

Jacob N. Whitehead, Esq. (SBN 266123)
reception@jnwpc.com
Meghan Higday, Esq. (SBN 334626)
mhigday@jnwpc.com
WHITEHEAD EMPLOYMENT LAW
7700 Irvine Center Drive, Suite 930
Irvine, California 92618
Telephone: (949) 674-4922

Assigned for All Purposes
Judge James J. Di Cesare

C-16

Attorneys for Plaintiff, Ashantae Williams, an individual on her own behalf and in her representative capacity, on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ORANGE – COMPLEX CIVIL**

ASHANTAE WILLIAMS, an individual
on her own behalf and in her representative
capacity, on behalf of all others similarly-
situated

Plaintiff,

vs.

BEST BUY CO., INC., dba MN BEST
BUY CO., INC. a Minnesota corporation;
and DOES 1 through 25, inclusive,

Defendant.

Case No. **30-2021-01194588-CU-OE-CXC**

**COMPLAINT FOR DAMAGES FOR
VIOLATION OF LABOR CODE §2698 Et
Seq. (Private Attorneys General Act of 2004)**

Plaintiff ASHANTAE WILLIAMS (“Plaintiff Williams”), hereby files this Complaint against Defendant, BEST BUY CO., INC., dba MN BEST BUY CO., INC., a Minnesota corporation, (“Best Buy” or “Defendant”) and DOES 1 through 25, inclusive.

Plaintiff is informed and believes and on the basis of that information and belief, alleges as follows:

- 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

2. This complaint challenges Defendant's systemic illegal employment practices resulting in violations of the state provisions of the Labor Code against Plaintiff and similarly situated, current or former employees of Defendant, ("Aggrieved Employees") during the relevant statutory period.

GENERAL ALLEGATIONS

4. Defendant Best Buy Co., Inc. dba MN Best Buy Co., Inc. is a Minnesota corporation duly registered to conduct business in the State of California, headquartered at 7601 Penn Avenue South, Richfield, Minnesota 55423.

6. Plaintiff is unaware of the true names and capacities of Defendants sued as DOES 1 through 25, inclusive, and therefore Plaintiff sue these Defendants by fictitious names. Plaintiff informed and believes and thereupon alleges that each of the fictitiously named Defendants is in some manner responsible for the wrongful acts and resulting damages to Plaintiff as alleged in this Complaint. Plaintiff will amend this Complaint to show the true names and capacities of these fictitiously named Defendants after their true names and capacities have been ascertained.

Page 2

1 managing agents, employees, and/or representatives of each other Defendant, and each such
2 Defendant was acting within the scope of such agency, employment and/or representation in
3 doing the wrongful acts alleged herein below and with permission and consent.

4 **The Plaintiff**

5 8. Plaintiff, Ashantae Williams was at all relevant times herein a resident of Vacaville,
6 California in the County of Solano. She was employed by Defendant as a full-time, hourly, non-
7 exempt customer service specialist, who also performed cashiering duties.

8 **JURISDICTION AND VENUE**

9 9. This action is brought pursuant to the PAGA. The civil penalties sought by Plaintiff
10 exceed the minimum jurisdiction limits of the Orange County Superior Court and will be
11 established according to proof at trial.

12 10. This Court has jurisdiction of this action pursuant to the California Constitution, Article
13 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those
14 given by statute to other courts. The statutes under which this action of brought do not specify any
15 other basis for jurisdiction.

16 11. This Court has jurisdiction over the violations of the PAGA and Cal. *Lab. Cod.* § 2802.

17 12. This Court has jurisdiction over Defendant and Does 1 – 25, inclusive, because upon
18 information and belief, each party has sufficient minimum contacts in California or otherwise
19 intentionally avails itself of California law so as to render the exercise of jurisdiction over it by
20 the California courts consistent with traditional notions of fair play and substantial justice.

21 13. Venue is proper in this Court because, upon information and belief, the named Defendant
22 transacts business and/or has offices in this county and/or the acts and omissions alleged herein
23 took place in this county.

24 **GENERAL ALLEGATIONS**

25 14. Plaintiff realleges and incorporates by reference each and every allegation contained
26 in the preceding paragraphs as though fully set forth herein.
27
28

1 15. Plaintiff was employed by Defendant from approximately November 1, 2019 to on
2 or about October 15, 2020. During the relevant statutory period, Plaintiff worked for
3 Defendant as a full-time, hourly, non-exempt employee at the Best Buy retail store located
4 at 1621 E. Monte Vista, in Vacaville, California.

5 16. Throughout the PAGA liability period, Plaintiff and similarly situated current or
6 former employees of Defendant work/worked at Best Buy retail stores throughout the State
7 of California (“the Aggrieved Employees”). Typical job duties included performing job
8 activities related to providing customer service, assisting customers with products,
9 answering questions and completing sales.

