

NO. S-062055
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

CORI MACARAEG

PLAINTIFF

AND:

E CARE CONTACT CENTERS LTD.

DEFENDANT

Brought pursuant to the *Class Proceedings Act*

WRIT OF SUMMONS

Name and address of each plaintiff

Cori Macaraeg
c/o TevlinGleadle Employment Law Strategies
700-1006 Beach Avenue
Vancouver BC V6E 1T7

Name and address of each defendant

E Care Contact Centers Ltd.
Suite 2433, Three Bentall Centre
PO Box 49116, 595 Burrard Street
Vancouver BC V7X 1G4

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s):

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) pursuant to the *Class Proceedings Act, RSBC 1996, c. 50* for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND the claim made against you, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST:

- (a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the Plaintiff's address for delivery which is set out in this writ, and
- (b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the Plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

- (a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or
- (b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person, after service, is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

- (a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and
- (b) the end of the Time for Appearance provided for above.

1. The address for the registry is:

The Law Courts
800 Smithe Street
Vancouver, British Columbia
V6Z 2E1

2. The Plaintiff's ADDRESS FOR DELIVERY is:

TevlinGleadle, Employment Law Strategies
Barristers & Solicitors
700 – 1006 Beach Avenue
Vancouver, British Columbia
V6E 1T7
Telephone: (604) 648-2966
Attention: Dan Gleadle

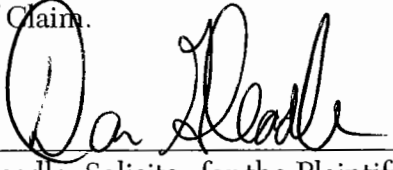
Fax number for delivery (if any): (604) 648-2967

3. The name and office address of the plaintiff's solicitor is:

Same as address for delivery.

The plaintiff's claim is set out in the attached Statement of Claim.

Dated March 28, 2006



Dan Gleadle, Solicitor for the Plaintiff

NO.
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

CORI MACARAEG

Plaintiff

AND:

E CARE CONTACT CENTERS LTD.

Defendant

Brought pursuant to the *Class Proceedings Act*

STATEMENT OF CLAIM

1. The plaintiff, Cori Macaraeg, was at all material times an employee of the defendant E Care Contact Centers Ltd. and resides at 311-1066 East 8th Avenue, Vancouver British Columbia, V5T 1T9.
2. The defendant, E Care Contact Centers Ltd. (“E Care”) is a company originally incorporated pursuant to the laws of the province of Manitoba, and continued into British Columbia on November 1, 2004 pursuant to the laws of the province of British Columbia. E Care Contact’s registered and records office is located at Suite 2433, Three Bentall Centre, PO Box 49116, 595 Burrard Street, Vancouver British Columbia, V7X 1G4.
3. The plaintiff brings this claim on her own behalf and under the *Class Proceedings Act*, RSBC 1996 c. 50 as a representative of the following classes of persons:
 - (a) All persons who, after January 1, 2004, worked over eight hours a day or over 40 hours a week while employed by E Care in the province of British Columbia, but excluding employees who have executed a binding full and final release in favour of the defendant.

4. The plaintiff commenced employment with the defendant on May 31, 2004 as a “Customer Services Representative” with the defendant’s Pre-NSF Team, and on June 30, 2004, was transferred to the Debt Liquidation Department in the capacity of “Credit Recovery Specialist - Account Manager”.

5. The plaintiff’s employment with the defendant was governed by the terms of a partly written and partly oral employment agreement (the “Employment Agreement”) which provided:

- (a) an indefinite term of employment;
- (b) an annual base salary of \$29,040.00;
- (c) commissions based on loans collected;
- (d) an annual performance bonus depending on her individual performance and the defendant’s profitability;
- (e) a comprehensive benefit package, including, Medical Service Plan coverage, Extended Health and Dental coverage, Life Insurance coverage, and Sick Pay benefits and Long Term Disability coverage.

6. The *Employment Standards Act* [RSBC 1996] Chapter 113 applies to all employment relationships in the province of British Columbia, including the relationship governed by the Employment Agreement between the plaintiff and the defendant. The said *Act* provides as follows:

35 (1) An employer must pay an employee overtime wages in accordance with section 40 if the employer requires, or directly or indirectly allows, the employee to work more than 8 hours a day or 40 hours a week.

