publishes the names of the top performing App Reviewers weekly based on the volume and
7 quality of their work.

8 16. To track the performance of the App Review Department as a whole, Apple
9 monitors a statistic called Service-Level Agreement ("SLA"). SLA represents the proportion of
10 Apps reviewed within 24 to 48 hours. Apple aims for an SLA of about 50%; however, at certain
11 times of the year, like right before the release of a new version of iOS—Apple's operating system
12 for mobile devices—an App Reviewer's SLA can fall to as low as 6%.

13 17. In response to such scenarios, Apple increases the working hours of its App
14 Reviewers to 12-hour shifts and encourages them to conduct more rapid review of Apps.

15 18. In addition to these quotas, Pham was also pressured by his managers to process
16 Apps even more quickly than usual using a "speedy" process. Pham was encouraged to utilize
17 the "speedy" process on and off over the course of his employment at Apple.

18 19. Pham was consistently a top performer, typically ranking among the top three App
19 Reviewers each week. Due to the pressures of Apple's quota system and the additional pressures
20 imposed by his managers, Pham regularly reviewed between 120 and 180 Apps each day in order
21 to maintain his performance ranking, which resulted in him spending approximately 3-4 minutes
22 per each App review.

23 20. In addition to his status as a top performer, Pham also garnered praise for his
24 accomplishments in his annual reviews, as his performance regularly achieved or exceeded
25 expectations. As an example, his 2015 annual review commended his "production above
26 expected target levels/team average" and his status "towards the top" of performers. It also
27 indicated that Pham was "a huge part of the success of app review." Later reviews also lauded
28 his "feedback for improvement of the App Review tools and processes," as well as his
"willing[ness] to help the team in many different ways when needed" and his "good attitude
towards his team."

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1 **B. Pham's Complaint and the Resulting Discrimination, Retaliation, and**
2 **Harassment**

3 21. In 2017, Apple reshuffled its App Review Department, resulting in Pham joining
4 a team led by another manager, Richard Chipman ("Chipman"), on September 7, 2017.

5 22. That same day, Chipman reprimanded Pham for his performance, claiming that
6 Pham's pace was too rapid, and told Pham to review Apps more slowly. As a new member of the
7 team, Pham complied with Chipman's directive.

8 23. Toward the end of Pham's shift on September 7, 2017, after Chipman had left the
9 office, Pham was approached at his desk by Terry Barwegen ("Barwegen"), a manager of a
10 different App Review team. Observing Pham working at the pace that Chipman had requested,
11 Barwegen confronted Pham in front of his new team, singling him out and telling him that he
12 "need[ed] to be working like everyone else," meaning that Pham must work faster than the pace
13 mandated by Chipman. Pham had already easily exceeded his daily quota at that point in time so
14 there was no ground for that request. Barwegen, nevertheless, berated Pham and tried to shame
15 him in front of the entire team, despite the fact that Pham had already discussed this issue with
16 his own manager and was following their directions.

17 24. In the weeks following this incident, Apple's App Review management team
18 continued to harass Pham about his performance, singling him out during "talks" about issues
19 that affected the entire team. Only Pham was subjected to reprimands for these issues despite their
20 prevalence among other employees on the team. In particular, Chipman and other Apple
21 supervisors did not single out or reprimand Pham's Caucasian co-workers for the same alleged
22 issues.

23 25. Around this time, Chipman also began taking more harassing and intimidating
24 actions against Pham and singling him out among his co-workers. For example, Chipman would
25 stand directly behind Pham's chair while Pham was working and stare at Pham's computer screen
26 without speaking. This occurred on essentially a daily basis. Other team members observed
27 Chipman's unusual behavior and asked Pham what was going on, as Chipman did not stand and
28 stare at their computer screens. Chipman's constant lurking and singling Pham out for criticism
in front of his team members was designed to intimidate and harass Pham.

 26. Discouraged by this harassment and concerned that he was the subject of efforts
to tarnish his reputation as an Apple employee, Pham filed a formal complaint with Brandon Wied
("Wied"), a Human Resources ("HR") Business Partner at Apple, on September 19, 2017. Pham

1 told Wied that he felt discriminated against by the management team, which was comprised
2 entirely of older Caucasian males, and offered to provide Wied with his work data and examples
3 of the discriminatory treatment he was facing.

4 27. At all relevant times, Chipman and the other managers who harassed and
5 discriminated against Pham were managing agents of Apple and/or acting with Apple's
6 knowledge and consent, *inter alia*, because Pham raised his issues to Apple HR. However, to
7 Pham's knowledge, no action was taken by neither Wied nor Apple HR after Pham's complaint.

8 28. Instead, following the filing of his discrimination complaint, Apple's App Review
9 management team only *increased* its harassing conduct towards Pham. Pham was then continually
10 confronted about the quality of his work and his error rate by a series of managers, including
11 Chipman, Barwegen, Justin Morgan ("Morgan"), Dan Martinez, and Steve Rea ("Rea"). Prior to
12 the filing of the formal complaint, Pham had never been confronted about any issues with his
13 work quality or error rate by these managers or anyone else at Apple. Notably, other App Review
14 Department employees' performance was on par with *or below* Pham's performance level, in
15 terms of quality of work or error rate; yet these employees were not subjected to the same
16 treatment.

17 29. Chipman, Barwegen, Morgan, Dan Martinez, Rea scrutinized Pham's work in
18 retaliation for the complaints he made against Apple for discrimination and harassment, and
19 because they wanted to further harass and discriminate against Pham. All these Apple managers
20 were managing agents of Apple, and they also acted with Apple's knowledge and consent to the
21 discriminatory, harassing and retaliatory conduct against Pham.

22 30. In particular, Pham's concerns about Chipman's motives was confirmed by his
23 colleagues. When Pham discussed Chipman's harassing and intimidating behavior with others
24 team members, they told him that Rea explicitly told them that Chipman and the other managers
25 were trying to get rid of Pham, and therefore they would be scrutinizing his work.

