

June 15, 2020

For Online Filing:

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Sent via U.S. Postal Service Certified Mail

Apple Cal, LLC
C/O Corporate Creations Network, Inc.
4640 Admiralty Way, 5th Floor
Marina del Rey, CA 90292

Sent via Electronic Mail

Tim Morris, Area Director
TMorris@sscpmanagement.com

RE: *Jacquelin Ruiz, et al, v. Apple Cal, LLC*

To Whom It May Concern,

This letter is being provided pursuant to the California Private Attorneys General Act (“PAGA”) as outlined in Labor Code §2699. Jacquelin Ruiz (hereafter referred to as “Ruiz” or “Plaintiff”) represents herself and similarly situated, current and former non-exempt employees of Apple Cal, LLC (hereafter referred to as “Defendant”), in California, for numerous violations under the California Labor Code.

Defendant, at all relevant times operated its retail food establishment in the State of California, in multiple counties, to include Stanislaus. Plaintiff, at all relevant times worked for or on behalf of Defendant at one or more of Defendant’s retail food establishments. Specifically, Plaintiff was acquired by Defendant on or about December 11, 2018 and has continuously been employed at the restaurant located at 2449 Claribel Road in Riverbank, California 95367.

Defendant has and continues to violate, and/or caused to be violated multiple California statutory and common laws, specifically certain provisions of the Labor Code that warrant and allow for civil penalties under PAGA. Plaintiff requests that the Labor Workforce Development Agency (“LWDA”) investigate the below-listed claims and/or allow for a representative action to commence through civil litigation. It is intended for this letter to satisfy all requirements under PAGA and to serve as notice of below-listed allegations to the LWDA and Defendant.

The below-listed violations of the Labor Code and other laws are claims that are made known to Plaintiff as of the date of this letter. The Plaintiff, through her attorney, reserves the right to supplement and/or add additional claims if or as they become known. The below listed claims are alleged by Plaintiff on behalf of herself and all similarly situated individuals, which are considered “aggrieved employees” as defined by Labor Code section 2699, *et seq.*, who have worked or continue to work for Defendant in California since June 16, 2019 to the present.

I. FAILURE TO PROVIDE MANDATORY, OFF-DUTY REST PERIODS

Cal. Labor Code 226.7 requires that no employee be made to work during a rest or recovery period mandated by I.W.C. Wage Order 5. The California Labor Code and I.W.C Wage Order 5 in relevant part indicate that an employer must authorize and permit rest periods for all non-exempt employees whose total daily work time is

at least 3.5 hours. Thus, offering a “rest period at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Plaintiff asserts that Defendant does not maintain any rest period policy authorizing and permitting employees to take rest periods, and in practice does not authorize and permit Plaintiff and aggrieved employees to take rest periods during the work shift.

Plaintiff and other aggrieved employees work shifts in excess of 3.5 hours but are not permitted to take all required rest periods per four (4) hours worked, or major fraction thereof. Defendant has failed to provide premium compensation to which Plaintiff and aggrieved employees are entitled to when legally compliant rest periods are not taken. Plaintiff and aggrieved employees have not been compensated with the required rest period premium for each workday in which a rest period violation occurs under Cal. Labor Code 226.7.

II. FAILURE TO PROVIDE MANDATORY, OFF DUTY MEAL PERIODS

Cal. Labor Code 226.7 and I.W.C Wage Order 5 in relevant part indicate that no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.

Plaintiff and other aggrieved employees work shifts in excess of 6 hours but are not permitted to take a meal period of not less than 30-minutes, uninterrupted. Defendant regularly failed to provide for an uninterrupted, off-duty 30-minute meal period to Plaintiff and other aggrieved employees, as such Plaintiff was denied lawfully due premium compensation for the missed meal periods. Defendant regularly interrupted or failed to permit and/or authorize Plaintiff and other aggrieved employees a mandated meal period, this was based in part due to the unreasonable demands placed upon Plaintiff and aggrieved employees, and grossly unsatisfactory management by Defendant’s management team. Furthermore, Defendant has a practice of requiring for Plaintiff and aggrieved employees to manipulate time records to reflect a compliant meal period, when in fact no compliant meal period was taken, thus to avoid imposition of meal period penalties against Employer. For these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

III. FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS

As described above, Defendant failed to pay premium compensation for the missed rest and meal period[s] at the requisite regular hourly rate of pay, thus causing Plaintiff’s and aggrieved employees’ paystub[s] for each occurrence of non-payment to be inaccurate. For these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §§226.3 and 2698 *et seq.*

IV. FAILURE TO PAY COMPENSATION DUE AND PAYABLE UPON CONCLUSION OF EMPLOYMENT

Cal. Labor Code §§201 and 202 require that all employees receive all earned and unpaid wages at the time of termination of employment, either immediately upon discharge or within the required time frame upon resignation. Labor Code §201 and §202 requires that all employees receive all earned and unpaid wages at the time of termination of employment, either immediately upon discharge or within the required time frame upon resignation. Plaintiff and aggrieved employees have been denied lawfully due rest and meal periods; thus, they are lawfully due premium compensation. Defendant owed Plaintiff and aggrieved employees one additional hour of pay at their regular rate to be paid no later than the next paycheck, for a daily rest period violation, and; one additional hour of pay at their regular rate to be paid no later than the next paycheck, for a missed meal period.

