

From: Kelle Winter

Fax: 18553946767

To:

Fax: (510) 267-1546

Page: 2 of 17

07/17/2020 4:48 PM

FILED BY FAX

ALAMEDA COUNTY

July 20, 2020

CLERK OF
THE SUPERIOR COURT
By Cheryl Clark, Deputy

CASE NUMBER:

RG20068159

Carolyn Hunt Cottrell (SBN 166977)
David C. Leimbach (SBN 265409)
Scott L. Gordon (SBN 319872)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
Ccottrell@schneiderwallace.com
Dleimbach@schneiderwallace.com

[Additional counsel listed on next page]

Attorneys for Plaintiff, Aggrieved Employees,
and the State of California

SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

BRIAN HAZEL, on behalf of the State of
California,

Plaintiff,

vs.

HIMAGINE SOLUTIONS, INC., and
DOES 1-100, inclusive,

Defendants.

Case No.: _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA PRIVATE
ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

1 Gregg I. Shavitz (*pro hac vice* forthcoming)
Alan L. Quiles (*pro hac vice* forthcoming)
2 SHAVITZ LAW GROUP, P.A.
951 Yamato Road, Suite 285
3 Boca Raton, FL 33431
Tel: (561) 447-8888
4 Fax: (561) 447-8831
gshavitz@shavitzlaw.com
5 aquiles@shavitzlaw.com

6 Attorneys for Plaintiff, Aggrieved Employees, and the State of California
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 Plaintiff Brian Hazel, on behalf of the State of California and Aggrieved Employees
2 (“Plaintiff”), complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this Labor Code Private Attorneys General Act (“PAGA”)
5 enforcement action behalf of the State of California to collect statutory penalties as a result of
6 defendant Himage Solutions, Inc.’s (“Defendant”) systematic violations of California labor law
7 with respect to Defendant’s current and former non-exempt remote Coders (“Coders”) in the State
8 of California (“Aggrieved Employees”).

9 2. This PAGA action against Defendant challenges its policies and practices of (1)
10 failing to compensate Coders for all hours worked; (2) failing to pay Coders minimum wage as
11 required by California law; (3) failing to pay Coders overtime wages as required by California law;
12 (4) failing to reimburse Coders for necessary business expenditures; (5) failing to provide Coders
13 accurate, itemized wage statements; and (6) failing to timely pay Coders wages owed upon the
14 termination of employment.

15 3. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly
16 Coders for Defendant. Defendant is the largest privately held healthcare information management
17 outsourcing company in the United States, supporting 250 clients across 50 states. Defendant works
18 with children’s and specialty hospitals, academic medical centers, large health systems, small rural
19 and secondary market facilities, and physician and group practices across multiple specialties.
20 Defendant employs Coders to work from home in the State of California and uniformly classifies
21 them as non-exempt from overtime compensation under California law. On information and belief,
22 Defendant employs over 100 Coders in the State of California.

23 4. Coders generally are assigned to one or more medical facilities/practices who are
24 Defendant’s clients. Coders review medical records and assign appropriate medical codes to
25 medical treatment and care provided by the facilities/practices to whom they are assigned. The
26 codes are used by organizations, including insurance companies, to review care provided and
27 determine compensability and reimbursement for the care provided. In addition to coding work,

1 Coders perform related tasks such as corresponding by email, participating in phone conferences,
2 engaging in quality control review, and other tasks related to their coding work.

3 5. Pursuant to a uniform, companywide policy and practice, Defendant fails to
4 accurately track or record the actual hours worked by its Coders. Specifically, Defendant has
5 implemented a timekeeping system that requires Coders to perform 15-20 minutes of compensable
6 work before they are deemed “on the clock.” Defendant uniformly fails to pay Coders for this pre-
7 shift activity.

8 6. Defendant also maintains a strict anti-overtime policy, and generally will only pay
9 Coders for a standard eight hours. Defendant does this despite the fact that the workload it requires
10 of its remote Coders takes considerably longer than 8 hours. Coders are not allowed to incur
11 overtime without Defendant’s approval, even if the Coder’s assignments nevertheless required the
12 Coder to work in excess of eight hours in a day, or forty hours in a week. Defendant expressly tells
13 its Coders that overtime was not permitted without prior authorization from management.
14 However, such requests were regularly denied and met with threats of reduced workload
15 assignments (and less than full-time employment) if the requesting Coder’s work was not completed
16 within the allotted shifts.

