

OCT 13 2020

BY Anne Perry
ANNE PERRY DEPUTY

Robert Drexler (SBN 119119)
Robert.Drexler@CapstoneLawyers.com
Molly DeSario (SBN 230763)
Molly.DeSario@CapstoneLawyers.com
Jonathan Lee (SBN 267146)
Jonathan.Lee@CapstoneLawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Naayshon Battle

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

NAAYSHON BATTLE, individually, and
on behalf of other members of the general
public similarly situated,

Plaintiff,

vs.

TELECARE CORPORATION, a California
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: CIVDS2015794

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, et seq.;
- (9) Violation of California Business & Professions Code §§ 17200, et seq. (Unlawful Business Practices); and

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

(10) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

1 Plaintiff Naayshon Battle, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court because Defendants employ persons in this county,
5 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
6 occurrences related to this action occurred in this county.

7 THE PARTIES

8 4. Plaintiff Naayshon Battle is a resident of Hesperia, in San Bernardino County,
9 California. Defendants employed Plaintiff as an hourly paid, non-exempt Personal Service
10 Coordinator (PSC) II / Peer Support Specialist II from approximately September 2016 to May
11 7, 2020. Plaintiff worked for Defendants at their locations in Riverside and San Bernardino,
12 California. During her employment, Plaintiff typically worked eight (8) hours or more per
13 day, and five (5) days per week. Plaintiff's primary job duties included, without limitation,
14 performing assessments, providing behavioral and substance abuse counseling, attending court
15 hearings, and working with county guardians.

16 5. TELECARE CORPORATION was and is, upon information and belief, a
17 California corporation, and at all times hereinafter mentioned, an employer whose employees
18 are engaged throughout this county, the State of California, or the various states of the United
19 States of America.

20 6. Plaintiff is unaware of the true names or capacities of the Defendants sued
21 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
22 amend the complaint and serve such fictitiously named Defendants once their names and
23 capacities become known.

24 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
25 were the partners, agents, owners, or managers of TELECARE CORPORATION at all
26 relevant times.

27 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
28 acts and omissions alleged herein was performed by, or is attributable to, TELECARE

1 CORPORATION and/or DOES 1 through 10 (collectively, “Defendants” or “TELECARE”),
2 each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert
3 with, each of the other co-Defendants and was acting within the course and scope of such
4 agency, employment, joint venture, or concerted activity with legal authority to act on the
5 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
6 official policy of Defendants.

7 9. At all relevant times, Defendants, and each of them, ratified each and every act
8 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
9 and abetted the acts and omissions of each and all the other Defendants in proximately causing
10 the damages herein alleged.

11 10. Plaintiff is informed and believes, and thereon alleges, that each of said
12 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
13 omissions, occurrences, and transactions alleged herein.

14 **GENERAL ALLEGATIONS**

15 11. Defendants are a mental health services provider, operating programs in six (6)
16 states, including California. Upon information and belief, Defendants maintain a single,
17 centralized Human Resources (“HR”) department at their company headquarters in Alameda,
18 California, which is responsible for the recruiting and hiring of new employees, and
19 communicating and implementing Defendants’ company-wide policies, including timekeeping
20 policies and meal and rest period policies, to employees throughout California.

21 12. In particular, Plaintiff and class members, on information and belief, received
22 the same standardized documents and/or written policies. Upon information and belief, the
23 usage of standardized documents and/or written policies, including new-hire documents,
24 indicate that Defendants dictated policies at the corporate level and implemented them
25 company-wide, regardless of their employees’ assigned locations or positions.

26 13. Upon information and belief, Defendants maintain a centralized Payroll
27 department at their company headquarters in Alameda, California, which processes payroll for
28 all non-exempt, hourly paid employees working for Defendants at their various locations and

1 jobsites in California, including Plaintiff and class members. Based upon information and
2 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
3 employees in California, irrespective of their work locations. Upon information and belief,
4 Defendants process payroll for departing employees in the same manner throughout the State
5 of California, regardless of the manner in which each employee's employment ends.

6 14. Defendants continue to employ non-exempt or hourly paid employees in
7 California.

8 15. Plaintiff is informed and believes, and thereon alleges, that at all times herein
9 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
10 and advisors knowledgeable about California labor and wage law, employment and personnel
11 practices, and about the requirements of California law.

12 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
13 members were not paid for all hours worked because all hours worked were not recorded.

14 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to receive certain wages for
16 overtime compensation and that they were not receiving certain wages for overtime
17 compensation.

18 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and class members were entitled to receive at least minimum
20 wages for compensation and that they were not receiving at least minimum wages for work
21 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
22 and class members were not paid at least minimum wages for work done off-the-clock.

23 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to meal periods in
25 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
26 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
27 periods and that Plaintiff and class members were not provided with all meal periods or
28 payment of one (1) additional hour of pay at their regular rates of pay when they did not

1 receive a timely, uninterrupted, thirty (30) minute meal period.

2 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to rest periods in
4 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
5 additional hour of pay at their regular rates of pay when they were not authorized and
6 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
7 and class members were not authorized and permitted to take compliant rest periods, nor did
8 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
9 pay at their regular rates of pay when they were not authorized and permitted to take a
10 compliant rest period.

11 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and class members were entitled to receive complete and
13 accurate wage statements in accordance with California law. In violation of the California
14 Labor Code, Plaintiff and class members were not provided complete and accurate wage
15 statements.

16 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that they had a duty to maintain accurate and complete payroll records in
18 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
19 and intentionally failed to do so.

20 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to timely payment of all
22 wages earned upon termination of employment. In violation of the California Labor Code,
23 Plaintiff and class members did not receive payment of all wages due, including, but not
24 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
25 within permissible time periods.

26 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to timely payment of wages
28 during their employment. In violation of the California Labor Code, Plaintiff and class

1 members did not receive payment of all wages, including, but not limited to, overtime wages,
2 minimum wages, and/or meal and rest period premium wages, within permissible time
3 periods.

4 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
6 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
7 and/or drug tests, but willfully, knowingly, and intentionally failed to do so.

8 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and/or class members were entitled to receive full
10 reimbursement for all business-related expenses and costs they incurred during the course and
11 scope of their employment and that they did not receive full reimbursement of applicable
12 business-related expenses and costs incurred.

13 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
17 falsely represented to Plaintiff and class members that they were properly denied wages, all in
18 order to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

20 28. At all times herein set forth, PAGA provides that any provision of law under
21 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
22 assessed and collected by the LWDA for violations of the California Labor Code and
23 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
24 civil action brought on behalf of themselves and other current or former employees pursuant
25 to procedures outlined in California Labor Code section 2699.3.

26 29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
27 person who was employed by the alleged violator and against whom one or more of the
28 alleged violations was committed."

1 30. Plaintiff and other current and former employees of Defendants are “aggrieved
2 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
3 or former employees and one or more of the alleged violations were committed against them.

4 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
5 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
6 following requirements have been met:

- 7 (a) The aggrieved employee or representative shall give written notice by
8 online filing with the LWDA and by certified mail to the employer of
9 the specific provisions of the California Labor Code alleged to have
10 been violated, including the facts and theories to support the alleged
11 violation.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall notify the employer and the aggrieved employee or
16 representative by certified mail that it does not intend to investigate the
17 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
18 the postmark date of the aggrieved employee’s notice. Upon receipt of
19 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
20 (65) calendar days of the postmark date of the aggrieved employee’s
21 notice, the aggrieved employee may commence a civil action pursuant
22 to California Labor Code section 2699 to recover civil penalties.

