

From: Tyler Smith

Fax: 14154217105

To: Alameda Superior Court (FaFax: (510) 267-1546

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SCHNEIDER WALLACE COTTRELL KONECKY LLP

Carolyn Hunt Cottrell (SBN 166977)

ccottrell@schneiderwallace.com

Ori Edelstein (SBN 268145)

oedelstein@schneiderwallace.com

Andrew Weaver (SBN 318935)

aweaver@schneiderwallace.com

2000 Powell Street, Suite 1400

Emeryville, California 94608

Tel: (415) 421-7100

Fax: (415) 421-7105

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

CASE NUMBER:

RG21100855**COHELAN KHOURY & SINGER**

Michael D. Singer (SBN 115301)

msinger@ckslaw.com

Kristina De La Rosa (SBN 279821)

kdelarosa@ckslaw.com

Rosemary C. Khoury (SBN 331307)

rkhoury@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001

Facsimile: (619) 595-3000

Additional Counsel on Following Page

Attorneys for Plaintiffs Donovan Foxx, Byron Bryant, and Yolanda Carbajal on behalf of themselves, the State of California, and all aggrieved employees

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**DONOVIN FOXX, BYRON BRYANT,
and YOLANDA CARBAJAL, on behalf of
themselves, the State of California and all
aggrieved employees

Plaintiffs,

v.

HEALTHCARE SERVICES GROUP,
INC., a Pennsylvania Corporation; HCSG
WEST LLC, a New Jersey Limited
Liability Company; KOA HOLDINGS,
LLC, a California Limited Liability
Company d/b/a COTTONWOOD
CANYON HEALTHCARE CENTER; and
DOES 1-10, inclusive.

Defendants.

Case No.

REPRESENTATIVE COMPLAINT
FOR PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT (PAGA),
LABOR CODE §§ 2698, ET SEQ.

- 1. PAGA PENALTIES FOR FAILURE TO PAY WAGES**
- 2. PAGA PENALTIES FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
- 3. PAGA PENALTIES FOR FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT AND AT SEPARATION**
- 4. PAGA PENALTIES FOR FAILURE TO MAINTAIN ACCURATE RECORDS**
- 5. PAGA PENALTIES FOR FAILURE TO REIMBURSE EXPENSES**

LEBE LAW, APC
Jonathan M. Lebe (SBN 284605)
jon@lebelaw.com
777 South Alameda Street
Los Angeles, CA 90021
Telephone: (213) 358-7046

1 **NATURE OF CLAIM**

2 1. Plaintiffs DONOVIN FOXX, BYRON BRYANT, and YOLANDA CARBAJAL
3 (“Plaintiffs”) were employed by Defendants in California during the relevant limitations period
4 in housekeeping or similar positions, and they bring this action on behalf of themselves and
5 other aggrieved non-exempt California employees of Defendants HEALTHCARE SERVICES
6 GROUP, INC., HCSG WEST LLC, and KOA HOLDINGS, LLC d/b/a COTTONWOOD
7 CANYON HEALTHCARE CENTER and Does 1-10 (collectively, “Defendants”).

8 2. This action arises from Defendants’ systematic failure to: pay minimum, regular,
9 and overtime wages; provide accurate, itemized wage statements; timely pay wages due during
10 employment and at separation; maintain accurate records; and reimburse expenses.

11 3. Plaintiffs seek civil penalties under the Private Attorneys General Act
12 (“PAGA”) on behalf of the State of California and the Labor and Workforce Development
13 Agency (“LWDA”). Lab. Code §§ 2698, *et seq.* At all times relevant to this action, Defendants
14 engaged in systematic conduct that violated applicable California laws and subjected them to
15 civil penalties for each violation as established by statute or the PAGA.

16 4. Plaintiffs exhausted the PAGA notice requirements and have standing and
17 capacity to sue as representatives of the State of California. Plaintiffs mailed written notice of
18 Defendants’ conduct to the LWDA and to Defendants pursuant to Labor Code section 2699.3
19 on December 28, 2020 (Plaintiffs Foxx and Bryant) and January 29, 2021 (Plaintiff Carbajal).
20 True and correct copies of these notices are attached as Exhibits A and B and are incorporated
21 by reference. Defendants did not provide notice of cure and the LWDA did not provide notice
22 of investigation in the 65 days after either PAGA notice was mailed.

