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County of Santa Clara
20CV369854
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

HIROMI MEGURO, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiffs,

vs.

SILICON VALLEY BANK, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No.: **20CV369854**

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LAB. CODE §§ 510, 558,
1194**
- (2) VIOLATION OF LAB. CODE § 226(a);**
- (3) VIOLATION OF BUS. & PROF. CODE
§§ 17200 *ET SEQ.*; AND**
- (4) VIOLATION OF LAB. CODE §§ 2698 *ET
SEQ.***

DEMAND OVER \$25,000.00

1 On behalf of herself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Hiromi Meguro, submits this Class and
3 Representative Action Complaint against Defendant, Silicon Valley Bank, and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code section 201-
9 204, 226(a), 510, 558, and 1194.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to pay all overtime due, failing to timely pay all wages due during employment or upon the
13 separation of employment, and failing to provide accurate itemized wage statements.

14 3. Defendants routinely fail to correctly calculate the regular rate of pay for purposes of
15 paying overtime to Plaintiff and other non-exempt employees. Specifically, Defendants fail to properly
16 calculate the regular rate of pay by not accounting for all non-discretionary compensation, including without
17 limitation, incentives, bonuses, and non-cash awards. Moreover, as a result of underpaid overtime from
18 Defendants’ failure to correctly calculate the regular rate of pay, Defendants also routinely fail to
19 timely pay Plaintiff and other non-exempt employees all due wages or timely pay all due wages upon
20 separation of employment. Defendants thus violate Sections 201-204, 510, 558, and 1194 and owe
21 additional overtime based on the correct regular rate of pay to Plaintiff and other employees and applicable
22 penalties, including waiting time penalties, to Plaintiff and other employees.

23 4. Defendants also routinely fail to provide accurate, itemized wage statements to Plaintiff
24 and other employees who were paid overtime. Specifically, whenever employees were paid overtime
25 wages, Defendants issued wage statements that did not identify the overtime rate as 1.5 times the
26 regular rate of pay. Rather, the overtime rate appeared as the base hourly rate of pay or one-half of the
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28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

hourly rate of pay. In addition, whenever employees were paid overtime wages, Defendants issued wage statements that failed to list the accurate total hours worked. Instead, when the hours shown on the wage statements are added up, they do not appear to add up to the actual total hours worked. Finally, as a result of underpaid overtime from Defendants' failure to correctly calculate the regular rate of pay, Defendants also routinely issue wage statements that fail to show accurate overtime wage rates, gross wages earned, and net wages earned. Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiff and other employees.

5. Plaintiff is informed and believes that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

6. The policies, practices, and customs of Defendants resulted in unjust enrichment of Defendants and an unfair business advantage over businesses that routinely adhere to the strictures of the Labor Code.

JURISDICTION AND VENUE

7. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of Defendants' violations of Section 201-204, 226(a), 510, 558, and 1194, and of the Unfair Competition Law, codified at Business and Professions Code sections 17200 *et seq.* (the "UCL").

8. Venue is proper as Defendants are headquartered in Santa Clara County.

PARTIES

9. Plaintiff began working for Defendants in 2018. Until her employment as a business data analyst was terminated in or about August of 2020, Plaintiff was paid on an hourly basis as a non-exempt employee. Whenever overtime wages were paid during her employment, Defendants consistently issued Plaintiff wage statements that identified the overtime rate as the base hourly rate of pay or one-half of the hourly rate of pay. In addition, whenever overtime wages were paid during her employment, Defendants also consistently issued Plaintiff wage statements that show hours that, when added up, do not appear to add up to the actual total hours worked. Moreover, Defendants consistently failed to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation, including without limitation, incentives, bonuses, and non-cash awards. For example, Plaintiff received an

1 “Annual Incentive Bonus” that was not included in her regular rate of pay for purposes of calculating
2 overtime. Plaintiff is a victim of the policies, practices, and customs of Defendants complained of in
3 this action in ways that have deprived her of the rights guaranteed by the Labor Code and the UCL.

