

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

3 Nicholas J. De Blouw (State Bar #280922)

Piya Mukherjee (State Bar #274217)

4 piya@bamlawca.com

2255 Calle Clara

5 La Jolla, CA 92037

Telephone: (858)551-1223

6 Facsimile: (858) 551-1232

Website: www.bamlawca.com

7 *Attorneys for Plaintiff*

Electronically FILED by
Superior Court of California,
County of Los Angeles
12/09/2024 7:21 PM
David W. Slayton,
Executive Officer/Clerk of Court,
By D. Gallegos, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF LOS ANGELES**

10
11 ERIC MARTIN, an individual, and on
behalf of the State of California, as a
12 private attorney general,

13 Plaintiff,

14 vs.

15
16 THE IMAGINE GROUP, LLC, a Limited
Liability Company; and DOES 1 through 50,
17 inclusive,

18 Defendant.
19
20
21
22
23
24
25
26
27
28

Case No. **24NNCV06388**

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s);

2. Discrimination and Retaliation in Violation of FEHA; and,

3. Retaliation in Violation of Labor Code § 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

Eric Martin (“PLAINTIFF”), on behalf of the people of the State of California and as an “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) with regard to the First Cause of Action, and as an individual with regard to the Second and Third Causes of Action, alleges on information and belief, except for his own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings the First Cause of Action against Defendant The Imagine Group, LLC (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as permitted by California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. California has enacted the PAGA which permits PLAINTIFF to bring an action on behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, as to the First Cause of Action, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA.

4. As to the First Cause of Action, PLAINTIFF is not suing in his individual capacity, he is proceeding solely under the PAGA, on behalf of the State of California for all aggrieved employees, including himself and other aggrieved employees. With regard to the First Cause of Action, nothing in this complaint should be construed as PLAINTIFF suing in his individual capacity.

5. PLAINTIFF brings the Second and Third Causes of Action individually against DEFENDANT for special damages, punitive damages, pre-judgment interest, costs and reasonable attorneys’ fees as set forth below.

///

///

THE PARTIES

6. The Imagine Group, LLC (“DEFENDANT”) is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

7. DEFENDANT provides commercial printing solutions and visual communication services within various business sectors in California.

8. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF’s employment with DEFENDANT started in June of 2018. PLAINTIFF has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees (“AGGRIEVED EMPLOYEES”) during the time period of September 10, 2023 until a date as determined by the Court (the “PAGA PERIOD”).

10. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT’s violation of California Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and believes, and based upon that information and belief alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

12. The agents, servants and/or employees of the DEFENDANT and each of them acting on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all DEFENDANT are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the DEFENDANT's agents, servants and/or employees.

THE CONDUCT

13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment,

1 PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had
2 they been paid for actual recorded time rather than “rounded” time. Additionally, DEFENDANT
3 engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work
4 off the clock in that DEFENDANT, as a condition of employment, required these employees to submit
5 to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
6 clocking into DEFENDANT’s timekeeping system for the workday. As a result, PLAINTIFF and the
7 AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal
8 breaks by working without their time being correctly recorded and without compensation at the
9 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and the AGGRIEVED
10 EMPLOYEES for all time worked, is evidenced by DEFENDANT’s business records.

11 14. State law provides that employees must be paid overtime and meal and rest break
12 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the AGGRIEVED
13 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of
14 an employee’s performance.

15 15. The second component of PLAINTIFF’s and the AGGRIEVED EMPLOYEES’
16 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF and the
17 AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The
18 non-discretionary incentive program provided all employees paid on an hourly basis with incentive
19 compensation when the employees met the various performance goals set by DEFENDANT. However,
20 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
21 PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
22 compensation as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay
23 and meal and rest break premium pay. Management and supervisors described the incentive program
24 to potential and new employees as part of the compensation package. As a matter of law, the incentive
25 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included in the
26 “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime compensation
27 and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by
28 DEFENDANT.

1 16. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
2 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
3 not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES
4 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)
5 hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time
6 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
7 for some workdays in which these employees were required by DEFENDANT to work ten (10) hours
8 of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
9 penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED
10 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with
11 DEFENDANT's corporate policy and practice.

12 17. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were
13 also required from time to time to work in excess of four (4) hours without being provided ten (10)
14 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
15 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
16 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
17 hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some
18 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and the AGGRIEVED
19 EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally, the
20 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
21 which the California Supreme Court defined as time during which an employee is relieved from all
22 work related duties and free from employer control. In so doing, the Court held that the requirement
23 under California law that employers authorize and permit all employees to take rest period means that
24 employers must relieve employees of all duties and relinquish control over how employees spend their
25 time which includes control over the locations where employees may take their rest period. Employers
26 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
27 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
28 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which states

1 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during their rest
2 period.

