

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

Norman B. Blumenthal (State Bar #068687)

2 Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

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

2255 Calle Clara

4 La Jolla, CA 92037

Telephone: (858)551-1223

5 Facsimile: (858) 551-1232

Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF ALAMEDA**

9
10 **CHANTIA WARREN**, on behalf of the
11 State of California, as a private attorney
general,

12
13 Plaintiff,

14 vs.

15 **TELECARE CORPORATION**, a
16 California Corporation; and **DOES 1**
through 50, inclusive,

17
18 Defendants.

**ENDORSED
FILED
ALAMEDA COUNTY**

MAY 04 2021

CLERK OF THE COURT

BY: Roni Gill Deputy Clerk

Case No. **HG 21 099839**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.*, for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
221, 226(a), 226.7, 233, 246, 351, 510,
512, 558(a)(1)(2), 1194, 1197, 1197.1,
1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B)

Filed By Fax

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

6 **INTRODUCTION**

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

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

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

22 **THE PARTIES**

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

27 5. DEFENDANT provides services and treatment for individuals with mental health
28 issues. Founded in 1965, DEFENDANT has over 110 locations in California.

1 6. PLAINTIFF has been employed by DEFENDANT in California from August of
2 2015 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
10 of February 25, 2020 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 233,
15 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
16 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s)
17 and thereby gives rise to civil penalties as a result of such conduct.¹ Based upon the foregoing,
18 PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning
19 of Labor Code § 2699, *et seq.*

20 9. The true names and capacities, whether individual, corporate, subsidiary,
21 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
22 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
23 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
24 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
25 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
26

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

1 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
2 responsible in some manner for one or more of the events and happenings that proximately
3 caused the injuries and damages hereinafter alleged.

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

12 **THE CONDUCT**

13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
19 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
20 was from time to time interrupted by work assignments while clocked out for what should have
21 been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and AGGRIEVED
22 EMPLOYEES would clock out of DEFENDANT's timekeeping system, in order to perform
23 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
24 Also, DEFENDANT, as a matter of established company policy and procedure, administered
25 a uniform practice of rounding the actual time worked and recorded by PLAINTIFF and
26 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
27 of their employment, PLAINTIFF and AGGRIEVED EMPLOYEES were paid less than they
28 would have been paid had they been paid for actual recorded time rather than "rounded" time.

1 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
2 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records. As a
3 result, DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES the
4 proper minimum and overtime wages.

5 12. In addition, State and federal law provides that employees must be paid overtime
6 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED
7 EMPLOYEES were compensated at an hourly rate plus incentive pay that is tied to specific
8 elements of an employee's performance.

9 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
10 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
11 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
12 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
13 hourly basis with incentive compensation when the employees met the various performance
14 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
15 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
16 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
17 of calculating overtime pay. Management and supervisors described the incentive program to
18 potential and new employees as part of the compensation package. As a matter of law, the
19 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
20 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
21 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
22 DEFENDANT.

23 14. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
24 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
25 and other non-exempt employees regularly earn non-discretionary remuneration, including but
26 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the
27 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
28 EMPLOYEES at their base rates of pay.

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

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

1 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
2 leave the work premises during their rest period. As a result of being on the premises for her
3 rest period, PLAINTIFF from time to time performed work tasks in the hospital for
4 DEFENDANT due to her being present at the facility.

5 17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
6 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
7 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
8 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
9 time worked, meaning the time during which an employee was subject to the control of an
10 employer, including all the time the employee was permitted or suffered to permit this work.
11 DEFENDANT required these employees to work off the clock without paying them for all the
12 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
13 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
14 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
15 time worked by working without their time being accurately recorded and without compensation
16 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
17 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
18 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
19 1197, and 1197.1.

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

1 the directions, believed them to be unlawful."

2 19. In the course of their employment PLAINTIFF and other AGGRIEVED
3 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
4 cellular phones as a result of and in furtherance of their job duties as employees for
5 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
6 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
7 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
9 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
10 for the benefit of DEFENDANT.

11 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
12 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
13 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
14 provides that every employer shall furnish each of his or her employees with an accurate
15 itemized wage statement in writing showing, among other things, gross wages earned and all
16 applicable hourly rates in effect during the pay period and the corresponding amount of time
17 worked at each hourly rate. DEFENDANT also violated Section 226(a)(9) by failing to identify
18 the correct rates of pay and number of hours worked, including but not limited to, for the "OT
19 Prem Addnl" item of pay, which was a wage payment. Aside, from the violations listed above
20 in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that
21 lists all the requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT
22 from time to time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
23 statements which violated Cal. Lab. Code § 226.

