



April 5, 2023

U.S. Equal Employment Opportunity Commission
New York District Office
33 Whitehall Street, 5th Floor
New York, NY 10004
newyfaxenf@eeoc.gov

Via Email and Certified USPS Mail

Re: EEOC Charge against Apple-Metro, Inc.

Dear EEOC New York District Office:

The Charging Party, Justin Onwenu ("Complainant"), by and through his undersigned attorneys the National Center for Law and Economic Justice and HKM Employment Attorneys LLP, respectfully submits the following charge of employment discrimination against Apple-Metro Inc. As indicated in the complaint, we would like it cross-filed with the New York City Commission on Human Rights and the New York State Division of Human Rights.

Complainant's Charge is on behalf of himself and others similarly situated and alleges that Apple-Metro Inc. engaged, and continues to engage in, discriminatory pay practices based on race and skin color.

Please call me if you have questions regarding this letter or the enclosed Charge.

/s/Anjana Malhotra

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CHARGE OF DISCRIMINATION This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.		Charge Presented To: Agency(ies) Charge No(s): EEOC
NY State Division of Human Rights, NYC Human Rights Commission and EEOC <i>State or local Agency, if any</i>		
Name (<i>indicate Mr., Ms., Mrs., Miss, Mx., Dr., Hon., Rev., etc.</i>) Mr. Justin Onwenu	Home Phone 313-405-5900	Year of Birth 6/18/1996
Street Address, City State and ZIP Code 425 W. 121st Street, Apt. 1307, New York, NY 10027		
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (<i>If more than two, list under PARTICULARS below.</i>)		
Name Apple-Metro, Inc.	No. Employees, Members 35+	Phone No. 914-777-2331
Street Address, City State and ZIP Code 550 Mamaroneck Avenue, Suite 204, Harrison, New NY 10528		
Name	No. Employees, Members	Phone No.
Street Address, City, State and ZIP Code		
DISCRIMINATION BASED ON Race and Color	DATE(S) DISCRIMINATION TOOK PLACE Earliest 3/10/2023 Latest continuing action	
THE PARTICULARS ARE (<i>If additional paper is needed, attach extra sheet(s)</i>): Please see attached statement.		
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY – <i>When necessary for State and Local Agency Requirements</i>	
I declare under penalty of perjury that the above is true and correct.	I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT	
4/5/2023 <i>Date</i>	Justin Onwenu <i>Charging Party Signature</i>	Digitally signed by Justin Onwenu Date: 2023.04.05 10:50:59 -04'00'
		SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (<i>month, day, year</i>)

EEOC Particulars: Justin Onwenu

Parties

1. I am the charging party in this matter. I am a dark-skinned African American man.
2. I am a server at Applebee's Neighborhood Grill & Bar at 610 Exterior Street, Bronx, NY 10451 ("South Bronx Applebee's"). I have worked at this restaurant since March 11, 2023. I am also a law student at Columbia Law School.
3. Servers are workers who serve food and drinks to guests in a courteous and timely manner.
4. The South Bronx Applebee's is owned and operated by Respondent Apple-Metro, Inc. ("Apple-Metro") and its wholly owned subsidiary BTM Apple, LLC ("BTM"). Apple-Metro does business as a franchisee of Applebee's Restaurants LLC and also has locations at 234 West 42nd Street, New York, NY 10036; and 205 West 50th Street, New York, NY 10019 (collectively "Midtown Manhattan Applebee's").
5. Apple-Metro and BTM maintain their headquarters at 550 Mamaroneck Avenue, Suite 204, Harrison, NY 10528.
6. The leadership of Apple-Metro is comprised of Zane Tankel, Chairman and Chief Executive Officer; Roy Raeburn, President; and Neesha Seervai, Chief Operating Officer. According to my manager, the leadership of Apple-Metro sets wage and tipping policies and other terms of conditions of employment for the Applebee's it operates, including the South Bronx Applebee's and Midtown Manhattan Applebee's.

7. I bring this charge on behalf of myself and other similarly situated employees working at Apple-Metro's South Bronx Applebee's and the other Apple-Metro locations where servers are predominantly Black and/or dark skinned who (a) because of race or color, are paid a lower hourly rate than at the Midtown Manhattan locations, where servers are predominantly non-Black and light-skinned; and (b) are subjected to wages and other policies and practices that discriminate against Black and/or dark-skinned employees.

Background

8. Apple-Metro's management trained me using the standard training modules and techniques used to train all Apple-Metro Applebee's servers. My training consisted both of online modules and working on the floor observing servers, assisting with service, or serving by myself with supervision. My online module training consisted of memorizing the menu items and learning about Apple-Metro's service practices, conflict resolution techniques for customers, terminology, food safety practices, and rules about sickness and time-off. Apple-Metro also trained me using a standardized Apple-Metro time-sensitive ten-step process for serving customers start to finish. My training was standardized, and on information and belief, Apple-Metro uses the same training modules and procedures for Midtown Manhattan Applebee's servers.