10 17. Plaintiff and those similarly situated held positions such as customer service
11 specialists, assistants, retail associates, sales associates, cashiers, Geek Squad agents/and or
12 consultants, assistant managers and store managers.

13 18. At all relevant times, as a matter of operational policy, Defendant required/requires that
14 their employees to utilize their personal cell phones to perform their daily job-related tasks and
15 duties. Plaintiff and the Aggrieved Employees used personal cell phones to communicate with
16 co-workers and supervisors regarding issues at store locations, product questions, scheduling,
17 and to communicate shift coverage requests. Defendant also required Plaintiff and the
18 Aggrieved Employees to download multiple apps onto their personal cell phones including
19 GroupMe, the BestBuy Employee app, and a BestBuy Scanner app used to scan barcodes of
20 products for customers for product information (e.g. price, inventory or availability of that
21 particular item at other Best Buy locations). The GroupMe app was used by Defendants to
22 enable group messaging with co-workers and supervisors, regarding store issues, policies,
23 promotional updates, and scheduling.

24 19. Defendants never provided a work phone to Plaintiff and the Aggrieved Employees and
25 at no time did they reimburse them for their expenses incurred in the routine and daily use of
26 their personal cell phones.
27
28

20. As a result of Defendant's failure to properly reimburse Plaintiff and the Aggrieved Employees for their personal cell phone expenses they necessarily incurred in the performance of their job duties, Plaintiff and the Aggrieved Employees have been denied the use and enjoyment of the monies they are owed by Defendant and have been forced to incur attorney's fees and costs of suit.

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT OF 2004,

LABOR CODE § 2698 ET SEQ.

(Against Defendant and DOES 1-25, Inclusive)

21. Plaintiff realleges and incorporates by reference, all of the foregoing paragraphs, as though fully set forth herein.

22. The Private Attorney Generals Act of 2004 (the “PAGA”) expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (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.

23. On February 1, 2021, Plaintiff Williams provided written notice to the LWDA and Defendant of the specific provisions of the Labor Code Plaintiff contend were violated, and the theories supporting their contentions. A true and correct copy of the February 1, 2021 notice is attached hereto as **Exhibit A**. More than sixty-five days have elapsed since Plaintiff Williams provided notice to the Defendant and the LWDA. To date, Plaintiff has not received a response from the LWDA indicating its intent to investigate her claims.

24. Plaintiff and the similarly situated employees are/ were non-exempt, hourly compensated employees and are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all former employees of Defendant, and one or more of the alleged violations was committed against them.

1 **Failure to Reimburse Expenses Incurred in the Discharge of Work-Related Duties**

2 25. At all times relevant, California Labor Code section 2802 was in force and effect. Section
3 2802(a) provides in pertinent part that: “*An employer shall indemnify his or her employee for all*
4 *necessary expenditures or losses incurred by the employee in direct consequence of the discharge*
5 *of his or her duties ...*”

6 26. As alleged above, Defendant required Plaintiff and the Aggrieved Employees to utilize
7 their personal cell phones to perform a variety of their daily job duties, without reimbursement for
8 such expenses incurred.

9 27. Defendant’s wrongful acts as alleged above constitute a continuing and ongoing unlawful
10 activity prohibited by the California Labor Code.

11 28. Plaintiff and the Aggrieved Employees seek reimbursement for all business-related
12 expenses they incurred in the performance of their job duties for Defendant, all applicable PAGA
13 civil penalties, together with interest thereon, as well as their attorneys’ fees and costs.

14 29. All unreimbursed expenses and penalties owed by Defendant to Plaintiff and the
15 Aggrieved Employees may be recovered through this PAGA action; no class certification is
16 required for Plaintiff to obtain a recovery on behalf of himself and on behalf of the Aggrieved
17 Employees. (See *Arias v. Superior Court* (2009) 46 Cal.4th 969, 970-975.)

18 **Damages**

19 30. Defendant’s actions constitute continuing and ongoing unlawful activity prohibited by
20 the California Labor Code, as alleged and therefore these acts constitute violations of the PAGA.

21 31. Pursuant to California Labor Code § 2699, Plaintiff requests and is entitled to recover
22 from Defendant civil penalties in the amount of a hundred dollars (\$100) for each aggrieved
23 employee per pay period for the initial violation, and two hundred dollars (\$200) for each
24 aggrieved employee per pay period for each subsequent violation; and

25 32. Attorneys’ fees and costs pursuant to Labor Code § 2699(g) and any other applicable
26 statute.
27
28

1 33. As alleged supra, notice of these violations were provided pursuant to Labor Code
2 §2699.3 asking the LWDA if it intends to investigate the alleged violations. More than 65 days
3 have passed since notice was provided and Plaintiff has not received any notification from the
4 LWDA that it intends to investigate the alleged violations. Therefore, the representative
5 Plaintiff is entitled to prosecute the PAGA claims under Labor Code §2699, et seq.

