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13 Attorneys for Plaintiff ROBIN GRAFFAM
14 individually and on behalf of all others similarly situated

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18
19 **FOR THE COUNTY OF SAN FRANCISCO**
20

21 ROBIN GRAFFAM, and on behalf of all
22 others similarly situated,

23
24 Plaintiffs,

25 v.

26 THEKEY OF CALIFORNIA, LLC, a
27 Delaware limited liability company;
28 THEYKEY HOLDINGS, LLC, a Delaware
limited liability company; HOME CARE
ASSISTANCE, INC. a California
corporation; HOME CARE ASSISTANCE
LLC, a Delaware limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.:

Assigned For All Purposes To:

Judge:

Dept.:

REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2699 et seq.)

1 Plaintiff ROBIN GRAFFAM (“Plaintiff”), individually and on behalf of the general public
2 and all non-exempt aggrieved employees (hereinafter referred to as “aggrieved employees”), hereby
3 files this Complaint against Defendants THEKEY OF CALIFRONIA, LLC, a Delaware limited
4 liability company; THEYKEY HOLDINGS, LLC, a Delaware limited liability company; HOME
5 CARE ASSISTANCE, INC. a California corporation; HOME CARE ASSISTANCE LLC, a
6 Delaware limited liability company; and DOES 1 through 50, inclusive (collectively “Defendants”)
7 and alleges on information and belief as follows:

8 **I. INTRODUCTION**

9 1. This is a representative action for recovery of penalties under the Private Attorneys
10 General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2699 *et seq.* PAGA permits “aggrieved
11 employees” to bring a lawsuit as a representative action on behalf of the general public as private
12 attorney general and all other current and former aggrieved employees, to recover civil penalties
13 and address an employer’s violations of the California Labor Code.

14 2. Defendants provide elder care services throughout California and the United States.

15 3. Through this action, Plaintiff is alleging that Defendant has engaged in a systematic
16 pattern of wage and hour violations under the California Labor Code and Industrial Welfare
17 Commission (“IWC”) Wage Orders.

18 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
19 increased their profits by violating state wage and hour laws by, among other things:

- 20 (a) Failing to pay all wages owed, including minimum wage and overtime;
- 21 (b) Failing to provide lawful meal periods or compensation in lieu thereof,
- 22 (c) Failing to authorize or permit lawful rest periods or provide compensation in lieu
23 thereof;
- 24 (d) Failing to reimburse for business expenses;
- 25 (e) Failing to provide one day's rest therefrom in seven for every person employed in
26 any occupation of labor.
- 27 (f) Willfully failing to provide accurate wage statements; and
- 28 (g) Failing to pay all wages due upon separation of employment.

1 5. Plaintiff brings this lawsuit seeking monetary relief against Defendants on behalf of
2 herself and other aggrieved employees to recover, among other things, civil penalties, attorney's
3 fees and costs and expenses pursuant to Labor Code §§ 2699, *et seq.* for violations enumerated under
4 2699.5 as follows: Labor Code §§ 201-204, 210, 223, 226, 226.3, 226.7, 510, 551, 512, 558, 1174,
5 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802.

6 **II. JURISDICTION AND VENUE**

7 6. This Court has jurisdiction over this action pursuant to the California Constitution
8 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
9 those given by statute to other courts. The statutes under which this action is brought do not give
10 jurisdiction to any other court.

11 7. This Court has jurisdiction over Defendants because, upon information and belief,
12 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
13 avails itself of the California market so as to render the exercise of jurisdiction over it by the
14 California Courts consistent with traditional notions of fair play and substantial justice.

15 8. Venue is proper in this Court because upon information and belief, one or more of
16 the Defendants, reside, transact business, or have offices in this County and/or the acts or omissions
17 alleged herein took place in this County. The unlawful acts alleged herein have a direct effect on
18 Plaintiff and all other aggrieved employees within the State of California. Defendants employ
19 numerous aggrieved employees in the State of California.

20 9. On the information and belief, Defendants conducted business within the State of
21 California during the purported liability period and continue to conduct business throughout the
22 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
23 similarly situated non-exempt aggrieved employees within California.