26 31. On June 20, 2018, Pham was called into Chipman's office and chastised by
27 Chipman for approving a game called "Puzzle of Love," which Chipman said was a "valid
28 rejection" that "should not have [been] approved," as the game was found to be objectively
offensive due to pornographic material in the game. However, the game in fact contained no
pornographic material, was not a valid rejection, and remains available in Apple's App Store to
date.

32. Between July and September 2018, Apple management conducted an audit of a

1 sample of Pham's App reviews and on September 19, 2018 provided him with a Documented
2 Coaching Plan ("DCP") that identified reviews by Pham that were purportedly erroneous.

3 33. Upon reviewing his purported errors at Apple's request to offer a rebuttal, Pham
4 was unable to determine any decisions that were accurately classified as errors on his part, and
5 pointed this out to Apple. Following Pham's rebuttal, Apple's Quality team reversed their
6 inaccurate classification of several of Pham's purported errors.

7 34. Pham's DCP identified his most serious error was his approval of a Guo Media
8 App, which was forbidden from Apple's China App Store. However, the same App was approved
9 by a series of other Apple employees, including three Chinese App Reviewers; yet none of them
10 were disciplined for approval of this App as Pham was.

11 35. Notably, all Apps identified by Apple's management team as being "erroneously
12 approved" by Pham in the DCP remained on Apple's App Store following the audit, and remain
13 there to date.

14 36. Upon information and belief, Guo Media was established by Guo Wengui
15 ("Guo"), a Chinese billionaire who goes by the name "Miles Kwok" in the United States. Guo is
16 believed to have fled China to seek asylum in the United States in 2014 and remains wanted by
17 the Chinese government for a series of alleged crimes. Guo publicly disputes the allegations made
18 against him by the Chinese government and claims that he is subjected to political persecution.
19 Guo regularly uses Guo Media to publicize claims of corruption against Chinese government
20 officials and members of the Chinese Communist Party.

21 37. Upon information and belief, after Pham approved the Guo Media App, the
22 Chinese government contacted Apple and demanded that the Guo Media App be removed from
23 Apple's App Store. Apple then performed an internal investigation and identified Pham as the
24 reviewer who approved it.

25 38. Shortly after Apple provided Pham with the DCP, he was called to a meeting to
26 discuss the Guo Media App with multiple Apple supervisors and managers, including Rea and
27 Apple senior manager Morgan. Pham immediately recognized that this meeting was highly
28 unusual, because Morgan had called Pham into his own office, even though App Reviewers and
other associates were normally never called in there.

39. At this meeting that took place in or around late September 2018, Apple
supervisors stated that the Guo Media App is critical of the Chinese government, and therefore
should be removed from the App Store. Pham responded that the Guo Media App publishes valid

1 claims of corruption against the Chinese government and the Chinese Communist Party, and
2 therefore, it should not be taken down.

3 40. Pham further told his supervisors at that meeting that there is no content on the
4 Guo Media App that is violent or liable to incite violence, that this App does not violate any of
5 Apple's policies and procedures in regards to Apps, and therefore it should remain on the App
6 Store as a matter of free speech.

7 41. Finally, Pham also noted in this meeting that removing the Guo Media App under
8 pressure from the Chinese government would be caving to censorship. Pham repeatedly asked
9 what technical or content criteria could justify removing the Guo Media App based on Apple's
10 stated policies and procedures, his supervisors and managers could identify any such basis.

11 42. A few days later, Pham's then immediate supervisor, Chipman, returned from
12 vacation and called Pham to a meeting to discuss the DCP, and the Guo Media App in particular.
13 Pham reiterated the same points to Chipman, including that there is no objectionable content on
14 the Guo Media App, that it merely publishes valid claims of corruption against the Chinese
15 government, and that it should not be taken down because Guo was entitled to publish his
16 opinions.

17 43. In the following weeks, Pham discussed the Guo Media App with other App
18 Reviewers and colleagues. Pham related what had occurred at these meetings with Apple
19 managers, including that Apple was taking steps to censor a Chinese dissident under pressure
20 from the Chinese government even though the App met all technical criteria to be approved.

21 44. Upon information and belief, Apple became aware of Pham's criticism, including
22 Chipman and his other managers, and they responded by retaliating against Pham and ultimately
23 terminating him.

24 45. Pham therefore believes and alleges that the DCP was created by Apple based on
25 an ulterior motive to appease the Chinese government—the DCP was meant to be Apple's
26 message to China that it in fact did *not* approve an App created by Guo, a well-known Chinese
27 political dissident, known for his fierce opposition to the Chinese government.

28 46. In creating the DCP, Apple was enforcing its policy and or practice of appeasing
and accepting the censorship of the Chinese government by removing Apps they did not approve
from the Apple stores, and instead punishing and retaliating against employees who spoke out
against such censorship both internally at Apple and outside the workplace, or employees who

1 complained and refused to remove Apps that the Chinese government objected to on political
2 ground from Apple's stores.

3 47. Because Apple maintains a lucrative business relationship with the Chinese
4 Government, Pham became concerned that this audit of his work and the resulting DCP was
5 nothing more than a pretext to justify Apple's escalation of harassing treatment towards Pham
6 and his eventual termination, all done with the purpose of appeasing the Chinese government and
7 because he refused and complained both internally and outside of Apple of Apple's conduct and
8 Apple's attempt to quash his own criticism against the company that Apple is censoring dissidents
9 of the Chinese government.

10 48. Accordingly, Pham asked that an Apple HR representative participate in a meeting
11 reviewing the audit of his work because he feared that he will be subjected to further retaliation
12 and harassment by his managers and supervisors.

13 49. However, following the audit, there was never any corrective action process,
14 issuance of the DCP, nor any other follow-up by Apple.

15 50. On September 20, 2018, the day after the DCP was issued, Pham requested a
16 meeting with a representative from Apple's HR Department to discuss the erroneous conclusions
17 in the DCP, as well as the harassment Pham had experienced from the App Review team's
18 managers.

