

SHAWNTÉ PRIEST, ATTORNEY AT LAW

July 6, 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

RE: *Matthew Reeves, et al. v. Apple Cal, LLC, et al.* – SUPPLEMENTAL PAGA NOTICE

Dear Labor Commissioner,

This supplemental notice is being provided pursuant to the California Private Attorneys General Act (“PAGA”) as outlined in Labor Code §2699. Matthew Reeves (hereafter referred to as “Reeves” or “Plaintiff”) represents himself 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. On or about June 6, 2020, Plaintiff on behalf of himself and similarly situated employees, submitted to the Labor Workforce Development Agency (“LWDA”) and Defendant notice pursuant to the Labor Code §2699.3 [Exhibit A]. Plaintiff continues to wait to receive any indication from the LWDA of its intent to pursue claims alleged in the June 6, 2020 notice. Thus, after sixty-five (65) days elapses, Plaintiff can properly commence a civil action pursuant to Labor Code §2699.

In this supplemental notice, Plaintiff is setting forth additional “facts and theories” to support each of the counts found in the previous notice and found within this supplemental notice. Defendant has and continues to violate, and/or cause 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.

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 supplemental notice. Plaintiff maintains that this supplemental notice relates back to the previously filed notice on June 6, 2020 [Exhibit B]. The Plaintiff, through his 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 himself and all similarly situated individuals, which are considered “aggrieved employees” as defined by Labor Code section 2699, *et seq.*

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/or in practice does not authorize and permit Plaintiff and aggrieved employees to take compliant rest periods during the work shift. Plaintiff further asserts that Defendant does not maintain a payroll code or other mechanism for the payment of rest period premium payments under Labor Code §226.7 in the event that a legally compliant rest period is not provided to its non-exempt employees.

Defendant regularly failed to provide for an uninterrupted 10-minute rest period to Plaintiff and aggrieved employees and required active work during rest periods. Defendant regularly interrupted or failed to permit and/or authorize Plaintiff and other aggrieved employees a mandated rest period, during usual and customary minimum of six (6) hour shifts, for a minimum of four (4) days per week. Defendant failed to provide premium compensation for the missed rest periods. For these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

II. FAILURE TO PROVIDE MANDATORY, OFF DUTY MEAL PERIODS

Cal. Labor Code section 226.7 and I.W.C. Wage Order 5 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. Labor Code section 512 further provides that employers may not employ employees for a work period of more than ten (10) hours per day without providing the employee with a second meal period of thirty (30) minutes; however, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Plaintiff and other aggrieved employees were not authorized and permitted to take legally compliant meal periods pursuant to California law. Indeed, Plaintiff and other aggrieved employees would not be able to take full thirty (30) minute meal periods during their work shifts despite working over five (5) hours a day; 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. Further, Plaintiff and other aggrieved employees were sometimes forced to take their meal period after the sixth hour of work. Defendant also failed to pay any meal period premiums at the applicable regular rate of pay for their failure to provide meal periods. Plaintiff and other aggrieved employees did not validly waive any or all of their meal periods during their employment. This was in violation of the law and Defendant is liable for civil penalties in this regard pursuant to Cal. Labor Code §§ 558 and 2698 *et seq.*

III. FAILURE TO PROVIDE MINIMUM WAGES

Cal. Labor Code §§1194 and 1197 and I.W.C Wage Order 5 in relevant part require that Plaintiff and aggrieved employees be paid at least the State's minimum wage rate for each hour that they worked. Plaintiff and other aggrieved employees were not paid at least the minimum wage for each hour worked. Plaintiff and aggrieved employees were required to work off-the-clock at times during their employment due to the amount of work that Defendant required of them. As an example, Defendant's location manager, Amber Love requested of Plaintiff to clock-out from his shift, yet resume working and engage in activities, such as providing service to dining patrons, greet customers at the host stand, pick-up drinks from the bar, etc.