23 32. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
24 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
25 provision other than those listed in Section 2699.5 after the following requirements have been
26 met:

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of

1 the specific provisions of the California Labor Code alleged to have
2 been violated (other than those listed in Section 2699.5), including the
3 facts and theories to support the alleged violation.

4 (b) An aggrieved employee's notice filed with the LWDA pursuant to
5 2699.3(c) and any employer response to that notice shall be
6 accompanied by a filing fee of seventy-five dollars (\$75).

7 (c) The employer may cure the alleged violation within thirty-three (33)
8 calendar days of the postmark date of the notice sent by the aggrieved
9 employee or representative. The employer shall give written notice
10 within that period of time by certified mail to the aggrieved employee or
11 representative and by online filing with the LWDA if the alleged
12 violation is cured, including a description of actions taken, and no civil
13 action pursuant to Section 2699 may commence. If the alleged violation
14 is not cured within the 33-day period, the aggrieved employee may
15 commence a civil action pursuant to Section 2699.

16 33. On August 6, 2020, Plaintiff provided written notice by online filing to the
17 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
18 Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
20 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
21 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
22 Plaintiff PAGA Case Number LWDA-CM-801560-20. A true and correct copy of Plaintiff's
23 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

24 34. As of the filing date of this complaint, over 65 days have passed since Plaintiff
25 sent the notice described above to the LWDA, and the LWDA has not responded that it
26 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

27 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
28 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for

violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

36. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

37. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

38. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks

1 relief authorized by California law.

2 42. Plaintiff's proposed class consists of and is defined as follows:

3 All persons who worked for Defendants as non-exempt, hourly
4 paid employees in California, at any time from July 17, 2018, until
the date of trial ("Class").

5 43. Plaintiff's proposed subclass consists of and is defined as follows:

6 All persons who worked for Defendants as non-exempt, hourly
7 paid employees in California and who received at least one wage
8 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

9 44. Members of the Class and Subclass are referred to herein as "class members."

10 45. Plaintiff reserves the right to redefine the Class and Subclass and to add
11 additional subclasses as appropriate based on further investigation, discovery, and specific
12 theories of liability.

13 46. There are common questions of law and fact as to class members that
14 predominate over questions affecting only individual members, including, but not limited to:

- 15 (a) Whether Defendants required Plaintiff and class members to work over
16 eight (8) hours per day, over twelve (12) hours per day, or over forty
17 (40) hours per week and failed to pay all legally required overtime
18 compensation to Plaintiff and class members;
- 19 (b) Whether Defendants failed to pay Plaintiff and class members at least
20 minimum wages for all hours worked;
- 21 (c) Whether Defendants failed to provide Plaintiff and class members with
22 meal periods;
- 23 (d) Whether Defendants failed to authorize and permit Plaintiff and class
24 members to take rest periods;
- 25 (e) Whether Defendants provided Plaintiff and class members with
26 complete and accurate wage statements as required by California Labor
27 Code section 226(a);
- 28 (f) Whether Defendants maintained accurate payroll records as required by

California Labor Code section 1174(d);

- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and meal and rest period premium wages due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed to timely pay overtime wages, minimum wages, and meal and rest period premium wages to Plaintiff and class members during their employment;
- (i) Whether Defendants failed to pay Plaintiff and class members for the costs of mandatory physical examinations and/or drug testing;
- (j) Whether Defendants failed to reimburse Plaintiff and/or class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if

any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

//

1 **FIRST CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

3 **(Against all Defendants)**

4 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 49. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

11 50. California Labor Code section 1198 and the applicable IWC Wage Order
12 provide that it is unlawful to employ persons without compensating them at a rate of pay
13 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
14 number of hours worked by the person on a daily or weekly basis.

15 51. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiff and class members working more than eight (8) hours in a day
17 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
18 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
19 workweek.

20 52. The applicable IWC Wage Order further provides that Defendants are and were
21 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
22 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
23 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
24 employee, including nondiscretionary bonuses and incentive pay.

25 53. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 54. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
5 class members were not paid overtime premiums for all of the hours they worked in excess of
6 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
7 hours in a week, because all hours worked were not recorded.

8 55. First, during the relevant time period, Defendants had a policy and/or practice
9 of discouraging and impeding Plaintiff and class members from recording hours worked that
10 were outside of their scheduled shifts, in order to limit the amount of overtime employees
11 could accrue. On information and belief, this limitation on overtime accrual was based on a
12 company-wide policy of staffing locations strictly based on the labor hours or labor budget set
13 by corporate. This policy of limiting overtime, coupled with Defendants' single-staffing
14 and/or understaffing policy (*see infra*), as well as the assignment of heavy workloads, led
15 Plaintiff and class members to work off-the-clock before and after their scheduled shift times
16 in order to complete their assigned tasks. As a result of this restriction on overtime accrual,
17 Defendants forced Plaintiff and class members to perform work off-the-clock outside of their
18 scheduled shifts, prior to clocking in and after clocking out. For example, Plaintiff and class
19 members were required to work on their case notes at home or in the office, after they had
20 clocked out for the day, due to Defendants' overtime restrictions. Plaintiff would spend
21 several hours each evening writing her notes but was not compensated for this time. As
22 another example, on days that Plaintiff spent at court, Defendants required her to clock out at
23 her scheduled shift end time even though she was still driving clients back from their court
24 hearings.

25 56. Moreover, Defendants had a company-wide policy and/or practice of requiring
26 that Plaintiff and class members respond to work-related calls from Defendants' answering
27 service when the designated person "on-call" was unreachable, even on their off-days. Thus,
28 Defendants failed to track this time spent working before and after scheduled shifts, and

1 Plaintiff and class members received no or incomplete compensation for this time.

2 57. Second, during the relevant period, Defendants had a company-wide policy
3 and/or practice of improperly rounding employees' clock-in and clock-out times in their
4 timekeeping system to the nearest quarter (0.25) of an hour. Defendants' rounding policy
5 resulted in the failure to compensate Plaintiff and class members fully for all hours worked,
6 causing Plaintiff and class members to not be paid overtime wages for all of the overtime
7 hours they actually worked. Defendants' policy of rounding is unfair and has, over time,
8 resulted in the underpayment of wages to Plaintiff and class members. To the extent
9 Defendants' rounding policy has taken away time worked that was eligible for overtime,
10 Plaintiff and class members were denied overtime pay for all hours worked.

11 58. Third, Defendants systematically adopted a single-staffing model for
12 employees assigned to cover court hearings, pursuant to their labor budget practices, thereby
13 failing to provide adequate meal period coverage to permit employees to take compliant meal
14 periods. Because Defendants assigned only one employee to attend court hearings, there was
15 no one available to relieve Plaintiff and class members needing meal period coverage. For
16 example, Plaintiff missed her meal periods because there were no other employees available
17 to relieve her, and when she was able to take a meal period, she remained on-duty because she
18 was required to eat with and attend to her clients.