19 51. On October 10, 2018, Pham met with Mike Gillaspie ("Gillaspie"), an Employee
20 Relations Business Partner in Apple's HR Department, to discuss these concerns and explained
21 that the audit felt arbitrary on the grounds that none of the errors listed in his DCP required any
22 follow-up correction and that all "erroneous" Apps were still listed on the App Store, as they
23 always should have been.

24 52. Pham and Gillaspie discussed the Guo Media App, and Pham reiterated what he
25 had discussed with multiple Apple managers—namely, that the App had no objectionable content
26 and that it appeared that Apple was caving to censorship by the Chinese government of a well-
27 known political dissident. Pham also told Gillaspie that he had discussed the Guo Media App
28 with other Apple employees, and that his managers were now retaliating against him in part
because of Pham's criticism of Apple's approach.

53. However, even after expressing the above concerns with Apple's HR Department,
no corrective action process followed the DCP, nor any other follow-up by Apple. Again, all
Apps identified by Apple's management team as being erroneously approved by Pham remain on

1 Apple's App Store to date.

2 54. The impact of the discrimination, harassment and retaliation that Pham had been
3 experiencing began to take a toll on Pham's mental and physical health. Concerned about his
4 medical health, on October 12, 2018, Pham sought the advice of a medical professional. Upon
5 recommendation from his doctor, Pham requested and took a medical leave of absence from
6 Apple, beginning on October 21, 2018.

7 55. On December 14, 2018, during his medical leave of absence, Pham received a text
8 message from a colleague at Apple indicating that Department Administrator, Courtney Horn
9 ("Horn"), and the management team were planning on terminating Pham's employment with
10 Apple upon his return from medical leave.

11 56. On February 15, 2019, Pham returned to Apple from medical leave and
12 immediately returned to providing the high quality and quantity of work that had consistently
13 made him a top performing App Reviewer for Apple.

14 57. On March 15, 2019, exactly 30 days after his return from medical leave, Pham
15 received a memorandum from Chipman terminating Pham's employment with Apple as of March
16 18, 2019. The memorandum stated that Pham's termination was due to his purported failure to
17 "successfully meet the objectives and expectations" of the position he had successfully held for
18 approximately four and a half years, as well as his purported failure to "meet other Apple
19 standards."

20 58. Following his termination, on March 15, 2019, Pham requested a review of the
21 decision to terminate his employment via Apple's Decision Review Policy because he believes
22 that his termination was discriminatory and retaliatory and was motivated by his national origin,
23 as well as Pham's vocal support for the Guo Media App because of its claims of corruption by a
24 Chinese political dissent, and Pham's stated opposition to Apple's willingness to accept
25 censorship of its Apps by the Chinese government and Chinese Community Party.

26 59. Pham further believes that his termination was retaliatory as it was a direct result
27 of his discrimination, harassment and retaliation complaints to HR on account of his national
28 origin as well as his political activity at Apple and outside the workplace.

60. On information and belief, each of these acts was either personally carried out,
authorized, or ratified by Chipman, Barwegen and other supervisor and managers at Apple as
well as Wied and the other Apple HR representatives, who exercised substantial independent
judgment such that their decisions and actions toward Pham ultimately determined Apple's

1 corporate policy. Thus, all these individuals acted at all times as managing agents of Apple and/or
2 with the authorization or ratification of Apple's officers, directors, or other managing agents.

3 61. Three months later, on June 18, 2019, following an investigation and five
4 interviews with Victor Cousins ("Cousins"), Apple's Employee Relations Business Partner
5 responsible for conducting the Decision Review, Cousins determined that Pham's termination
6 was "an appropriate management step," and confirmed that "Apple will not be changing the
7 decision to terminate [Pham's] employment."

8 62. Although Pham has avidly attempted to find alternative employment since his
9 termination from Apple, he remains unemployed to date.

10 63. Notably, another co-worker of Vietnamese origin and ancestry on Pham's team
11 was terminated approximately one to two months prior to Pham's termination by Apple. Upon
12 information and belief, the termination of this employee was not based on job performance, but
13 rather on a personal vendetta and discriminatory animus on the part of Chipman and other Apple
14 supervisors in the App Review Department.

15 **FIRST CAUSE OF ACTION**
16 **Discrimination Based on Political Affiliation**
17 **in Violation of Labor Code §§ 98.6, 1101, and 1102**
18 **(Alleged against All Defendants)**

19 64. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
20 herein by reference.

21 65. California's Labor Code offers protections to employees against the unlawful
22 practices of employers by discharging, discriminating, retaliating, or taking any adverse action
23 against an employee or applicant for employment due to political affiliation, or by controlling or
24 directing the political activities or affiliations of employees. Labor Code §§ 98.6, 1101, 1102.

25 66. As set forth above, Pham was harassed, punished, discriminated against, and
26 eventually terminated based upon his approval of, and vocal support for, the Guo Media App,
27 which publicizes claims of corruption against Chinese government officials and members of the
28 Chinese Communist Party, and is backed by a well-known Chinese political dissident.

67. Based on the facts above, Pham reasonably believes that the unlawful
discrimination he faced was based upon Apple's desire to appease the Chinese government, in
order to maintain Apple's lucrative business in China. In discriminating against Pham, Apple
was enforcing its unwritten policy of appeasing and accepting the censorship of the Chinese
government, and punishing and retaliating against employees who speak out against such

1 censorship or complained and opposed Apple's practices and policies of appeasing the Chinese
2 government and quashing any of its political dissidents.

3 68. By terminating Pham and taking other adverse employment actions against him
4 based upon his approval of the Guo Media App, Defendants violated California Labor Code §§
5 98.6, 1101, and 1102.

6 69. Defendants' actions, as described above, directly and proximately have caused,
7 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
8 him to suffer severe emotional distress, anguish, pain and suffering, humiliation, indignity,
9 personal embarrassment, and damage to his professional reputation.

10 70. Accordingly, Pham is entitled to damages according to proof at trial.