23 **PARTIES**

24 **Plaintiffs**

25 5. Plaintiff DONOVIN FOXX is a resident of Solano County, California who
26 worked for Defendants in a housekeeping position from approximately April 2018 to June
27 2020.

28 6. Plaintiff BYRON BRYANT is a resident of Solano County, California who

1 worked for Defendants in a housekeeping position from approximately January to June 2020.

2 7. Plaintiff YOLANDA CARBAJAL is a resident of San Diego County, California
3 who worked for Defendants in a housekeeping position from approximately January to July
4 2020.

5 **Defendants**

6 8. Defendant HEALTHCARE SERVICES GROUP, INC. is a Pennsylvania
7 Corporation headquartered in Bensalem Township, Pennsylvania. HEALTHCARE SERVICES
8 GROUP, INC. provides food, housekeeping, laundry and linen, and maintenance services to
9 hospitals, nursing homes, rehabilitation centers, and retirement facilities throughout the United
10 States, providing dietary services in more than 1,500 facilities and cleaning services in more
11 than 3,000 facilities.

12 9. Defendant HCSG WEST LLC is a New Jersey Limited Liability Company
13 headquartered in Ewing, New Jersey. HCSG WEST LLC provides housekeeping, laundry, and
14 dietary services at client facilities as a subcontracted service provider on behalf of
15 HEALTHCARE SERVICES GROUP, INC.

16 10. Defendant KOA HOLDINGS, LLC is a California Limited Liability Company
17 headquartered in El Cajon, California, doing business as COTTONWOOD CANYON
18 HEALTHCARE CENTER, that operates a short-term rehabilitation and skilled nursing home.

19 11. Does 1 through 10, inclusive, are persons or entities whose true names and
20 identities are unknown to Plaintiffs, and are sued by fictitious names. Plaintiffs will amend to
21 allege their true names and capacities when known. Plaintiffs are informed and believe each
22 Doe defendant is the agent, representative, or parent or subsidiary entity of the named
23 Defendants, and is responsible in some manner for the events, transactions, and injuries
24 alleged, and harm suffered by Plaintiffs and other aggrieved employees.

25 12. Plaintiffs allege that Defendants acted with direct, substantial, and supervisory
26 control over all aspects of Plaintiffs' employment and that of other aggrieved employees, such
27 that each is a joint employer of all aggrieved employees. Alternatively, all managing agents,
28 officers, and directors, who are unknown at this point, are liable for civil penalties pursuant to

1 Labor Code section 558.1 and applicable Industrial Welfare Commission (“IWC”) Wage
2 Order(s).

3 **JURISDICTION AND VENUE**

4 13. Venue as to each Defendant is proper in this judicial district under Code of Civil
5 Procedure §§ 393 and 395.5. Defendants conduct business and commit the Labor Code
6 violations giving rise to these claims in Alameda County, and each Defendant or DOE is within
7 California for service of process. The unlawful acts alleged have a direct effect on aggrieved
8 employees within California and within Alameda County.

9 14. This Court has jurisdiction over Plaintiffs’ claims because Defendants regularly
10 conduct business in California and are alleged to have violated the law in California; Plaintiffs’
11 claims raise no federal question; and PAGA civil penalty actions are not subject to federal
12 jurisdiction.

13 **GENERAL ALLEGATIONS**

14 15. During the PAGA Period, Defendants have conducted business and employed
15 aggrieved employees in Alameda County, and employed Plaintiffs and other aggrieved
16 employees in the State of California.

17 16. During the PAGA Period, Plaintiffs and other aggrieved employees of
18 Defendants worked under the same policies, practices, and procedures relating to their
19 employment. On information and belief, these policies, practices, and procedures are ongoing.

20 17. During the PAGA Period, Defendants failed to pay Plaintiffs and other
21 aggrieved employees for all time worked or spent under Defendants’ control. Specifically,
22 Defendants required aggrieved employees to undergo COVID-19 health screenings before
23 entering facilities, but did not compensate employees for this time.

