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ELECTRONICALLY FILED
Superior Court of California,
County of Placer

01/29/2021
By: Olivia Lucatuorto, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

PAUL GULLETT, as a private attorney general,

Plaintiff,

vs.

APPLE AMERICAN GROUP, LLC, a Delaware
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. S-CV-0045844

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT UNDER THE
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

Plaintiff, Paul Gullett, as a proxy for the State of California, submits this First Amended Complaint against Defendant, Apple American Group LLC, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. (“PAGA”), this representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties and other relief pursuant to, among other provisions, Labor Code sections 201-204, 210, 226(a), 226.3, 226.7, 512, 558, and 2698 et seq.¹

2. Plaintiff is informed and believes that Defendants have jointly and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of employees by failing to authorize and permit duty-free rest periods, provide duty-free meal periods, pay all premium wages for such missed rest periods and meal periods, and provide accurate itemized wage statements.

3. Defendants routinely failed to authorize and permit Plaintiff and other non-exempt employees to take duty-free 10-minute rest periods for every four hours worked, or major fraction thereof, due to a lack of staffing. Specifically, because there was no one able to relieve Plaintiff and other non-exempt employees during their shifts, Plaintiff and other non-exempt employees were routinely denied duty-free rest periods and instead were required to continue working. Despite not permitting duty-free rest periods, Defendants also routinely failed to pay Plaintiff and other non-exempt employees the requisite rest period premium pay of an additional hour of wages.

4. On shifts exceeding five hours of work, Defendants also routinely failed to provide Plaintiff and other non-exempt employees with a duty-free 30-minute meal period within the first five hours of work. As with rest periods, Plaintiff and other non-exempt employees were routinely denied duty-free meal periods and instead were required to continue working. Defendants also routinely failed to pay Plaintiff and other non-exempt employees the requisite meal period premium pay of an additional hour of wages.

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 5. Defendants also routinely failed to provide accurate itemized wage statements to Plaintiff
2 and other employees. First, as a result of the above practices, Defendants failed to furnish Plaintiff and
3 other non-exempt employees with wage statements that accurately showed the hours worked, premium
4 pay earned for missed rest periods and meal periods, gross wages earned, and net wages earned. Second,
5 whenever overtime wages are paid to Plaintiff and other non-exempt employees, Defendants issue wage
6 statements that fail to accurately itemize total hours worked. Moreover, when the hours shown on the
7 wage statements are added up, the sum also does not equal the total hours worked. Third, whenever
8 overtime wages are paid to Plaintiff and other non-exempt employees, Defendants issue wage statements
9 that do not itemize and show the overtime rate as 1.5 times the regular rate of pay. Rather than show all
10 applicable hourly rates in effect during the pay period, the overtime rates appear to be one-half of the
11 hourly rate of pay. Fourth, Defendants issue wage statements to Plaintiff and all other employees that do
12 not itemize and show the name of the legal entity that is the employer. Instead, “Apple American Group
13 LLC”—an entity which is not among the corporations, limited liability companies, and limited
14 partnerships of record with the California Secretary of State—is shown on wage statements.

15 6. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
16 in establishing minimum working conditions and requirements in California. These labor standards
17 protect employees from onerous terms and conditions of employment or exploitation by employers who
18 have superior economic and bargaining power. Plaintiff is informed and believes that Defendants have
19 engaged in, among other things, a system of willful violations of the Labor Code by creating and
20 maintaining policies, practices, and customs that knowingly deny its employees the above stated rights
21 and benefits.

22 7. Defendants’ pattern, practice, and uniform administration of corporate policy in violation
23 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
24 rights of Plaintiff and aggrieved employees under Sections 201-204, 210, 226(a), 226.3, 226.7, 512, 558,
25 and 2698 et seq., applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5 to recover
26 applicable penalties, reasonable attorneys’ fees, and costs of suit.
27
28

JURISDICTION AND VENUE

8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 226(a), 226.7, and 512.

9. Venue is proper in the County of Placer. Plaintiff worked for Defendants in Auburn, California.

PARTIES

10. Plaintiff began working for Defendants in or about January of 2020. Until his employment as a server ended in or about October of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee. Plaintiff regularly worked more than five hours in a workday, but he was not permitted to take duty-free 10-minute rest periods, was not provided duty-free 30-minute meal periods, and was not paid premium pay of an additional hour of wages. Plaintiff also was not provided with accurate itemized wage statements. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code.

11. Plaintiff is informed and believes that Defendant, Apple American Group LLC, was and is a Delaware limited liability company. Plaintiff is informed and believes that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 226(a), 226.7, and 512.

12. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the

other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

15. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

PAGA ALLEGATIONS

16. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226(a), 226.7, and 512 committed against all aggrieved employees since April 22, 2019.

17. On or about October 19, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections 201-204, 226(a), 226.7, and 512. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

18. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations against all aggrieved employees for the period described above.