17 7. Defendant communicated efficiency expectations to its Coders, requiring Coders to
18 perform a certain measurable amount of work each shift. Failure to perform the expected amount
19 of work in the scheduled shift results in the Coders being considered inefficient, jeopardizing the
20 amount and favorability of their future assignments. Repeated inefficient ratings could lead to
21 termination. Defendant is aware that as a natural result of its policy Coders work in excess of eight
22 hours a day or forty hours in a week, but are not compensated for this time.

23 8. Defendant also fails to reimburse Coders for their necessary business expenses.
24 These expenses include but are not limited to cellular telephones, personal computers, and internet
25 use.

26 9. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
27 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the PAGA.

1 **PARTIES**

2 10. Plaintiff and Aggrieved Employees are current and former non-exempt Coders
3 working remotely throughout the State of California.

4 11. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
5 Complaint was a resident of the State of California.

6 12. Plaintiff was employed by Defendant from approximately February 2019 until
7 August 2019. Plaintiff worked for Defendant as a Coder in the County of Los Angeles.

8 13. Defendant Himage Solutions, Inc. is a Florida corporation with its principal place
9 of business located in St. Louis, Missouri. Defendant does business in the State of California,
10 including but not limited to its reliance on California's labor market to secure the services of remote
11 Coders. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-exempt
12 Coders throughout California, including in Alameda County.

13 14. Defendant employs Plaintiff and the Aggrieved Employees

14 15. The true names and capacities, whether individual, corporate, associate, or otherwise,
15 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
16 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously-
17 named Defendants is responsible in some manner for the occurrences and violations as herein
18 alleged. Plaintiff will amend this Complaint to show their true names and capacities when they have
19 been ascertained. Defendant and Doe Defendants are jointly and severally liable for the civil
20 penalties asserted.

21 16. At all relevant times, Defendant has done business under the laws of California, and
22 has employed Aggrieved Employees in this judicial district. Defendant is a "person" as defined in
23 Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an "employer" as
24 that term is used in the Labor Code, and IWC Wage Orders.

25 **JURISDICTION AND VENUE**

26 17. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). On
27 information and belief, Defendant does not reside in the State of California.

18. This Court has jurisdictions over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is a corporation authorized to do business in the State of California, and because Defendant in fact does do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

19. Plaintiff worked for Defendant as a non-exempt, hourly Coder in the State of California, County of Los Angeles, from approximately February 2019 until August 2019.

20. Defendant is a privately held healthcare information management outsourcing company, and employs remote Coders throughout the State of California. Defendant works with children's and specialty hospitals, academic medical centers, large health systems, small rural and secondary market facilities, and physician and group practices across multiple specialties.

21. Defendant employs Coders to work from home in the State of California and uniformly classifies them as non-exempt from overtime compensation under the California law.

22. Coders generally are assigned to one or more medical facilities/practices who are Defendant's clients. Coders review medical records and assign appropriate medical codes to medical treatment and care provided by the facilities/practices to whom they are assigned. The codes are used by organizations, including insurance companies, to review care provided and determine compensability and reimbursement for the care provided. In addition to coding work, Coders perform related tasks such as corresponding by email, participating in phone conferences, engaging in quality control review, and other tasks related to their coding work.

23. Pursuant to a uniform, companywide policy and practice, Defendant fails to accurately track or record the actual hours worked by its Coders. Specifically, Defendant has implemented a timekeeping system that requires Coders to perform 15-20 minutes of compensable work before they are deemed “on the clock.” Defendant uniformly fails to pay Coders for this pre-shift activity.

24. Defendant also maintains a strict anti-overtime policy, and generally will only pay Coders for a standard eight hours. Defendant expressly tells its Coders that overtime was not

1 permitted without prior authorization from management. However, such requests are regularly
2 denied, even if already incurred. Defendant has implemented this policy and practice despite the
3 fact that the workload it requires of its remote Coders takes considerably longer than eight hours.