11 71. In doing the acts herein alleged, Defendants acted with oppression, fraud or
12 malice, and in reckless or in willful disregard of Pham's rights, and Pham is therefore entitled to
13 punitive damages in an amount according to proof at the time of trial.

14 **SECOND CAUSE OF ACTION**
15 **Retaliation Based on Political Affiliation**
16 **in Violation of Labor Code §§ 98.6, 1101, and 1102**
17 **(Alleged Against All Defendants)**

18 72. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
19 herein by reference.

20 73. California's Labor Code makes it unlawful for an employer to discharge, threaten
21 to discharge, demote, suspend, retaliate against, or take any adverse action against an employee
22 due to political affiliation, or by controlling or directing the political activities or affiliations of
23 employees. Labor Code §§ 98.6, 1101, 1102.

24 74. As set forth above, Pham was harassed and eventually terminated based upon his
25 approval of, and vocal support for, the Guo Media App, which publicizes claims of corruption
26 against Chinese government officials and members of the Chinese Communist Party, and is
27 backed by a well-known Chinese political dissident.

28 75. Based on the facts above, Pham reasonably believes that he was terminated in
retaliation because of his approval of the Guo Media App and his related complaints to HR about
harassment and discrimination, including his formal complaint with Wied, an HR Business
Partner at Apple, on September 19, 2017, and his meeting with Gillaspie, an Employee Relations
Business Partner in Apple's HR Department, on October 10, 2018. In discriminating against
Pham, Apple was enforcing its unwritten policy of appeasing and accepting the censorship of the

1 Chinese government, and punishing and retaliating against employees who speak out against such
2 censorship or complained and opposed Apple's practices and policies of appeasing the Chinese
3 government and quashing any of its political dissidents.

4 76. By terminating Pham and taking other adverse employment actions against him
5 based upon his approval of the Guo Media App, Defendants violated California Labor Code §§
6 98.6, 1101, and 1102.

7 77. Defendants' actions, as described above, directly and proximately have caused,
8 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
9 him to suffer severe emotional distress, anguish, pain and suffering, humiliation, indignity,
10 personal embarrassment, and damage to his professional reputation.

11 78. Accordingly, Pham is entitled to damages according to proof at trial.

12 79. In doing the acts herein alleged, Defendants acted with oppression, fraud or
13 malice, and in reckless or in willful disregard of Pham's rights, and Pham is therefore entitled to
14 punitive damages in an amount according to proof at the time of trial.

15 **THIRD CAUSE OF ACTION**

16 **Discrimination Based on National Origin in Violation of FEHA: Disparate Treatment** 17 **(Alleged Against All Defendants)**

18 80. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
19 herein by reference.

20 81. FEHA offers protections to employees against the unlawful practices of employers
21 by broadly prohibiting employment discrimination in discharges, or terms and conditions of
22 employment, and particularly based on age or national origin. Gov't Code § 12900, *et seq.*

23 82. As set forth above, Pham was treated differently, and discriminated against, based
24 upon his national origin, which is a protected class under FEHA.

25 83. By terminating Pham and taking other adverse employment actions against him
26 based upon his national origin, Defendants violated FEHA.

27 84. Defendants' actions, as described above, directly and proximately have caused,
28 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
him to suffer severe emotional distress, anguish, pain and suffering, humiliation, indignity,
personal embarrassment, and damage to his professional reputation.

85. Accordingly, Pham is entitled to damages according to proof at trial.

86. In doing the acts herein alleged, Defendants acted with oppression, fraud or

1 malice, and in reckless or in willful disregard of Pham's rights, and Pham is therefore entitled to
2 punitive damages in an amount according to proof at the time of trial.

3 **FOURTH CAUSE OF ACTION**
4 **Discrimination Based on Medical Condition in Violation of FEHA**
5 **(Alleged Against All Defendants)**

6 87. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
7 herein by reference.

8 88. FEHA offers protections to employees against the unlawful practices of employers
9 by broadly prohibiting employment discrimination in discharges, or terms and conditions of
10 employment based on medical condition and/or disability. Gov't Code § 12900, *et seq.*

11 89. As set forth above, Pham was treated differently, and discriminated against, based
12 upon his actual and perceived medical condition or disabilities, including but not limited to the
13 extreme stress and anxiety brought upon by working under the aforementioned conditions at
14 Apple, which are protected classes under FEHA.

15 90. Further, by terminating Pham and taking other adverse employment actions
16 against him based upon his actual and perceived medical condition or disabilities, Defendants
17 violated FEHA.

18 91. Defendants' actions, as described above, directly and proximately have caused,
19 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
20 him to suffer severe emotional distress, anguish, pain and suffering, humiliation, indignity,
21 personal embarrassment, and damage to his professional reputation.

22 92. Accordingly, Plaintiff is entitled to damages according to proof at trial.

23 93. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,
24 and in reckless or in willful disregard of Plaintiff's rights and Plaintiff is therefore entitled to
25 punitive damages in an amount according to proof at the time of trial.

26 **FIFTH CAUSE OF ACTION**
27 **Harassment Based on National Origin in Violation of FEHA**
28 **(Alleged Against All Defendants)**

94. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
herein by reference.

95. Pham was subjected to harassment, discrimination, and retaliation in the course of
his employment with Apple by his supervisors and other employees at the company related to
work, despite exceeding his quota of App reviews, and of the Apps which he approved, despite

1 these Apps being still available in the Apple App stores both in the United States and/or in China.

2 96. Pham's supervisors and other employees at the company created and allowed a
3 hostile work environment and harassed Pham on the basis of his national origin in violation of
4 FEHA.

5 97. Pham's supervisors and other employees at the company engaged in an ongoing
6 pattern and practice of severe or pervasive and unlawful harassment by subjecting Pham to a
7 hostile work environment because of his national origin.

8 98. The above-described unwelcome harassment was severe and/or pervasive and
9 created an intimidating, oppressive, hostile and offensive work environment which interfered with
10 Pham's emotional and physical well-being and Pham's ability to perform his job.

11 99. Apple is responsible for Pham's harassment by his supervisors and other
12 employees at the company based on the theory of *respondeat superior*.