24 21. Cal. Lab. Code § 204 provides that "[a]ll wages. . . earned by any person in any
25 employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays." Further, Cal. Lab. Code § 204(d) expressly
27 requires employers to pay employees all wages owed within seven (7) days of the close of the
28 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other

1 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
2 payroll period, including but not limited to for the "PDL Hours," wage payments.

3
4 22. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
5 to collect or receive from an employee any part of wages theretofore paid by said employer
6 to said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and
7 other AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable
8 to PLAINTIFF and the AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
9 deductions from compensation payable to PLAINTIFF and the AGGRIEVED
10 EMPLOYEES, and thereby fails to pay these employees all wages due at each applicable
11 pay period and upon termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek
12 recovery of all illegal deductions from wages according to proof, related penalties, interest,
13 attorney fees and costs.

14 23. In violation of the applicable sections of the California Labor Code and the
15 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
16 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED
17 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT
18 is intended to purposefully avoid the payment for all time worked as required by California
19 law which allows DEFENDANT to illegally profit and gain an unfair advantage over
20 competitors who complied with the law. To the extent equitable tolling operates to toll
21 claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
22 should be adjusted accordingly.

23 24. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
24 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which
25 failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF and
26 other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal
27 and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional
28 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate

1 and/or pay all required compensation for work performed by the AGGRIEVED
2 EMPLOYEES and violated the California Labor Code and regulations promulgated
3 thereunder as herein alleged.

4 25. All of the conduct and violations alleged herein occurred during the PAGA
5 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
6 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations
7 that affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.*
8 2018 AJDAR 12157 (Certified for Publication 12/19/18).

9 **JURISDICTION AND VENUE**

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

12 27. Venue is proper in this Court pursuant to California Code of Civil Procedure,
13 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
14 DEFENDANT (i) currently maintains and at all relevant times maintained offices and
15 facilities in this County and/or conducts substantial business in this County, and (ii)
16 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
17 AGGRIEVED EMPLOYEES.

18 **FIRST CAUSE OF ACTION**

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

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

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

22 28. PLAINTIFF incorporates by reference, as though fully set forth herein, the
23 prior paragraphs of this Complaint.

24 29. PAGA is a mechanism by which the State of California itself can enforce state
25 labor laws through the employee suing under the PAGA who do so as the proxy or agent of
26 the state's labor law enforcement agencies. An action to recover civil penalties under
27 PAGA is fundamentally a law enforcement action designed to protect the public and not to
28 benefit private parties. The purpose of the PAGA is not to recover damages or restitution,

1 but to create a means of "deputizing" citizens as private attorneys general to enforce the
2 Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the
3 public interest to allow aggrieved employees, acting as private attorneys general to recover
4 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
5 claims cannot be subject to arbitration.

6 30. PLAINTIFF, and such persons that may be added from time to time who
7 satisfy the requirements and exhaust the administrative procedures under the Private
8 Attorney General Act, brings this Representative Action on behalf of the State of California
9 with respect to herself and all individuals who are or previously were employed by
10 DEFENDANT in California and classified as non-exempt employees ("AGGRIEVED
11 EMPLOYEES") during the time period of February 25, 2020 until a date as determined by
12 the Court (the "PAGA PERIOD").

13 31. On February 25, 2021, PLAINTIFF gave written notice by electronic mail to
14 the Labor and Workforce Development Agency (the "Agency") and by certified mail to the
15 employer of the specific provisions of this code alleged to have been violated as required by
16 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations
17 to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
18 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy
19 of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

20 32. The policies, acts and practices heretofore described were and are an unlawful
21 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
22 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
23 record and provide legally required meal and rest periods, (c) failed to pay overtime wages,
24 (d) failed to pay minimum wages, and (e) failed to reimburse for required expenses, all in
25 violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204
26 *et seq.*, 210, 221, 226(a), 226.7, 233, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
27 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B),
28 and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a

1 result of such conduct.² PLAINTIFF hereby seeks recovery of only civil penalties as
2 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
3 the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the State of California and with respect to all AGGRIEVED
9 EMPLOYEES:

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

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

14
15 Dated: May 4, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

16
17
18 By: 

19 Norman B. Blumenthal

20 Attorneys for Plaintiff
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28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).