

From: Sarah King-Cash

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 2 of 15

03/24/2021 4:10 PM

FILED BY FAX

ALAMEDA COUNTY

March 25, 2021

CLERK OF
THE SUPERIOR COURT
By Xian-xii Bowie, Deputy

CASE NUMBER:

RG21093104

1 Carolyn H. Cottrell (SBN 166977)
2 Kyle G. Bates (SBN 299114)
3 SCHNEIDER WALLACE
4 COTTRELL KONECKY LLP
5 2000 Powell Street, Suite 1400
6 Emeryville, California 94608
7 Tel: (415) 421-7100; Fax: (415) 421-7105
8 ccottrell@schneiderwallace.com
9 kbates@schneiderwallace.com

10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*

12 **SUPERIOR COURT OF CALIFORNIA**
13 **COUNTY OF ALAMEDA**

14 LUCI GILLESPIE, on behalf of the State of
15 California and Aggrieved Employees,

16 Plaintiffs,

17 vs.

18 FLAX HOLDINGS LLC, d/b/a RIVER VALLEY
19 CARE CENTER

20 Defendant.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

21 **COMPLAINT**

22 *Gillespie v. Flax Holding, et al., Case No.:*

1 Plaintiff Luci Gillespie (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”) enforcement
5 action behalf of the State of California to collect statutory penalties as a result of defendant Flax
6 Holdings LLC’s - *doing business as* River Valley Care Center - (“Defendant”) systematic violations
7 of California labor law with respect to Defendant’s current and former non-exempt hourly workers
8 in the State of California (“Aggrieved Employees”). Defendant maintains a longstanding policy and
9 practice of failing to properly compensate non-exempt hourly employees for missed rest periods and
10 non-compliant meal breaks. These policies deny Plaintiff and Aggrieved Employees rest periods that
11 comply with California law.

12 2. This PAGA action against Defendant challenges its policies and practices of (1) failing
13 to authorize and permit Plaintiff and Aggrieved Employees to take compliant meal breaks which
14 they are entitled by law; (2) failing to authorize and permit Plaintiff and Aggrieved Employees to
15 take rest breaks which they are entitled by law, (3) failing to provide Plaintiff and Aggrieved
16 Employees accurate, itemized wage statements, and (4) and failing to timely pay Plaintiff and
17 Aggrieved Employees full wages upon termination or resignation.

18 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
19 employees who have worked for Defendant as Nurses, Certified Nursing Assistants, Caretakers,
20 Dietary Aides, and other non-managerial service workers paid on an hourly basis. Defendant owns
21 and operates an affiliated family of independently licensed and operated skilled nursing providers by
22 providing an array of administrative and consulting support services. Defendant employs non-
23 managerial workers in the State of California and uniformly classifies them as non-exempt from
24 overtime compensation under California law. On information and belief, Defendant employs over
25 200 workers in the State of California.

4. Plaintiff worked as a Nursing Assistant at River Valley Care Center in Live Oak, California from approximately April 2020 to June 2020. Ms. Gillespie's hourly rate of pay was \$13.00 per hour. While her schedule varied, Ms. Gillespie typically worked 8 hours per shift, and between 2 and 5 days per week. Ms. Gillespie worked approximately 16 to 40 hours per week.

5. Plaintiff files this action to recover all penalties, and other damages on behalf of himself and Aggrieved Employees. Plaintiff seeks to remedy the sweeping practices Defendant has integrated across their facilities throughout California that have deprived Plaintiff and Aggrieved Employees of their lawfully earned wages and breaks.

PARTIES

6. Plaintiff Luci Gillespie is an individual over the age of eighteen, and at all times mentioned in this Complaint was a resident of the State of California. Plaintiff was employed by Defendant from approximately April 2020 until June 2020. Plaintiff worked for Defendant as a Nursing Assistant at River Valley Care Center in Live Oak, California.

7. Defendant Flax Holdings LLC is a limited liability company located in Live Oak, California, and is registered to do business in California. Defendant does business in the State of California, including but not limited to its reliance on California's labor market to secure the services of hourly workers. Defendant may be served with process by serving its registered agent, Jennifer M. Sternshein, at 5316 E Chapman Ave, Orange, California, 92869.

8. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-exempt workers as Nurses, Nurse's Assistants, Dietary Aides, and other non-managerial positions throughout California including Alameda County. Defendant employs Plaintiff and the Aggrieved Employees.

9. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the operations of its agents, managers, and employees throughout all its facilities in California.

10. At all relevant times, Defendant has done business under the laws of California, and has employed Aggrieved Employees in this judicial district. Defendant is a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an “employer” as that term

1 is used in the Labor Code, and IWC Wage Orders.

2 **JURISDICTION AND VENUE**

3 11. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). Defendant
4 conducts business, has jobsites, and employs Aggrieved Employees in this County, as a result, the
5 causes of action asserted arose in whole or in part in this County.

6 12. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA.
7 The Court also has jurisdiction over Defendant because it is a limited liability company authorized to
8 do business in the State of California, and because Defendant in fact does do business and employ
9 workers in the State of California.

10 **FACTUAL ALLEGATIONS**

11 13. Defendant operates skilled nursing facilities throughout the United States and
12 California, including Alameda County California. Defendant employs over two hundred of hourly
13 non-exempt workers across these facilities.

14 14. Plaintiff worked as a non-exempt Nursing Assistant at the River Valley Care Center, a
15 skilled nursing facility owned and operated by Defendant from approximately April 2020 to June
16 2020. Plaintiff earned \$13.00 per hour for approximately 16 to 40 hours of work per week. Her duties
17 included taking patient vital signs, feeding, bathing, and dressing patients, serving meals, keeping
18 rooms clean, setting up medical equipment, answering calls for help, and observing changes in a
19 patient's condition or behavior.

20 15. Defendant employs non-managerial employees in the State of California and uniformly
21 classifies them as non-exempt from overtime compensation under the California law.

22 16. Non-exempt, hourly workers employed by Defendant have a variety of responsibilities.
23 Some employees clean patient rooms, communicate with doctors, administer medicine, record
24 medical history and symptoms, and perform diagnostic tests.

25 17. Pursuant to a uniform, companywide policy and practice, Defendant requires Plaintiff
26 and Aggrieved Employees to remain on duty throughout their scheduled shifts, including during rest
27

1 break periods. Specifically, Plaintiff and Aggrieved Employees are routinely denied rest breaks
2 because Defendant does not authorize permit, and/or make available timely rest breaks periods.
3 Additionally, Plaintiff and Aggrieved Employees are too busy with work during the day to have time
4 to take bona fide rest breaks.

5 18. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
6 Employees premium pay for missed rest periods.

7 19. Plaintiff is informed, believes, and thereon alleges that the same rest break policies are
8 used across all Defendant's facilities throughout California.

9 20. Defendant also does not permit Plaintiff and Aggrieved Employees to take compliant
10 meal break periods. Specifically, Plaintiff and Aggrieved Employees are routinely denied timely
11 meal breaks because Defendant does not authorize permit, and/or make available timely meal break
12 periods. Additionally, Plaintiff and Aggrieved Employees are too busy with work during the day to
13 have time to take bona fide meal breaks before the fifth hour of work.

14 21. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
15 Employees with premium pay for missed or untimely meal breaks.

16 22. Plaintiff is informed, believes, and thereon alleges that the same meal break policies are
17 used across all Defendant's facilities.

18 23. Defendant's failure to compensate employees for missed rest and meal breaks also
19 results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage
20 statements as required by California law. The wage statements are inaccurate because they do not
21 include premium pay for missed or untimely meal breaks.

22 24. Further, Defendant does not provide Aggrieved Employees, including Plaintiff, whose
23 employment has ended, with full payment of all wages owed at the end of their employment. As these
24 workers are owed premium pay when their employment ends, and these amounts remain unpaid under
25 Defendant's policies and practices, Defendant fails to pay all wages due upon termination. As a
26 consequence, Defendant is subject to waiting time penalties.
27

1 25. Defendant has employed several hundreds of employees during the four-year period
2 prior to the filing of this Complaint.

