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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 JAMES HYLAND, on behalf of the State of
15 California, as a private attorney general,

16 Plaintiff,

17 vs.

18 BEST BUY HEALTH, INC., a
19 Corporation, and DOES 1 through 50,
20 inclusive,

21 Defendants.

Case No. 37-2021-00030211-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 227.3, 246, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

07/15/2021 at 10:38:05 AM

Clerk of the Superior Court
By Aida Cruz, Deputy Clerk

1 Plaintiff James Hyland (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant BEST BUY HEALTH, INC.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

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

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Best Buy Health, Inc. (“DEFENDANT”) is a Corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT provides device-based emergency response services and virtual
27 care offerings that connect patients and physicians.
28

1 6. PLAINTIFF was employed by DEFENDANT in California from May of 2017 to
2 January of 2021 and was at all times classified by DEFENDANT as a non-exempt employee,
3 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
4 of minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
10 the time period of March 31, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3,
16 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
17 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).
18 Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved
19 employees within the meaning of Labor Code § 2699, *et seq.*

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and the other 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. DEFENDANT requires PLAINTIFF and the other AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time they performed post-shift duties, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the other AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. Specifically, before clocking in, PLAINTIFF and other AGGRIEVED EMPLOYEES were required to wait in-line for a COVID-19 screening, one which included questions about their current set of symptoms before each employee was scanned and screened for a fever. Additionally, PLAINTIFF was from time to time interrupted by work assignments during his meal and rest periods. Indeed, there were days where PLAINTIFF did not even receive a partial lunch. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its

1 employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit minimum
2 wage and overtime compensation by from time to time working without their time being
3 accurately recorded and without compensation at the applicable minimum wage and overtime
4 rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and other
5 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT's business
6 records.

7 12. As a result of their rigorous work schedules, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES are also from time to time unable to take off duty meal breaks
9 and are not fully relieved of duty for meal periods. PLAINTIFF and other AGGRIEVED
10 EMPLOYEES are from time to time required to perform work as ordered by DEFENDANT
11 for more than five (5) hours during a shift without receiving an off-duty meal break.
12 Further, DEFENDANT fails to provide PLAINTIFF and other AGGRIEVED
13 EMPLOYEES with a second off-duty meal period from time to time in which these
14 employees are required by DEFENDANT to work ten (10) hours of work from time to time.
15 PLAINTIFF and the other AGGRIEVED EMPLOYEES therefore forfeit meal breaks
16 without additional compensation and in accordance with DEFENDANT's corporate policy
17 and practice.

18 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES are also required from time to time to work in excess of four (4) hours
20 without being provided ten (10) minute rest periods. Further, these employees are denied
21 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
22 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes
23 for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
24 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10)
25 hours or more from time to time. PLAINTIFF and other AGGRIEVED EMPLOYEES are
26 also not provided with one hour wages in lieu thereof. As a result of their rigorous work
27 schedules, PLAINTIFF and other AGGRIEVED EMPLOYEES are from time to time
28 denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

1 Additionally, the applicable California Wage Order requires employers to provide
2 employees with off-duty rest periods, which the California Supreme Court defined as time
3 during which an employee is relieved from all work related duties and free from employer
4 control. In so doing, the Court held that the requirement under California law that
5 employers authorize and permit all employees to take rest period means that employers must
6 relieve employees of all duties and relinquish control over how employees spend their time
7 which includes control over the locations where employees may take their rest period.
8 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
9 minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
10 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees
11 to remain on DEFENDANT's premises under DEFENDANT's control during what should
12 be their paid, off duty rest periods.

13 14. DEFENDANT also fails to provide PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES with complete and accurate wage statements which failed to show, among
15 other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that
16 every employer shall furnish each of his or her employees with an accurate itemized wage
17 statement in writing showing, among other things, gross wages earned and all applicable
18 hourly rates in effect during the pay period and the corresponding amount of time worked at
19 each hourly rate. PLAINTIFF and the other AGGRIEVED EMPLOYEES were paid on an
20 hourly basis. As such, the wage statements should reflect all applicable hourly rates during
21 the pay period and the total hours worked, and the applicable pay period in which the wages
22 were earned pursuant to California Labor Code Section 226(a). The wage statements
23 DEFENDANT provided to PLAINTIFF and other AGGRIEVED EMPLOYEES failed to
24 identify such information. More specifically, the wage statements failed to identify the
25 accurate total hours worked each pay period. When the hours shown on the wage statements
26 were added up, they did not equal the actual total hours worked during the pay period.
27 Additionally, DEFENDANT violated Section 226 by failing to identify the correct rates of
28 pay and number of hours worked, including for the "OT on Bonus," item of pay, which was

1 a wage payment Aside, from the violations listed above, DEFENDANT failed to issue to
2 PLAINTIFF an itemized wage statement that lists all the requirements under California
3 Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF
4 and the other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab.
5 Code § 226.

6 15. DEFENDANT intentionally and knowingly fails to reimburse and indemnify
7 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
8 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
9 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
10 2802, employers are required to indemnify employees for all expenses incurred in the course
11 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
12 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
13 employee in direct consequence of the discharge of his or her duties, or of his or her
14 obedience to the directions of the employer, even though unlawful, unless the employee, at
15 the time of obeying the directions, believed them to be unlawful."