3 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
4 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees
5 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
6 to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning the time during
7 which an employee was subject to the control of an employer, including all the time the employee was
8 permitted or suffered to permit this work. DEFENDANT required these employees to work off the
9 clock without paying them for all the time they were under DEFENDANT's control. As such,
10 DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES
11 were under compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
12 EMPLOYEES forfeited time worked by working without their time being accurately recorded and
13 without compensation at the applicable minimum wage and overtime wage rates. To the extent that
14 the time worked off the clock does not qualify for overtime premium payment, DEFENDANT failed
15 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,
16 and 1197.1.

17 19. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
18 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
19 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
20 employer shall furnish each of his or her employees with an accurate itemized wage statement in
21 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
22 during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF
23 and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements
24 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
25 applicable pay period in which the wages were earned pursuant to California Labor Code Section
26 226(a). The wage statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED
27 EMPLOYEES failed to identify such information. More specifically, the wage statements failed to
28 identify the accurate total hours worked each pay period. When the hours shown on the wage

1 statements were added up, they did not equal the actual total hours worked during the pay period in
2 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
3 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
4 under California Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFF
5 and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

6 20. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
7 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
8 not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210
9 provides:

10 [I]n addition to, and entirely independent and apart from, any other penalty provided in
11 this article, every person who fails to pay the wages of each employee as provided in
12 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
13 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

14 21. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
15 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab.
16 Code § 204(d), including but not limited to for the “Hourly” regular wage payments.

17 22. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
18 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
19 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
20 remuneration, including, but not limited to, incentives, shift differential pay, and bonuses. Rather than
21 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and the
22 AGGRIEVED EMPLOYEES at their base rates of pay.

23 23. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
24 employees be calculated by dividing the employee’s total wages, not including overtime premium pay,
25 by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

26 24. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
27 regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
28 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was

1 paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as
2 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

3 25. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and the
4 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant
5 to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges
6 that such failure to pay sick pay at regular rate was willful, such that the AGGRIEVED EMPLOYEES
7 whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
8 Sections 201-203.

9 26. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
10 collect or receive from an employee any part of wages theretofore paid by said employer to said
11 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the AGGRIEVED
12 EMPLOYEES, made unlawful deductions from compensation payable to PLAINTIFF and the
13 AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions from compensation
14 payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby failed to pay these
15 employees all wages due at each applicable pay period and upon termination.

16 27. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
17 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the
18 PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties
19 on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to
20 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
21 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
23 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
24 employee, at the time of obeying the directions, believed them to be unlawful."

25 28. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES
26 as a business expense, were required by DEFENDANT to use their own personal cellular phones as
27 a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed
28 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones

1 for DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were
2 required by DEFENDANT to use their personal cellular phones. As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred
4 unreimbursed business expenses which included, but were not limited to, costs related to the use of
5 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

6 29. In violation of the applicable sections of the California Labor Code and the requirements
7 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
8 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable seating when the nature of these
10 employees' work reasonably permitted sitting.

11 30. DEFENDANT knew or should have known that PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
13 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
14 allow them to sit when it did not interfere with the performance of their duties.

15 31. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
16 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001,
17 Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF
18 and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable seating is the
19 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
20 this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder
21 as herein alleged.

22 32. The employment of some AGGRIEVED EMPLOYEES has terminated and
23 DEFENDANT has not tendered payment of all wages owed as required by law. Additionally,
24 at all times during the term of PLAINTIFF's employment with DEFENDANT, AGGRIEVED
25 EMPLOYEES earned and accrued vested vacation and holiday time on the date of their
26 termination pursuant to DEFENDANT's uniform vacation policies and applicable California
27 law. The amount of vacation pay PLAINTIFF and the other AGGRIEVED EMPLOYEES
28 earned and accumulated is evidenced by DEFENDANT's business records. Additionally,