24 18. During the PAGA Period, if all time spent working or under Defendants’ control
25 had been accurately recorded, Plaintiffs and other aggrieved employees would have been
26 entitled to overtime compensation in many instances because they worked over eight total daily
27 hours. Defendants thus failed to pay Plaintiffs and other aggrieved employees overtime wages
28 for all overtime hours worked when Defendants required them to work off-the-clock.

1 19. During the PAGA Period, Defendants failed to pay Plaintiff and other aggrieved
2 employees overtime wages at the proper rate by failing to include shift premiums, bonuses, and
3 other incentive payments in calculating Plaintiffs' and aggrieved employees' overtime rates.

4 20. During the PAGA Period, Defendants, by virtue of centralized and uniform pay
5 policies, failed to provide accurate, itemized wage statements to Plaintiffs and aggrieved
6 employees. By not paying for time required to undergo COVID-19 screenings; not paying for
7 time spent working before being allowed to clock in; manipulating time records to underreport
8 time worked; and improperly calculating overtime wages, Defendants failed to provide critical
9 and legally required data on wage statements provided to Plaintiffs and other aggrieved
10 employees. As a result, Defendants failed to list the total hours actually worked, gross and net
11 wages actually earned, the correct overtime rates, all applicable pay rates in effect and the
12 corresponding number of hours worked at each rate, and other accurate wage information.

13 21. During the PAGA Period, as a result of Defendants' failure to pay all wages due
14 to Plaintiffs and other aggrieved employees during employment, Defendants also failed to
15 timely pay all wages due to these employees at separation.

16 22. During the PAGA Period, Defendants failed to maintain accurate and complete
17 records because, for instance, Defendants' records did not show the proper wages earned and
18 proper overtime rates that should have been paid to Plaintiffs and other aggrieved employees.

19 23. During the PAGA Period, Defendants failed to reimburse Plaintiffs' and other
20 aggrieved employees' reasonable and necessary business expenses. For example, Defendants
21 failed to fully reimburse Plaintiffs and other aggrieved employees for Personal Protective
22 Equipment ("PPE"), including but not limited to protective face masks and gloves, and Slip
23 Resistant shoes, which were required for their employment.

24 24. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
25 law, any provision of this code that provides for a civil penalty to be assessed and collected by
26 the Labor and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies, or employees, for a violation of this code, may, as an
28 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of

1 himself or herself and other current or former employees pursuant to the procedures specified
2 in Section 2699.3.”

3 25. Labor Code section 2699(f)(2) provides: “For all provisions of this code except
4 those for which a civil penalty is specifically provided, there is established a civil penalty for a
5 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
6 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
7 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
8 for each aggrieved employee per pay period for each subsequent violation.”

9 **FIRST CAUSE OF ACTION**

10 **PAGA Penalties for Failure to Pay Minimum, Regular, and Overtime Wages**
11 **Labor Code §§ 510, 1194, 1197.1, 1198; IWC Wage Order(s)**
(By Plaintiffs and each Aggrieved Employee Against All Defendants)

12 26. Plaintiffs incorporate the preceding paragraphs of this Complaint.

13 27. “The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of labor for
15 employees. The employment of any employee for longer hours than those fixed by the order or
16 under conditions of labor prohibited by the order is unlawful.” Labor Code § 1198

17 28. By failing to pay at least minimum wages for all hours worked or under
18 Defendants’ control, Defendants violated Labor Code sections 1194 and 1198 and the
19 “Minimum Wages” section of the applicable IWC Wage Order(s).

20 29. By failing to pay correctly calculated overtime wages for hours worked in
21 excess of eight (8) in one day or forty (40) in one week Defendants violated Labor Code
22 sections 510 and 1194, and 1198 and the “Hours and Days of Work” section of the applicable
23 IWC Wage Order(s).

24 30. Any employer or other person acting either individually or as an officer, agent,
25 or employee of another person, who pays or causes to be paid to any employee less than the
26 minimum wage shall be subject to a civil penalty of \$100 for a first intentional violation and
27 \$250 for a subsequent violation, whether intentional or not. Labor Code § 1197.1.

28 31. Defendants failed to pay all overtime earned by Plaintiffs and aggrieved

1 employees by failing to include all remuneration in the regular rate of pay for overtime
2 purposes, including failing to include all shift differentials/premiums, all referral bonuses and
3 all non-discretionary incentive pay in the regular rate of pay for overtime purposes.