4 10. Plaintiff is informed and believes that Silicon Valley Bank was and is a California
5 corporation. Plaintiff is informed and believes that at all times herein mentioned Defendant and Does 1
6 through 50, are and were corporations, business entities, individuals, or partnerships that are and were
7 licensed to do business and actually doing business in the State of California. Based upon all the facts
8 and circumstances incident to Defendants’ business, Defendants are subject to Section 201-204, 226(a),
9 510, 558, and 1194, and the UCL.

10 11. Plaintiff does not know the true names or capacities of the defendants sued herein as
11 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
12 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true
13 names and capacities are known. Plaintiff is informed and believes that each of said fictitious
14 defendants was responsible in some way for the matters alleged herein and proximately caused the
15 illegal employment practices, wrongs, and injuries complained of herein.

16 12. At all times herein mentioned, each of said Defendants participated in the doing of the
17 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
18 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
19 scope of said agency and employment.

20 13. Plaintiff is informed and believes that at all times material hereto, each of said
21 Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with,
22 each of the other Defendants and was acting within the course and scope of such agency, employment,
23 joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by
24 certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or
25 omissions of the acting Defendants.

26 14. Plaintiff is informed and believes that at all times material hereto each of the Defendants
27 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the
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1 alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in
2 pursuance of, a joint venture, partnership, or common enterprise.

3 CLASS ACTION ALLEGATIONS

4 15. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class
5 certification of the following classes: (i) all current and former non-exempt employees of Defendants in
6 the State of California who were paid overtime wages at any time since April 6, 2019 (the “Wage
7 Statement Class”), and (ii) all current and former non-exempt employees of Defendants in the State of
8 California who earned overtime and non-discretionary compensation, including without limitation,
9 incentives, bonuses, and non-cash awards at any time since April 6, 2016 (the “Overtime Class”). The
10 Wage Statement Class and Overtime Class are collectively referred to as the “Class.”

11 16. **Numerosity and Ascertainability:** The members of the Class are so numerous that
12 joinder of all members would be impractical, if not impossible. The identities of the members of the
13 Class are readily ascertainable by review of Defendants’ records, including payroll records. Plaintiff is
14 informed and believes that Defendants violated Sections 510, 558, and 1194 by failing to pay all
15 overtime due and Section 226(a) by failing to provide accurate itemized wage statements.

16 17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
17 represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready,
18 willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff’s attorneys have
19 prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-
20 and-hour class actions currently pending in California state and federal courts.

21 18. **Common Question of Law and Fact:** There are predominant common questions of law
22 and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is
23 informed and believes that Defendants uniformly administer a corporate policy and practice of (i)
24 routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff
25 and other non-exempt employees by not accounting for all non-discretionary compensation, including
26 without limitation, incentives, bonuses, and non-cash awards and (ii) routinely failing to provide accurate,
27 itemized wage statements that state all applicable hourly rates of pay and total hours worked whenever non-
28 exempt employees in California are paid overtime wages.

1 19. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
2 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
3 Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis. Whenever
4 overtime wages were paid during her employment, Defendants consistently issued Plaintiff wage
5 statements that identified the overtime rate as the base hourly rate of pay or one-half of the hourly rate of
6 pay. In addition, whenever overtime wages were paid during her employment, Defendants also
7 consistently issued Plaintiff wage statements that show hours that, when added up, do not appear to add
8 up to the actual total hours worked. Moreover, Defendants consistently failed to properly calculate
9 Plaintiff's regular rate of pay by not accounting for all non-discretionary compensation, including without
10 limitation, incentives, bonuses, and non-cash awards. For example, Plaintiff received an "Annual Incentive
11 Bonus" that was not included in her regular rate of pay for purposes of calculating overtime. Plaintiff thus
12 is a member of the Class and has suffered the alleged violations of the Labor Code.

13 20. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
14 in establishing minimum working conditions and requirements in California. These labor standards
15 protect employees from onerous terms and conditions of employment or exploitation by employers who
16 have superior economic and bargaining power.

17 21. The nature of this action and the format of laws available to Plaintiff and members of the
18 Class make the class action format a particularly efficient and appropriate procedure to redress the
19 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
20 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
21 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
22 legal resources. Requiring each member of the Class to pursue an individual remedy would also
23 discourage the assertion of lawful claims by employees who would be disinclined to file an action
24 against their former or current employer for real and justifiable fear of retaliation and permanent
25 damage to their careers at their current or subsequent employment.