13 100. As a result of the hostile and offensive work environment perpetrated and
14 maintained by Pham's supervisors and other employees at the company, Pham has suffered and
15 will continue to suffer pain and suffering, severe mental anguish and emotional and physical
16 distress and injury, expenses, humiliation, anxiety, loss of earnings, past and future, and other
17 employment benefits and job opportunities.

18 101. Accordingly, Pham is entitled to damages according to proof at trial.

19 102. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice,
20 and in reckless or in willful disregard of Pham's rights and Pham is therefore entitled to punitive
21 damages in an amount according to proof at the time of trial.

22 **SIXTH CAUSE OF ACTION**
23 **Retaliation in Violation of FEHA**
24 **(Alleged Against All Defendants)**

25 103. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
26 herein by reference.

27 104. Under FEHA, Defendants are forbidden from retaliating against any person for
28 opposing any practices forbidden by FEHA.

105. In violation of this provision of FEHA, Defendants acted in a retaliatory manner
towards Pham because he asserted his rights under FEHA, including, but not limited to, his right
to an environment free of discrimination or retaliation and his right to be accommodated as a
result of his medical condition.

1 106. The termination of Pham occurred in retaliation to Pham's opposition to
2 Defendants' discrimination against him, as well as in retaliation for Pham's assertion of his rights
3 under FEHA by taking medical leave due to the undue stress caused by Defendants' workplace
4 demands and harassment.

5 107. Defendants' actions, as described above, directly and proximately have caused,
6 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
7 his to suffer severe emotional distress, anguish, pain and suffering, humiliation, indignity,
8 personal embarrassment, and damage to his professional reputation.

9 108. Accordingly, Pham is entitled to damages according to proof at trial.

10 109. In doing the acts herein alleged, Defendants acted with oppression, fraud or
11 malice, and in reckless or in willful disregard of Pham's rights and Pham is therefore entitled to
12 punitive damages in an amount according to proof at the time of trial.

13 **SEVENTH CAUSE OF ACTION**
14 **Failure to Prevent Harassment, Discrimination, or Retaliation**
15 **in Violation of FEHA**
16 **(Alleged Against All Defendants)**

17 110. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
18 herein by reference.

19 111. Pursuant to Gov't Code § 12940(k), Defendants have a duty to take all reasonable
20 steps necessary to prevent discrimination from occurring in their place of employment.

21 112. Pham was an employee of Apple when the alleged events occurred.

22 113. Pham was subjected to harassment, discrimination, and retaliation in the course of
23 his employment with Apple by his supervisors and other employees at the company related to
24 work, despite exceeding his quota of app reviews, and of the Apps which he approved, despite
25 these Apps being still available in the app store.

26 114. Apple failed to take all reasonable steps to prevent the harassment, discrimination,
27 and retaliation that Pham faced from his supervisors and other Apple employees, including the
28 complaints and requests which Pham made to HR.

 115. Pham was seriously harmed by Defendants' negligence. Defendants' actions, as
described above, directly and proximately have caused, and continue to cause, Pham to suffer
losses of income and work opportunities and have caused severe emotional distress, anguish, pain
and suffering, humiliation, indignity, personal embarrassment, and damage to his professional
reputation.

1 116. Defendants' failure to take all reasonable steps to prevent harassment,
2 discrimination, and retaliation was a substantial factor in causing Pham's harm.

3 117. Accordingly, Pham is entitled to damages according to proof at trial.

4 118. In doing the acts herein alleged, Defendants acted with oppression, fraud, or
5 malice, and in reckless or in willful disregard of Pham's rights and Pham is therefore entitled to
6 punitive damages in an amount according to proof at the time of trial.

7 **EIGHTH CAUSE OF ACTION**
8 **Wrongful Termination in Violation of Public Policy**
9 **(Alleged Against All Defendants)**

10 119. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63
11 herein by reference.

12 120. An employer commits tortious termination in violation of public policy when there
13 is an applicable public policy protecting an employee with a certain status and the employer
14 terminates the employee because of his protected status. *Tameny v. Atlantic Richfield Co.* (1980)
15 27 Cal.3d 167. A duty is implied by law on the part of the employer to conduct its affairs in
16 compliance with public policy, expressed judicially or by statute.

17 121. The public policy expressed in California Labor Code §§ 98.6, 1101, and 1102, as
18 well as FEHA, protects Pham from discrimination based on political affiliation. Defendants
19 committed wrongful termination in violation of public policy because it terminated Pham for
20 discriminatory motives as set forth above.

21 122. Defendants' actions, as described above, directly and proximately have caused,
22 and continue to cause, Pham to suffer losses of income and work opportunities and have caused
23 severe emotional distress, anguish, pain and suffering, humiliation, indignity, personal
24 embarrassment, and damage to his professional reputation.

25 123. Accordingly, Pham is entitled to damages according to proof at trial.

26 124. In doing the acts herein alleged, Defendants acted with oppression, fraud, or
27 malice, and in reckless or in willful disregard of Pham's rights, and Pham is therefore entitled to
28 punitive damages in an amount according to proof at the time of trial.

29 **NINTH CAUSE OF ACTION**
30 **Unlawful, Unfair, and/or Fraudulent Business Practices in Violation of Business and**
31 **Professions Code §§ 17200, et seq.**
32 **(Alleged Against All Defendants)**

33 125. Pham repeats and re-alleges all of the previous allegations in paragraphs 1-63

1 herein by reference.

2 126. The California Business and Professions Code (“B&P Code”) § 17200, *et seq.* (the
3 “Unfair Business Practices Act”) prohibits unfair competition in the form of any unlawful, unfair
4 or fraudulent business act or practice.

5 127. B&P Code § 17202 provides that “[n]otwithstanding Section 3369 of the Civil
6 Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law
7 in a case of unfair competition.”

8 128. B&P Code § 17203 provides that the Court may restore to any person in interest
9 any money or property which may have been acquired by means of such unfair competition.

