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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SANTA CLARA  
12 UNLIMITED JURISDICTION  
13

23CV409937

14 SANDRA SKINNER, on behalf of herself, all  
15 others similarly situated, and the general  
public,

16 *Plaintiff,*

17 v.

18 THEKEY OF CALIFORNIA, LLC, a  
Delaware limited liability company; THEKEY  
19 HOLDINGS, LLC, a Delaware limited  
liability company; HOME CARE  
20 ASSISTANCE, INC., a California  
corporation; HOME CARE ASSISTANCE,  
21 LLC, a Delaware limited liability company;  
and DOES 1 through 50, inclusive,

22 *Defendants.*  
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Case No.

**REPRESENTATIVE ACTION**

**COMPLAINT**

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff SANDRA SKINNER (“Plaintiff”), on behalf of herself, all others similarly  
2 situated, and the general public, complains and alleges as follows:

### 3 INTRODUCTION

4 1. Plaintiff brings this representative action against defendants THEKEY OF  
5 CALIFORNIA, LLC, a Delaware limited liability company; THEKEY HOLDINGS, LLC, a  
6 Delaware limited liability company; HOME CARE ASSISTANCE, INC., a California corporation;  
7 HOME CARE ASSISTANCE, LLC, a Delaware limited liability company; and DOES 1 through  
8 50, inclusive, (collectively referred to as “Defendants”) for alleged violations of the Labor Code.  
9 As set forth below, Plaintiff alleges that Defendants have

- 10 (1) failed to provide Plaintiff and all other similarly situated individuals with meal  
11 periods;
- 12 (2) failed to provide them with rest periods;
- 13 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 14 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular  
15 rate of pay;
- 16 (5) failed to pay them at least minimum wage for all hours worked;
- 17 (6) failed to pay them overtime wages at the correct rate;
- 18 (7) failed to pay them double time wages at the correct rate;
- 19 (8) failed to pay them overtime and/or double time wages by failing to include all  
20 applicable remuneration in calculating the regular rate of pay;
- 21 (9) failed to reimburse them for all necessary business expenses;
- 22 (10) failed to provide them with accurate written wage statements; and
- 23 (11) failed to pay them all of their final wages following separation of employment.

24 Based on these alleged violations, Plaintiff now brings this representative action to recover civil  
25 penalties, and related relief on behalf of **Error! Reference source not found.** and all others  
26 similarly situated, all other aggrieved employees, and the State of California.

### 27 JURISDICTION AND VENUE

- 28 2. This Court has subject matter jurisdiction to hear this case because the penalties sought

1 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the  
2 State of California.

3 3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure §§  
4 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are  
5 the subject matter of this Complaint occurred therein and/or each defendant is found, maintains  
6 offices, transacts business, and/or has an agent therein.

### 7 **PARTIES**

8 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual  
9 residing in the State of California.

10 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant THEKEY  
11 OF CALIFORNIA, LLC is, and at all relevant times mentioned herein, a Delaware limited liability  
12 company doing business in the State of California.

13 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant THEKEY  
14 HOLDINGS, LLC is, and at all relevant times mentioned herein, a Delaware limited liability  
15 company doing business in the State of California.

16 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant HOME  
17 CARE ASSISTANCE, INC. is, and at all relevant times mentioned herein, a Delaware limited  
18 liability company doing business in the State of California.

19 8. Plaintiff is informed and believes, and thereupon alleges, that Defendant HOME  
20 CARE ASSISTANCE, LLC is, and at all relevant times mentioned herein, a Delaware limited  
21 liability company doing business in the State of California.

22 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as  
23 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.  
24 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants  
25 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the  
26 fictitiously named defendants are responsible in some manner for the occurrences, acts and  
27 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these  
28 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and

1 capacities of the DOE defendants when ascertained.

2       10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times  
3 mentioned herein, some or all of the defendants were the representatives, agents, employees,  
4 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some  
5 or all of the other defendants, and, in doing the things alleged herein, were acting within the course  
6 and scope of such relationship and with the full knowledge, consent, and ratification by such other  
7 defendants.

8                   **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

9       11. Plaintiff worked for Defendants as an hourly, non-exempt employee during the  
10 applicable statutory period.

11                                   **Off-the-clock Work**

12       12. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants  
13 directed, permitted, or otherwise encouraged Plaintiff and the aggrieved employees to perform off-  
14 the-clock work.

15       13. Upon information and belief, Defendants did not accurately record the actual hours  
16 worked by Plaintiff and the aggrieved employees, instead they were simply paid according to their  
17 scheduled work shift times, resulting in Plaintiff and the aggrieved employees being paid in hourly  
18 increments of exact round numbers such as 40.00 hours worked or 32.00 hours worked. These hours  
19 did not reflect the actual amount of time Plaintiff and the aggrieved employees spent working, and  
20 failed to account for substantial periods of time that Plaintiff and the aggrieved employees were  
21 subject to Defendants control, including during overnight shifts. Furthermore, on instances where  
22 another Care Giver working for Defendants was late to report to their work location, the Care Giver  
23 still on location would be forced to remain at the client's location to ensure their wellbeing. Because  
24 this time was not recorded as part of their scheduled work shift, it was unpaid by Defendants. Upon  
25 information and belief, if Plaintiff and the aggrieved employees arrived early, or were kept late, this  
26 time spent working would be unrecorded by Defendants and therefore not paid for.

27       14. As a result of performing off-the-clock work that was directed, permitted, or  
28 otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid

1 for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the time  
2 they were scheduled to work their shifts and did not pay Plaintiff and the aggrieved employees for  
3 any of the time spent working off-the-clock.