4 25. Defendant communicated efficiency expectations to its Coders, requiring Coders to
5 perform a certain measurable amount of work each shift. Failure to perform the expected amount
6 of work in the scheduled shift results in the Coders being considered inefficient, jeopardizing the
7 amount and favorability of their future assignments. Repeated inefficient ratings could lead to
8 termination. Defendant is aware that as a natural result of this policy Coders work in excess of
9 eight hours a day or forty hours in a week, but are not compensated for this time.

10 26. Regularly throughout the course of his employment, Plaintiff and Coders worked in
11 excess of eight hours in a day but were only paid for their standard eight hours pursuant to these
12 uniform policies and practices. Similarly, Plaintiff and Coders worked in excess of forty hours in
13 a pay period but were only paid up to eight hours in a day, or forty hours in a week, pursuant to this
14 strict anti-overtime policy.

15 27. When the uncompensated time is factored in, Plaintiff and Aggrieved Employees
16 regularly work over 8 hours per day, necessitating the payment of overtime compensation for some
17 of the time that they work. Likewise, when accounting for this uncompensated time, Plaintiff and
18 Aggrieved Employees work in excess of 40 hours in a week, necessitating the payment of overtime
19 compensation. But as a result of its policies and practices, Defendant fails to provide Plaintiff and
20 Aggrieved Employees the required overtime premium for this time.

21 28. Defendant also fails to reimburse Coders for their necessary business expenses.
22 These expenses include but are not limited to cellular telephones, personal computers, and internet
23 use. As Coders, Plaintiff and Aggrieved Employees all reasonably and necessarily incur these
24 uniform expenses. As a matter of policy, Defendant did not, and does not, reimburse Plaintiff and
25 Aggrieved Employees for these expenses.

26 29. Defendant does not provide Plaintiff and Aggrieved Employees with accurate wage
27 statements as required by California law. Plaintiff and Aggrieved Employees receive wage
28

1 statements that do not reflect all hours worked, applicable overtime premiums, or reasonably
2 incurred but unreimbursed expenses.

3 30. Defendant does not provide Plaintiff and Aggrieved Employees with full payment of
4 all wages owed at the end of employment. These workers are owed wages and premium pay for all
5 time worked, overtime, and unreimbursed expenses when their employment ends. These amounts
6 remain unpaid after voluntary and involuntary termination. As a consequence, Defendant is subject
7 to waiting time penalties.

8 31. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
9 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
10 Defendant's operations in California. Defendant knows or should know that its policies and
11 practices have been unlawful and unfair.

12 32. Defendant's conduct was willful, carried out in bad faith, and caused significant
13 damages to Plaintiff and Aggrieved Employees in an amount to be determined at trial.

14 **FIRST CAUSE OF ACTION**
15 **Penalties Pursuant to § 2699(a) of the Private Attorneys General Act**

16 33. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
17 herein.

18 34. Labor Code § 2699(a) provides:

19 Notwithstanding any other provision of law, any provision of this code that provides for a
20 civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 or any of its departments, divisions, commissions, boards, agencies or employees, for a
22 violation of this code, may, as an alternative, be recovered through a civil action brought by
23 an aggrieved employee on behalf of himself or herself and other current or former employees.

24 35. Labor 226.7 Code §§ 201 and 202 require employers to immediately pay wages
25 earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72
26 hours after he or she quits, at the latest.

27 36. Labor Code § 203 provides, in relevant part:

28 If an employer willfully fails to pay, without abatement or reduction, in
accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee
who is discharged or who quits, the wages of the employee shall continue as a

1 penalty from the due date thereof at the same rate until paid or until an action
2 therefore is commenced; but the wages shall not continue for more than 30 days.

3 37. Labor Code § 256 provides: “The Labor Commissioner shall impose a civil penalty
4 in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.”

