

**LAW OFFICE OF
THOMAS P. HOGAN**

MODESTO: 1207 13TH St., Ste. 1 · Modesto, CA 95354 · (209) 492-9335 · (209) 492-9356

December 29, 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

SSCP Management, Inc.
Cheryl Green, Registered Agent
13355 Noel Rd, Ste 1645
Dallas, TX 75240

RE: *Matthew Reeves, et al. v. Apple Cal, LLC, et al.* – SUPPLEMENTAL PAGA NOTICE (2)

Dear Labor Commissioner,

Pursuant to Labor Code §2699.3, Matthew Reeves (hereafter referred to as “Plaintiff”) provides this supplemental written notice of filing a Labor Code §2699 *et seq.* (Private Attorneys General Act (“PAGA”)) claim against Apple Cal, LLC and SSCP Management, Inc. (hereafter referred to collectively as “Defendants”) for numerous violations under the California Labor Code. Plaintiff seeks relief on behalf of himself and all other current and former non-exempt employees of Defendants in California (hereafter referred collectively with Plaintiff as “Plaintiffs”).

On or about June 6, 2020, Plaintiffs submitted to the Labor Workforce Development Agency (“LWDA”) and Apple Cal, LLC notice pursuant to the Labor Code §2699.3. A supplemental notice was sent to the LWDA and Apple Cal, LLC on July 7, 2020. Plaintiffs waited the requisite time and exhausted the administrative review period prior to commencing a civil action pursuant to Labor Code §2699. A representative action was filed against Apple Cal, LLC on September 28, 2020 in the Superior Court for State of California, County of Stanislaus, case number CV-20-004214. A copy of the complaint was provided to the LWDA on October 5, 2020.

In this supplemental notice, Plaintiffs are setting forth additional “facts and theories” to support each of the counts found in the previous notice and found within this supplemental notice as it pertains to Apple Cal, LLC and SSCP Management, Inc. Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants had direct and indirect control of the work and working conditions of Plaintiffs; made hiring, firing and other human resources decisions, such as regulating the wages and benefits of Plaintiffs, exemplified by Defendants’ management team’s integration in the daily practices and process of employees assigned to Defendants’ casual dining locations in California.

Plaintiffs are informed and believe, and thereon allege, that at all times mentioned herein, Defendants shared senior and executive management personnel for oversight of Defendants' joint enterprise, such as referring all non-exempt employees in California to contact Defendants' Human Resources Manager, Cheryl Green; Defendants' Area Manager, Tim Morris, and Defendants' General Manager, Anthony Perriera for discussion about or resolution of employment related concerns, to lodge complaints and for direct and indirect supervision of day-to-day tasks. As such, each defendant was and is the agent, servant, and employee of the other defendant, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omission complained of herein.

Defendants have and continue 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 Plaintiffs as of the date of this supplemental notice. Plaintiffs maintain that this supplemental notice relates back to the previously filed notice on June 6, 2020 and July 7, 2020. Plaintiffs, through their attorneys, reserve the right to supplement and/or add additional claims if or as they become known. The below listed claims are alleged by Plaintiffs, 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." Plaintiffs asserts that Defendants do not maintain any rest period policy authorizing and permitting employees to take rest periods, and/or in practice do not authorize and permit Plaintiffs to take compliant rest periods during the work shift. Plaintiffs further assert that Defendants do 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 Plaintiffs.

Defendants regularly failed to provide for an uninterrupted 10-minute rest period to Plaintiffs and required active work during rest periods. Defendants regularly interrupted or failed to permit and/or authorize Plaintiffs to take a mandated rest period, during usual and customary minimum of six (6) hour shifts, for a minimum of four (4) days per week. Defendants failed to provide premium compensation for the missed rest periods. For these violations, Defendants are 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. Plaintiffs were not authorized and permitted to take legally compliant meal periods pursuant to California law. Indeed, Plaintiffs 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 Plaintiffs, and grossly unsatisfactory management by Defendants' management team. Further, Plaintiffs were sometimes forced to take their meal period after the sixth hour of work. Defendants also failed to pay any meal period

premiums at the applicable regular rate of pay for their failure to provide meal periods. Plaintiffs did not waive any or all their meal periods during their employment. This was in violation of the law and Defendants are 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 Plaintiffs be paid at least the State's minimum wage rate for each hour that they worked. Plaintiffs were not paid at least minimum wage for each hour worked. Plaintiffs were required to work off-the-clock at times during their employment due to the amount of work that Defendants required of them. As an example, Defendants' 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.

