

From: Silvia Carter

Fax: 18553946767

To: Alameda Superior Court - F.Fax: (510) 267-1546

Page: 3 of 16

06/02/2021 2:38 PM

FILED BY FAX

ALAMEDA COUNTY

June 02, 2021

CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy

CASE NUMBER:

RG21100764

1 Carolyn H. Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
2 Philippe M. Gaudard (SBN 331744)
SCHNEIDER WALLACE COTTRELL KONECKY LLP
3 2000 Powell Street, Suite 1400
Emeryville, California 94608
4 Tel: (415) 421-7100
Fax: (415) 421-7105
5 ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
6 pgaudard@schneiderwallace.com

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

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

12 KHAYO SISHI, on behalf of the State of
13 California;

14 *Plaintiff,*

15 v.

16 ESKATON PROPERTIES INCORPORATED,
17 and DOES 1-100, inclusive;

18 *Defendants.*

Case No.: _____

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

DEMAND FOR JURY TRIAL

28
COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(a) AND (f) OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL

Khayo Sishi v. Eskaton Properties Incorporated

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant Eskaton Properties
5 Incorporated (“Eskaton” or “Defendant”), on behalf of the State of California to collect statutory
6 penalties as a result of Defendant’s systematic violations of California labor law with respect to
7 Defendant’s non-exempt, hourly workers employed in California (“Aggrieved Employees”).

8 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
9 employed by Defendant as residential care associates & assistants, residential medication associates
10 & assistants, home health aides, housekeepers, any workers involved with patient care and other non-
11 managerial positions throughout California.

12 3. Upon information and belief, Defendant Eskaton Properties Incorporated is part of the
13 nursing homes & long-term care facilities industry. Eskaton provides memory care, assisted living and
14 skill nursing services. Eskaton has over 1,400 employees and operates twelve facilities across
15 California. Eskaton conducts extensive operations in California.

16 4. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
17 and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
18 (2) failing to make available, authorize and/or permit Plaintiff and Aggrieved Employees to take
19 timely and compliant meal periods to which they are entitled by law and failing to make premium
20 payments for those non-compliant meal periods; (3) failing to make available, authorize and/or permit
21 Plaintiff and Aggrieved Employees to take timely and compliant rest periods and failing to make
22 premium payments for those non-compliant rest periods.

23 5. Defendant maintains a longstanding policy and/or practice of failing to properly
24 compensate Plaintiff and Aggrieved Employees for work related tasks performed while “off-the-
25 clock,” including, but not limited to, attending a mandatory monthly training lasting several hours for
26 which Plaintiff and Aggrieved Employees do not receive compensation. As a matter of policy,
27 Defendant systematically fails to record such trainings as hours worked.

28 ///

6. Plaintiff and Aggrieved Employees routinely perform off-the-clock work before, after and/or during paid shifts, when those unrecorded and uncompensated trainings occur.

7. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been denied proper payment for all hours worked, *i.e.*, for time spent off-the-clock. Defendant fails to pay for any of this time worked off-the-clock in violation of the California Labor Code.

8. Defendant also regularly fails to provide Plaintiff and Aggrieved Employees with timely, legally compliant meal and rest breaks, yet Defendant does not provide Plaintiff and Aggrieved Employees with premium pay for missed, late and/or interrupted meal and rest breaks.

9. Plaintiff and Aggrieved Employees are often denied compliant meal and rest breaks because (i) Defendant does not authorize, permit, and/or make available timely meal and rest breaks for Plaintiff and Aggrieved Employees; and (ii) Plaintiff and Aggrieved Employees are often too busy with work during the day to have time to take bona fide meal and rest breaks.

10. Plaintiff and Aggrieved Employees regularly work through their rest breaks. When Plaintiff and Aggrieved Employees attempt a rest break, such is often untimely, *i.e.*, does not occur before the fourth hour of work and/or before the eighth hour of work, and/or is interrupted.

11. Similarly, when Plaintiff and Aggrieved Employees attempt a meal break, such is often untimely, *i.e.*, does not occur before the fifth hour of work, and/or is interrupted.

12. Further, when Plaintiff and Aggrieved Employees work longer shifts lasting ten hours or more, Plaintiff and Aggrieved Employees do not receive a second meal break before the tenth hour of work.

13. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

14. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers employed by Defendant as Residential Care Associates & Assistants, Residential Medication Associates & Assistants, Home Health Aides, Housekeepers, any workers involved with patient care and other non-managerial positions throughout California. Defendant employs and/or employed

1 Plaintiff and Aggrieved Employees.

2 15. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
3 Complaint was a resident of the State of California.

4 16. Plaintiff is employed as a non-exempt residential care assistant by Defendant since
5 approximately March 2019 and is compensated at an hourly rate of \$19.00. Plaintiff works at a
6 Defendant's location in Burlingame, California.

7 17. Defendant Eskaton Properties Incorporated is a domestic corporation with its principal
8 place of business located in Carmichael, California. Eskaton does business in the State of California
9 and employs workers, including Plaintiff and Aggrieved Employees, in California. Eskaton may be
10 served with process by serving its registered agent, Todd Stanley Murch, 5105 Manzanita Avenue,
11 Carmichael, California 95608.

12 18. Plaintiff is informed, believes, and thereon alleges that Defendant operates facility
13 locations throughout California, including in Alameda County. Plaintiff is informed, believes, and
14 thereon alleges that Defendant employs Aggrieved Employees, throughout California, including in
15 Alameda County.