9. As a server, I perform the same job duties that I was trained in, which include taking customer orders, relaying customer orders to the kitchen, serving customers food and drinks, presenting guests with their check, and managing payment. I am required to apply the standard ten-step process I learned in training to manage my customers. Servers at the Midtown Manhattan Applebee's perform identical job duties as they do at my location.

10. Since I started training and serving at the South Bronx Applebee's, customers have consistently praised me for my service and work.

11. My direct supervisors are: Jose Perez, Area Director; Jecely Velez, General Manager; and two to three different managers that work on each shift (individually "manager" and collectively "managers"). Jose Perez sets my schedule. On information and belief, Apple-Metro sets all other terms and conditions of my employment. When I asked my manager about my work and discipline rules, he stated that: "[t]he whole company, we have one owner, we don't have multiple owners. So whatever you see in the five boroughs is the same company .. is Apple-Metro."

12. There are three shifts at the South Bronx Applebee's: a morning, lunch, and evening shift. All shifts have set start times, but have varying individualized end times, dependent on customer volume. The morning shift begins at 9:00 AM and generally ends between 12:00 and 2:00 PM. The afternoon shift starts at 12:00 PM, and generally ends between 6:00 and 8:00 PM. The evening shift begins at 4:00 PM and lasts until between 10:00 and 12:00 PM. I am primarily assigned to the afternoon and evening shifts.

13. According to my manager, the executives and board of Apple-Metro decide wage rates and gratuity practices for me and the other servers at the South Bronx Applebee's, as well the servers at the Midtown Manhattan Applebee's. The managers at individual Apple-Metro Applebee's locations do not make decisions about wage rates and gratuity practices.

14. Apple-Metro has standard working conditions and terms for all of its locations. The Apple-Metro logo is on the form that management and I have to fill out to document work absences or negative employee behavior. When I asked my manager about disciplinary policies

and this negative employee behavior documentation form, he informed me that Apple-Metro “is one company, one set of rules, one owner, one department,” and that “it’s not going to change.”

Wage Discrimination

15. Currently, Apple-Metro pays me the subminimum wage of \$10.00 an hour as a server. Customers also tip me for my service. During my training period, the South Bronx Applebee’s paid me \$15.00 per hour, and I was not eligible to receive tips from customers.

16. Before and after I was hired, Apple-Metro’s management informed me that my hourly rate as a server would be \$10.00 an hour, plus tips from customers, and that two percent of my gross sales would go to the bartenders.

17. The servers at the South Bronx Applebee’s, where I work, are predominantly Black and dark-skinned. Nine of the servers are dark-skinned Black, nine are Latino, four of whom are dark-skinned. All the servers at this location are paid \$10.00 an hour.

18. While working at the South Bronx Applebee’s, I have witnessed multiple occasions where customers have left no or minimal tips on their bill. Customers at the South Bronx Applebee’s rarely tip the industry standard rate of 18-20% of the bill; the majority of customers tip less than 10%. Of the tables I have served, assisted with, or observed, approximately 10% of the customers pay 15-20% in tips; 25% pay 10-15% in tips; 40% pay 5-10%; and 25% pay 0-5% in tips.

19. Apple-Metro pays servers at the Midtown Manhattan Applebee’s the full minimum wage of \$15.00 an hour.

20. On information and belief, the servers at the Midtown Manhattan Applebee’s located at 234 W. 42nd Street, New York, NY 10036 are predominantly non-Black and light-

skinned. Of seven servers observed, only one was Black, while two were white, two were light-skinned Latinas, and two were Brown Latinos.

21. On information and belief, the servers at the Midtown Manhattan Applebee's located at 205 West 50th Street, New York, NY 10019 are predominantly non-Black and light-skinned. Of the servers observed, only one was Black and dark-skinned.

22. Multiple Black servers and bartenders at the Midtown Manhattan Applebee's have sued Apple-Metro for engaging in discrimination on the basis of race and color, including racial harassment, discriminatory discipline, promotion, and termination. *See, e.g., Allman v. Apple Metro*, Case No. 20-CV-892 (S.D.N.Y., filed Feb. 2, 2020) (settled); *Ernest v. Apple Metro*, Case No. 14-CV-1891 (S.D.N.Y., filed Mar. 18, 2014) (settled).¹

23. The job description and duties of the servers at the Midtown Manhattan Applebee's are identical to mine and the other servers at the South Bronx Applebee's. Like me, the servers at the Midtown Manhattan Applebee's take customer orders, relay customer orders to the kitchen, serve customers food and drinks, present customers with the check, and manage payment.

24. On information and belief, Apple-Metro sets the same training, discipline, promotion, terms and conditions of employment, and work rules for servers at the South Bronx Applebee's and the Midtown Manhattan Applebee's. Apple-Metro also sets the wages for all three locations.

25. The bills at the Midtown Manhattan Applebee's include a recommended optional gratuity of 18%. Apple-Metro does not recommend a gratuity at the the South Bronx Applebee's

¹ Generally, Apple-Metro has been subjected to numerous class action and individual lawsuits alleging violations of state and federal labor laws.

where I work, even though the majority of customers there tip below 10% of the bill and the hourly rate of pay is \$5.00 an hour lower than the Midtown Manhattan Applebee's.