Plaintiffs 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. Defendants do not have any proper policy or practice in place to ensure that Plaintiffs would be paid at least minimum wage for each hour that they worked or requisite reporting time pay. Due to Defendants' deficient management oversight and insufficient timekeeping and payroll policies, Plaintiffs were not paid for this off-the-clock work that Defendants required of them.

Thus, Plaintiffs are not paid at least the applicable state minimum wage for those hours worked. This is against the law and Defendants are 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, Plaintiffs 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. Plaintiffs believe, and based thereon, allege that Defendants do not and did not record Plaintiffs' time spent at meetings. Additionally, Plaintiffs assert that Defendants do not and did not record Plaintiffs' time spent working off-the-clock. Thus, Defendants failed to maintain accurate records required by law and, instead, maintained incomplete, and inaccurate records regarding Plaintiffs' time worked. This is against the law and Defendants are liable for civil penalties pursuant to Cal. Labor Code § 1174.5.

V. FAILURE TO PROVIDE TIMELY AND ACCURATE WAGE STATEMENTS

As described above, Defendants failed to pay premium compensation for the missed rest periods at the requisite regular hourly rate of pay, thus causing Plaintiffs' paystubs for each occurrence of non-payment to be inaccurate. For these violations, Defendants are 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. Plaintiffs have been denied lawfully due rest periods; thus, they are lawfully due premium compensation. Defendants owed Plaintiffs one additional hour of pay at their regular rate to be paid no later than the next paycheck.

Defendants' willful failure to provide the requisite additional hour of pay caused Plaintiffs 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, Defendants are 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. Defendants required for Plaintiffs 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 Defendants. As an example, Defendants' manager Anthony Perriera transmits electronic communication to Plaintiffs on their personal cellular phones. These electronic communications are business related and often require reciprocal communication, thus causing Plaintiffs to incur cellular data and/or internet charges, for work purposes. Plaintiffs incurred mileage expense when required to travel to other restaurant locations other than their base location for meetings, without reimbursement. Plaintiffs are due reimbursement for mileage incurred, outside of their normal daily commute, when required to drive their personal vehicle in furtherance of Defendants' business. Plaintiffs assert that Defendants do not maintain any policy authorizing and permitting Plaintiffs to be reimbursed for personal expenses incurred as a result of the discharge of their duties, and in practice Defendants do not authorize such reimbursement. Plaintiffs incurred expense as a result of use of their personal equipment or property, such as telephone land line, cellular phone, home internet and/or vehicles.

Plaintiffs are informed and believe that Defendants required Plaintiffs 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 Defendants are liable for civil penalties pursuant to Cal. Labor Code § 2698 *et seq.*

VII. 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, Defendants, violated Plaintiffs' 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/is in violation of the law.

VIII. 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."

Defendants are 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 Defendants' management representatives Kim Katz and Anthony Perriera. Plaintiff attempted to speak about his employment concerns with Cheryl Green, VP of Human Resources on two occasions and Chris Dahrod, President on at least one occasion; however, Plaintiff was referred to Kim Katz and Anthony Perriera. 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, threatened with termination from employment, and in fact, was terminated from employment contemporaneous to his complaint and refusal to participate in an activity that would result in violation of the law. Collectively, these adverse actions and/or altered terms and conditions of employment are in violation of the law. As a result, Defendants violated Labor Code sections 1102.5(b)-(d) and Defendants are liable for the civil penalty pursuant to Labor Code § 1102.5.

As a result of Defendants' violations of the above referenced Labor Code provisions, as well as other California laws, Defendants are liable for all applicable back wages, premiums and penalties, interest, attorneys' fees, costs, and all other applicable damages and remedies under California Labor Code section 2698 *et seq.* and any other applicable statute, including but not limited to Labor Code section 558.

Plaintiffs respectfully request for the LWDA to investigate these claims. If the LWDA opts to forego investigation, Plaintiffs respectfully requests timely notification of the LWDA's decision. Please mail notification related to this matter to the Law Office of Thomas P. Hogan, attention Shawnté Priest, 1207 13th Street, Suite I in Modesto, California 95354 or by email to Shawnte@TomHoganLaw.com.

Regards,

A handwritten signature in cursive script, appearing to read "Shawnté Priest".

Shawnté Priest, Esq.

cc: Client

Remedy Law Group, LLP (Andy@remedylawgroup.com, Armen@remedylawgroup.com)
Littler (DRopel@littler.com, BTorres@littler.com)