1 DEFENDANT also underpaid accrued vested vacation wages to AGGRIEVED EMPLOYEES
2 by failing to pay such wages at the regular rate of pay and more specifically the final rate of pay
3 that included all non-discretionary incentive compensation. Rather than pay vacation wages
4 at the regular rate of pay, DEFENDANT underpaid vacation wages to AGGRIEVED
5 EMPLOYEES at their base rates of pay, instead of including all of the AGGRIEVED
6 EMPLOYEES' non-discretionary incentive compensation into the vacation wage payment
7 calculations. DEFENDANT failed to specify in DEFENDANT's written vacation policy the
8 rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would be paid vacation
9 upon leaving employment with DEFENDANT. As a result of DEFENDANT's unlawful
10 practice, policy and procedure to deny paying the AGGRIEVED EMPLOYEES all of their
11 vested vacation and holiday time, DEFENDANT failed to pay AGGRIEVED EMPLOYEES
12 all vested vacation time as wages due upon employment termination, in violation of the
13 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid
14 waiting time penalties to AGGRIEVED EMPLOYEES at their base rates of pay, instead of
15 including all of the AGGRIEVED EMPLOYEES' non-discretionary compensation into the
16 waiting time penalty calculations. This failure by DEFENDANT is believed to be the result
17 of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned,
18 accrued and vested vacation and holiday time, as well as the corresponding waiting time
19 penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
20 practice to the detriment of AGGRIEVED EMPLOYEES. DEFENDANT's uniform practice
21 and policy of failing to pay AGGRIEVED EMPLOYEES for all vested vacation and holiday
22 time accumulated at employment termination violated and continues to violate Section 227.3
23 of the California Labor Code.

24 JURISDICTION AND VENUE

26 33. This Court has jurisdiction over this Action pursuant to California Code of Civil
27 Procedure, Section 410.10.

28 34. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections

1 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
2 currently maintains and at all relevant times maintained offices and facilities in this County and/or
3 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
4 in this County against PLAINTIFF and other AGGRIEVED EMPLOYEES.

5
6 **FIRST CAUSE OF ACTION**

7 **For Violation of the Private Attorneys General Act**

8 **[Cal. Lab. Code §§ 2698]**

9 **(By PLAINTIFF and Against All Defendants)**

10 35. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
11 the prior paragraphs of this Complaint.

12 36. PAGA is a mechanism by which the State of California itself can enforce state labor
13 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
14 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
15 enforcement action designed to protect the public and not to benefit private parties. The purpose of
16 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
17 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
18 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
19 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
20 PAGA claims cannot be subject to arbitration.

21 37. PLAINTIFF, and such persons that may be added from time to time who satisfy the
22 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
23 this Representative Action on behalf of the State of California with respect to himself and all
24 individuals who are or previously were employed by DEFENDANT in California, including any
25 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
26 ("AGGRIEVED EMPLOYEES") during the time period of September 10, 2023 until a date as
27 determined by the Court (the "PAGA PERIOD").

28 38. On September 10, 2024, PLAINTIFF gave written notice by electronic mail to the Labor

1 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
2 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See*
3 **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft*
4 *complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
5 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative
6 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
7 to all AGGRIEVED EMPLOYEES as herein defined.

8 39. The policies, acts and practices heretofore described were and are an unlawful business
9 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED
10 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
11 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
12 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
13 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
14 sections listed in Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246,
15 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
16 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
17 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to
18 civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as
19 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State
20 of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27
28 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically excludes
and/or does not allege any claims under California Labor Code §558(a)(3).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4

5

6

7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

1 and high-quality performance. Specifically, after reporting these violations to
2 DEFENDANT's Human Resources Director, Brittany Williams, in July and continuing to
3 October of 2023 when DEFENDANT 'closed' their investigation, PLAINTIFF was
4 retaliated against and forced to work a hybrid work schedule as opposed to working
5 remotely as he had been prior to him reporting the illegal workplace activities described in
6 his report to Human Resources. Additionally, employees much younger and with less
7 experience than PLAINTIFF, were offered promotions and better pay and working
8 conditions after PLAINTIFF engaged in the protected activity of reporting the age
9 discrimination, illegal workplace practices, and failure to properly pay him wages under the
10 California Labor Code. Furthermore, the continuous stress and discrimination at work
11 caused PLAINTIFF to feel afraid of going into work each day. PLAINTIFF has since been
12 diagnosed by a Dr. to have anxiety disorder with mixed anxiety and depression. As a result
13 of DEFENDANT's conduct as stated herein, PLAINTIFF has severe difficulty
14 concentrating, fatigue, impaired task completion, anhedonia, irritability and insomnia.
15 DEFENDANT's consistent failure to recognize PLAINTIFF's extensive contributions, and
16 to force PLAINTIFF to work in a windowless room while subjecting PLAINTIFF to a
17 hostile and retaliatory environment away from his peers, has led to PLAINTIFF's
18 significant emotional distress and depression. As a result of the good faith complaints
19 PLAINTIFF made to DEFENDANT regarding the discriminatory practices stated above,
20 and in direct retaliation for those complaints, DEFENDANT has denied PLAINTIFF work
21 promotions, proper wages, a remote work from home schedule, and banished PLAINTIFF
22 to work in a small, confined, windowless space, isolated from the rest of the staff working
23 on-site. Further, the Secure Room PLAINTIFF was banished to also deprived PLAINTIFF
24 the essential IT tools that were crucial to effectively manage the Disney account
25 PLAINTIFF was assigned to. PLAINTIFF raised complaints of illegality while he worked
26 for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
27 retaliated against him by taking adverse employment actions as described herein.
28 Prior to filing this action PLAINTIFF exhausted his administrative remedies by filing a