Defendant's willful failure to provide the requisite additional hour of pay [for missed rest and for missed meal periods] caused aggrieved employees to not receive all earned and unpaid wages at the time of termination of employment, either immediately upon discharge or within the required time frame upon resignation. As a result of violations of Labor Code §§201, 202 and 203, Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

V. FAILURE TO PROVIDE REASONABLE LACTATION ACCOMMODATION

Cal. Labor Code §1031 requires that every employer make reasonable efforts to provide an employee desiring to express breast milk for the employee's infant child with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private. Additionally, the employer must provide a safe, clean room, free of hazardous materials with a surface to place a breast pump and personal items. Lastly, the employee must be provided with a place to sit, have access to electricity or alternative devices, and access to a sink with running water and a refrigerator suitable for storing milk.

Plaintiff has personal knowledge that Defendant has failed to comply with this requirement, by requiring her and other female employees to express milk in substandard conditions, such as being directed to use a toilet stall by Defendant's manager Mark Farinas. Defendant, through its agent[s], Kim Katz, Mark Farinas and Meghan Ott deprived Plaintiff of reasonable lactation accommodation; disclosed protected health information to unauthorized third parties [REDACTED]

[REDACTED] such as compliant rest periods [or extended rest periods as a reasonable accommodation] to express milk. As a result of Defendant's violation of Labor Code §1031, Plaintiff has suffered prohibited discrimination, harassment and retaliation for her engagement in protected conduct, thus Defendant is liable for civil penalties pursuant to Cal. Labor Code §98.6 and §2698 *et seq.*

VI. VIOLATION OF LABOR CODE SECTIONS 558 AND 558.1

Cal. Labor Code section 558 states that it is unlawful for any employer, or other person acting on behalf of an employer, to violate or cause to be violated any of sections 500 to 558.1 of the Labor Code or any order of the Industrial Welfare Commission. Similarly, Labor Code section 558.1 states that it is unlawful for any employer or other person acting on behalf of an employer to violate, or cause to be violated, any provision regulating wages or hours and days of work in any order of the Industrial Welfare Commission, as well as Sections 203, 226, 226.7, or 2802 of the Labor Code. As described above, Defendant, by and through its agents, violated Plaintiff's and similarly situated employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This was in violation of the law.

VII. CIVIL PENALTIES

Plaintiff intends to initiate civil action on behalf of herself and other aggrieved employees to recover civil penalties from the alleged violations. Plaintiff has a good faith and reasonable belief and thereon has investigated these allegations, and based on that information believes that Defendant has committed at least the following Cal. Labor Code violations:

- Cal. Labor Code §98.6 for discriminating, retaliating, and/or taking adverse action against Plaintiff for having availed herself of protected rights afforded under the Cal. Labor Code.

- Cal. Labor Code §§226.7 and 558 for failing to permit Plaintiff and other aggrieved employees legally compliant rest periods and failing to pay corresponding premium compensation at their respective regular rates of pay.
- Cal. Labor Code §§226.7 and 558 for failing to permit Plaintiff and other aggrieved employees legally compliant meal periods and failing to pay corresponding premium compensation at their respective regular rates of pay, for each meal period violation.
- Cal. Labor Code §§226.3 for failing to provide Plaintiff and other aggrieved employees with accurate and itemized wage statements.
- Cal. Labor Code §204 for failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month.
- Cal. Labor Code §§226, 558 and 1174 for failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees.
- Cal. Labor Code §§201, 202 and 203 for failing to timely remit all wages due and payable upon termination [or resignation] from employment to aggrieved employees.

Plaintiff on behalf of herself and all other similarly situated individuals (i.e., “aggrieved employees”) request for the LWDA to investigate these claims. If the Agency opts to forego investigation, Plaintiff respectfully requests timely notification of the Agency’s decision. Please mail notification related to this matter to Shawnté Priest, Attorney at Law, 1275 W. Main Street, No. 1042 in Ripon, California 95366 or by email to spriest@priestlawfirm.net.

Regards,

A handwritten signature in dark ink, appearing to read "Spriest", written in a cursive, flowing style.

Shawnte Priest, Esq.

cc: Client