19 59. Fourth, as stated, Defendants had, and continue to have, a company-wide policy
20 and/or practice of staffing their locations strictly based on a labor budget set by the corporate
21 office. Defendants' practice of labor budgeting resulted in chronic understaffing, such that
22 there were too few employees on duty to handle the heavy workload, which included certain
23 daily tasks, and provide uninterrupted meal period coverage. Furthermore, Defendants had a
24 company-wide practice of failing to schedule meal periods, which further caused Plaintiff and
25 class members to not be relieved of their duties for compliant meal periods. Thus, Plaintiff
26 and class members suffered missed and/or interrupted meal periods, work for which they were
27 not paid. Finally, on information and belief, because Defendants frowned upon employees
28 accruing meal period penalties, Defendants adjusted employee time records to reflect

1 compliant meal periods, regardless of whether they had received a compliant meal period or
2 not, in order to strictly limit meal penalties that Defendants would otherwise owe.
3 Consequently, Plaintiff and class members performed work during meal periods for which
4 they were not paid.

5 60. Defendants knew or should have known that as a result of these company-wide
6 practices and/or policies, Plaintiff and class members were performing their assigned duties
7 off-the-clock before and after their shifts and during meal periods, and were suffered or
8 permitted to perform work for which they were not paid. Because Plaintiff and class members
9 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
10 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
11 members were not paid overtime wages for all of the overtime hours they actually worked.

12 61. Defendants' failure to pay Plaintiff and class members the balance of overtime
13 compensation as required by California law, violates the provisions of California Labor Code
14 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
15 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
16 and attorneys' fees.

17 **SECOND CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 19 **Minimum Wages** 20 **(Against all Defendants)**

21 62. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
22 and every allegation set forth above.

23 63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
24 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
25 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
26 fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time
27 during which an employee is subject to the control of an employer, and includes all the time
28 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.

1 Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

2 64. As stated, as a result of Defendants’ policy of limiting the amount of overtime
3 employees could accrue by discouraging and impeding Plaintiff and class members from
4 recording hours worked that were outside of their scheduled shifts, Plaintiff and class
5 members were forced to work off-the-clock before and after their scheduled shift start and end
6 times to complete their assigned job duties. Defendants also had a company-wide policy
7 and/or practice of rounding Plaintiff’s and class members’ hourly clock-in and clock-out times
8 in their timekeeping system to the nearest quarter-hour, resulting in the failure to compensate
9 them for all hours worked.

10 65. Furthermore, stated above, due to Defendants’ policies and/or practices of
11 understaffing or single-staffing while assigning heavy workloads, and failure to schedule meal
12 periods, Plaintiff and class members were forced to forego meal periods, have their meal
13 periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

14 66. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
15 and class members worked through that qualified for overtime premium payment. To the
16 extent that these off-the-clock hours did not qualify for overtime premium payment,
17 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
18 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

19 67. Defendants’ failure to pay Plaintiff and class members minimum wages violates
20 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
21 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
22 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

23 **THIRD CAUSE OF ACTION**

24 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

25 **Violations**

26 **(Against all Defendants)**

27 68. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
28 and every allegation set forth above.

1 69. At all relevant times herein set forth, California Labor Code section 512(a)
2 provides that an employer may not require, cause, or permit an employee to work for a period
3 of more than five (5) hours per day without providing the employee with a meal period of not
4 less than thirty (30) minutes, except that if the total work period per day of the employee is
5 not more than six (6) hours, the meal period may be waived by mutual consent of both the
6 employer and the employee. Under California law, first meal periods must start after no more
7 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
8 2012).

9 70. At all relevant times herein set forth, California Labor Code sections 226.7,
10 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
11 meal period mandated by an applicable order of the IWC.

12 71. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and
13 the applicable IWC Wage Order also require employers to provide a second meal period of
14 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
15 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
16 hours worked is no more than twelve (12) hours, the second meal period may be waived by
17 mutual consent of the employer and the employee only if the first meal period was not waived.

18 72. First, during the relevant time period, as stated, Defendants had, and continue
19 to have, uniform policies and/or practices of single-staffing and understaffing due to labor
20 budgeting and assignment of heavy workloads, which resulted in a lack of meal period
21 coverage and prevented Plaintiff and class members from taking all timely, uninterrupted meal
22 periods to which they were entitled. As a result, Plaintiff and class members would be forced
23 to work in excess of five (5) hours before taking meal periods, have their meal periods
24 interrupted, and/or had to forgo their meal periods altogether. For example, during her
25 employment, Plaintiff and class members took their meal periods at their desks to continue
26 working on assigned tasks, such as writing case notes, reading and answering emails, and
27 responding to phone calls. In addition, on days that they were assigned to court-duty, Plaintiff
28 and class members had no opportunity to leave the courtrooms due to a lack of coverage,

1 causing them to take late meal periods after working in excess of five (5) hours. When they
2 were finally able to take a meal period, Plaintiff and class members remained on-duty because
3 they were required to eat with and attend to clients.

4 73. Second, as stated, Defendants, on a company-wide basis, have systematically
5 discouraged and impeded Plaintiff and class members from taking meal periods by failing to
6 schedule meal periods, even though they are aware and know that employees are entitled to
7 such meal periods. As a result of this uniform failure to schedule meal periods, Plaintiff and
8 class members were not provided timely, uninterrupted 30-minute meal periods during their
9 shifts in which they were entitled to receive a meal period. Furthermore, on information and
10 belief, because Defendants frowned upon employees accruing meal period penalties,
11 Defendants' management would adjust Plaintiff's and class members' time records to reflect
12 compliant meal periods, regardless of whether they had received a compliant meal period or
13 not, in order to strictly limit meal penalties that would need to be paid by Defendants.

14 74. Third, Defendants did not provide Plaintiff and class members with second 30-
15 minute meal periods on days that they worked in excess of ten (10) hours in one day. During
16 her employment, Plaintiff worked shifts in excess of ten (10) or more hours per day, but was
17 not provided a second 30-minute meal period. Plaintiff and class members did not sign valid
18 meal period waivers on days that they were entitled to meal periods and were not relieved of
19 all duties.

20 75. Moreover, Defendants engaged in a company-wide practice and/or policy of
21 not paying all meal period premiums owed when compliant meal periods are not provided.
22 Because of Defendants' practices and/or policies, Plaintiff and class members have not
23 received premium pay for all missed, late, and interrupted meal periods. As a result,
24 Defendants failed to provide Plaintiff and class members compliant meal periods in violation
25 of California Labor Code sections 226.7, 512, and 516 and failed to pay the full meal period
26 premiums due.

27 76. Defendants' conduct violates the applicable IWC Wage Order, and California
28 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore

entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

77. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

78. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class members' employment by Defendants.

79. At all relevant times, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

80. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7, Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

81. During the relevant time period, Defendants regularly failed to authorize and

1 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
2 period worked or major fraction thereof. As with meal periods, Defendants' policies and/or
3 practices of understaffing and assigning heavy workloads prevented Plaintiff and class
4 members from being relieved of all duty in order to take compliant rest periods. Defendants
5 also failed to schedule rest periods, which, coupled with Defendants' failure to provide
6 adequate rest period coverage, further led to Plaintiff and class members not being authorized
7 and permitted to take rest periods.

8 82. Furthermore, upon information and belief, during the relevant time period,
9 Defendants maintained and implemented a company-wide on-premises rest period policy,
10 which mandated that Plaintiff and class members remain on the work premises during their
11 rest periods. Upon information and belief, Defendants' company-wide on-premises rest
12 period policy prevented Plaintiff and class members from being relieved of all duties for rest
13 periods and caused them to perform work during rest periods.

14 83. As a result of Defendants' practices and policies, Plaintiff and class members
15 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
16 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
17 throughout her employment, Plaintiff would miss her rest periods due to understaffing, heavy
18 workload, and the lack of coverage for rest periods.