10 129. B&P Code § 17204 allows any “person who has suffered injury in fact and has
11 lost money or property as a result of such unfair competition” to prosecute a civil action for
12 violation of this code.

13 130. B&P Code § 17204 further allows any person acting for the interest of itself, its
14 members or the general public to prosecute a civil action for violation of the Unfair Business
15 Practices Act.

16 131. Defendants have engaged in acts of unfair competition as defined by the Unfair
17 Business Practices Act, by engaging in the unlawful, unfair and fraudulent practices and acts
18 described above, which were done for the purpose of harassing and terminating Pham to appease
19 the Chinese government and maintain Apple’s business relationship with China, to the detriment
20 of Pham’s economic, physical, mental, and emotional interest.

21 132. The acts and practices described above constitute unfair, unlawful and fraudulent
22 business practices, and unfair competition, within the meaning of the Unfair Business Practices
23 Act.

24 133. The acts and practices described above have allowed and will allow Defendants to
25 gain an unfair competitive advantage over law-abiding competitors.

26 134. As a direct and proximate result of the aforementioned acts and practices,
27 Defendants, received and continues to receive, ill-gotten gains at the expense of Apple employees.

28 135. Pham is entitled to restitution pursuant to B&P Code § 17203 for all employment
benefits, salary, and/or severance taken from him during the period of his harassment and post-
termination.

136. Injunctive relief is necessary and appropriate to prevent Defendants from repeating
their unlawful, unfair, and fraudulent business acts and practices described herein.

1 137. Pursuant to the B&P Code § 17203 and/or any other applicable law, Pham seeks
2 an order preventing Defendants from engaging in an unlawful, unfair, and fraudulent conduct,
3 and preventing Defendants from profiting and benefiting from illegal and wrongful acts.

4 138. Pursuant to the B&P Code § 17202, Pham's success in this action will enforce
5 important rights affecting the public interest.

6 139. Pham takes upon himself for the enforcement of these laws and prosecution of
7 these lawful claims. There is a financial burden involved in pursuing this action. Because this
8 action is seeking to vindicate an important public right, it would be against the interests of justice
9 to penalize Pham by forcing him to pay attorneys' fees from any amount recovered from this
10 action.

11 140. An award of attorneys' fees is appropriate for this cause of action, *inter alia*,
12 pursuant to CCP § 1021.5 and other applicable laws, because: (a) this action will confer a
13 significant benefit upon the general public; (b) there is a financial burden involved in pursuing
14 this action; and (c) it would be against the interest of justice to force Pham to pay attorney's fees
15 from any amount recovered in this action.

16 **JURY DEMAND**

17 141. Pham hereby demands a trial by jury in this action.

18 **PRAYER FOR RELIEF**

19 Wherefore, Pham prays for the following relief:

- 20 1. Actual damages and/or restitution;
- 21 2. General damages;
- 22 3. Punitive damages;
- 23 4. Statutory damages and penalties;
- 24 5. Reasonable attorneys' fees as permitted by law;
- 25 6. Costs of the suit incurred herein as permitted by law; and
- 26 7. All other further relief as this Court deems just and proper.

27 Dated: July 17, 2020

PERETZ & ASSOCIATES

28 By:  _____

Yosef Peretz
Shane Howarter

Attorneys for Plaintiff TRIEU PHAM

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 31, 2019

Ruth Israely
22 Battery Street, Suite 200
San Francisco, California 94111

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201912-08735631
Right to Sue: Pham / Apple, Inc.

Dear Ruth Israely:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 31, 2019

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201912-08735631
Right to Sue: Pham / Apple, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

December 31, 2019

Trieu Pham
1673 West Campbell Avenue
Campbell, California 95008

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 201912-08735631
Right to Sue: Pham / Apple, Inc.

Dear Trieu Pham,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective December 31, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
 (Gov. Code, § 12900 et seq.)

5 **In the Matter of the Complaint of**

6 Trieu Pham

DFEH No. 201912-08735631

7 Complainant,

8 vs.

9 Apple, Inc.

10 ,

11 Respondents

12 1. Respondent **Apple, Inc.** is an **employer** subject to suit under the California Fair
13 Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

14 2. Complainant **Trieu Pham**, resides in the City of **Campbell** State of **California**.

15 3. Complainant alleges that on or about **March 18, 2019**, respondent took the
16 following adverse actions:

17 **Complainant was harassed** because of complainant's race, ancestry, national
18 origin (includes language restrictions), color, disability (physical or mental), other,
association with a member of a protected class.

19 **Complainant was discriminated against** because of complainant's race, ancestry,
20 national origin (includes language restrictions), color, disability (physical or mental),
21 other, association with a member of a protected class and as a result of the
discrimination was terminated, reprimanded, denied any employment benefit or
privilege, denied reasonable accommodation for a disability, other.

22 **Complainant experienced retaliation** because complainant reported or resisted
23 any form of discrimination or harassment, requested or used a disability-related
24 accommodation, participated as a witness in a discrimination or harassment
25 complaint and as a result was terminated, reprimanded, denied any employment
26 benefit or privilege, other.

1 **Additional Complaint Details:** This is an action brought by Trieu Pham (“Pham”) against Defendant APPLE, INC. (“Apple”) and DOES 1-10 (collectively,
2 “Defendants”) in connection with claims arising from Pham’s employment with Apple, including wrongful termination. Defendants discriminated and retaliated against,
3 harassed, and finally wrongfully terminated Pham for political reasons, his national origin, and medical condition. Pham therefore seeks compensatory damages,
4 general damages, punitive damages, and the cost of suit, including attorneys’ fees, for the harm caused to him by the wrongful conduct of Defendants.
5

6 Pham is an American man of Vietnamese national origin and ancestry. Pham is a resident of the County of Santa Clara, California. Pham worked for Apple as an iOS App Reviewer in Cupertino, California from October 13, 2014 until he was wrongfully
7 terminated on March 18, 2019.
8