26. According to my manager, Apple-Metro has a different suggested gratuity policy in "the city"/Midtown Manhattan Applebee's in part because "white people and tourists" frequent that location. In contrast, approximately 90-95% of the customers at the South Bronx Applebee's are people of color. When I asked my manager if they could add the suggested gratuity at the South Bronx, he said that the "[W]e are the employees .. [and] are not the guys that make these decisions. The CEO, along with the COO and CFO .. are the people who make the decisions, not us, we are forced to do whatever they tell us to do."

27. On information and belief, there is no legitimate business reason for the differential in the hourly wage rate among servers, or the suggested added gratuity in Midtown Manhattan. The South Bronx Applebee's is very profitable and among the top five in New York City in terms of gross sales. Management has directly confirmed the South Bronx Applebee's statistics and profitability with me.

28. According to the South Bronx Applebee's Area Director, Apple-Metro executives and management set daily and monthly financial targets for each location based on the previous year's performance. The Area Director maintains this information on a board. For March 2023, the sales target was \$706,000, but as of March 23, the restaurant had already passed that target with \$750,000 in sales. Based on these numbers the restaurant could earn about \$1,000,000 per month.

Impact and Legal Violations

29. Even though I have been working at the South Bronx Applebee's for a short amount of time, it became demoralizing to me when I started serving and getting my own tips to

learn that my hourly wage rate is a subminimum wage, in contrast to the predominantly non-Black and non-dark skinned servers in the Midtown Manhattan Applebee's locations who are paid the full minimum wage for the City. In addition, given that the vast majority of my tips (90%) are under 15%, it is frustrating that Apple-Metro adds suggested 18% gratuities for servers to the bill in Midtown Manhattan, but does not do so in the South Bronx location.

30. Working at a lower pay rate is also demoralizing and humiliating to me because I believe Apple-Metro is motivated by my (and my co-workers') race and color. In addition, it is disturbing to me that managers explained that the the different gratuity practices for Midtown Manhattan servers doing the same work as me were in part to related to the racial composition of the customers—that the customers are predominantly white. Working under a policy and practice that does not create the same incentives for tips on top of the discriminatory wage differences is dehumanizing to me.

31. Apple-Metro's discriminatory and disparate practices are also harmful and demoralizing because I have also seen how tipping practices are the result of my race and appearance. Tips are supposed to make up for the fact that I'm being paid less than the minimum wage. However, customers frequently do not leave tips at the South Bronx Applebee's, and for me and many South Bronx servers, it is understood that you could receive a lower tip because of race or appearance. Additionally, it is not uncommon for tips to be accompanied with harassment or other demeaning/inappropriate behavior from customers. Tips are also provided independent of how strong my service was or the work and time I spend game planning to get paid for what I'm worth. It is demoralizing to me that Apple-Metro institutes an entirely different set of wage practices, pays me less, and recommends tips on every bill as a matter of course in its Midtown Manhattan Applebee's where the servers are predominantly light-skinned and not Black. While

the difference in the \$15.00 and \$10.00 wages adds up to at least a \$10,000 wage disparity for a year of full time serving work, the impact of Apple-Metro's tip suggestion policies may be equally (if not more) significant. Apple-Metro provides Manhattan workers with greater financial security that is free from many of the degrading aspects of service work. Apple-Metro does not provide this for workers in the Bronx on the basis of race and color.

32. Finally, I am especially disturbed because I know that the subminimum wage for tipped workers is a legacy of slavery; it was developed as a direct response to the abolition of chattel slavery and implemented to prevent newly freed Black workers from making economic gains. By engaging in this discriminatory pay practices, Apple-Metro is further perpetuating these racial inequalities.

33. By paying me and, on information and belief, other workers at other Applebee's locations employing predominantly Black and/or dark-skinned servers at a lower rate than at the Midtown Manhattan locations, Apple-Metro has imposed a different, discriminatory, and unequal race-based pay practice for the same work done by non-Black employees.

34. Because I am Black and dark-skinned, Apple-Metro intentionally discriminates against me and similarly situated employees at the South Bronx Applebee's and, on information and belief, other Apple-Metro Applebee's employing predominantly Black and dark-skinned workers by imposing a discriminatory pay structure at its restaurants that favors non-Black and light-skinned employees, respectively.

35. Based on the conduct described herein, Apple-Metro has violated the Civil Rights Act of 1991 (Title VII), 42 U.S.C. §§ 2000e *et seq.*, New York State Executive Law §§ 290 *et seq.*, and the New York City Administrative Code §§ 8-101 *et seq.*, by discriminating against me

and other Black and dark-skinned employees because of our race and color. Apple-Metro has engaged in both disparate treatment and disparate impact discrimination.

36. As a result of Apple-Metro's discriminatory wage policies, suggested gratuity practices and racially discriminatory rationales for differential practices, I and other similarly situated Black and dark-skinned workers suffer from an ongoing unlawful loss in income based on our race and color.