16 19. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
18 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously
19 named Defendants is responsible in some manner for the occurrences and violations as herein alleged.
20 Plaintiff will amend this Complaint to show their true names and capacities when they have been
21 ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

22 20. At all relevant times, Defendant has done business under the laws of California, have
23 had places of business in California, including in this judicial district, and have employed Aggrieved
24 Employees in this judicial district. Defendant is a "person" as defined in Labor Code § 18 and
25 Business and Professions Code § 17201. Defendant is also an "employer" as that term is used in the
26 Labor Code and IWC Wage Orders.

27 ///

28 ///

1 and Aggrieved Employees for all hours worked. Plaintiff and Aggrieved Employees are not permitted
2 to log the actual number of hours they work each week and therefore are not compensated for all time
3 worked and spent under the control and supervision of Defendant, *i.e.*, time spent for the benefit of
4 Defendant.

5 30. For instance, Defendant requires Plaintiff and Aggrieved Employees to attend a
6 mandatory monthly training lasting several hours for which Plaintiff and Aggrieved Employees do
7 receive compensation. As a matter of policy, Defendant systematically fails to record such trainings
8 as hours worked. This time goes unrecorded and uncompensated, even though it should be
9 compensated.

10 31. Plaintiff and Aggrieved Employees are also often not provided with timely, compliant
11 meal breaks. For instance, Plaintiff and Aggrieved Employees are often too busy with work during
12 the day to take a bona fide meal break by the end of the fifth hour of work. Plaintiff and Aggrieved
13 Employees are therefore often required to take untimely meal break past the fifth hour of work.

14 32. Additionally, when Plaintiff and Aggrieved Employees are required to work longer
15 shifts lasting ten hours or more, Plaintiff and Aggrieved Employees are systematically denied a second
16 meal break to which they are entitled by the end of the tenth hour of work.

17 33. Further, Defendant regularly requires Plaintiff and Aggrieved Employees to remain on
18 duty during rest periods. Plaintiff and Aggrieved Employees are not provided with rest breaks during
19 which they are relieved of work-related duties. Plaintiff and Aggrieved Employees are often too busy
20 with work during the day to have time to take bona fide rest breaks. In the rare instance when Plaintiff
21 and Aggrieved Employees attempt a rest break, such is routinely untimely and/or interrupted.

22 34. Despite these recurring violations, Defendant does not pay premiums to Plaintiff and
23 Aggrieved Employees for missed, interrupted and/or untimely, *i.e.*, non-compliant, rest and meal
24 periods.

25 35. As a result of these practices, Defendant denies Plaintiff and Aggrieved Employees
26 compensation for all hours worked and premium payments resulting from missed, untimely and/or
27 uninterrupted meal and rest periods.

28 ///

36. Plaintiff is informed, believes, and thereon alleges that Defendant's same compensation protocol and meal and rest periods practices are used across all Defendant's facilities throughout California.

37. Plaintiff is informed, believes, and thereon alleges that Defendant is well aware that its policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time worked and that Plaintiff and Aggrieved Employees do not receive legally compliant meal and rest periods. Thus, Defendant's denial of wages and compliant meal and rest periods to Plaintiff and Aggrieved Employees is and/or was deliberate and willful.

38. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct has been widespread, repeated, and consistent as to Aggrieved Employees and throughout Defendant's operations in California.

39. Defendant's conduct is and/or was willful, carried out in bad faith, and triggers significant civil penalties in an amount to be determined at trial.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of the State of California and Aggrieved Employees)

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

41. Labor Code § 2699(a) provides:

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

42. 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.

43. Plaintiff also seeks civil penalties pursuant to Labor Code §§ 225.5, 226.3, and 256.

44. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-five 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).

45. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699.

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

47. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On Behalf of the State of California and Aggrieved Employees)

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

49. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of 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.

50. 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.”

51. 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....”

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

4 53. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-2001 require
5 Defendant to authorize, permit, and/or make available timely and compliant meal and rest periods to
6 its employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-2001 prohibit
7 employers from employing an employee for more than five hours without a meal period of not less
8 than thirty minutes, and from employing an employee more than ten hours per day without providing
9 the employee with a second meal period of not less than thirty minutes. Section 226.7 and IWC Wage
10 Orders 4-2001 and 7-2001 also require employers to authorize and permit employees to take ten
11 minutes of net rest time per four hours, or major fraction thereof of work, and to pay employees their
12 full wages during those rest periods. Unless the employee is relieved of all duty during the thirty-
13 minute meal period and ten-minute rest period, the employee is considered “on duty” and the meal
14 or rest period is counted as time worked under the applicable wage orders.

15 54. To the extent than any violation alleged herein does not carry penalties under Labor
16 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
17 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
18 by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f) for Plaintiff
19 and Aggrieved Employees for violations of Labor Code provisions including, but not limited, to,
20 Labor Code 204, 226.7, 512, IWC Wage Orders 4-2001 and 7-2001, and any other violation alleged
21 herein does not carry penalties under Labor Code § 2699(a).

22 55. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
23 notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
24 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
25 compliance with § 2699.3(a).

26 56. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
27 Employees, and herself as set forth in Labor Code § 2699(g)(1).

28 ///

57. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

58. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest on penalties awarded as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: June 2, 2021

Carolyn H. Cottrell
Ori Edelstein
Philippe M. Gaudard
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

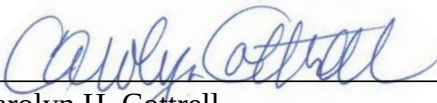
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: June 2, 2021

6 
7 _____
8 Carolyn H. Cottrell
9 Ori Edelstein
10 Philippe M. Gaudard
11 SCHNEIDER WALLACE
12 COTTRELL KONECKY LLP

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