24 10. The California Superior Court also has jurisdiction in this matter because on
25 information and belief there are no federal questions at issue, as the issues herein are based solely
26 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
27 California Code of Civil Procedure, and the California Civil Code.

28 **III. PARTIES**

1 11. On information and belief, Defendants provide elder care services throughout
2 California and the United States.

3 12. Other than identified herein, Plaintiff is unaware of the true names, capacities,
4 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
5 DOES 1 through 50, but are informed and believe and thereon alleges that said defendants are legally
6 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
7 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are
8 ascertained.

9 13. Plaintiff is informed and believes and thereon alleges that each defendant, directly
10 or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees,
11 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
12 believe and thereon allege that each of the Defendants acted in all respects pertinent to this action
13 as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
14 pertinent hereto, and the acts of Defendants are legally attributable to the other defendant(s).

15 **IV. FACTUAL ALLEGATIONS**

16 14. Plaintiff began employment with Defendant as a caregiver from on or about July,
17 2021. Plaintiff occupied said non-exempt, hourly positions until her last day of employment on or
18 about March, 2022.

19 15. Plaintiff's job duties included, but were not limited to, assisting with dressing,
20 cleaning, and other daily care duties for the clients of Defendant(s).

21 16. During the relevant time period, Plaintiff and Aggrieved employees typically worked
22 at least five (5) days a week. During their scheduled workdays, Plaintiff and Class Members were
23 scheduled to work at least eight (8) hour shifts, but their shifts typically lasted longer.

24 17. During the relevant time period, Defendant implemented policies and practices
25 which resulted in Plaintiff and Aggrieved employees working off the clock and without
26 compensation. For instance, due to time constraints, the demands of their work shifts, a lack of
27 staffing, and the needs of customers, Plaintiff and Aggrieved employees would often work during
28 their rest and meal breaks. Furthermore, Defendant would require Plaintiff and aggrieved employees

1 to work before or after they had clocked out. Plaintiff was not compensated for work performed “off
2 the clock”.

3 18. During the relevant time period, due to the demands of the work shifts, Plaintiff and
4 Aggrieved employees were frequently required to work in excess of five (5) hours without a
5 minimum, uninterrupted thirty (30) minute by the end of the fifth hour of their shift. For instance,
6 Plaintiff and Aggrieved employees were required to continue patient care during all breaks, and eat
7 while they worked, regardless of the length of their shift. Therefore, Plaintiff, and on information
8 and belief, Aggrieved employees were not paid one (1) hour of pay at their regular rate of
9 compensation for each workday that a compliant meal period was not provided, in violation of
10 California labor laws, regulations and IWC Wage Orders.

11 19. During the relevant time period, due to the demands of the work shifts, as discussed
12 herein, Plaintiff and Aggrieved employees were required to work without being permitted or
13 authorized a minimum ten (10) minute rest period for every four hours or major fraction thereof
14 worked and were not compensated one (1) hour of pay at their regular rate of compensation for each
15 workday that a rest period was not provided, in violation of California labor laws, regulations, and
16 IWC Wage Orders. For instance, Plaintiff and Aggrieved employees were often not able to take a
17 break at all, or were required to perform work duties during breaks. Therefore, Plaintiff’s and
18 Aggrieved employees’ rest breaks were frequently interrupted by customers requiring attention and
19 a lack of staffing.

20 20. Defendants have also failed indemnify Plaintiff and Class Members for expenses
21 incurred in direct discharge of their duties. For example, Plaintiff and Aggrieved employees were
22 required to use their personal cell phones and vehicles in the performance of their job duties in order
23 to receive communications from Defendants and respond, and drive between clients’ homes.
24 Plaintiff and Aggrieved employees were not properly indemnified for this personal expense.

25 21. On information and belief, Defendant willfully failed to pay all earned wages in a
26 timely manner to Aggrieved employees during their employment and at the termination of their
27 employment all compensation due, including but not limited to all wages owed including overtime
28 and compensation for having failed to properly provide rest periods and meal periods.

1 22. Defendants failed to maintain accurate itemized records reflecting total hours worked
2 and have failed to provide Aggrieved employees with accurate, itemized wage statements reflecting
3 total hours worked and appropriate rates of pay for those hours worked.