16 16. In the course of their employment PLAINTIFF and other AGGRIEVED
17 EMPLOYEES as a business expense, are required by DEFENDANT to use their own
18 personal cellular phones and personal vehicles to inter-location travel as a result of and in
19 furtherance of their job duties as employees for DEFENDANT but are not reimbursed or
20 indemnified by DEFENDANT for the cost associated with the use of their personal cellular
21 phones and personal vehicles, including but not limited to gas money, for DEFENDANT's
22 benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES are required by
23 DEFENDANT to use their personal cellular phones to respond to managers while off the
24 clock (which also results in minimum wage and overtime violations). As a result, in the
25 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
26 EMPLOYEES incurred unreimbursed business expenses which included, but were not
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1 limited to, costs related to the use of their personal cellular phones and personal vehicles all
2 on behalf of and for the benefit of DEFENDANT.

3 17. DEFENDANT underpaid sick pay wages to PLAINTIFF and other
4 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay.
5 Specifically, PLAINTIFF and other non-exempt employees earned non-discretionary
6 remuneration, including but not limited to, incentives and bonuses. Rather than pay sick pay
7 at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
8 AGGRIEVED EMPLOYEES at their base rates of pay.

9 18. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
10 employment are due and payable twice during each calendar month, on days designated in
11 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
12 requires employers to pay employees all wages owed within Seven (7) days of the close of
13 the payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
14 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of
15 the payroll period.

16 19. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
17 to collect or receive from an employee any part of wages theretofore paid by said employer
18 to said employee.” DEFENDANT made unlawful deductions from compensation payable to
19 PLAINTIFF and the other AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
20 deductions from compensation payable to PLAINTIFF and other AGGRIEVED
21 EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable
22 pay period and upon termination.

23 20. In violation of the applicable sections of the California Labor Code and the
24 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
25 a matter of company policy, practice and procedure, intentionally, knowingly and
26 systematically failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES
27 for missed meal and rest periods. This uniform policy and practice of DEFENDANT is
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1 intended to purposefully avoid the payment for all time worked as required by California law
2 which allows DEFENDANT to illegally profit and gain an unfair advantage over
3 competitors who complied with the law. To the extent equitable tolling operates to toll
4 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
5 should be adjusted accordingly.

6 21. By reason of this uniform conduct applicable to PLAINTIFF and all
7 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and
8 procedure which fails to accurately calculate and record all missed meal and rest periods and
9 failed to pay all minimum and overtime wages due to PLAINTIFF and other AGGRIEVED
10 EMPLOYEES. The proper recording of these employees' missed meal and rest breaks is
11 the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the
12 obligation to meet this burden, DEFENDANT fails to properly calculate and/or pay all
13 required compensation for work performed by the AGGRIEVED EMPLOYEES and
14 violated the California Labor Code and regulations promulgated thereunder as herein
15 alleged.

16 22. All of the conduct and violations alleged herein occurred during the PAGA
17 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
18 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
19 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
20 2018 AJDAR 12157 (Certified for Publication 12/19/18).

21 **JURISDICTION AND VENUE**

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23 23. This Court has jurisdiction over this Action pursuant to California Code of
24 Civil Procedure, Section 410.10.

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26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT,
28 resides in this County, and DEFENDANT (i) currently maintains and at all relevant times

1 maintained offices and facilities in this County and/or conducts substantial business in this
2 County, and (ii) committed the wrongful conduct herein alleged in this County against
3 PLAINTIFF and the AGGRIEVED EMPLOYEES.

4 **FIRST CAUSE OF ACTION**

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

6 **[Cal. Lab. Code §§ 2698, *et seq.*]**

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

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

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

20 27. PLAINTIFF, and such persons that may be added from time to time who
21 satisfy the requirements and exhaust the administrative procedures under the Private
22 Attorney General Act, brings this Representative Action on behalf of the State of California
23 with respect to himself and all individuals who are or previously were employed by
24 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
25 EMPLOYEES") during the time period of March 31, 2020 until a date as determined by the
26 Court (the "PAGA PERIOD").
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1 28. On March 31, 2021 PLAINTIFF gave written notice by electronic mail to the
2 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
3 employer of the specific provisions of this code alleged to have been violated as required by
4 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
5 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
6 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
7 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

8 29. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
10 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
11 record and provide legally required meal and rest periods, (c) failed to pay overtime and sick
12 pay wages, (d) failed to pay minimum wages, (e) failed to reimburse for required business
13 expenses, and (f) failed to provide wages when due, all in violation of the applicable Labor
14 Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7,
15 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
16 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Industrial
17 Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
18 PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code
19 Private Attorney General Act of 2004 as the representative of the State of California for the
20 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
24 severally, as follows:

- 25 1. On behalf of the State of California and with respect to all AGGRIEVED
26 EMPLOYEES:

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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

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

5 Dated: July 15, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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8 By: /s/ Norman Blumenthal
9 Norman B. Blumenthal
10 Attorneys for Plaintiff
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