6 34. The proper measure of damages and penalties under the PAGA is as to all Aggrieved
7 Employees, whether a part of this action or not. Further this claim needs no certification to
8 proceed with recovery. See *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 970-975.

9 35. Accordingly, Plaintiff respectfully requests that the Court award judgment and relief in
10 her favor including civil penalties under California Labor Code §2699 in the amount of one
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 during the relevant period, according to proof.

14 36. Plaintiff as the personal representatives of the Aggrieved Employees, will and does seek
15 to recover any and all penalties for each and every violation shown to exist or to have occurred
16 during the liability period, in an amount according to proof, as to those penalties that are
17 otherwise only available to public agencies. Said fund recovered will be distributed in
18 accordance with the PAGA, with at least 75% of said PAGA penalty recovery being reimbursed
19 to the State of California and the LWDA.

20
21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff pursuant to PAGA, prays for judgment as follows:

23 1. Upon the Cause of Action, for civil penalties and wages pursuant to statute as set forth in
24 Labor Code § 2698 *et seq.*, for Defendant's violations of Labor Code § 2802.

25 2. Upon the PAGA Cause of Action, for attorneys' fees and costs pursuant to Labor Code §
26 2699.3 and any other applicable statute; and

27 3. For such other and further relief the court may deem just and proper.
28

1 Dated: April 8, 2021

WHITEHEAD EMPLOYMENT LAW

2
3 By:



Jacob N. Whitehead, Esq.
Meghan Higday, Esq.
Attorneys for Plaintiff and
Aggrieved Employees

EXHIBIT A



February 1, 2021

Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class Mail

Employment Law Group
7601 Penn Avenue South
Richfield, Minnesota 55423

Via Certified Mail

C T Corporation System
Registered Agent for
Best Buy Co., Inc.
818 West Seventh Street, Suite 930
Los Angeles, California 90017

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Ashantae Williams ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of Best Buy Co., Inc., dba MN Best Buy Co., Inc., a Minnesota corporation, duly registered with the California Secretary of State to conduct business in California, and Does 1 through 20 (hereinafter "Defendants") regarding claims of violation of the California Labor Code.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as an exempt and/or non-exempt, hourly and/or salary, fulltime and/or part time employees, including but not limited to Customer Service Specialists, Customer Assistants, Retail Associates, Store Sales Associates, Cashiers, Geek Squad Agents, Geek Squad Consultants, Assistant Managers, and Managers (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants' failure to reimburse work-related expenses.

As further detailed below, Defendants violated the provisions of California Labor Code § 2802.

Plaintiff was hired by Defendants on approximately November 1, 2019 and was employed until approximately October 15, 2020, as a full-time, hourly, non-exempt Cashier. Plaintiff completed sales, provided customer service, as well as, assisted with answering questions and finding products for customers on the sales floor.

During the relevant statutory period, Plaintiff and the Aggrieved Employees had to utilize their personal cell phones for work related duties and functions. Plaintiff and the Aggrieved Employees used personal cell phones to communicate with co-workers and supervisors regarding issues at store locations, product questions, scheduling, and coverage requests. Defendants required Plaintiff and the Aggrieved Employees to download multiple apps on their cell phones including GroupMe, the BestBuy Employee app, and a BestBuy Scanner app used for product information. Plaintiff and the Aggrieved Employees were required to use their cell phones daily. The BestBuy Scanner app required Plaintiff and the Aggrieved Employees to scan barcodes of products for customers, which provided information like price, whether the product was in stock, and locations which had the product in stock. The GroupMe app was used by Defendants for Plaintiff and the Aggrieved Employees to group message with co-workers and supervisors, regarding store issues, store policy and promotional updates, and scheduling. Defendants required Plaintiff and the Aggrieved Employees to perform a “wellness check” prior or at the beginning of every shift to ensure employees were fit to work their scheduled shift. Defendants never provided a work phone to Plaintiff and the Aggrieved Employees, which was required to complete these expected job duties. Plaintiff and the Aggrieved Employees regularly received calls and texts from co-workers and supervisors regarding work related issues while on the clock, off the clock, and even on their days off. Due to Defendants not providing a work phone, a personal cell phone was necessary for employment with Defendants. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, “*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even*

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

As described above, during the relevant statutory period, Plaintiff and Aggrieved Employees daily utilize or utilized their personal cell phone to use Defendants’ required apps and to make calls or text co-workers and supervisors in the course of work-related duties with no reimbursement from Defendants. Defendants violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Conclusion

In sum, as has been factually alleged, Defendants violated Labor Code § 2802. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, and interest as provided by California law, as well as attorneys’ fees and civil penalties as provided for under Labor Code § 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the agency’s intent to investigate under the PAGA’s provisions. Alternatively, Plaintiff requests the agency please inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW



Jacob N. Whitehead

JNW/mnh