36 (1) An employer must either

- (a) ensure that an employee has at least 32 consecutive hours free from work each week, or

(b) pay an employee 1 1/2 times the regular wage for time worked by the employee during the 32 hour period the employee would otherwise be entitled to have free from work.

39 Despite any provision of this Part, an employer must not require or directly or indirectly allow an employee to work excessive hours or hours detrimental to the employee's health or safety.

40 (1) An employer must pay an employee who works over 8 hours a day, and is not working under an averaging agreement under section 37,

(a) 1 1/2 times the employee's regular wage for the time over 8 hours, and

(b) double the employee's regular wage for any time over 12 hours.

(2) An employer must pay an employee who works over 40 hours a week, and is not working under an averaging agreement under section 37, 1 1/2 times the employee's regular wage for the time over 40 hours.

(3) For the purpose of calculating weekly overtime under subsection (2), only the first 8 hours worked by an employee in each day are counted, no matter how long the employee works on any day of the week.

46 An employee who works on a statutory holiday must be paid for that day

(a) 1 1/2 times the employee's regular wage for the time worked up to 12 hours,

(b) double the employee's regular wage for any time worked over 12 hours, and

(c) an average day's pay, as determined using the formula in section 45 (1).

7. It was an express, or alternatively, an implied term of the Employment Agreement that the plaintiff:

(a) would be paid overtime pay for hours worked over 8 or 12 hours a day and or hours worked over 40 hours a week, at rates of pay set out in the Employment Standards Act; and

(b) would be provided with reasonable and adequate notice of dismissal if her employer were to terminate her employment without just cause.

8. At all times the plaintiff faithfully and diligently performed her duties on behalf of the defendant and throughout her employment proved to be a valuable and reliable employee.

9. After she was transferred to the Debt Liquidation Department on June 30, 2004 the plaintiff regularly worked more than 8 hours per day and more than 40 hours per week. Particulars of the hours worked by the plaintiff are well known to the defendant, as the defendant kept daily records of hours worked by way of a time clock to be punched by employees, and also by phone records.

10. The defendant breached Employment Agreement by failing to pay the plaintiff sick pay benefits for one day in late November, 2005 when she was away from work sick.

11. The defendant breached the Employment Agreement and its statutory duty to the plaintiff pursuant to the Employment Standards Act by failing to pay the plaintiff for overtime hours worked, particulars of which are well known to the defendant. Alternatively, the plaintiff claims against the defendant for payment for overtime hours worked on the basis of the principle of quantum meruit.

12. The defendant breached the Employment Agreement on February 21, 2006 by dismissing the plaintiff without notice.

13. The dismissal of the plaintiff by the defendant constituted an arbitrary and wilful breach of the employment agreement and a wrongful dismissal of the plaintiff and the plaintiff has suffered loss, damage and expense by reason thereof.

14. The defendant is indebted to the plaintiff for:

- (a) sick pay in respect of one day in late November, 2005;
- (b) overtime pay for the hours worked in excess of 8 in any day and 40 in any week between June 30, 2004 and February 21, 2006.

Wherefore the plaintiff claims on her own behalf as follows:

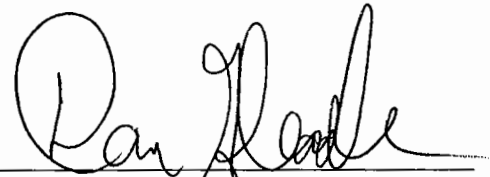
- (c) judgment for one day's pay for sick pay;
- (d) damages for wrongful dismissal;
- (e) interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c.79;
- (f) costs pursuant to section 37 of the Class Proceedings Act, RSBC 1996, c. 50;
- (g) such further and other relief as this Honourable Court may consider just.

Wherefore the plaintiff claims on her own behalf and on behalf of the members of the class as follows:

- (h) judgment for all unpaid overtime pay;
- (i) interest pursuant to the Court Order Interest Act, R.S.B.C. 1996, c.79;
- (j) costs pursuant to section 37 of the Class Proceedings Act, RSBC 1996, c. 50;
- (k) such further and other relief as this Honourable Court may consider just.

Place of trial: Vancouver, BC

Dated March 28, 2006



Dan Gleadle, Solicitor for the Plaintiff

This **Statement of Claim** is filed and delivered by Dan Gleadle of TevlinGleadle, Employment Law Strategies, solicitors for the plaintiff, whose place of business and address for delivery is 700 – 1006 Beach Avenue, Vancouver, B.C., V6E 1T7, Telephone (604) 648-2966, Fax (604) 648-2967