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8 *Attorneys for the People of the State of California*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11
12 **THE PEOPLE OF THE STATE OF
13 CALIFORNIA,**

14 Plaintiff,

15 v.

16 **CK FRANCHISING, INC., an Ohio
17 corporation; and
18 SDX HOME CARE OPERATIONS, LLC, a
19 Delaware limited liability company,**

20 Defendants.

Case No. **24STCV21541**

Unlimited Civil

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES, AND
OTHER EQUITABLE RELIEF**

(BUS. & PROF. CODE, §§ 17200 et seq.,
16600; CIVIL CODE, § 1671)

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22 Plaintiff, the People of the State of California (“Plaintiff” or the “People”), by and through
23 Rob Bonta, Attorney General of the State of California (“Attorney General”), allege the following
24 on information and belief:

25 **INTRODUCTION**

26 1. The People bring this civil enforcement action against CK Franchising, Inc.
27 (“CKFI”) and SDX Home Care Operations, LLC (“SDX”) (collectively, “Defendants” or
28

1 “Comfort Keepers”) for placing impermissible constraints on employee mobility in violation of
2 the California Unfair Competition Law (Bus. & Prof. Code, § 17200 et seq.).

3 2. Defendants are a leading nationwide provider of in-home care services under the
4 “Comfort Keepers” brand, and since at least 2018 to early 2024, Defendants violated Business
5 and Professions Code section 16600 by requiring thousands of older adults and clients with
6 disabilities to enter unlawful home-care service contracts that restrain caregivers from engaging
7 in a lawful profession. If a client solicited, hired, or utilized the services of any current or former
8 Comfort Keepers employee during the term of the home-care service contract or up to one year
9 following its termination, \$12,500 in liquidated damages could be charged automatically to the
10 client’s credit card. The full sum could be charged irrespective of when the caregiver was
11 employed by Comfort Keepers, whether the caregiver was randomly assigned by a different
12 agency, or whether the caregiver ever had any contact with the specific client while at Comfort
13 Keepers. These terms effectively deterred other home care agencies and individual clients from
14 hiring Comfort Keepers’ present and former caregivers, therefore unlawfully limiting caregiver
15 mobility.

16 **PARTIES**

17 3. Plaintiff is the People of the State of California. The People bring this action by and
18 through Rob Bonta, the Attorney General of the State of California and the chief law officer of
19 the state. (Cal. Const., art. V, 13.)

20 4. Defendant CKFI is an Ohio corporation headquartered in Irvine, California. CKFI
21 offers franchises nationwide under the Comfort Keepers brand and is a leading provider of in-
22 home care services. At all relevant times, CKFI, doing business as Comfort Keepers, has
23 transacted business in the County of Los Angeles and elsewhere in the State of California.

24 5. Defendant SDX is a Delaware limited liability company. SDX owns and operates
25 Comfort Keepers franchise businesses in California, including in the County of Los Angeles, and
26 nationwide.

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1 **JURISDICTION AND VENUE**

2 6. This court has original jurisdiction over this action pursuant to California
3 Constitution article VI, section 10.

4 7. This Court has jurisdiction over Defendants because by offering, selling, and owning
5 franchises in California, entering into agreements with California consumers for in-home care
6 services rendered in California, and hiring California workers, Defendants purposefully availed
7 themselves of the California market so as to render the exercise of jurisdiction over Defendants
8 by the California courts consistent with traditional notions of fair play and substantial justice.

9 8. Venue is proper here because the violations of law alleged in this Complaint
10 occurred in the County of Los Angeles and elsewhere throughout California.

11 **TOLLING OF STATUTE OF LIMITATIONS AND RELATED DEFENSES**

12 9. Pursuant to a valid agreement, the People and the Defendants have tolled all time
13 limits and time-related defenses, either in law or in equity, including but not limited to statutes of
14 limitation, statutes of repose, and the doctrine of laches, relating to claims that the People might
15 bring against the Defendants pertaining to their policies and practices related to contracts with
16 their in-home caregiver employees and clients.

17 10. The People and the Defendants have entered into a series of tolling agreements, the
18 first of which became effective on August 25, 2022; all unexpired claims as of that date are tolled
19 until August 26, 2024.

20 **DEFENDANTS' BUSINESS PRACTICES**

21 **A. Defendants' Client Care Agreement Unlawfully Restricts Employee Mobility**

22 11. Defendant CKFI offers franchises nationwide and in California under the Comfort
23 Keepers brand. Defendant SDX owns and operates Comfort Keepers franchise businesses in
24 California and nationwide. Since at least August 2018, Defendants have served more than 2,500
25 clients and employed approximately 300 caregivers.

26 12. Defendants' primary clients are older adults and individuals with disabilities needing
27 assistance with basic non-medical care at home.

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1 13. To obtain services, Defendants require each of their clients to execute a standard
2 client care agreement defining the scope of services. Given the sensitive nature of the care and
3 client and caregiver relationship, the client care agreement outwardly makes it simple for the
4 termination of services; either party can cancel the contract at any time by providing two weeks'
5 notice.

