

ELECTRONICALLY FILED

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County of Placer

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF PLACER

PAUL GULLETT, as an individual and on
behalf of all others similarly situated, and 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

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATIONS OF:**

- (1) LAB. CODE § 226.7;
- (2) LAB. CODE §§ 226.7, 512;
- (3) LAB. CODE § 226;
- (4) BUS. & PROF. CODE §§ 17200 *ET SEQ.*;
- AND
- (5) LAB. CODE §§ 2698 *ET SEQ.*

DEMAND OVER \$25,000.00

On behalf of himself and other similarly situated current and former employees of Defendants, and as a proxy for the State of California, Plaintiff, Paul Gullett, submits this Class and Representative Action Complaint against Defendant, Apple American Group LLC, and Does 1 through 50 (collectively, “Defendants”).

INTRODUCTION

1. This class and representative action challenges systemic employment practices resulting in violations of the California Labor Code against individuals who worked for Defendants. The Complaint seeks penalties, damages, and other relief for Defendants’ violations of Labor Code sections 201-204, 226(a), 226.7, and 512.¹

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. Defendants thus violate Section 226.7 and the applicable IWC Wage Order.

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

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

1 routinely failed to pay Plaintiff and other non-exempt employees the requisite meal period premium
2 pay of an additional hour of wages. Defendants thus violate Sections 226.7 and 512 and the
3 applicable IWC Wage Order.

4 5. Defendants also routinely failed to provide accurate itemized wage statements to
5 Plaintiff and other employees. First, as a result of the above practices, Defendants failed to furnish
6 Plaintiff and other non-exempt employees with wage statements that accurately showed the hours
7 worked, premium pay earned for missed rest periods and meal periods, gross wages earned, and net
8 wages earned. Second, whenever overtime wages are paid to Plaintiff and other non-exempt
9 employees, Defendants issue wage statements that fail to accurately itemize total hours worked.
10 Moreover, when the hours shown on the wage statements are added up, the sum also does not
11 equal the total hours worked. Third, whenever overtime wages are paid to Plaintiff and other
12 non-exempt employees, Defendants issue wage statements that do not itemize and show the
13 overtime rate as 1.5 times the regular rate of pay. Rather than show all applicable hourly rates in
14 effect during the pay period, the overtime rates appear to be one-half of the hourly rate of pay.
15 Fourth, Defendants issue wage statements to Plaintiff and all other employees that do not itemize
16 and show the name of the legal entity that is the employer. Instead, “Apple American Group
17 LLC”—an entity which is not among the corporations, limited liability companies, and limited
18 partnerships of record with the California Secretary of State—is shown on wage statements.
19 Defendants thus violate Section 226(a).

20 6. Plaintiff is informed and believes that Defendants have engaged in, among other
21 things, a system of willful violations of the Labor Code by creating and maintaining policies,
22 practices, and customs that knowingly deny its employees the above stated rights and benefits.

23 7. The policies, practices, and customs of Defendants resulted in unjust enrichment
24 of Defendants and an unfair business advantage over businesses that routinely adhere to the
25 strictures of the Labor Code.

26 **JURISDICTION AND VENUE**

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

Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the “UCL”).

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 and the UCL.

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 and the UCL.

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.

CLASS ACTION ALLEGATIONS

16. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of the following classes: (i) all current and former non-exempt employees of Defendants in the State of California who worked at least 3.5 hours in a work shift since April 22, 2016 (the “Rest Break Class”), (ii) all current and former non-exempt employees of Defendants in the State of California who worked more than 5.0 hours in a work shift since April 22, 2016 (the “Meal Break Class”), (iii) all current and former employees of Defendants in the State of California since April 22, 2019 (the “Wage Statement Class”), and (iv) all current and former employees of Defendants in the State of California who were paid overtime wages at any time since April 22, 2019 (the “Wage Statement Sub-Class”). The Rest Break Class, Meal Break Class, and Wage Statement Class and Sub-Class are collectively referred to as the “Class.”

17. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is informed and believes that Defendants violated Sections 201-204, 226(a), 226.7, and 512 against Plaintiff and other 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.

18. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

19. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of (i) routinely failing to authorize and permit duty-free rest periods, (ii) routinely failing to provide duty-free meal periods, (iii) routinely failing to pay all premium wages for such missed rest periods and meal periods, and (iv) routinely failing to provide accurate itemized wage statements..

20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the Class suffered. As with other members of the Class, 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 member of the Class and has suffered the alleged violations of the Labor Code.

21. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power.

22. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate

1 procedure to redress the wrongs alleged herein. If each employee were required to file an
2 individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
3 advantage since they would be able to exploit and overwhelm the limited resources of each
4 individual plaintiff with their vastly superior financial and legal resources. Requiring each
5 member of the Class to pursue an individual remedy would also discourage the assertion of
6 lawful claims by employees who would be disinclined to file an action against their former or
7 current employer for real and justifiable fear of retaliation and permanent damage to their careers
8 at their current or subsequent employment.

9 23. The prosecution of separate actions by individual members of the Class, even if
10 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
11 to individual members of the Class that would establish potentially incompatible standards of
12 conduct for Defendants, or (b) adjudications with respect to individual members of the Class that
13 would, as a practical matter, be dispositive of, or substantially impair or impede the ability to
14 protect, the interests of other members of the Class not parties to the adjudications. Further, the
15 claims of the individual members of the Class are not sufficiently large to warrant vigorous
16 individual prosecution considering the concomitant costs and expenses.

