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on behalf of herself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**ARIN SHIPLEY, an individual, on behalf of)
herself and all other aggrieved employees)

Plaintiff,

vs.

ROBSAG, INC., a California Corporation;
HAMILTON BOARD & CARE FACILITIES,
a California Corporation; KIMBERLY
COMMODORE, an individual; GAYELYNN
DOE, an individual, and DOES 1 through 100,
inclusive,

Defendants.

Case No. 20GDCV00578**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)Plaintiff ARIN SHIPLEY ("Representative Plaintiff" "Plaintiff" or "SHIPLEY") alleges as
follows:**PARTIES**

1. Representative Plaintiff is an individual who resides in California and was employed by Defendants ROBSAG, INC. and HAMILTON BOARD & CARE FACILITIES (hereinafter referred to as "Defendants," or "the Companies") from on or about March 15, 2019

1 until on or about September 20, 2019.

2 2. Representative Plaintiff is informed and believes, and based on such information
3 and belief, alleges that at all times mentioned herein, Defendants is a California Corporation,
4 licensed to do business and actually doing business in the State of California. Defendant is a
5 purveyor of terpenes within the State of California, including, but not limited to, the County of Los
6 Angeles. Thus, Defendant is subject to the applicable California laws as alleged in this action.

7 3. Upon information and belief, Defendant KIMBERLY COMMODORE (hereinafter,
8 "COMMODORE") is an individual who resides in the State of California and the County of Los
9 Angeles. Defendant COMMODORE was and is an agent of Defendant, and in that capacity was
10 and is responsible for overseeing and implementing Defendants timekeeping policies and
11 procedures that Representative Plaintiff and the other aggrieved employees were made to follow.

12 4. Upon information and belief, Defendant GAYELYNN DOE (hereinafter, "DOE") is
13 an individual who resides in the State of California and the County of Los Angeles. Defendant
14 COMMODORE was and is an agent of Defendant, and in that capacity was and is responsible for
15 overseeing and implementing Defendants timekeeping policies and procedures that Representative
16 Plaintiff and the other aggrieved employees were made to follow.

17 5. Representative Plaintiff is unaware of the true names and capacities, whether
18 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
19 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave
20 of court to amend this complaint to state said defendants' true names and capacities when the same
21 have been ascertained. Representative Plaintiff is informed and believes and based on such
22 information and belief alleges that said fictitiously-named defendants are responsible in some
23 manner for the injuries and damages to Representative Plaintiff, and other aggrieved employees as
24 further alleged herein.

25 6. This is only a Private Attorney General Action Complaint, pursuant to California
26 Labor Code section 2699 et seq., on behalf of ARIN SHIPLEY and all other persons similarly
27 situated who worked for Defendants in its California locations as non-exempt, hourly employees
28 (herein collectively identified as "other aggrieved employees") for:

- (i) failure to pay overtime and double time in violation of Labor Code sections 510, 1198, and the applicable Wage Orders;
- (ii) failure to pay minimum wage in violation of Labor Code 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders;
- (iii) failure to provide rest and meal periods in violation of Labor Code sections 226.7, 512(a), 1198 and the applicable Wage Orders;
- (iv) failure to keep accurate payroll records and provide itemized wage statements in violation of Labor Code 226(a), 1174(d), 1198, and the applicable Wage Orders;
- (v) failure to pay split shift pay in violation of Labor Code 1198 and California Code of Regulations 11050(4)(C);
- (vi) failure to pay all wages earned on time in violation of Labor Code sections 204;
- (vii) failure to pay all wages earned upon discharge or resignation in violation of Labor Code 201, 202, and 203;
- (viii) failure to provide basic information at the time of hiring and when employment changes occur in violation of Labor Code 2810.5(a)(1)(A)-(C) (Wage Theft Prevention Act).
- (ix) failure to reimburse necessary, business-related expenses in violation of labor code 2800 and 2802;
- (x) failure to provide notice of paid sick time and accrual in violation of Labor Code 246.