4 23. Defendants failed to provide one day's rest therefrom in seven to each person
5 employed in any occupation of labor.

6 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 currently employ, and employed and during the relevant period over one hundred (100) Aggrieved
8 employees in California.

9 25. Aggrieved employees employed by Defendants, at all times pertinent hereto, have
10 been Aggrieved employees within the meaning of the California Labor Code and the implementing
11 rules and regulations of the IWC California Wage Orders.

12 **V. REPRESENTATIVE CLAIM**

13 **ENFORCEMENT OF LABOR CODE § 2699, *et seq.* (“PAGA”)**

14 **(Against All Defendants)**

15 26. Plaintiff gave timely written notice by certified mail of Defendant’s violations of
16 various provisions of the California Labor Code as alleged in this complaint to the Labor and
17 Workforce Development Agency (“LWDA”) and Defendant. See **Exhibit A**, Plaintiff’s Notice to
18 LWDA.

19 27. The LWDA did not provide notice of its intention to investigate Defendant’s alleged
20 violations within the 65-day statutory period. See Cal. Lab. Code § 2699.3.

21 28. Plaintiff brings this action on her own behalf as an aggrieved employee, as well as
22 on behalf of each and every other aggrieved employee pursuant to California Labor Code § 2699.

23 29. All claims alleged herein arise under California law for which Plaintiff seeks relief
24 as authorized by California law.

25 30. Plaintiff incorporates and re-allege each and every allegation contained above as
26 though fully set forth herein.

27 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for
28 a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or

1 any of its departments, divisions, commissions, boards, agencies or employees for violation of the
2 code may, as an alternative, be recovered through a civil action brought by an aggrieved employee
3 on behalf of himself and other current or former employees pursuant to the procedures specified in
4 Labor Code § 2699.3.

5 32. For all provisions of the Labor Code except those for which a civil penalty is
6 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
7 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
8 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
9 period in which Defendants violated these provisions of the Labor Code.

10 33. Defendants' conduct violates numerous Labor Code sections including, but not
11 limited to, the following:

- 12 (a) Violation of Labor Code §§ 510, 1194, 1197, and 1198 for failure to pay all lawful
13 wages owed to Plaintiff and other aggrieved employees;
- 14 (b) Violation of Labor Code §§ 510, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198 for
15 unpaid wages as herein alleged;
- 16 (c) Violation of Labor Code §§ 226.7 and 512 for failure to provide lawful,
17 uninterrupted, duty-free meal periods without paying Plaintiff and other aggrieved
18 employees premium wages for every day said meal periods were not provided;
- 19 (d) Violation of Labor Code § 226.7 for failure to authorize or permit lawful,
20 uninterrupted, duty-free rest breaks without paying Plaintiff and other aggrieved
21 employees premium wages for every day said rest breaks were not authorized or
22 permitted;
- 23 (e) Violation of Labor Code §551 for failure to provide one day's rest therefrom in seven;
- 24 (f) Violation of Labor Code § 2802 for failing to indemnify Plaintiff and other aggrieved
25 employees for business-related expenses;
- 26 (g) Violation of Labor Code §§ 226 and 226.2 for failure to provide accurate itemized
27 wages statements to Plaintiff and other aggrieved employees as herein alleged; and
- 28 (h) Violation of Labor Code §§ 201-203 for failing to timely pay all earned wages to
 Plaintiff and other aggrieved employees upon separation of employment.

34. Plaintiff is an "aggrieved employee" because she was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of all other aggrieved employees.

35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all other aggrieved employees under PAGA.

36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled and seeks to recover all civil penalties available under the law, in addition to other remedies, for violations of the Labor Code sections cited above.

37. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants and DOES 1 through 10, jointly and severally, as follows:

1. For civil penalties against Defendant on behalf of all aggrieved employees and the LWDA pursuant to Labor Code §§ 2699, *et seq.*;

2. For reasonable attorney's fees, costs of suit and interest to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and

3. For such other relief as the Court deems just and proper.

Dated: March 1, 2023

JAMES HAWKINS, APLC

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