19 84. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed
22 to pay them rest period premium wages due, in violation of Labor Code section 226.7 and the
23 applicable IWC Wage Order.

24 85. Defendants' conduct violates the applicable IWC Wage Order and California
25 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
26 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
27 compensation for each work day that a compliant rest period was not authorized and
28 permitted.

1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
3 **Statements and Failure to Maintain Accurate Payroll Records**
4 **(Against all Defendants)**

5 86. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
6 and every allegation set forth above.

7 87. At all relevant times herein set forth, California Labor Code section 226(a)
8 provides that every employer shall furnish each of his or her employees an accurate and
9 complete itemized wage statement in writing, including, but not limited to, the name and
10 address of the legal entity that is the employer, the inclusive dates of the pay period, total
11 hours worked, and all applicable rates of pay.

12 88. At all relevant times, Defendants have knowingly and intentionally provided
13 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
14 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
15 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
16 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
17 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
18 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

19 89. Because Defendants did not accurately record the time Plaintiff and Subclass
20 members spent working off the clock, improperly rounded their total hours worked, and
21 deducted time from their records for meal periods that were interrupted and/or missed (and
22 therefore time for which they should have been paid), Defendants did not list the correct
23 amount of gross wages and net wages earned by Plaintiff and Subclass members in
24 compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to
25 accurately list the total number of hours worked by Plaintiff and Subclass members in
26 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect
27 during the pay period and corresponding accurate number of work hours worked at each
28 hourly rate in violation of section 226(a)(9).

1 90. The wage statement deficiencies also include, without limitation, failing to list
2 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
3 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
4 only the last four digits of his or her social security number or an employee identification
5 number other than a social security number; failing to list the name and address of the legal
6 entity that is the employer; failing to list the inclusive dates of the period for which class
7 members were paid; and/or failing to state all hours worked as a result of not recording or
8 stating hours worked off-the-clock.

9 91. California Labor Code section 1198 provides that the maximum hours of work
10 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
11 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
12 employment of any employees for longer hours than those fixed by the order or under
13 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
14 Wage Order, employers are required to keep accurate time records showing when the
15 employee begins and ends each work period and meal period. During the relevant time
16 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
17 and meal period start and stop times for Plaintiff and Subclass members, in violation of
18 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
19 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
20 periods were taken regardless of if or when meal periods were actually taken, and thereby
21 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
22 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
23 second 30-minute meal periods to which they were entitled, Defendants kept no records of
24 meal start and end times for second meal periods.

25 92. California Labor Code section 1174(d) provides that “[e]very person employing
26 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
28 plants or establishments at which employees are employed, payroll records showing the hours

1 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
2 applicable piece rate paid to, employees employed at the respective plants or
3 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
5 members showing the daily hours they worked and the wages paid thereto as a result of failing
6 to record the off-the-clock hours that they worked and improperly rounding Plaintiff’s and
7 Subclass members’ total hours worked.

8 93. Plaintiff and Subclass members are entitled to recover from Defendants the
9 greater of their actual damages caused by Defendants’ failure to comply with California Labor
10 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
11 employee.

12 **SIXTH CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 14 **Termination** 15 **(Against all Defendants)**

16 94. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 95. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
19 that if an employer discharges an employee, the wages earned and unpaid at the time of
20 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
21 her employment, his or her wages shall become due and payable not later than seventy-two
22 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
23 his or her intention to quit, in which case the employee is entitled to his or her wages at the
24 time of quitting.

25 96. On information and belief, Defendants had a company-wide practice or policy
26 of paying departing employees their final wages on the next regular pay cycle, instead of
27 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,
28 Plaintiff resigned from her employment with Defendants effective May 7, 2020, but did not

1 receive her final wages within seventy-two (72) hours. Instead, Defendants tendered
2 Plaintiff's final wages to her over two (2) weeks later on May 22, 2020. Thus, Defendants
3 failed to pay Plaintiff her final wages within seventy-two (72) hours, in violation of Labor
4 Code section 202.

5 97. Moreover, Defendants willfully failed to pay Plaintiff and class members who
6 are no longer employed by Defendants the earned and unpaid wages set forth above, including
7 but not limited to, overtime wages, minimum wages, and/or meal and rest period premium
8 wages, either at the time of discharge, or within seventy-two (72) hours of their leaving
9 Defendants' employ.

10 98. Defendants' failure to pay Plaintiff and class members who are no longer
11 employed by Defendants their wages earned and unpaid at the time of discharge, or within
12 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
13 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
14 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
15 thirty (30) day maximum pursuant to California Labor Code section 203.

16 SEVENTH CAUSE OF ACTION

17 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 18 Employment 19 (Against all Defendants)

20 99. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 100. This cause of action is dependent upon, and wholly derivative of, the overtime
23 wages, minimum wages, and/or meal and rest period premium wages, that were not timely
24 paid to Plaintiff and those class members.

25 101. At all times relevant herein set forth, Labor Code section 204 provides that all
26 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
27 days, inclusive, of any calendar month, other than those wages due upon termination of an
28 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of

1 the month during which the labor was performed.

2 102. At all times relevant herein, Labor Code section 204 provides that all wages
3 earned by any person in any employment between the sixteenth (16th) and the last day,
4 inclusive, of any calendar month, other than those wages due upon termination of an
5 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
6 month.

7 103. At all times relevant herein, Labor Code section 204 provides that all wages
8 earned for labor in excess of the normal work period shall be paid no later than the payday for
9 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
10 204 provides that the requirements of this section are deemed satisfied by the payment of
11 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
12 seven (7) calendar days following the close of the payroll period.

13 104. During the relevant time period, Defendants willfully failed to pay Plaintiff and
14 class members all wages due including, but not limited to, overtime wages, minimum wages,
15 and meal and rest period premium wages, within the time periods specified by California
16 Labor Code section 204.

17 105. Defendants' failure to pay Plaintiff and class members all wages due violates
18 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
19 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

20 **EIGHTH CAUSE OF ACTION**

21 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***

22 **(Against all Defendants)**

23 106. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
24 and every allegation set forth above.

25 107. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
26 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
27 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
28 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section

1 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for
2 violations of those Labor Code sections not found in section 2699.5, including sections 516
3 and 1182.12.

4 108. Defendants' conduct, as alleged herein, violates numerous sections of the
5 California Labor Code, including, but not limited to, the following:

- 6 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
7 wage order for Defendants' failure to compensate Plaintiff and other
8 aggrieved employees with all required overtime pay, as alleged herein;
- 9 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
10 and the applicable IWC wage order for Defendants' failure to
11 compensate Plaintiff and other aggrieved employees with at least
12 minimum wages for all hours worked, as alleged herein;
- 13 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and the
14 applicable IWC wage order for Defendants' failure to provide Plaintiff
15 and other aggrieved employees with meal periods, as alleged herein;
- 16 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
17 IWC wage order for Defendants' failure to authorize and permit
18 Plaintiff and other aggrieved employees to take rest periods, as alleged
19 herein;
- 20 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
21 wage order for failure to provide accurate and complete wage statements
22 to Plaintiff and other aggrieved employees, as alleged herein;
- 23 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
24 IWC wage order for failure to maintain payroll records as alleged
25 herein;
- 26 (g) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
27 earned wages upon termination, as alleged herein;
- 28 (h) Violation of Labor Code section 204 for failure to pay all earned wages

during employment, as alleged herein;

- (i) Violation of Labor Code section 222.5 for failure to compensate other aggrieved employees for mandatory physical examinations and/or drug testing as set forth below; and
- (j) Violation of Labor Code section 2802 for failure to reimburse other aggrieved employees for all business expenses necessarily incurred, as set forth below.

109. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any medical or physical examination taken.

110. At all times relevant herein, Defendants implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory physical examinations, tuberculin (TB) testing, flu shots, and/or drug testing, upon hiring and periodically thereafter, but required them to do so at their own expense. Defendants had a company-wide policy requiring that all employees, including other aggrieved employees, travel to a specified medical clinic using their own personal vehicles to undergo physical examinations, TB testing, flu shots, and/or drug testing. At all times, Defendants were in control of scheduling the date and time for the examinations and/or testing, selecting the provider/clinic where the examinations and/or testing were to take place, and determining the scope of the examinations and/or testing.

111. However, Defendants did not compensate other aggrieved employees for the time they spent traveling to and from the medical clinics; for the time they spent undergoing the physical examinations, TB testing, flu shots, and/or drug testing; or reimburse them for the travel expenses they incurred getting to and from the medical clinics. Defendants' policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, flu shots, and/or drug testing violates California Labor Code section 222.5. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

1 112. At all times herein set forth, California Labor Code section 2802 provides that
2 an employer must reimburse employees for all necessary expenditures and losses incurred by
3 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
4 to prevent employers from passing off their cost of doing business and operating expenses on
5 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
6 (2014). The applicable wage order, IWC Wage Order 4-2001, provides that: “[w]hen the
7 employer requires the use of tools or equipment or they are necessary to the performance of a
8 job, such tools and equipment shall be provided and maintained by the employer, except that
9 an employee whose wages are at least two (2) times the minimum wage may provide and
10 maintain hand tools and equipment customarily required by the particular trade or craft.”

11 113. During the relevant time period, as stated, Defendants had a company-wide
12 policy of requiring other aggrieved employees to travel to medical clinics on their own time
13 and using their personal vehicles or alternate transportation to obtain mandatory physical
14 examinations, TB testing, flu shots, and/or drug testing, but did not reimburse them for their
15 travel expenses, including mileage. At all times, Defendants were in control of scheduling the
16 date and time for the testing and/or physical examinations, selecting the provider or clinic
17 where the testing and/or physical examinations were to take place, and determining the scope
18 of the testing and/or physical examinations. Defendants gave other aggrieved employees strict
19 instructions to obtain drug testing, TB testing, flu shots, and/or physical examinations, and
20 other aggrieved employees underwent the testing and/or physical examinations and/or testing
21 for the sole benefit of Defendants. Although Defendants required other aggrieved employees
22 to use their own vehicles or obtain alternate transportation to undergo physical examinations,
23 TB testing, flu shots, and/or drug testing, Defendants never reimbursed them for their travel
24 expenses.

25 114. Defendants could have provided other aggrieved employees with the actual
26 tools for use on the job, such as company vehicles, to be used for fulfilling work-related tasks,
27 or Defendants could have reimbursed employees for the costs of their mileage and travel
28 expenses. Instead, Defendants passed these operating costs off onto other aggrieved

employees.

115. Thus, Defendants had, and continue to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Other aggrieved employees are entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

NINTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* – Unlawful Business Practices (Against all Defendants)

116. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

117. Defendants are “persons” as defined by California Business & Professions Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

118. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants’ unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

119. Defendants’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

120. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants’ policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and

1198 and the applicable IWC Order, as alleged herein;

- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), 1198, and the applicable IWC Order, as alleged herein;
- (f) Failing to timely pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204 and the applicable IWC Order, as alleged herein; and
- (g) Failing to pay Plaintiff and class members the costs of mandatory physical examinations and/or drug testing in violation of California Labor Code section 222.5, as set forth below.

121. At all relevant times herein, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any medical or physical examination taken.

122. During the relevant time period, Defendants implemented, on a company-wide basis, an employer-imposed requirement that Plaintiff and class members undergo a mandatory physical examination, tuberculin (TB) test, and/or drug test upon hiring and periodically thereafter, but required them to do so at their own expense. Defendants had a company-wide policy requiring that all employees, including Plaintiff and class members,

1 travel to a specified medical clinic using their own personal vehicles to undergo drug testing,
2 TB testing, flu shots, and/or physical examinations. At all times, Defendants were in control
3 of scheduling the date and time for the examinations and/or testing, selecting the
4 provider/clinic where the examinations and/or testing were to take place, and determining the
5 scope of the examinations and/or testing.

6 123. During the relevant time period, Plaintiff was instructed by Defendants to travel
7 to a designated medical clinic, U.S. Healthworks, in Riverside, California, and obtain a TB
8 test. Plaintiff followed Defendants' instructions, traveled to the clinic Defendants selected,
9 and underwent the testing. For her initial test, Plaintiff drove approximately 90 miles (for
10 approximately 60-80 minutes total) to and from the medical clinic selected by Defendants
11 using her own vehicle, spent 40 minutes waiting at the medical facility, and 10 minutes
12 undergoing the requisite testing. Plaintiff repeated this trip in order to receive her TB test
13 results, spending the same amount of time traveling to and from the medical clinic, and
14 waiting for her test reading. Plaintiff was then required to make a third trip to the same
15 medical clinic to finalize her TB test, making a 4-mile detour (for approximately 10 minutes)
16 from her commute to work, and waited 10 minutes to receive her results. Plaintiff and class
17 members were also required to take annual TB tests and flu shots at the U.S. Healthworks
18 clinic or medical clinic of their choosing on their own time using their personal vehicles.

19 124. However, Defendants did not compensate Plaintiff and class members for the
20 time they spent traveling to and from the medical clinics; for the time they spent undergoing
21 the drug testing, TB testing, flu shots, and/or physical examinations; or reimburse them for the
22 travel expenses they incurred getting to and from the medical clinics. Defendants' policy
23 and/or not paying for all costs Plaintiff and class members incurred obtaining mandatory
24 physical examinations and/or drug testing is in violation of California Labor Code section
25 222.5.

26 125. As a result of the violations of California law herein described, Defendants
27 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
28 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged

1 herein.

2 126. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
3 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
4 Defendants during a period that commences four years prior to the filing of this complaint; a
5 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
6 class members; and an award of attorneys' fees pursuant to California Code of Civil
7 Procedure section 1021.5 and other applicable laws; and an award of costs.

8 **TENTH CAUSE OF ACTION**

9 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

10 **Unfair Business Practices**

11 **(Against all Defendants)**

12 127. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
13 and every allegation set forth above.

14 128. Defendants are “persons” as defined by California Business & Professions
15 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
16 and/or associations.

17 129. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
18 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
19 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff
20 seeks to enforce important rights affecting the public interest within the meaning of Code of
21 Civil Procedure section 1021.5.

22 130. Defendants' activities, namely Defendants' company-wide practice and/or
23 policy of not paying Plaintiff and class members all meal and rest period premium wages due
24 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
25 compensation guarantee and enhanced enforcement implemented by section 226.7. The
26 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
27 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
28 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were

1 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
2 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
3 unfair business practice in violation of California Business & Professions Code sections
4 17200, *et seq.* (Id.)