Plaintiff and aggrieved employees are required to attend meetings outside of their scheduled shift, at times at a restaurant location [other than their base location], yet do not receive requisite reporting time pay [if the employee is not put to work or is given less than half of the hours they were scheduled for or usually worked]. Defendant does not have any proper policy or practice in place to ensure that Plaintiff and other aggrieved employees would be paid at least minimum wage for each hour that they worked or requisite reporting time pay. Due to Defendant's deficient management oversight and insufficient timekeeping and payroll policies, Plaintiff and aggrieved employees were not paid for this off-the-clock work that Defendant required of them.

Thus, Plaintiff and aggrieved employees are not paid at least the applicable state minimum wage for those hours worked. This is against the law and Defendant is liable for civil penalties in this regard.

IV. FAILURE TO KEEP ACCURATE TIME RECORDS

Cal. Labor Code section 1174(d) provides that employers must keep and maintain accurate payroll records showing the hours worked daily by, and the wages paid to, employees. As described above, Plaintiff and aggrieved employees are required to attend meetings outside of their scheduled shift, at times at a restaurant location [other than their base location], yet do not receive requisite reporting time pay [if the employee is not put to work or is given less than half of the hours they were scheduled for or usually worked]. Plaintiff believes, and based thereon, alleges that Defendant does not [and did not] record Plaintiff's and aggrieved employees' time spent at meetings. Additionally, Plaintiff asserts that Defendant does not [and did not] record Plaintiff's and aggrieved employee's time spent working off-the-clock. Thus, Defendant failed to maintain accurate records required by law and, instead, maintained incomplete, and inaccurate records regarding Plaintiff's and aggrieved employees' hours worked. This is against the law and Defendant is liable for civil penalties pursuant to Cal. Labor Code § 1174.5.

V. 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. Similarly, each occurrence that Defendant did not correctly calculate and issue Plaintiff's and aggrieved employees minimum wages resulted in provision of an inaccurate wage statement, in that the total hours worked by the employee, gross wages earned and net wages are incorrect. Additionally, Defendant issues wages in the form of cash payment without a compliant wage statement. For payment[s] issued by cash, Plaintiff and aggrieved employees are provided a corresponding computer printout that does not satisfy all requirements of Labor Code §226(a). Specifically, the computer printout does not list: (1) gross wages earned, (2) net wages earned, (3) total hours worked by the employee, (4) all applicable hourly rates in effect during the pay period, and (5) the name and address of the legal entity that is the employer. For these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §§226.3 and 2698 *et seq.*

VI. 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 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. Plaintiff and aggrieved employees have been denied lawfully due meal periods; thus, they are lawfully due premium compensation. Defendant owed Plaintiff and aggrieved employees one additional hour of pay at their regular rate, for each meal period violation, to be paid no later than the next paycheck. Plaintiff and aggrieved employees have been denied lawfully due minimum wages because of Defendant's failure to pay reporting time pay, and/or pay for all hours worked.

Defendant's willful failure to provide the requisite compensation [as outlined above] 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 REIMBURSEMENT EXPENSES

Labor Code §2802 requires that an employer shall indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or their obedience to the directions of the employer. Defendant required for Plaintiff and aggrieved employees to place and/or receive telephone and electronic communication by use of their personal telephone landline, cellular phone and/or home internet in performance of duties for Defendant. As an example, Defendant's manager Anthony Perriera transmits electronic communication to Plaintiff and aggrieved employees on their personal cellular phones. These electronic communications are business related and often require reciprocal communication, thus causing Plaintiff and aggrieved employees to incur cellular data and/or internet charges, for work purposes. Plaintiff and/or aggrieved employees incurred mileage expense when required to travel to other restaurant locations [other than their base location] for meetings, without reimbursement. Plaintiff and/or aggrieved employees are due reimbursement for mileage incurred [at the standard IRS rate], outside of their normal daily commute, when required to drive their personal vehicle in furtherance of Defendant's business. Plaintiff asserts that Defendant does not maintain any policy authorizing and permitting Plaintiff and aggrieved employees to be reimbursed for personal expenses incurred as a result of the discharge of their duties, and in practice Defendant does not authorize such reimbursement. Plaintiff and aggrieved employees incurred expense as a result of use of their personal equipment or property, such as telephone landline, cellular phone, home internet and/or vehicle[s].