5 38. Labor Code § 225.5 provides that every person who unlawfully withholds wages due
6 any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty
7 of \$100 for any initial violation for each failure to pay each employee and \$200 for each
8 subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

9 39. Labor Code § 226(a) provides:

10 Every employer shall, semimonthly or at the time of each payment of wages, furnish each
11 of his or her employees, either as a detachable part of the check, draft, or voucher paying
12 the employee's wages, or separately when wages are paid by personal check or cash, an
13 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours
14 worked by the employee, except for any employee whose compensation is solely based
15 on a salary and who is exempt from payment of overtime under subdivision (a) of Section
16 515 or any applicable order of the Industrial Welfare Commission, (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
18 rate basis, (4) all deductions, provided that all deductions made on written orders of the
19 employee may be aggregated and shown as one item, (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid, (7) the name of the employee
21 and his or her social security number, (8) the name and address of the legal entity that is
22 the employer, and (9) all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee. The
24 deductions made from payments of wages shall be recorded in ink or other indelible form,
25 properly dated, showing the month, day, and year, and a copy of the statement or a record
26 of the deductions shall be kept on file by the employer for at least four years at the place
27 of employment or at a central location within the State of California.

28 40. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil
penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in
an initial citation and one thousand dollars (\$1,000) per employee for each violation in a
subsequent citation, for which the employer fails to provide the employee a wage
deduction statement or fails to keep the records required in subdivision (a) of Section 226.
The civil penalties provided for in this section are in addition to any other penalty provided
by law.

41. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees

1 in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to
2 Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

3 42. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
4 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
5 wage statement in compliance with Labor Code § 226(a).

6 43. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation
7 of Labor Code § 510, alleged above, as well as any provision regulating hours and days of work
8 in any order of the IWC.

9 44. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
10 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Sixty-
11 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the
12 administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

13 45. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
14 Employees, and himself as set forth in Labor Code § 2699(g)(i).

15 46. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
16 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
17 award of attorneys’ fees and costs as set forth below.

18 47. Wherefore, Plaintiff requests relief as hereinafter provided.

19 **SECOND CAUSE OF ACTION**
20 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

21 48. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
22 herein.

23 49. Labor Code § 2699(f) provides:

24 For all provisions of this code except those for which a civil penalty is specifically
25 provided, there is established a civil penalty for a violation of these provisions, as follows:
26 . . . (2) If, at the time of the alleged violation, the person employs one or more employees,
27 the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
for the initial violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

1 50. Labor Code § 200 defines wages as “all amounts for labor performed by employees
2 of every description, whether the amount is fixed or ascertained by the standard of time, task,
3 piece, commission basis or method of calculation.”

4 51. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
5 employment are due and payable twice during each calendar month....”

6 52. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as “the time
7 during which an employee is subject to the control of an employer, and includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so.”

9 53. Labor Code § 1198 makes it unlawful for employers to employ employees under
10 conditions that violate the Wage Order.

11 54. Labor Code § 2802 requires employers to indemnify employees for all necessary
12 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
13 her duties.

14 55. To the extent than any violation alleged herein does not carry penalties under Labor
15 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
16 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts
17 established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f)
18 for Defendant’s violations of Labor Code §§ 1182.12, 1194, 1197, 204, and 2802.

19 56. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
20 with notice of his intention to file this claim. Sixty-five calendar days have passed without notice
21 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action
22 in compliance with § 2699.3(a).

23 57. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
24 Employees, and himself as set forth in Labor Code § 2699(g)(i).

25 58. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
26 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
27 award of attorneys’ fees and costs as set forth below.

59. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest on penalties awarded as provided by applicable law;
4. For an award of reasonable attorneys' fees;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Dated: July 17, 2020

Respectfully submitted,

Carolyn Hunt Cottrell
David C. Leimbach
Scott L. Gordon
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Gregg I. Shavitz (*pro hac vice* forthcoming)
Alan L. Quiles (*pro hac vice* forthcoming)
SHAVITZ LAW GROUP, P.A.

Attorneys for Plaintiff, Aggrieved Employees, and the
State of California

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled
3 to a jury.

4
5 Dated: July 17, 2020

Respectfully submitted,

6 

7 Carolyn Hunt Cottrell
8 David C. Leimbach
9 Scott L. Gordon
10 SCHNEIDER WALLACE
11 COTTRELL KONECKY LLP

12 Gregg I. Shavitz (*pro hac vice* forthcoming)
13 Alan L. Quiles (*pro hac vice* forthcoming)
14 SHAVITZ LAW GROUP, P.A.

15 Attorneys for Plaintiff, Aggrieved Employees, and the
16 State of California
17
18
19
20
21
22
23
24
25
26
27
28