9 On September 23, 2014, Apple offered Pham the position of iOS App Reviewer (“App Reviewer”). Pham accepted the position and began work for Apple on
10 October 13, 2014. Upon beginning work for Apple, Pham earned a wage of \$31.25 per hour, plus additional benefits and compensation that were provided to him as
11 part of his compensation including medical and dental insurance, vacation and holiday pay, retirement benefits, and the option of participating in Apple’s Employee
12 Stock Purchase Program.
13

14 The App Reviewers at Apple work with Apple’s Marketing Department. As an App Reviewer, Pham was responsible for determining whether software applications (“Apps”) were reliable, performed as expected, and were free of offensive material. Pham reviewed Apps based on a pre-set of technical, content, and design criteria provided by Apple; and he determined whether to accept, reject, or hold each App. Developers who disagree with an App Reviewer’s decision to reject their App can appeal that decision to Apple’s App Review Board, which has the authority to
15 overrule the decision of the lower-level App Reviewer. If a rejected App is subject to continued appeals, it may end up before Apple’s Executive Review Board, which has
16 final say on all App decisions. The Executive Review Board is also responsible for handling Apps that fall into the “gray area” within Apple’s policies, such as Apps that
17 are publicly sensitive, those that could result in negative publicity for Apple, or those that may impact the company’s business relationships.
18
19
20
21

22 Apple imposes daily quotas on App Reviewers to accept, reject, or hold between 50 and 100 Apps each day. A daily quota of 80 App reviews was imposed upon Pham,
23 which equates to approximately one App review every 6 minutes over the course of an 8-hour shift. Apple tracks each App Reviewer’s rate of review using software
24 called “Watchtower,” and publishes the names of the top performing App Reviewers weekly based on the volume and quality of their work. To track the performance of
25 the App Review Department as a whole, Apple monitors a statistic called Service-
26

1 Level Agreement (“SLA”). SLA represents the proportion of Apps reviewed within 24
2 to 48 hours. Apple aims for an SLA of about 50%; however, at certain times of the
3 year, like right before the release of a new version of iOS—Apple’s operating system
4 for mobile devices — an App Reviewer’s SLA can fall to as low as 6%. In response
5 to such scenarios, Apple increases the working hours of its App Reviewers to 12-
6 hour shifts and encourages them to conduct more rapid review of Apps. In addition
7 to these quotas, Pham was also pressured by his managers to process Apps even
8 more quickly than usual using a “speedy” process. Pham was encouraged to utilize
9 the “speedy” process on and off over the course of his employment at Apple.

7 Pham was consistently a top performer, typically ranking among the top three App
8 Reviewers each week. Due to the pressures of Apple’s quota system and the
9 additional pressures imposed by his managers, Pham regularly reviewed between
10 120 and 180 Apps each day in order to maintain his performance ranking, which
11 resulted in him spending approximately 3-4 minutes per each App review. In
12 addition to his status as a top performer, Pham also garnered praise for his
13 accomplishments in his annual reviews, as his performance regularly achieved or
14 exceeded expectations. As an example, his 2015 annual review commended his
15 “production above expected target levels/team average” and his status “towards the
16 top” of performers. It also indicated that Pham was “a huge part of the success of
17 app review.” Later reviews also lauded his “feedback for improvement of the App
18 Review tools and processes,” as well as his “willing[ness] to help the team in many
19 different ways when needed” and his “good attitude towards his team.”

15 In 2017, Apple reshuffled its App Review Department, resulting in Pham joining a
16 team led by another manager, Richard Chipman (“Chipman”), on September 7,
17 2017. That same day, Chipman reprimanded Pham for his performance, claiming
18 that Pham’s pace was too rapid, and told Pham to review Apps more slowly. As a
19 new member of the team, Pham complied with Chipman’s directive. Toward the end
20 of Pham’s shift on September 7, 2017, after Chipman had left the office, Pham was
21 approached at his desk by Terry Barwegen (“Barwegen”), a manager of a different
22 App Review team. Observing Pham working at the pace that Chipman had
23 requested, Barwegen confronted Pham in front of his new team, singling him out and
24 telling him that he “need[ed] to be working like everyone else,” meaning that Pham
25 must work faster than the pace mandated by Chipman. Pham had already easily
26 exceeded his daily quota at that point in time.

22 In the weeks following this incident, Apple’s App Review management team
23 continued to harass Pham about his performance, singling him out during “talks”
24 about issues that affected the entire team. Only Pham was subjected to reprimands
25 for these issues despite their prevalence among other employees on the team. In
26 particular, Chipman and other Apple supervisors did not single out or reprimand
27 Pham’s Caucasian co-workers for the same alleged issues. Around this time,

1 Chipman also began taking more harassing and intimidating actions against Pham
2 and singling him out among his co-workers. For example, Chipman would stand
3 directly behind Pham's chair while Pham was working and stare at Pham's computer
4 screen without speaking. Other team members observed Chipman's unusual
5 behavior and asked Pham what was going on, as Chipman did not stand and stare
6 at their computer screens.

5 Discouraged by this harassment and concerned that he was the subject of efforts to
6 tarnish his reputation as an Apple employee, Pham filed a formal complaint with
7 Brandon Wied ("Wied"), a Human Resources ("HR") Business Partner at Apple, on
8 September 19, 2017. Pham told Wied that he felt discriminated against by the
9 management team, which was comprised entirely of older Caucasian males, and
10 offered to provide Wied with his work data and examples of the discriminatory
11 treatment he was facing. However, to Pham's knowledge, no action was taken by
12 neither Wied nor Apple HR after Pham's complaint. Instead, following the filing of
13 his discrimination complaint, Apple's App Review management team only increased
14 its harassing conduct towards Pham. Pham was then continually confronted about
15 the quality of his work and his error rate by a series of managers, including
16 Chipman, Barwegen, Justin Morgan, Dan Martinez, and Steve Rea. Prior to the
17 filing of the formal complaint, Pham had never been confronted about any issues
18 with his work quality or error rate by these managers or anyone else at Apple.
19 Notably, other App Review Department employees' performance was on par with or
20 below Pham's performance level, in terms of quality of work or error rate; yet these
21 employees were not subjected to the same treatment.