FIRST CAUSE OF ACTION

Violation of Labor Code §§ 2698 et seq.

(By Plaintiff on Behalf of Aggrieved Employees Against All Defendants)

19. The preceding paragraphs are re-alleged and incorporated by this reference.

20. For Plaintiff and non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

21. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to Plaintiff and aggrieved employees. As a matter of policy and practice, Defendants also fail to pay an additional hour of pay at the regular rate of compensation for each rest period missed by Plaintiff and aggrieved employees. Specifically, because there was no one able to relieve Plaintiff and aggrieved employees during their shifts of at least 3.5 hours, Plaintiff and aggrieved employees were routinely denied duty-free rest periods and instead were required to continue working during rest periods. Plaintiff and aggrieved employees were not paid the requisite rest period premium pay. Defendants thus violate Section 226.7 and the applicable IWC Wage Order.

22. For Plaintiff and non-exempt employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more than five hours per day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes. Section 226.7(b) provides that an employer shall not require an employee to work during a meal period. Section 226.7(c) states that “the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

23. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail to provide Plaintiff and aggrieved employees with a duty-free 30-minute meal period within the first five hours of work. As a matter of policy and practice, Defendants also do not pay an additional hour of pay at the regular rate of compensation for each meal period missed by Plaintiff and aggrieved employees. As with rest periods, Plaintiff and aggrieved employees were routinely denied duty-free meal periods and instead were required to continue working. Plaintiff and aggrieved employees were not paid all

requisite wages or meal period premium pay. Defendants thus violate Sections 226.7 and 512 and the applicable IWC Wage Order.

24. Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days.

25. Based on Defendants' failure to pay rest period and meal period premium pay to Plaintiff and aggrieved employees and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and aggrieved employees all due wages or timely pay all due wages upon separation of employment. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violate Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

26. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, the corresponding number of hours worked at each hourly rate, gross wages earned, net wages earned, total hours worked, and the name of the legal entity that is the employer.

27. As a matter of policy and practice, Defendants failed to provide accurate itemized wage statements to Plaintiff and aggrieved employees. Specifically, because of Defendants' rest period and meal period violations, Defendants failed to furnish Plaintiff and aggrieved employees with wage statements that accurately showed the hours worked, premium pay earned for missed rest periods and meal periods, gross wages earned, and net wages earned.

28. As a matter of policy and practice, Defendants failed to provide accurate itemized wage statements whenever Plaintiff and aggrieved employees were paid overtime wages. Specifically, whenever overtime wages are paid to Plaintiff and aggrieved employees, Defendants issue wage statements that do not itemize and show (i) the overtime rate as 1.5 times the regular rate of pay or (ii) the total hours worked. Rather than show all applicable hourly rates in effect during the pay period, the overtime rates appear to be one-half of the hourly rate of pay. Not only failing to itemize the accurate total hours worked during the pay period, the hours shown on the wage statements also do not appear to add up to equal the total hours worked.

29. As a matter of policy and practice, Defendants also failed to provide accurate itemized wage statements to Plaintiff and aggrieved employees. Defendants issue wage statements to Plaintiff and aggrieved employees that do not itemize and show the name of the legal entity that is the employer. Instead, "Apple American Group LLC"—an entity which is not among the corporations, limited liability companies, and limited partnerships of record with the California Secretary of State—is shown on wage statements. Defendants thus violate Sections 226.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699, and for costs and attorneys' fees;

2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699, Code of Civil Procedure section 1021.5, and any other applicable laws; and

3. For such other and further relief that the Court may deem just and proper.

DATED: January 29, 2020

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of
7 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
8 1250, Los Angeles, California 90071.

9 On January 29, 2021, I served the following document(s) described as: **FIRST**
10 **AMENDED REPRESENTATIVE ACTION COMPLAINT UNDER THE LABOR CODE**
11 **PRIVATE ATTORNEYS GENERAL ACT OF 2004** on the interested parties in this action as
12 follows:

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28 *Attorney for Plaintiff Paul Gullett*
(Via E-Mail Only)

29 X BY MAIL: by placing _____ the original or X a true and correct
30 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
31 attached mailing list. I am readily familiar with the firm's practice for collection and processing
32 of correspondence and other materials for mailing with the United States Postal Service. On this
33 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
34 collection and mailing on this date at the address above following our office's ordinary business
35 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
36 in the ordinary course of business.

37 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
38 of the above-described document(s) to the party(ies) listed above or on the attached mailing list
39 from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)

1 indicated above or on the attached mailing list. I certify that said electronic transmission was
2 completed and that all pages were received by the party(ies) identified herein or on the attached
mailing list.

3 I declare under penalty of perjury under the laws of the State of California that the
4 above is true and correct. Executed on January 29, 2021, at Los Angeles, California.

5 
6 Erika Mejia