1 timely administrative complaint with the Department of Fair Employment and Housing
2 (“DFEH”) and received a DFEH Right to Sue letter on September 9, 2024.

3 42. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code
4 Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices,
5 including the following bases for liability:

6 a. Taking adverse employment actions against PLAINTIFF, including
7 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or
8 otherwise discriminating against PLAINTIFF, in whole or in part on the basis of
9 PLAINTIFF’s age in violation of Government Code Section 12940(a);

10 b. Harassing PLAINTIFF and/or creating a hostile work environment, in
11 whole or in part on the basis of PLAINTIFF’s age;

12 c. Failing to take all reasonable steps to prevent discrimination and
13 harassment based on age in violation of Government Code section 12940(k);

14 d. Retaliating against PLAINTIFF for seeking to exercise rights
15 guaranteed under FEHA, participating in protected activities, and/or opposing
16 DEFENDANT’s failure to provide such rights, in violation of Government Code Section
17 12940(h).

18 43. As a proximate result of DEFENDANT’s willful, knowing, and intentional
19 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
20 substantial losses of earnings and other employment benefits.

21 44. As a proximate result of DEFENDANT’s willful, knowing, and intentional
22 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
23 humiliation, emotional distress, and physical and mental pain and anguish, all to
24 PLAINTIFF’s damage in a sum according to proof.

25 45. PLAINTIFF has incurred and continues to incur legal expenses and attorneys’
26 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
27 reasonable attorneys’ fees and costs (including expert costs) in an amount according to
28 proof.

1 46. DEFENDANT's misconduct was committed intentionally, in a malicious,
2 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
3 against DEFENDANT.

4 **TENTH CAUSE OF ACTION**

5 **Retaliation**

6 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

7 **(By PLAINTIFF Against All Defendants)**

8 47. PLAINTIFF realleges and incorporates by reference, as though fully set forth
9 herein, the prior paragraphs of this Complaint.

10 48. At all relevant times, Labor Code section 1102.5 was in effect and was
11 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
12 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that
13 the employee may disclose illegality.

14 49. PLAINTIFF, the most experienced Production Artist with DEFENDANT,
15 with a rich background in design since 1988 and art directing since 1994, has been
16 consistently overlooked for promotions despite significant responsibilities DEFENDANT
17 has assigned him during his employment and also consistently retaliated against by
18 DEFENDANT for voicing his concerns about illegal and unfair workplace practices. In
19 July of 2023 (and for more than a year prior in various ways through email and verbal
20 communications with his supervisors) PLAINTIFF formally submitted a 54 page report to
21 DEFENDANT's Human Resources department detailing what he reasonably perceived to
22 be DEFENDANT's acts of age discrimination, unfair and illegal labor practices, and failure
23 to properly pay PLAINTIFF wages under the California Labor Code, amongst numerous
24 other acts PLAINTIFF believed to be illegal and/or unfair business practices. Additionally,
25 employees who were much younger than PLAINTIFF, were offered promotions with better
26 pay and working conditions. As a result of PLAINTIFF's good faith complaints,
27 DEFENDANT fabricated performance and conduct issues about PLAINTIFF, denied
28 PLAINTIFF employment opportunities, privileges, and wages under the Labor Code, and