3 26. Defendant's method of paying Plaintiff and Aggrieved Employees was willful, and was
4 not based on a good faith and reasonable belief that their conduct complied with California law.

5 27. Defendant's conduct was willful, carried out in bad faith, and caused significant
6 damages to non-exempt hourly employees in an amount to be determined at trial.

7
8 **FIRST CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(a)

9 28. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
10 herein.

11 29. Labor Code § 2699(a) provides:

12 Notwithstanding any other provision of law, any provision of this code that
13 provides for a civil penalty to be assessed and collected by the Labor and
14 Workforce Development Agency or any of its departments, divisions
15 commissions, boards, agencies or employees, for a violation of this code,
16 may, as an alternative, be recovered through a civil action brought by an
17 aggrieved employee on behalf of himself or herself and other current or
18 former employees.

19 30. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages earned
20 and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after
21 he or she quits, at the latest.

22 31. Labor Code § 203 provides, in relevant part:

23 If an employer willfully fails to pay, without abatement or reduction, in
24 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
25 employee who is discharged or who quits, the wages of the employee shall
26 continue as a penalty from the due date thereof at the same rate until paid
27 or until an action therefore is commenced; but the wages shall not continue
28 for more than 30 days.

29 32. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in
30 an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

31 33. Labor Code § 225.5 provides that every person who unlawfully withholds wages due

any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

34. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

35. Defendant Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

36. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees

1 in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to
2 Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

3 37. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
4 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
5 statement in compliance with Labor Code § 226(a).

6 38. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
7 violation of Labor Code § 510, alleged above, as well as any provision regulating hours and days
8 of work in any order of the IWC.

9 39. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
10 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim on
11 December 3, 2020. Eighty-two calendar days have passed without notice from the LWDA. Plaintiff
12 satisfied the administrative prerequisites to commence this civil action in compliance with §
13 2699.3(a).

14 40. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
15 Employees, and herself as set forth in Labor Code § 2699(g)(i).

16 41. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
17 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
18 and costs as set forth below.

19 42. Wherefore, Plaintiff requests relief as hereinafter provided.

20 **SECOND CAUSE OF ACTION**
21 **Penalties Pursuant to Labor Code § 2699(f)**

22 43. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
23 herein.

24 44. Labor Code § 2699(f) provides:

25 For all provisions of this code except those for which a civil penalty is
26 specifically provided, there is established a civil penalty for a violation of
27 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial

violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

45. Labor Code § 200 defines wages as “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation.”

46. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any employment are due and payable twice during each calendar month....”

47. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

48. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

49. Labor Code § 2802 requires employers to indemnify employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

50. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant’s violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of his intention to file this claim. Forty-eight calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

52. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

53. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for

1 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
2 award of attorneys' fees and costs as set forth below.

3 54. Wherefore, Plaintiff requests relief as hereinafter provided.

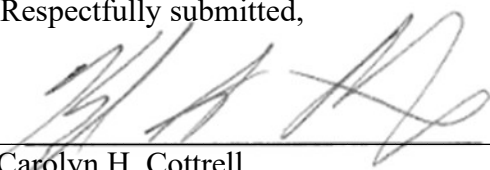
4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for relief as follows:

- 6 1. For the Court to declare, adjudge, and decree that Defendant has violated the
7 California Labor Code as alleged herein;
- 8 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
9 civil penalties provided under the PAGA;
- 10 3. For an award of reasonable attorneys' fees as provided by the California Labor
11 Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other
12 applicable law;
- 13 4. For interest on penalties awarded as provided by applicable law;
- 14 5. For all costs of suit; and
- 15 6. For such other and further relief as this Court deems just and proper.

16
17 Respectfully submitted,

18 Date: March 24, 2021

19 
20 Carolyn H. Cottrell
21 Kyle G. Bates
22 SCHNEIDER WALLACE
23 COTTRELL KONECKY LLP

24 *Attorneys for Plaintiff, on behalf of the State of*
25 *California and Aggrieved Employees*

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Date: March 24, 2021

Respectfully submitted,



Carolyn H. Cottrell

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*