VENUE AND JURISDICTION

7. Venue is proper under California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that Representative Plaintiff's injuries were incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's complaint arose within the County of Los Angeles, and Defendant is located in the County of Los Angeles.

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STATEMENT OF FACTS

8. Representative Plaintiff was hired by Defendants as a Residential Care Specialist on or about March 15, 2019. Representative Plaintiff worked for Defendants up until September 20, 2019 when her employment terminated. Defendants are doing business in California as Adult Care Facilities.

9. While employed with Defendants, Representative Plaintiff and other aggrieved employees that worked with her at the Company's California locations, which include other aggrieved employees that he seeks to represent in this action, working as non-exempt, hourly employees (herein collectively identified as "other aggrieved employees") were regularly required to work off-the-clock, and during their rest and meal periods.

10. Defendants failed to pay its aggrieved employees' overtime in accordance with California law when they worked in excess of eight (8) hours in a day and/or 40 hours within a workweek. Defendants also failed to pay its aggrieved employees' double time in accordance with California law when they worked in excess of 12 hours in a workday.

11. Defendants failed to provide Representative Plaintiff and other aggrieved employees with meal periods in accordance with Labor Code Sections 512(a) and 226.7, as aggrieved employees were often not afforded an opportunity to take an off-duty meal period of at least 30 minutes within the first five (5) hours of their shift, because of work understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other actions, inactions, or decisions made by and within the sole control and discretion of Defendants.

12. Additionally, when Representative Plaintiff and aggrieved employees worked in excess of 10 hours in a day, they were not offered an opportunity to take a second meal period in accordance with Labor Code section 512(a).

13. Defendants also failed to pay its aggrieved employees a premium pursuant to Labor Code section 226.7 when it failed to provide its employees with legally adequate meal periods as described above.

14. Defendants also failed to provide Representative Plaintiff and other aggrieved employees with a 10-minute rest break for every four hours of work, or every major fraction

1 thereof, as employees were forced to work extended periods without rest breaks due to
2 understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other
3 actions, inactions, or decisions made by and within the sole control and discretion of Defendants.
4 Defendants also failed to provide its employees with a premium payment pursuant to Labor Code
5 section 226.7 when it failed to provide its employees with legally adequate rest breaks.

6 15. Additionally, Plaintiff and other aggrieved employees were not provided a premium
7 wage pursuant to Labor Code section 226.7 for their legally inadequate meal and rest periods, as
8 they were not relieved of all duties and responsibilities for the respective time periods as required
9 by the law. Defendants' failure to properly pay Plaintiff and other aggrieved employees for all
10 hours worked in these instances violates Labor Code sections 226.7, 512(a), 1198 and the
11 applicable Wage Orders.

12 16. Representative Plaintiff and other aggrieved employees were often required to work
13 off-the-clock before their shifts started, after their shifts were completed, and during their meal and
14 rest periods. During this off-the-clock time and these so-called "working lunches", employees were
15 required by Defendants to finish work tasks that they did not have time to finish during their shift
16 because of understaffing, inadequate coverage, unreasonably high workload and expectations,
17 and/or other actions, inactions, or decisions made by and within the sole control and discretion of
18 Defendants'.

19 17. Defendants, being aware of these occurrences, still deducted 30 minutes from their
20 pay on these days that they were required to continue working without a legal meal period. The
21 Companies altered and adjusted time-sheets and time-cards in order to obfuscate this fact.

22 18. Defendants required Plaintiff and other aggrieved employees to work without
23 appropriate compensation, including the payment of at least minimum wage, for such work time as
24 described above in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198, and
25 the applicable Wage Orders.