17 24. Defendants' pattern, practice, and uniform administration of corporate policy in
18 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern
19 will establish the rights of Plaintiff and the Class under Sections 203, 210, 218, 218.5, 226,
20 226.7, and 512, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section
21 1021.5 to recover damages and restitution, including unpaid wages and premium wages and
22 interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

23 25. This action is brought for the benefit of the Class, which is commonly entitled to a
24 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The
25 Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.
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28

FIRST CAUSE OF ACTION

Violation of Labor Code § 226.7

(By Plaintiff and the Rest Break Class Against All Defendants)

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

27. Because Plaintiff and the Rest Break Class were 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.”

28. As a matter of policy and practice, Defendants fail to permit off-duty rest periods to Plaintiff and the Rest Break Class. 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 the Rest Break Class. Specifically, because there was no one able to relieve Plaintiff and the Rest Break Class during their shifts of at least 3.5 hours, Plaintiff and the Rest Break Class were routinely denied duty-free rest periods and instead were required to continue working. Plaintiff and the Rest Break Class were required to continue working during rest periods. Plaintiff and the Rest Break Class, however, were not paid the requisite rest period premium pay. Defendants thus violate Section 226.7 and the applicable IWC Wage Order. As such, Plaintiff and the Rest Break Class are owed rest period premium pay.

29. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Rest Break Class to recover unpaid rest period premium pay, including interest thereon, attorneys’ fees, and costs of suit.

30. Moreover, 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.

31. Based on Defendants' failure to pay rest period premium pay to Plaintiff and the Rest Break Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Rest Break Class 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 violated Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

32. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Rest Break Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Violation of Labor Code §§ 226.7, 512

(By Plaintiff and the Meal Break Class Against All Defendants)

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

34. Because Plaintiff and the Meal Break Class were 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."

35. As a matter of policy and practice on shifts exceeding five hours of work, Defendants fail to provide Plaintiffs and the Meal Break Class 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 the Meal Break Class. As with rest periods, Plaintiff and the Meal Break Class were routinely denied duty-free meal periods and instead were required to continue working. Plaintiff and the Meal Break Class, however, 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. As such, Plaintiff and the Meal Break Class are owed meal period premium pay for meal periods Defendants failed to provide and are owed unpaid wages for unpaid meal periods during which Plaintiff and the Meal Break Class remained on duty.

36. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Meal Break Class to recover unpaid meal period premium pay and unpaid wages for on-duty hours worked, including interest thereon, attorneys' fees, and costs of suit.

37. Based on Defendants' failure to pay meal period premium pay to Plaintiff and the Meal Break Class and as a matter of policy and practice, Defendants failed to timely pay Plaintiff and the Meal Break Class 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 violated Sections 201-204 by not timely paying all due wages and not timely paying all due wages upon the separation of employment.

38. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Meal Break Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

1 **THIRD CAUSE OF ACTION**

2 **Violation of Labor Code § 226**

3 **(By Plaintiff and the Class Against All Defendants)**

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

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

10 41. As a matter of policy and practice, Defendants failed to provide

11 42. As a matter of policy and practice, Defendants failed to provide accurate itemized
12 wage statements to Plaintiff, the Rest Break Class, and the Meal Break Class. Specifically,
13 because of Defendants' rest period and meal period violations, Defendants failed to furnish
14 Plaintiff and the Class with wage statements that accurately showed the hours worked, premium pay
15 earned for missed rest periods and meal periods, gross wages earned, and net wages earned.

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

24 44. As a matter of policy and practice, Defendants also failed to provide accurate
25 itemized wage statements to Plaintiff and the Wage Statement Class. Defendants issue wage
26 statements to Plaintiff and all other employees that do not itemize and show the name of the legal
27 entity that is the employer. Instead, "Apple American Group LLC"—an entity which is not
28

among the corporations, limited liability companies, and limited partnerships of record with the California Secretary of State—is shown on wage statements.

45. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Violation of Business and Professions Code §§ 17200 *Et Seq.*

(By Plaintiff and the Class Against All Defendants)

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

47. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failure to pay all premium wages for failures to authorize and permit duty-free rest periods or provide duty-free meal periods.

48. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

49. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Class to full restitution of all monies withheld, acquired, or converted by Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

Violation of Labor Code §§ 2698 *Et Seq.*

(By Plaintiff and Aggrieved Employees Against All Defendants)

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

51. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of

California. In this capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226(a), 226.7, and 512 committed since April 22, 2019, against all aggrieved employees. Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

52. As stated herein, Defendants fail to authorize and permit duty-free rest periods, provide duty-free meal periods, pay or timely pay all premium wages for such missed rest periods and meal periods, and provide accurate itemized wage statements

53. 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.

54. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable penalties for Defendants' violations of Sections 201-204, 226(a), 226.7, and 512 against all aggrieved employees for the period described above.

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. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid rest period premium pay and interest thereon, and penalties pursuant to Sections 203, 210, 218, and 226.7, and for costs and attorneys' fees
5. Upon the Second Cause of Action for damages, including unpaid meal period premium pay, unpaid wages, and interest thereon, and penalties pursuant to Sections 203, 210, 218, 218.5, 226.7, and 512, and for costs and attorneys' fees