4 32. Plaintiffs, as representatives of the general public, seek to recover any and all
5 penalties under Labor Code section 2699(f)(2) and 1197.1 for Defendants' violations of the
6 Labor Code in an amount according to proof, as to those penalties that are otherwise only
7 available in public agency enforcement actions, with 75% of the civil penalties recovered being
8 reimbursed to the LWDA on behalf of the State of California.

9 **SECOND CAUSE OF ACTION**
10 **PAGA Penalties for Failure to Provide Accurate, Itemized Wage Statements**
11 **Labor Code §§ 226, 226.3**
(By Plaintiffs and each Aggrieved Employee Against All Defendants)

12 33. Plaintiffs incorporate the preceding paragraphs of this Complaint.

13 34. All employers must provide employees with accurate, itemized wage statements
14 showing, among other things, gross wages earned, total hours worked, net wages earned, and
15 all applicable hourly rates in effect in a pay period and the corresponding number of hours
16 worked at each rate. Labor Code § 226(a).

17 35. Defendants knowingly failed to comply with these provisions by, among other
18 things, failing to provide accurate, itemized wage statements showing the accurate gross wages
19 earned, total hours worked, net wages earned, and all applicable hourly rates in effect in a pay
20 period and the corresponding number of hours worked at each rate.

21 36. Labor Code section 226.3 provides for civil penalties for violations of Labor
22 Code section 226. The civil penalty is \$250 for the initial violation and \$1,000 for each
23 subsequent violation.

24 37. Plaintiffs, as representatives of the general public, seek to recover any and all
25 penalties under Labor Code sections 2699(f)(2) and 226.3 for Defendants' violations of the
26 Labor Code in an amount according to proof, as to those penalties that are otherwise only
27 available in public agency enforcement actions, with 75% of the civil penalties recovered being
28 reimbursed to the LWDA on behalf of the State of California.

THIRD CAUSE OF ACTION
PAGA Penalties for Failure to Timely Pay Wages Due During Employment and at Separation
Labor Code §§ 201-204, 210, 256
(By Plaintiffs and each Aggrieved Employee Against All Defendants)

38. Plaintiffs incorporate the preceding paragraphs of this Complaint.

39. An employer must pay employees' earned wages twice per month on days designated in advance by the employer. Labor Code § 204.

40. An employer who discharges an employee must pay all compensation due and to that employee immediately upon discharge. Labor Code § 201. An employer must pay all compensation due to an employee who quits within 72 hours. Labor Code § 202.

41. Because Defendants did not timely pay all earned wages during employment, Defendants had a consistent policy of willfully failing to timely pay earned wages to former employees. If an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until paid or until an action is commenced. Labor Code § 203. The penalty cannot exceed 30 days of wages.

42. Labor Code section 210(a) provides: "(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee, and (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

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

44. Plaintiffs, as representatives of the general public, seek to recover any and all penalties under Labor Code sections 2699(f)(2), 210, and 256 for Defendants' violations of the Labor Code in an amount according to proof, as to those penalties that are otherwise only

1 available in public agency enforcement actions, with 75% of the civil penalties recovered being
2 reimbursed to the LWDA on behalf of the State of California.

3 **FOURTH CAUSE OF ACTION**
4 **PAGA Penalties for Failure to Maintain Accurate Records**
5 **Labor Code § 1174, 1174.5, 1198; IWC Wage Order(s)**
6 **(By Plaintiffs and each Aggrieved Employee Against All Defendants)**

7 45. Plaintiffs incorporate the preceding paragraphs of this Complaint.

8 46. Employers must maintain payroll records showing each employee's total daily
9 hours worked and wages paid for at least three years. Labor Code § 1174.

10 47. The "Records" section of the applicable IWC Wage Order(s) require employers
11 to maintain accurate information about each employee's time records, including when the
12 employee begins and ends each work period and meal period and the total daily hours worked.

13 48. "The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of labor for
15 employees. The employment of any employee for longer hours than those fixed by the order or
16 under conditions of labor prohibited by the order is unlawful." Labor Code § 1198

17 49. Because Defendants, among other things, did not record off-the-clock work and
18 time spent under Defendants' control; manipulated time records to underreport time worked
19 and under Defendants' control; and did not accurately calculate overtime rates, Defendants
20 failed to maintain accurate records as to Plaintiffs and other aggrieved employees.