26 22. The prosecution of separate actions by individual members of the Class, even if
27 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
28 individual members of the Class that would establish potentially incompatible standards of conduct for

1 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a
2 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
3 of other members of the Class not parties to the adjudications. Further, the claims of the individual
4 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
5 the concomitant costs and expenses.

6 23. Defendants' pattern, practice, and uniform administration of corporate policy in
7 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
8 establish the rights of Plaintiff and the Class under Sections 201-204, 226(a), 510, 558, and 1194 and
9 applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover unpaid
10 overtime, including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

11 24. This action is brought for the benefit of the Class, which is commonly entitled to a
12 specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class
13 is commonly entitled to restitution of those funds being improperly withheld by Defendant.

14 **FIRST CAUSE OF ACTION**

15 **Violation of Labor Code §§ 510, 558 and 1194**

16 **(By Plaintiff and the Overtime Class Against All Defendants)**

17 25. The preceding paragraphs are re-alleged and incorporated by this reference.

18 26. This cause of action is brought pursuant to Section 510, 558, and 1194 which requires an
19 employer to pay employees overtime at a rate of one and one-half the employee's regular rate of pay
20 for any work in excess of eight hours in a workday or forty hours in a workweek.

21 27. As a matter of policy and practice, Defendants suffered and permitted Plaintiff and the
22 Overtime Class to work in excess of 8 hours in a workday or over 40 hours in a workweek without
23 proper overtime pay. Defendants routinely failed to correctly calculate the regular rate of pay for
24 purposes of paying overtime to Plaintiff and the Overtime Class. Specifically, Defendants routinely
25 failed to properly calculate the regular rate of pay by not accounting for all non-discretionary compensation,
26 including without limitation, incentives, bonuses, and non-cash awards. For example, Plaintiff received an
27 "Annual Incentive Bonus" that was not included in her regular rate of pay for purposes of calculating
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overtime. Defendants thus violate Section 510 and owe additional overtime based on the correct regular rate of pay to Plaintiff and the Overtime Class.

28. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Section 510 and the applicable IWC Wage Order, and entitles Plaintiff and the Overtime Class to recover the unpaid overtime, including interest thereon, liquidated damages or penalties, attorneys' fees, and costs of suit.

29. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than thirty (30) days. Section 204 generally provides that wages are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

30. As alleged herein and as a matter of policy and practice, Defendants routinely underpaid overtime to Plaintiff and the Overtime Class. Based on Defendants' failure to correctly calculate overtime, Defendants routinely failed to timely pay Plaintiff and the Overtime Class all due wages or timely pay all due wages upon separation of employment. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Defendants thus violated Sections 201-204 by not timely paying Plaintiff and the Overtime Class all due wages and not timely paying employees all due wages upon the separation of employment and owe applicable penalties, including waiting time penalties, to Plaintiff and other employees.

31. Such a pattern, practice, and uniform administration of corporate policy is unlawful under Sections 201-204 and the applicable IWC Wage Order, and entitles Plaintiff and the Overtime Class to recover applicable penalties, including waiting time penalties, attorneys' fees, and costs of suit.

1 **SECOND CAUSE OF ACTION**

2 **Violation of Labor Code § 226(a)**

3 **(By Plaintiff, the Wage Statement Class, and the Overtime Class Against All Defendants)**

4 32. The preceding paragraphs are re-alleged and incorporated by this reference.

5 33. Section 226(a) requires employers to provide itemized wage statements to its employees
6 that show accurate information, including without limitation, all applicable hourly rates in effect during
7 the pay period, the total hours worked, gross wages earned, and net wages earned. Whenever Defendants
8 pay overtime wages to Plaintiff and the Class, Defendants fail to provide accurate itemized wage
9 statements to Plaintiff and the Class in violation of Section 226(a).

10 34. As a matter of policy and practice, Defendants routinely fail to provide itemized wage
11 statements that accurately state all applicable hourly rates of pay to Plaintiff and the Class. Specifically,
12 whenever Defendants paid overtime wages, Defendants issued wage statements that did not identify the
13 overtime rate as 1.5 times the regular rate of pay. Rather, the overtime rate appeared as the base hourly
14 rate of pay or one-half of the hourly rate of pay.