6 14. In reality, the client care agreement in use from 2019 to early 2024 (“Agreement”)
7 placed restraints on Defendants’ caregivers by limiting their employment prospects. During the
8 term of the Agreement and for one year following the termination of services, “the Client will not,
9 directly or indirectly through family, or through any other person, company or agency, utilize or
10 hire any Comfort Keepers employee or former Comfort Keeper employee” (hereafter, the “No
11 Hire Provision”).

12 15. The Agreement also stated that “for the same period of time, the Client agrees not to,
13 directly or indirectly through family or any other person, induce any Comfort Keepers employee
14 to leave his/her employment with Comfort Keepers” (hereafter, the “Non-Solicitation
15 Provision”).

16 16. In the event a client violated the No Hire or Non-Solicitation Provisions, the
17 Agreement authorized Defendants to charge the client for \$12,500 in liquidated damages without
18 any notice or process. Due to its broad language and monetary penalties, the Agreement had the
19 effect of restraining employee mobility. In other words, the No Hire and Non-Solicitation
20 Provisions effectively barred individual clients, as well as other home care agencies, from hiring
21 Comfort Keepers’ employee caregivers, as the client would be charged with liquidated damages
22 once Defendants determined a violation occurred.

23 **B. The Client Care Agreement’s Liquidated Damages Provision Is Void**

24 17. Liquidated damages are presumed void in contracts “for the retail purchase . . . of
25 personal property or services, primarily for . . . personal, family, or household purposes.” (Civ.
26 Code, § 1671, subs. (c) & (d).)

27 18. In order to receive services, Defendants’ Agreement required clients to agree to
28 “PAY TO COMFORT KEEPERS \$12,500 AS LIQUIDATED DAMAGES FOR EACH

1 EMPLOYEE OR FORMER EMPLOYEE THE CLIENT UTILIZES, HIRES, OR INDUCES TO
2 LEAVE HIS/HER EMPLOYMENT” (hereafter, the “Liquidated Damages Provision”).

3 19. The Agreement authorized Defendants to automatically charge the client’s credit
4 card for the full amount of liquidated damages without notice, despite the Agreement being a
5 contract for the retail purchase of services for personal, family, or household purposes.

6 **FIRST CAUSE OF ACTION**
7 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
8 **Unfair Competition Law**
9 **(Against All Defendants)**

10 20. The People re-allege and incorporate by reference each of the paragraphs above as
11 though fully set forth in this cause of action.

12 21. Defendants have engaged in acts or practices that are unlawful, unfair, or fraudulent
13 and which constitute unfair competition within the meaning of section 17200 of the Business and
14 Professions Code. These acts or practices include, but are not limited to, the following:

- 15 a. Including the No Hire Provision in the Agreement, which restrained employee
16 mobility in violation of Business and Professions Code section 16600 by
17 restraining employees from seeking or obtaining employment with Comfort
18 Keepers’ clients;
- 19 b. Including the Non-Solicitation Provision in the Agreement, which restrained
20 employee mobility in violation of Business and Professions Code section 16600 by
21 preventing current or former Comfort Keepers’ clients from soliciting or inducing
22 Comfort Keepers’ caregivers to leave their employment;
- 23 c. Including the No Hire Provision and Non-Solicitation Provision in the Agreement,
24 which restrained employee mobility in violation of Business and Professions Code
25 section 16600 by discouraging competitors from hiring current and former
26 Comfort Keepers’ employees;
- 27 d. Including the void Liquidated Damages Provision in the Agreement in violation of
28 Civil Code Section 1671; and

1 e. Including authorization in the Agreement for Defendants to charge the full amount
2 of the liquidated damages to a client’s credit card in violation of Civil Code
3 Section 1671.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, the People pray for the following relief:

6 1. That Defendants, their successors, agents, representatives, assigns and all persons
7 who act in concert with them, jointly and severally, be permanently enjoined from engaging in
8 unfair competition as defined in Business and Professions Code section 17200, including, but not
9 limited to, the acts and practiced alleged in this Complaint, under the authority of Business and
10 Professions Code section 17203;

11 2. Pursuant to Business and Professions Code section 17206, that each Defendant be
12 assessed a civil penalty in an amount up to \$2,500 for each violation of Business and Professions
13 Code section 17200 et seq., as proven at trial;

14 3. Pursuant to Business and Professions Code section 17206.1, that each Defendant be
15 assessed an additional civil penalty in an amount up to \$2,500 for each violation of Business and
16 Professions Code section 17200 et seq. perpetrated against “one or more senior citizens or
17 disabled persons,” as proven at trial;

18 4. That the People recover its costs of suit, including all costs of investigation; and

19 5. Such other and further relief as the court deems appropriate and just.

20 [Signature follows on next page]

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1 Dated: August 23, 2024

Respectfully submitted,

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