1 PLAINTIFF was plagued with ongoing work pressures, obligations, and mistreatment by
2 his supervisors as a result of PLAINTIFF's willingness to raise formal complaints described
3 herein. DEFENDANT also tasked PLAINTIFF with many duties beyond PLAINTIFF's
4 official role, but PLAINTIFF was not offered a promotion to a new role or a raise in pay to
5 commensurate him for all the work being performed and PLAINTIFF's proactive approach
6 and high-quality performance. Specifically, after reporting these violations to
7 DEFENDANT's Human Resources Director, Brittany Williams, in July and continuing to
8 October of 2023 when DEFENDANT 'closed' their investigation, PLAINTIFF was
9 retaliated against and forced to work a hybrid work schedule as opposed to working
10 remotely as he had been prior to him reporting the illegal workplace activities described in
11 his report to Human Resources. Additionally, employees much younger and with less
12 experience than PLAINTIFF, were offered promotions and better pay and working
13 conditions after PLAINTIFF engaged in the protected activity of reporting the age
14 discrimination, illegal workplace practices, and failure to properly pay him wages under the
15 California Labor Code. Furthermore, the continuous stress and discrimination at work
16 caused PLAINTIFF to feel afraid of going into work each day. PLAINTIFF has since been
17 diagnosed by a Dr. to have anxiety disorder with mixed anxiety and depression. As a result
18 of DEFENDANT's conduct as stated herein, PLAINTIFF has severe difficulty
19 concentrating, fatigue, impaired task completion, anhedonia, irritability and insomnia.
20 DEFENDANT's consistent failure to recognize PLAINTIFF's extensive contributions, and
21 to force PLAINTIFF to work in a windowless room while subjecting PLAINTIFF to a
22 hostile and retaliatory environment away from his peers, has led to PLAINTIFF's
23 significant emotional distress and depression. As a result of the good faith complaints
24 PLAINTIFF made to DEFENDANT regarding the discriminatory practices stated above,
25 and in direct retaliation for those complaints, DEFENDANT has denied PLAINTIFF work
26 promotions, proper wages, a remote work from home schedule, and banished PLAINTIFF
27 to work in a small, confined, windowless space, isolated from the rest of the staff working
28 on-site. Further, the Secure Room PLAINTIFF was banished to also deprived PLAINTIFF

1 the essential IT tools that were crucial to effectively manage the Disney account
2 PLAINTIFF was assigned to. PLAINTIFF raised complaints of illegality while he worked
3 for DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
4 retaliated against him by taking adverse employment actions as described herein.

5 50. As a proximate result of DEFENDANT'S willful, knowing, and intentional
6 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
7 humiliation, emotional distress, and mental and physical pain and anguish, all to his damage
8 in a sum according to proof.

9 51. As a result of DEFENDANT'S adverse employment actions against
10 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
11 proof.

12 52. DEFENDANT'S misconduct was committed intentionally, in a malicious,
13 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
14 against defendants.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

- 18 1. For the First Cause of Action on behalf of the State of California and with respect
19 to all AGGRIEVED EMPLOYEES:

20 A) Recovery of civil penalties as prescribed by the Labor Code Private
21 Attorneys General Act of 2004; and,

22 B) An award of attorneys' fees and cost of suit, as allowable under the law,
23 including, but not limited to, pursuant to Labor Code §2699;

- 24 2. For the Second and Third and Causes of Action on behalf of PLAINTIFF
25 Individually:

26 A) For all special damages which were sustained as a result of
27 DEFENDANT's conduct, including, but not limited to, back pay, front
28

1 pay, lost compensation and job benefits that PLAINTIFF would have
2 received but for the retaliatory practices of DEFENDANT;

3 B) For all exemplary damages, according to proof, which were sustained
4 as a result of DEFENDANT's conduct;

5 C) An award of interest, including prejudgment interest at the legal rate

6 D) Such other and further relief as the Court deems just and equitable;
7 and,

8 E) An award of penalties, attorneys' fees and cost of suit.
9

10 Dated: December 6, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
11

12 By: /s/ Nicholas De Blouw

13 Norman B. Blumenthal

14 Nicholas J. De Blouw

15 *Attorneys for Plaintiff*
16
17
18
19
20
21
22
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated: December 6, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

/s/ Nicholas De Blouw

Norman B. Blumenthal
Nicholas J. De Blouw

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

**2255 CALLE CLARA
LA JOLLA, CALIFORNIA 92037**

Web Site: www.bamlawca.com

San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

**WRITERS E-MAIL:
Nick@bamlawca.com**

**WRITERS EXT:
1004**

September 10, 2024
CA3454

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

The Imagine Group, LLC
Certified Mail #9589071052701737668027
CSC - LAWYERS INCORPORATING
SERVICE
BECKY DEGEORGE
2710 GATEWAY OAKS DRIVE, Suite
150N
SACRAMENTO, CA 95833

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by The Imagine Group, LLC in California, including any employees staffed with The Imagine Group, LLC by a third party, and classified as non-exempt employees during the time period of September 10, 2023 until a date as determined by the Court. Our offices represent Plaintiff Eric Martin (“Plaintiff”) and other Aggrieved Employees in a lawsuit against The Imagine Group, LLC (“Defendant”). Plaintiff has been employed by Defendant in California since June of 2018. Plaintiff has been at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and

Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.