5 131. A violation of California Business & Professions Code sections 17200, *et seq.*
6 may be predicated on any unfair business practice. In the instant case, Defendants' policies
7 and practices have violated the spirit of California's meal and rest period laws and constitute
8 acts against the public policy behind these laws.

9 132. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
10 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
11 benefits implemented by section 226.7 withheld and retained by Defendants during a period
12 that commences four years prior to the filing of this complaint; a permanent injunction
13 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
14 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
15 Procedure section 1021.5 and other applicable laws; and an award of costs.

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
20 against Defendants, jointly and severally, as follows:

21 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
22 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
23 reserves the right to amend her prayer for relief to seek a different amount.

24 **Class Certification**

- 25 2. That this case be certified as a class action;
26 3. That Plaintiff be appointed as the representative of the Class and Subclass;
27 4. That counsel for Plaintiff be appointed as class counsel.

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

$$\begin{matrix} 2 \\ 3 \\ 4 \end{matrix}$$
5
67
89
1011
12

13

14
15
16

17
1819
2021
22

23

24
25

26

27
28

1 willfully failing to provide all meal periods to Plaintiff and class members;

2 17. That the Court make an award to the Plaintiff and class members of one (1)
3 hour of pay at each employee's regular rate of pay for each workday that a meal period was
4 not provided;

5 18. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 19. For premiums pursuant to California Labor Code section 226.7(c);

8 20. For pre-judgment interest on any unpaid meal period premiums from the date
9 such amounts were due, or as otherwise provided by law;

10 21. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 22. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fourth Cause of Action**

15 23. That the Court declare, adjudge and decree that Defendants violated California
16 Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully
17 failing to authorize and permit Plaintiff and class members to take all rest periods;

18 24. That the Court make an award to the Plaintiff and class members of one (1) hour
19 of pay at each employee's regular rate of pay for each workday that a rest period was not
20 authorized and permitted;

21 25. For all actual, consequential, and incidental losses and damages, according to
22 proof;

23 26. For premiums pursuant to California Labor Code section 226.7(c);

24 27. For pre-judgment interest on any unpaid rest period premiums from the date
25 such amounts were due, or as otherwise provided by law;

26 28. For attorneys' fees pursuant to California Code of Civil Procedure section
27 1021.5, or as otherwise provided by law; and

28 29. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

31. For all actual, consequential, and incidental losses and damages, according to proof;

32. For injunctive relief pursuant to California Labor Code section 226(h);

33. For statutory penalties pursuant to California Labor Code section 226(e);

34. For attorneys' fees and costs pursuant to California Labor Code section 226(e)(1); and

35. For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiff and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiff and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 204 (by failing timely to pay all earned wages during employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical examinations); and 2802 (by failing to reimburse business expenses);

49. For civil penalties pursuant to California Labor Code sections 210, 226.3, 256,

1 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
2 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
3 1197, 1197.1, 1198, and 2802;

4 50. For attorneys' fees and costs pursuant to California Labor Code section
5 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
6 Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d),
7 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

8 51. For pre-judgment and post-judgment interest as provided by law; and

9 52. For such other and further relief as the Court may deem equitable and
10 appropriate.

11 **As to the Ninth Cause of Action**

12 53. That the Court declare, adjudge and decree that Defendants' conduct of failing
13 to provide Plaintiff and class members all overtime wages due to them, failing to provide
14 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
15 class members all meal periods, failing to authorize and permit Plaintiff and class members to
16 take all rest periods, failing to provide Plaintiff and class members accurate and complete
17 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
18 failing to timely pay Plaintiff and class members all earned wages during employment, and
19 failing to reimburse Plaintiff and class members for the costs of mandatory drug testing and/or
20 physical examinations, constitutes an unlawful business practice in violation of California
21 Business and Professions Code sections 17200, *et seq.*;

22 54. For restitution of unpaid wages to Plaintiff and all class members and
23 prejudgment interest from the day such amounts were due and payable;

24 55. For the appointment of a receiver to receive, manage and distribute any and all
25 funds disgorged from Defendants and determined to have been wrongfully acquired by
26 Defendants as a result of violations of California Business & Professions Code sections 17200
27 *et seq.*;

28 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to

1 California Code of Civil Procedure section 1021.5; and

2 57. For such other and further relief as the Court may deem equitable and
3 appropriate.

4 **As to the Tenth Cause of Action**

5 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
6 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
7 an unfair business practice in violation of California Business and Professions Code sections
8 17200, *et seq.*;

9 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
10 from Plaintiff and class members and prejudgment interest from the day such amounts were
11 due and payable;

12 60. For the appointment of a receiver to receive, manage and distribute any and all
13 funds disgorged from Defendants and determined to have been wrongfully acquired by
14 Defendants as a result of violations of California Business & Professions Code sections 17200
15 *et seq.*;

16 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
17 California Code of Civil Procedure section 1021.5;

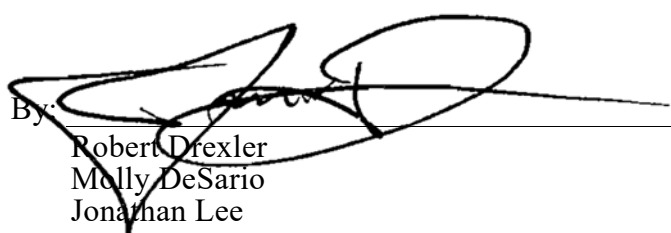
18 62. For pre-judgment and post-judgment interest as provided by law; and

19 63. For such other and further relief as the Court may deem equitable and
20 appropriate.

21
22 Dated: October 12, 2020

Respectfully submitted,

23 Capstone Law APC

24
25 By: 

26 Robert Drexler
27 Molly DeSario
28 Jonathan Lee

Attorneys for Plaintiff Naayshon Battle

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

August 6, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Naayshon Battle v. Telecare Corporation*

Dear PAGA Administrator:

This office represents Naayshon Battle in connection with her claims under the California Labor Code. Ms. Battle was an employee of TELECARE CORPORATION ("TELECARE").

The employer may be contacted directly at the address below:

TELECARE CORPORATION
1080 MARINA VILLAGE PKWY, SUITE 100
ALAMEDA CA 94501

Ms. Battle intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Battle seeks relief on behalf of herself, the State of California, and other persons who are or were employed by TELECARE in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TELECARE employed Ms. Battle as a non-exempt, hourly paid Personal Service Coordinator (PSC) II / Peer Support Specialist II from approximately September 2016 to May 7, 2020. Ms. Battle worked for TELECARE at its locations in Riverside and San Bernardino, California. Ms. Battle typically worked eight (8) hours or more per day, and five (5) days per week. Ms. Battle's primary job duties included, without limitation, performing assessments, providing behavioral and substance abuse counseling, attending court hearings, and working with county guardians.

TELECARE has committed one or more of the following Labor Code violations against Ms. Battle, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

TELECARE’s Company-Wide and Uniform Payroll and HR Practices

TELECARE CORPORATION is a California corporation and a leading mental health services provider, operating programs in six (6) states, including California. Upon information and belief, TELECARÉ maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Alameda, California, for all non-exempt, hourly paid employees working for TELECARÉ in California, including Ms. Battle and other aggrieved employees. At all relevant times, TELECARÉ issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Battle and other aggrieved employees, regardless of their location or position.