Plaintiff is informed and believes that Defendant required Plaintiff and aggrieved employees to utilize their personal property and/or equipment for work purposes but failed to properly reimburse them for such use. This is in violation of the law and Defendant is liable for civil penalties pursuant to Cal. Labor Code § 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 on 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 aggrieved employees' rights provided for under Labor Code sections 558 and 558.1 as well as the incorporated Wage Orders and incorporated statutes therein. This is in violation of the law.

VII. UNLAWFUL RETALIATION

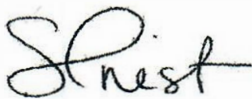
Cal. Labor Code section 1102.5(b) states that an employer may "not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or

noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Cal. Labor Code section 1102.5(c) states that an employer may "not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation."

Defendant is aware of Plaintiff's anticipated engagement with a state and federal agency regarding his claims of discrimination, harassment and/or retaliation by way of multiple communications with Defendant's management representatives Kim Katz, Anthony Perriera, and others. At all times after Plaintiff made multiple complaints regarding discrimination and sexual harassment and/or made known his intention to pursue formal grievance with the assistance of a state or federal agency, he was subjected to additional hostile treatment, including physical assault, adverse action in the form of unpaid disciplinary suspension, threat of termination, and termination from employment. Collectively, these adverse action[s] and/or altered terms and conditions of employment are in violation of the law. As a result, Defendant violated Labor Code sections 1102.5(b)-(d) and Defendant is liable for the civil penalty pursuant to Labor Code § 1102.5.

Plaintiff on behalf of himself 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,



Shawnté Priest, Esq.

cc: Client

Douglas Ropel, Attorney for Apple Cal, LLC
(by email to dropel@littler.com)

EXHIBIT A

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corp. Creatims Network
4640 Admiralty Way
5th Fl
Marina del Rey CA 90292



9590 9402 5701 9346 9977 27

Article Number (Transfer from service label)

7019 1640 0001 0403 2071

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☒ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery | |

EXHIBIT B

June 6, 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

Timothy Morris, Area Director
TMorris@sscpmanagement.com

RE: *Matthew Reeves, et al, v. Apple Cal, LLC, et al.*

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. Matthew Reeves (hereafter referred to as "Reeves" or "Plaintiff") represents himself 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 his 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 himself and all similarly situated individuals, which are considered "aggrieved employees" as defined by Labor Code section 2699, *et seq.*

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." Defendants regularly failed to provide for an uninterrupted 10-minute rest period to Plaintiff and similarly situated former and current non-exempt employees and required active work during rest periods. Defendants regularly interrupted or failed to permit and/or authorize Plaintiff and other aggrieved employees a mandated rest period, during usual and customary minimum of six (6) to (8) hour shifts, four (4) to five (5) days per week. Defendant failed to provide premium compensation for the missed rest periods. For these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

II. FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS

As described above, Defendant failed to pay premium compensation for the missed rest 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.*

III. 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 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.

Defendant's willful failure to provide the requisite additional hour of pay [for missed rest 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.*

IV. 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 on 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.

V. UNLAWFUL RETALIATION

Cal. Labor Code section 1102.5(b) states that an employer may "not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose

information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Cal. Labor Code section 1102.5(c) states that an employer may "not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation."

Defendant is aware of Plaintiff's anticipated engagement with a state and federal agency regarding his claims of discrimination, harassment and/or retaliation by way of multiple communications with Defendant's management representatives Kim Katz, Anthony Perriera, and others. At all times after Plaintiff made multiple complaints regarding discrimination and sexual harassment and/or made known his intention to pursue formal grievance with the assistance of a state or federal agency, he has been subjected to additional hostile treatment, including physical assault, adverse action in the form of unpaid disciplinary suspension and threatened with termination from employment. Collectively, these adverse action[s] and/or altered terms and conditions of employment are in violation of the law. As a result, Defendant violated Labor Code sections 1102.5(b)-(d) and Defendant is liable for the civil penalty pursuant to Labor Code § 1102.5.

Plaintiff on behalf of himself 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 black ink, appearing to read 'Shawnté Priest', with a stylized flourish at the end.

Shawnté Priest, Esq.

cc: Client