4 15. Defendants knew or should have known that Plaintiff and the aggrieved employees  
5 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and  
6 the aggrieved employees for these hours.

7 16. Defendants were aware of this practice and directed, permitted, or otherwise  
8 encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

9 17. As a result of Defendants' policies and practices, Plaintiff and the aggrieved  
10 employees were not paid for all hours worked.

#### 11 **Missed Meal Periods and Auto-Deduct**

12 18. During their employment with Defendants, Plaintiff and the aggrieved employees  
13 regularly worked shifts of eight to twelve hours per day, without being afforded a meal break  
14 during the first five hours, and/or a second meal break after ten hours, as required by California  
15 law. Upon information and belief, Defendants had a policy of automatically deducting thirty  
16 minutes from Plaintiff's and the aggrieved employees' paychecks, regardless of whether Plaintiff  
17 and the aggrieved employees received a meal period or not.

18 19. Plaintiffs and the aggrieved employees members were not provided with meal  
19 periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants'  
20 policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing  
21 each work shift with not enough workers; (3) imposing so much work on each employee such that  
22 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their  
23 work on time; and (4) no formal written meal and rest period policy that encouraged employees to  
take their meal and rest periods.

24 20. Defendants required Plaintiff and the aggrieved employees to work on site at the  
25 homes of different clients for continuous periods without any breaks for meal periods or otherwise.  
26 In many instances, Plaintiff and the aggrieved employees were the only Care Givers at a client's  
27 locations, and no relief was provided so that Plaintiff and the aggrieved employees could be  
28 relieved of their myriad job duties so they could take a meal period.

21. As a result of Defendants' policies and/or practices, Plaintiffs and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked.

## Missed Rest Periods

22. Plaintiff and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

23. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked.

### Regular Rate of Pay

24. The regular rate of pay under California law includes all remuneration for employment paid, on behalf of the employer, to the employee. This requirement includes, but is not limited, to, commissions and non-discretionary bonuses.

25. During the applicable limitations period, Defendants violated the rights of Plaintiff and the aggrieved employees under the above-referenced Labor Code sections by failing to pay them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and 1198 as a result of not correctly calculating their regular rate of pay to include all applicable remuneration, including, but not limited to, non-discretionary bonuses and/or sign on bonuses.

## Expense Reimbursement

26. Plaintiff and the aggrieved employees members were required to utilize their own personal vehicles to perform their job duties.

27. Plaintiff and the aggrieved employees members were not reimbursed for gas and mileage for use of their personal vehicles to run errands for clients.

28. Defendants failed to reimburse Plaintiff and the aggrieved employees for such necessary business expenses incurred by them.

## Wage Statements

29. Plaintiff and the aggrieved employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226.

30. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

31. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

32. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

33. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

### FIRST CAUSE OF ACTION

## CIVIL PENALTIES

**(Lab. Code §§ 2698 *et seq.*)**

34. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

35. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

36. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

1           37. Plaintiff, a former employee against whom Defendants committed one or more of the  
2 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee  
3 within the meaning of Labor Code § 2699(c).

4           38. Plaintiff has complied with the procedures for bringing suit specified in Labor Code  
5 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency  
6 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an  
7 intent to investigate.

8           39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil  
9 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,  
10 512, 1194, 1197, 1198 and 2802:

11           i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1194, 1198  
12 and 2802, one hundred dollars (\$100) for each employee per pay period for  
13 each initial violation and two hundred dollars (\$200) for each employee per  
14 pay period for each subsequent violation (penalties set by Labor Code §  
15 2699(f)(2));

16           ii. For violations of Labor Code § 203, a penalty in an amount not exceeding  
17 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);

18           iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each  
19 employee for each initial violation that was neither willful nor intentional,  
20 two hundred dollars (\$200) for each employee, plus 25% of the amount  
21 unlawfully withheld from each employee, for each initial violation that was  
22 either willful or intentional, and two hundred dollars (\$200) for each  
23 employee, plus twenty-five percent (25%) of the amount unlawfully withheld  
24 from each employee, for each subsequent violation, regardless of whether the  
25 subsequent violation was either willful or intentional (penalties set by Labor  
26 Code § 210);

27           iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each  
28 employee for each initial violation that was neither willful nor intentional,

1 two hundred dollars (\$200) for each employee, plus twenty-five percent  
2 (25%) of the amount unlawfully withheld from each employee, for each  
3 initial violation that was either willful or intentional, and two hundred dollars  
4 (\$200) for each employee, plus twenty-five percent (25%) of the amount  
5 unlawfully withheld from each employee, for each subsequent violation,  
6 regardless of whether the subsequent violation was either willful or  
7 intentional (penalties set by Labor Code § 225.5);

8 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial  
9 citation, two hundred and fifty dollars (\$250) for each employee for each  
10 violation. Alternatively, if an initial citation or its equivalent occurred before  
11 the filing of this action, one thousand dollars (\$1,000) for each employee for  
12 each violation (penalties set by Labor Code § 226.3);

13 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each  
14 employee for each initial pay period for which the employee was underpaid,  
15 and one hundred dollars (\$100) for each employee for each subsequent pay  
16 period for which the employee was underpaid (penalties set by Labor Code §  
17 558);

18 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each  
19 aggrieved employee for each initial violation of Labor Code § 1197 that was  
20 intentional and two hundred and fifty dollars (\$250) for each aggrieved  
21 employee per pay period for each subsequent violation of Labor Code §  
22 1197, regardless of whether the initial violation was intentional (penalties set  
23 by Labor Code § 1197.1);

24 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable  
25 attorneys' fees and costs in connection with Plaintiff's claims for civil  
26 penalties.

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