15 On June 20, 2018, Pham was called into Chipman's office and chastised by
16 Chipman for approving a game called "Puzzle of Love," which Chipman said was a
17 "valid rejection" that "should not have [been] approved," as the game was found to
18 be objectively offensive due to pornographic material in the game. However, the
19 game in fact contained no pornographic material, was not a valid rejection, and
20 remains available in Apple's App Store to date. Between July 17, 2018 and August
21 14, 2018, Apple management conducted an audit of a sample of Pham's App
22 reviews and provided him with a Documented Coaching Plan ("DCP") that identified
23 reviews by Pham that were purportedly erroneous.

21 Upon reviewing his purported errors at Apple's request to offer a rebuttal, Pham was
22 unable to determine any decisions that were accurately classified as errors on his
23 part, and pointed this out to Apple. Following Pham's rebuttal, Apple's Quality team
24 reversed their inaccurate classification of several of Pham's purported errors.
25 Pham's DCP identified his most serious error was his approval of a Guo Media App,
26 which was forbidden from Apple's China App Store. However, the same App was
27 approved by a series of other Apple employees, including three Chinese App
28 Reviewers; yet none of them were disciplined for approval of this App as Pham was.

1 Notably, all Apps identified by Apple's management team as being "erroneously
2 approved" by Pham in the DCP remained on Apple's App Store following the audit,
and remain there to date.

3 Upon information and belief, Guo Media was established by Guo Wengui ("Guo"), a
4 Chinese billionaire who goes by the name "Miles Kwok" in the United States. Guo is
5 believed to have fled China to seek asylum in the United States in 2014 and remains
6 wanted by the Chinese government for a series of alleged crimes. Guo publicly
7 disputes the allegations made against him by the Chinese government and claims
8 that he is subjected to political persecution. Guo regularly uses Guo Media to
publicize claims of corruption against Chinese government officials and members of
the Chinese Communist Party.

9 Pham therefore believes and alleges that the DCP was created by Apple based on
10 an ulterior motive to appease the Chinese government: the DCP was meant to be
11 Apple's message to China that it in fact did not approve an App created by Guo, a
12 well-known Chinese political dissident, known for his fierce opposition to the Chinese
13 government. Because Apple maintains a lucrative business relationship with the
14 Chinese Government, Pham became concerned that this audit of his work and the
15 resulting DCP was nothing more than a pretext to justify Apple's escalation of
harassing treatment towards Pham and his eventual termination, all done with the
purpose of appeasing the Chinese government. Accordingly, Pham asked that an
Apple HR representative participate in a meeting reviewing the audit of his work.
However, following the audit, there was never any corrective action process,
issuance of the DCP, nor any other follow-up by Apple.

16 On September 20, 2018, Pham requested a meeting with a representative from
17 Apple's HR Department to discuss the erroneous conclusions in the DCP, as well as
18 the harassment Pham had experienced from the App Review team's managers. On
19 October 10, 2018, Pham met with Mike Gillaspie ("Gillaspie"), an Employee
20 Relations Business Partner in Apple's HR Department, to discuss these concerns
21 and explained that the audit felt arbitrary on the grounds that none of the errors
22 listed in his DCP required any follow-up correction and that all "erroneous" Apps
23 were still listed on the App Store, as they always should have been. However, even
after expressing these concerns with Apple's HR Department, no corrective action
process followed the DCP, nor any other follow-up by Apple. Again, all Apps
identified by Apple's management team as being erroneously approved by Pham
remain on Apple's App Store to date.

24 The impact of the harassment that Pham had been experiencing began to take a toll
25 on Pham's mental and physical health. Concerned, on October 12, 2018, Pham
26 sought the advice of a medical professional. Upon recommendation from his doctor,
Pham requested and took a medical leave of absence from Apple, beginning on

1 October 21, 2018. On December 14, 2018, during his medical leave of absence,
2 Pham received a text message from a colleague at Apple indicating that Department
3 Administrator, Courtney Horn ("Horn"), and the management team were planning on
4 terminating Pham's employment with Apple upon his return from medical leave. On
5 February 15, 2019, Pham returned to Apple from medical leave and immediately
6 returned to providing the high quality and quantity of work that had consistently
7 made him a top performing App Reviewer for Apple.

8 On March 15, 2019, exactly 30 days after his return from medical leave, Pham
9 received a memorandum from Chipman terminating Pham's employment with Apple
10 as of March 18, 2019. The memorandum stated that Pham's termination was due to
11 his purported failure to "successfully meet the objectives and expectations" of the
12 position he had successfully held for approximately four and a half years, as well as
13 his purported failure to "meet other Apple standards." Following his termination, on
14 March 15, 2019, Pham requested a review of the decision to terminate his
15 employment via Apple's Decision Review Policy because he believes that his
16 termination was discriminatory and motivated by his national origin. He further
17 believes that his termination was retaliatory as it was a direct result of his
18 discrimination and retaliation complaints to HR, as well as his implicit support of a
19 Chinese political dissident.

20 Three months later, on June 18, 2019, following an investigation and five interviews
21 with Victor Cousins ("Cousins"), Apple's Employee Relations Business Partner
22 responsible for conducting the Decision Review, Cousins determined that Pham's
23 termination was "an appropriate management step," and confirmed that "Apple will
24 not be changing the decision to terminate [Pham's] employment." Although Pham
25 has avidly attempted to find alternative employment since his termination from
26 Apple, he remains unemployed to date. Notably, another co-worker of Vietnamese
27 origin and ancestry on Pham's team was terminated approximately one to two
28 months prior to Pham's termination by Apple. Upon information and belief, the
29 termination of this employee was not based on job performance, but rather on a
30 personal vendetta and discriminatory animus on the part of Chipman and other
31 Apple supervisors in the App Review Department.

1 VERIFICATION

2 I, **Ruth Israely**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On December 31, 2019, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

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San Francisco, California