15 35. As a matter of policy and practice, Defendants also routinely fail to provide itemized
16 wage statements that accurately state the total hours worked to Plaintiff and the Class. Whenever
17 Defendants paid overtime wages, Defendants issued wage statements that failed to list the accurate total
18 hours worked. Instead, when the hours shown on the wage statements are added up, they do not appear
19 to add up to the actual total hours worked.

20 36. As a matter of policy and practice, Defendants also routinely fail to provide itemized
21 wage statements that accurately state all applicable hourly rates of pay, gross wages earned, and net
22 wages earned. As a result of underpaid overtime from Defendants' failure to correctly calculate the
23 regular rate of pay, Plaintiff and the Overtime Class were not provided with wage statements listing
24 accurate overtime wage rates, gross wages earned, or net wages earned.

25 37. Such a pattern, practice, and uniform administration of corporate policy is unlawful
26 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
27 and costs of suit.
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1 **THIRD CAUSE OF ACTION**

2 **Violation of Business and Professions Code §§ 17200 *Et Seq.***

3 **(By Plaintiff and the Overtime Class Against All Defendants)**

4 38. The preceding paragraphs are re-alleged and incorporated by this reference.

5 39. Plaintiff is informed and believes that at Defendants have engaged and continue to
6 engage in unfair and unlawful business practices in California by utilizing the employment policies and
7 practices alleged herein in violation of Sections 510, 558, and 1194.

8 40. As alleged herein, Defendants uniformly administer a corporate policy and practice of
9 routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to
10 Plaintiff and the Overtime Class. Defendants' utilization of such unfair and unlawful business practices
11 constitutes unfair and unlawful competition and provides an unfair advantage over Defendants'
12 competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Class the minimum
13 working condition standards and conditions due to them under the Labor Code and applicable IWC
14 Wage Orders.

15 41. Such a pattern, practice, and uniform administration of corporate policy regarding illegal
16 employee compensation as described herein is unlawful and creates an entitlement to recovery by
17 Plaintiff and the Overtime Class to full restitution of all monies withheld, acquired, or converted by
18 Defendants by means of the unfair practices complained of herein, including interest thereon, attorneys'
19 fees, and costs of suit.

20 **FOURTH CAUSE OF ACTION**

21 **Violation of Labor Code §§ 2698 *Et Seq.***

22 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

23 42. The preceding paragraphs are re-alleged and incorporated by this reference.

24 43. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
25 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
26 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226(a), 510, 558, and
27 1194 committed since April 6, 2019, against all aggrieved employees.

44. As stated herein, Defendants violate Sections 201-204, 226(a), 510, 558, and 1194 by (i) routinely failing to correctly calculate the regular rate of pay for purposes of paying overtime to Plaintiff and other non-exempt employees by not accounting for all non-discretionary compensation, including without limitation, incentives, bonuses, and non-cash awards and (ii) routinely failing to provide accurate, itemized wage statements that state all applicable hourly rates of pay and total hours worked whenever non-exempt employees in California are paid overtime wages. Under Section 2699(c), Plaintiff is an “aggrieved employee,” as one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

45. On or about August 24, 2020, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226(a), 510, 558, and 1194. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

46. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable civil penalties for Defendants' violations of Sections 201-204, 226(a), 510, 558, and 1194 against all aggrieved employees for the alleged period.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for unpaid overtime, including interest thereon, and penalties pursuant to Sections 201-204, 510, 1194, and 1198, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;

1 6. Upon the Third Cause of Action for restitution of all funds unlawfully acquired by
2 Defendants by any acts or practices declared to be in violation of the UCL, including interest thereon,
3 and for costs and attorneys' fees;

4 7. Upon the Fourth Cause of Action for penalties according to proof pursuant to Sections
5 210, 226.3, 558, and 2699, and for costs and attorneys' fees;

6 8. Upon each cause of action for attorneys' fees and costs as provided by Sections 218.5,
7 226, 1194, and 2699, and Code of Civil Procedure section 1021.5; and

8 9. For such other and further relief that the Court may deem just and proper.
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10 DATED: August 28, 2020

DIVERSITY LAW GROUP, P.C.

11 By: 

12 Larry W. Lee
13 Simon L. Yang
14 Attorneys for Plaintiff
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