26 19. California Labor Code section 226(a) provides that every employer shall furnish to
27 each of its employees an accurate, itemized wage statement in writing, showing, among other
28 things, all applicable hourly rates in effect during the pay period and the corresponding correct

1 number of hours worked at each hourly rate by the employee. Defendants' wage statements fail to
2 comply with this section of the Labor Code as they list the incorrect rates of pay and the incorrect
3 number of hours worked at each rate of pay. The number of hours that the employees actually spent
4 working for the Companies, which are listed on the pay stubs, is incorrect because of, among other
5 things, the Companies' failure to properly compensate its employees for all of the time that they
6 spent working under their employer's control.

7 20. Defendants wage statements listed the incorrect rates of pay and earnings. Thus, the
8 total earnings and the overtime hours listed on the employee's pay stubs are incorrect. The number
9 of hours that the employees actually spent working for the Companies that is listed on the wage
10 statement is also incorrect because of the Companies' failure to record and compensate its
11 employees for all of the time that they are under its control, including, but not limited to, time that
12 they spend complying with the Companies' required "working lunches" and off-the-clock work,
13 and when Defendants deducted 30-minutes for meal periods that were not legally adequate.

14 21. Defendants regularly scheduled and required Representative Plaintiff and the other
15 aggrieved employees to work "split shifts". California Code of Regulations 11050(4)(C) requires
16 employer to furnish to employees one (1) hour's pay at the minimum wage in addition to the wages
17 for that work day for any day in which an employee works a "split shift". However, despite
18 regularly scheduling Representative Plaintiff and the other aggrieved employees for "split shifts",
19 Defendants failed to pay Representative Plaintiff and the other aggrieved employees one (1) hour's
20 pay at the minimum wage in addition to the wages for that work day as required by law.

21 22. Representative Plaintiff and all aggrieved employees who worked for Defendants
22 did not receive all wages earned on time as defined by California Labor Code section 204. As a
23 consequence of Defendants failures as described above, Representative Plaintiff and other
24 aggrieved employees did not receive, among other things, their straight time, overtime, or double
25 time pay, minimum wages for off-the-clock work, rest period premium wages, meal period
26 premium wages.

27 23. Representative Plaintiff and all aggrieved employees who were separated from their
28 employment with Defendants, to whom Defendants willfully failed to pay for all hours worked as

described herein, are also entitled to up to thirty days of wages pursuant to California Labor Code sections 201, 202, and 203.

24. Defendants failed to provide employees with basic information at the time of hiring and when changes occurred to their employment, including, rate of pay (including overtime), whether employee would be paid hourly, salary, piece rate, or by shift, day, week, commission, or otherwise, and information regarding allowances, such as for as meals and lodging, and information regarding the right to accrue and use paid sick leave and the legal protections for employee when so doing.

25. Defendants directed Representative Plaintiff and other aggrieved employees to incur personal expenses on behalf of Defendants while performing their respective job duties. Such personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and parking expenses. Without incurring these expenses, Representative Plaintiff and other aggrieved employees would not be able to accomplish their job duties. Defendants failed to indemnify Representative Plaintiff and other aggrieved for all of these necessary expenditures.

26. Defendants failed to provide to Representative Plaintiff and other aggrieved employees who worked for them for more than 30 days with written notice setting the amount of sick leave available, or paid time off in lieu thereof, on either their itemized wage statements or in a separate writing accompanying such statements.

FIRST CAUSE OF ACTION

(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)

(By Plaintiff Against Defendants and Does 1 through 10, inclusive)

27. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 21, and each and every part thereof with the same force and effect as though fully set forth herein.

28. PAGA expressly establishes that any provisions of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

29. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

30. Plaintiff and the other hourly-paid or non-exempt employees, are “aggrieved employees” within the meaning of California Labor Code section 2699(c) as they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

31. Defendants' failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

32. Defendants' failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7, 512(a), 1198, and the applicable Wage Orders.