Upon information and belief, TELECARÉ maintains a centralized Payroll department at its corporate headquarters in Alameda, California, which processes payroll for all non-exempt, hourly paid employees working for TELECARÉ in California, including Ms. Battle and other aggrieved employees. Further, TELECARÉ issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Battle and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, TELECARÉ utilized the same methods and formulas when calculating wages due to Ms. Battle and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TELECARE willfully failed to pay all overtime wages owed to Ms. Battle and other aggrieved employees. During the relevant time period, Ms. Battle and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Ms. Battle’s experience and counsel’s review of those records currently available relating to Ms. Battle’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Battle reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, TELECARE had a policy and/or practice of discouraging and impeding Ms. Battle and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with TELECARE's single-staffing and/or understaffing policy (*see infra*), as well as the assignment of heavy workloads, led Ms. Battle and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. As a result of this restriction on overtime accrual, TELECARE forced Ms. Battle and other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, prior to clocking in and after clocking out.

For example, Ms. Battle and other aggrieved employees were required to work on their case notes at home or in the office, after they had clocked out for the day, due to TELECARE's overtime restrictions. Ms. Battle would spend several hours each evening writing her notes but was not compensated for this time. As another example, on days that Ms. Battle spent at court, TELECARE required her to clock out at her scheduled shift end time even though she was still driving clients back from their court hearings. Moreover, TELECARE had a company-wide policy and/or practice of requiring that Ms. Battle and other aggrieved employees respond to work-related calls from TELECARE's answering service when the designated person "on-call" was unreachable, even on their off-days. Thus, TELECARE failed to track this time spent working before and after scheduled shifts, and Ms. Battle and other aggrieved employees received no or incomplete compensation for this time.

Second, during the relevant period, TELECARE had a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in its timekeeping system to the nearest quarter (0.25) of an hour. TELECARE's rounding policy resulted in the failure to compensate Ms. Battle and other aggrieved employees fully for all hours worked, causing Ms. Battle and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. TELECARE's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Battle and other aggrieved employees. To the extent TELECARE's rounding policy has taken away time worked that was eligible for overtime, Ms. Battle and other aggrieved employees were denied overtime pay for all hours worked.

Third, TELECARE systematically adopted a single-staffing model for employees assigned to cover court hearings, pursuant to its labor budget practices, thereby failing to provide adequate meal period coverage to permit employees to take compliant meal periods. Because TELECARE assigned only one employee to attend court hearings, there was no one available to relieve Ms. Battle and other aggrieved employees needing meal period coverage. For example, Ms. Battle missed her meal periods because there were no other employees available to relieve her, and when she was able to take a meal period, she remained on-duty because she was required to eat with and attend to her clients.

Fourth, as stated, TELECARE had, and continues to have, a company-wide policy and/or practice of staffing its locations strictly based on a labor budget set by the corporate office. TELECARE's practice of labor budgeting resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workload, which included certain daily tasks, and provide uninterrupted meal period coverage. Furthermore, TELECARE had a company-wide practice of failing to schedule meal periods, which further caused Ms. Battle and other aggrieved employees to not be relieved of

their duties for compliant meal periods. Thus, Ms. Battle and other aggrieved employees suffered missed and/or interrupted meal periods, work for which they were not paid. Finally, on information and belief, because TELECARE frowned upon employees accruing meal period penalties, TELECARE adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that TELECARE would otherwise owe. Consequently, Ms. Battle and other aggrieved employees performed work during meal periods for which they were not paid.

TELECARE knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Battle and other aggrieved employees were performing their assigned duties during their meal periods and off-the-clock before or after their shifts, and were suffered or permitted to perform work for which they were not paid. TELECARE also knew, or should have known, that it did not compensate Ms. Battle and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Ms. Battle and other aggrieved employees regularly worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Battle and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. TELECARE's failure to pay Ms. Battle and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, TELECARE did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, TELECARE paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TELECARE failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TELECARE failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Battle and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 4 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining "Hours Worked").

As stated, as a result of TELECARE's policy of limiting the amount of overtime employees could accrue by discouraging and impeding Ms. Battle and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Battle and other aggrieved employees were forced to work off-the-clock before and after their scheduled shift start and end times to complete their assigned job duties. TELECARE also had a company-wide policy and/or practice of

rounding Ms. Battle's and other aggrieved employees' hourly clock-in and clock-out times in its timekeeping system to the nearest quarter-hour, resulting in the failure to compensate them for all hours worked. Furthermore, stated above, due to TELECARE's policy and/or practice of understaffing or single-staffing while assigning heavy workloads, and failure to schedule meal periods, Ms. Battle and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, TELECARE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination, tuberculin (TB) test, flu shots, and/or drug test upon hiring and periodically thereafter. At all times, TELECARE was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing. TELECARE gave other aggrieved employees strict instructions to obtain physical examinations, TB testing, flu shots, and drug testing, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of TELECARE. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing TELECARE's mandatory physical examination, TB test, flu shots, and/or drug test. However, TELECARE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the physical examinations, TB testing, flu shots, and/or drug testing.

Thus, TELECARE did not pay minimum wages for all hours worked by Ms. Battle and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, TELECARE did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Accordingly, TELECARE regularly failed to pay at least minimum wages to Ms. Battle and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Battle and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate,

except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant time period, as stated, TELECARE had, and continues to have, a uniform policy and/or practice of single-staffing and understaffing due to labor budgeting and assignment of heavy workloads, which resulted in a lack of meal period coverage and prevented Ms. Battle and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Battle and other aggrieved employees would be forced to work in excess of five (5) hours before taking meal periods, have their meal periods interrupted, and/or had to forgo their meal periods altogether. For example, during her employment, Ms. Battle and other aggrieved employees took their meal periods at their desks to continue working on assigned tasks, such as writing case notes, reading and answering emails, and responding to phone calls. In addition, on days that they were assigned to court-duty, Ms. Battle and other aggrieved employees had no opportunity to leave the courtrooms due to a lack of coverage, causing them to take late meal periods after working in excess of five (5) hours. When they were finally able to take a meal period, Ms. Battle and other aggrieved employees remained on-duty because they were required to eat with and attend to clients.

Second, as stated, TELECARE, on a company-wide basis, has systematically discouraged and impeded Ms. Battle and other aggrieved employees from taking meal periods by failing to schedule meal periods, even though they are aware and know that employees are entitled to such meal periods. As a result of this uniform failure to schedule meal periods, Ms. Battle and other aggrieved employees were not provided timely, uninterrupted 30-minute meal periods during their shifts in which they were entitled to receive a meal period. Furthermore, on information and belief, because TELECARE frowned upon employees accruing meal period penalties, TELECARE's management would adjust Ms. Battle's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by TELECARE.

Third, TELECARE did not provide Ms. Battle and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Battle worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-minute meal period. Ms. Battle and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

TELECARE also has engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Battle and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that TELECARE did pay meal period premium wages to other aggrieved employees, it did so at the incorrect rates. Because TELECARE did not properly calculate other aggrieved employees' regular rates of pay by including all remunerations, such as incentive pay and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

Accordingly, TELECARE failed to provide all meal periods in violation of California Labor Code sections 226.7, 512, 516, and 1198. Ms. Battle and other aggrieved employees are therefore entitled

to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, TELECARE regularly failed to authorize and permit Ms. Battle and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TELECARE's policies and/or practice of understaffing and assigning heavy workloads prevented Ms. Battle and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. TELECARE also failed to schedule rest periods, which, coupled with TELECARE's failure to provide adequate rest period coverage, further led to Ms. Battle and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, TELECARE maintained and implemented a company-wide practice and/or policy requiring that Ms. Battle and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Battle and other aggrieved employees were restricted from leaving the work premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, TELECARE effectively maintained control over Ms. Battle and other aggrieved employees during rest periods, and, as a result of this rest period policy, TELECARE did not relinquish control over Ms. Battle and other aggrieved employees during rest periods.