21 50. Labor Code section 1174.5 provides: "Any person employing labor who
22 willfully fails to maintain accurate and complete records required by subdivision (d) of Section
23 1174, shall be subject to a civil penalty of five hundred dollars."

24 51. Plaintiffs, as representatives of the general public, seek to recover any and all
25 penalties under Labor Code sections 2699(f)(2) and 1174.5 for Defendants' violations of the
26 Labor Code in an amount according to proof, as to those penalties that are otherwise only
27 available in public agency enforcement actions, with 75% of the civil penalties recovered being
28 reimbursed to the LWDA on behalf of the State of California.

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FIFTH CAUSE OF ACTION
PAGA Penalties for Failure to Reimburse Expenses
Labor Code § 2802
(By Plaintiffs and each Aggrieved Employee Against All Defendants)

52. Plaintiffs incorporate the preceding paragraphs of this Complaint.

53. By failing to reimburse Plaintiffs' and other aggrieved employees' reasonable and necessary business expenses, including for Personal Protective Equipment (PPE), Defendants willfully violated Labor Code section 2802.

54. Plaintiffs, as representatives of the general public, seek to recover any and all penalties under Labor Code section 2699(f)(2) for Defendants' violations of the Labor Code in an amount according to proof, as to those penalties that are otherwise only available in public agency enforcement actions, with 75% of the civil penalties recovered being reimbursed to the LWDA on behalf of the State of California.

PRAYER FOR RELIEF

Plaintiffs pray for the following relief on behalf of themselves and other aggrieved employees against Defendants:

a. Maintenance of this claim as a Representative Action under the PAGA, and providing Plaintiffs and their counsel with all enforcement capability as if this action had been instituted by the Department of Labor Standards Enforcement ("DLSE");

b. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2) where a statutory civil penalty is not provided, in an amount to be assessed and according to proof;

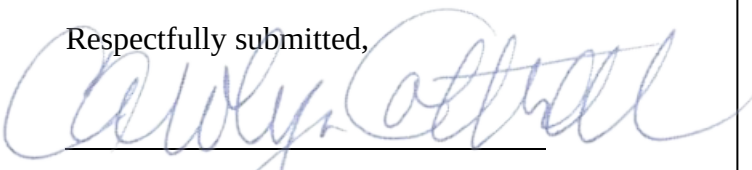
c. For recovery of civil penalties as permitted by Labor Code section 1197.1, for paying or causing to be paid less than minimum wage, in an amount to be assessed and according to proof;

d. For recovery of civil penalties as permitted by Labor Code section 510, for not paying all overtime pay, in an amount to be assessed and according to proof;

e. For recovery of civil penalties as permitted by Labor Code section 226.3, for failing to provide accurate, itemized wage statements, in an amount to be assessed and according to proof;

- 1 f. For recovery of civil penalties as permitted by Labor Code section 256 for
2 failure to timely pay wages upon separation of employment;
- 3 g. For recovery of civil penalties as permitted by Labor Code section 210 for
4 failure to timely pay wages upon separation of employment;
- 5 h. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as
6 to any restitution recovery;
- 7 i. Attorneys' fees and costs of suit, including expert fees and fees pursuant to the
8 PAGA, and/or Code of Civil Procedure section 1021.5 on a public benefit theory; and all other
9 applicable state laws; and
- 10 j. Such other relief as this Court deems necessary, just, equitable, and proper.

11
12 Dated: June 2, 2021

13 Respectfully submitted,
14 

15 SCHNEIDER WALLACE
16 COTTRELL KONECKY LLP
17 Carolyn Hunt Cottrell
18 Ori Edelstein
19 Andrew Weaver

20 COHELAN KHOURY & SINGER
21 LEBE LAW, APC
22 LAW OFFICES OF SAHAG MAJARIAN II
23 Michael D. Singer, Esq.
24 Kristina De La Rosa, Esq.
25 Jonathan M. Lebe

26 Attorneys for Plaintiffs Donovan Foxx, Byron
27 Bryant, and Yolanda Carbajal, on behalf of the
28 State of California and Aggrieved Employees.