Failure to Provide Rest Periods

33. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

34. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Failure to Keep Accurate and Provide Itemized Wage Statements

35. Defendants' failure to keep accurate, and provide itemized wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a),

1 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code
2 section 226(a), 1174(d), and 1198.

3 **Failure to Pay "Split Shift" Premiums**

4 36. Defendants' failure to pay Representative Plaintiff and the other aggrieved
5 employees one (1) hour's pay at the minimum wage in addition to the wages for that workday for
6 any workday in which Representative Plaintiff and the other aggrieved employees were scheduled
7 for and required to work a "split shift" constitutes unlawful or unfair activity prohibited by
8 California Labor Code 1198 and California Code of Regulations 11050(4)(C).

9 **Failure to Timely Pay Wages During Employment**

10 37. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
11 employees during employment in accordance with Labor Code section 204 constitutes unlawful
12 and/or unfair activity prohibited by California Labor Code section 204.

13 **Failure to Timely Pay Wages Upon Termination**

14 38. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
15 employees upon termination in accordance with Labor Code sections 201, 202, and 203 constitutes
16 unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

17 **Failure to Provide Basic Information upon Hiring / When Conditions of Employment Change**

18 39. Defendants' failure to provide basic information to Plaintiff and the other aggrieved
19 employees related to the conditions of their pay and their rights regarding sick leave in accordance
20 with California Labor Code section 2810.5(a)(1)(A)-(C) constitutes unlawful and/or unfair activity
21 prohibited by California Labor Code section 2810.5(a)(1)(A)-(C).

22 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

23 40. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for
24 necessary business-related expenses and costs in accordance with California Labor Code sections
25 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
26 sections 2800 and 2802.

27 **Failure to Provide Notice of Paid Sick Time and Accrual**

28 41. Defendants' failure to provide Plaintiff and the other aggrieved employees that
8.

1 works for the same employer for more than 30 days with written notice setting the amount of sick
2 leave available (or paid time off in lieu thereof) for use in their itemized wage statements or in a
3 separate writing accompanying such statements in accordance with Labor Code 246 constitutes
4 unlawful and/or unfair activity prohibited by California Labor Code section 246.

5 42. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
6 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of
7 them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
8 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
9 penalties against Defendants, and each of them, including but not limited to:

10 a. Penalties under California Labor Code section 2699 in the amount of a
11 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation,
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each
13 subsequent violation;

14 b. Penalties under California Code of Regulations Title 8 section 11010, et seq.
15 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the
16 initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay
17 period for each subsequent violation;

18 c. Penalties under California Labor Code section 210 in addition to, and
19 entirely independent and apart from, any other penalties provided in the California Labor
20 Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay
21 period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee
22 per pay period for each subsequent violation; and

23 d. Any and all additional penalties and sums as provided by the California
24 Labor Code and/or other statutes.

25 43. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
26 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
27 Workforce Development Agency for the enforcement of labor laws and education of employers
28 and employees about their rights and responsibilities and twenty-five percent (25%) to the

1 aggrieved employees.

2 44. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
3 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

4 THEREFORE, Representative Plaintiff and the individuals he seeks to represent request
5 relief as described below:

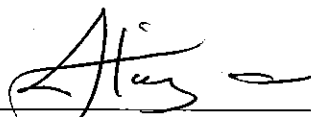
6 **PRAYER**

7 THEREFORE, Representative Plaintiff prays for judgment against Defendants, and Does 1
8 through 10, and each of them, as follows:

- 9 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
10 Procedure Section 1021.5;
11 2. Statutory penalties under PAGA;
12 3. Costs of suit; and
13 4. Such further relief as the Court deems just and proper.

14 Dated: July 9, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

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16
17 By: 

18 Haig B. Kazandjian, Esq.,
19 Cathy Gonzalez, Esq.,
20 Kevin Crough, Esq.,
21 Attorneys for Plaintiff JUAN FERNANDEZ
22 on behalf of herself and all others similarly
23 situated
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