As a result of TELECARE's practices and policies, Ms. Battle and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Battle would miss her rest periods due to understaffing, heavy workload, and the lack of coverage for rest periods.

TELECARE also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Battle and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TELECARE did pay rest period premium

wages to other aggrieved employees, it did so at the incorrect rates. Because TELECARE did not properly calculate other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, TELECARE failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Battle and other aggrieved employees are therefore entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TELECARE has not provided Ms. Battle and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TELECARE has knowingly and intentionally provided Ms. Battle and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TELECARE issued uniform wage statements to Ms. Battle and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, TELECARE violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because TELECARE did not record the time Ms. Battle and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), TELECARE did not list the correct amount of gross wages and net wages earned by Ms. Battle and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, TELECARE failed to accurately list the total number of the hours worked by Ms. Battle and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because TELECARE did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, TELECARE did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). TELECARE also failed to correctly list all applicable hourly rates in effect during the pay

period, namely, correct overtime rates of pay and correct rates of pay for premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of her or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), TELECARE willfully failed to maintain accurate payroll records for Ms. Battle and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Battle’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. At all relevant times, as stated, TELECARE engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Battle and other aggrieved employees. Also, as stated, TELECARE engaged in a company-wide practice and/or policy of falsifying Ms. Battle’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Battle and other aggrieved employees. Furthermore, in light of TELECARE’s failure to provide Ms. Battle and other aggrieved employees with second 30-minute meal periods to which they were entitled, TELECARE kept no records of meal start and end times for second meal periods.

Because TELECARE failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Battle and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Battle and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Battle and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TELECARE failed to pay Ms. Battle and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Ms. Battle and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves her or her employment, her or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting.

On information and belief, TELECARE had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Battle resigned from her employment with TELECARE effective May 7, 2020, but did not receive her final wages within seventy-two (72) hours. Instead, TELECARE tendered Ms. Battle's final wages to her over two (2) weeks later on May 22, 2020. Thus, TELECARE failed to pay Ms. Battle her final wages within seventy-two (72) hours, in violation of Labor Code section 202.

Moreover, TELECARE willfully failed to pay Ms. Battle and other aggrieved employees who are no longer employed by TELECARE all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving TELECARE's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Battle and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, TELECARE implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory physical examinations, tuberculin (TB) testing, flu shots, and/or drug testing, upon hiring and periodically thereafter, but required them to do so at their own expense. As stated, TELECARE had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo physical examinations, TB testing, flu shots, and/or drug testing. At all times, TELECARE was in control of scheduling the date and time for the examinations and/or testing, selecting the provider/facility where the examinations and/or testing were to take place, and determining the scope of the examinations and/or testing. However, TELECARE did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the physical examinations, TB testing, flu shots, and/or drug testing, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. TELECARE's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations, TB testing, flu shots, and/or drug testing is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of her or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, TELECARE had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory physical examinations, tuberculin (TB) testing, flu shots, and/or drug testing, but did not reimburse them for their travel expenses, including mileage. At all times, TELECARE was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. TELECARE gave other aggrieved employees strict instructions to obtain drug testing, TB testing, flu shots, and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for

the sole benefit of TELECARE. Although TELECARE required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo physical examinations, TB testing, flu shots, and/or drug testing, TELECARE never reimbursed them for their travel expenses.

TELECARE could have provided other aggrieved employees with the actual tools for use on the job, such as company vehicles, to be used for fulfilling work-related tasks, or TELECARE could have reimbursed employees for the costs of their mileage and travel expenses. Instead, TELECARE passed these operating costs off onto other aggrieved employees.

Thus, TELECARE had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” TELECARE, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Battle’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Battle seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Battle, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against TELECARE for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Battle seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: TELECARE CORPORATION (via U.S. Certified Mail)

CERTIFIED MAIL®



7019 2280 0000 7398 7173

stone
LAW APC
Century Park East, Ste 1000
Alameda, CA 94607



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TELECARE CORPORATION
1080 MARINA VILLAGE PKWY, SUITE 100
ALAMEDA CA 94501



9590 9403 0424 5163 3663 93

2. Article Number (Transfer from service label)

7019 2280 0000 7398 7173

PS Form 3811, April 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

☐ Mail
☐ Mail Restricted Delivery (500)

Domestic Return Receipt

TELECARE CORPORATION
1080 MARINA VILLAGE PKWY, SUITE 100
ALAMEDA CA 94501

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

TELECARE CORPORATION

Street and Apt. No., or PO Box No.

1080 MARINA VILLAGE PKWY, SUITE 100

City, State, ZIP+4®

ALAMEDA CA 94501

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Nanyshon Battle v.
Telecare Corporation

7019 2280 0000 7398 7173

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TELECARE CORPORATION
1080 MARINA VILLAGE PKWY, SUITE 100
ALAMEDA CA 94501

**9590 9403 0424 5163 3663 93**

2. Article Number (Transfer from service label)

7019 2280 0000 7398 7173**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

- ☐ Agent
- ☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No**3. Service Type**

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
- ☐ Priority Mail Express®

PS Form 3811, April 2015 PSN 7530-02-000-9053

Domestic Return Receipt

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles. I declare that I am over the age of eighteen
4 (18) and not a party to this action. My business address is: Capstone Law APC, 1875 Century
5 Park East, Suite 1000, Los Angeles, California 90067.

6 On October 12, 2020, I served the within document(s) described below as:

7 **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION**
8 **UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR**
9 **CODE §§ 2698, ET SEQ.**

10 on the interested parties in this action by placing true copies thereon enclosed in sealed envelopes
11 address as follows:

12 Catherine M. Dacre
13 Jaclyn A. Gross
14 SEYFARTH SHAW LLP
560 Mission Street, 31st Floor
San Francisco, California 94105
cdacre@seyfarth.com
jgross@seyfarth.com

Geoffrey C. Westbrook
SEYFARTH SHAW LLP
400 Capitol Mall, Suite 2350
Sacramento, California 95814-4428
gwestbrook@seyfarth.com

- 15 (X) **MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelopes
16 were mailed with postage thereon fully prepaid.
17 () **PERSONAL:** I caused such envelope to be delivered by hand to the individuals at the
18 address listed above.
19 () **OVERNIGHT COURIER:** I caused the above-referenced document(s) to be delivered
20 via overnight courier service (FedEx) to the individuals at the address listed above.
21 () **FACSIMILE:** I caused the above-referenced document(s) to be transmitted to the above-
22 named person at the telephone numbers above.
23 (X) **E-MAIL:** Due to the National Emergency and public health orders in California related to
the coronavirus and COVID-19 pandemic, Capstone Law APC attorneys and staff are
working remotely and therefore have limited capabilities to send physical mail in the
normal course of business. On this date, I personally transmitted the foregoing
document(s) using electronic mail to the e-mail address(es) of the person(s) listed above.
(X) **(STATE)** I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

24 **EXECUTED** this document on October 12, 2020, at Los Angeles, California.

25 
26 _____
27 Sandy S. Acevedo
28