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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**EBONY RUSSELL, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

LBS FINANCIAL CREDIT UNION, a California
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. **21STCV02472****REPRESENTATIVE ACTION COMPLAINT
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004****DEMAND OVER \$25,000.00**

1 Plaintiff, Ebony Russell, as a proxy for the State of California, submits this Complaint against
2 Defendant, LBS Financial Credit Union, and Does 1 through 50 (collectively, “Defendants”).

3 INTRODUCTION

4 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code section
5 2698 et seq. (“PAGA”), this representative action Complaint challenges systemic employment practices
6 resulting in violations of the California Labor Code against individuals who worked for Defendants.
7 The Complaint seeks penalties and other relief pursuant to, among other provisions, Labor Code
8 sections 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698 et seq.¹

9 2. Plaintiff is informed and believes that Defendants jointly and severally have acted
10 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
11 failing to pay or timely pay all sick pay wages, failing to pay or timely pay all overtime and double-time
12 wages, and failing to provide accurate itemized wage statements.

13 3. Defendants routinely fail to pay sick pay wages at the regular rate of pay. Specifically,
14 Plaintiff and other non-exempt employees regularly earn non-discretionary incentives, including for
15 example Service Awards, that Defendants fail to consider when paying sick pay wages. Rather than pay
16 sick pay wages at the regular rate of pay, Defendants underpay sick pay wages to Plaintiff and other
17 non-exempt employees at their base rates of pay.

18 4. Defendants also routinely fail to pay all overtime and double-time wages based on the
19 regular rate of pay. Again, Plaintiff and other non-exempt employees regularly earn non-discretionary
20 incentives, including for example Service Awards, that Defendants fail to consider when paying
21 overtime wages and double-time wages. By failing to consider all remuneration when calculating the
22 regular rate of pay, Defendants underpay overtime wages and double-time wages to Plaintiff and other
23 non-exempt employees.

24 5. Because Defendants underpay sick pay wages, overtime wages, and double-time wages,
25 Defendants routinely fail to provide accurate itemized wage statements to Plaintiff and other non-
26 exempt employees. Specifically, Defendants fail to furnish Plaintiff and other non-exempt employees
27

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 with wage statements that accurately show and itemize all applicable wage rates, gross wages earned,
2 and net wages earned.

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

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

10 8. Defendants' pattern, practice, and uniform administration of corporate policy in violation
11 of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the
12 rights of Plaintiff and aggrieved employees under Sections 201-204, 210, 226, 226.3, 233, 246, 248.5,
13 510, 558, 1194, and 2698 et seq., applicable IWC Wage Orders, and Code of Civil Procedure section
14 1021.5, among other provisions, to recover applicable penalties, reasonable attorneys' fees, and costs of
15 suit.

16 JURISDICTION AND VENUE

17 9. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
18 Defendants' violations of Sections 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698
19 et seq.

20 10. Venue is proper in the County of Los Angeles. Plaintiff worked for Defendants in Long
21 Beach, California.

22 PARTIES

23 11. Plaintiff began working for Defendants in or about July of 2001 and worked in
24 California for Defendants for 30 or more days within a year. Until her employment as a financial
25 services representative ended in or about July of 2020, Plaintiff was paid on an hourly basis as a non-
26 exempt employee and earned non-discretionary incentives, including for example Service Awards.
27 Plaintiff also worked in excess of eight hours in a day or 40 hours in a week, in excess of 12 hours in a
28 day, and accrued and used paid sick leave. Because non-discretionary incentive wages were not

1 included when calculating Plaintiff's regular rate of pay, Plaintiff was underpaid sick pay wages,
2 overtime wages, and double-time wages. Plaintiff also was not provided with accurate itemized wage
3 statements. Plaintiff thus is a victim of the policies, practices, and customs of Defendants complained of
4 in this action in ways that have deprived her of the rights guaranteed by the Labor Code.

5 12. Plaintiff is informed and believes that Defendant, LBS Financial Credit Union, was and
6 is a California corporation. Plaintiff is informed and believes that at all times herein mentioned named
7 defendants and Does 1 through 50, were and are corporations, business entities, individuals, or
8 partnerships that are and were licensed to do business and actually doing business in the State of
9 California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are
10 subject to Sections 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698 et seq.

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

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

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

27 16. Plaintiff is informed and believes that at all times material hereto each of the Defendants
28 (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the

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 **PAGA ALLEGATIONS**

4 17. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks
5 penalties for Defendants' Labor Code violations committed against all aggrieved employees since July
6 27, 2020, pursuant to Sections 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698 et
7 seq. As stated herein, Defendants fail to pay or timely pay all sick pay wages, failing to pay or timely
8 pay all overtime and double-time wages, and failing to provide accurate itemized wage statements.
9 Under Section 2699(c), Plaintiff is an "aggrieved employee," as one or more of the alleged violations
10 was committed against Plaintiff as an employee of Defendants.

11 18. On or about January 5, 2021, Plaintiff sent written notice to the Labor & Workforce
12 Development Agency ("LWDA") of specific facts and theories for Defendants' Labor Code violations
13 under Sections 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698 et seq. Plaintiff
14 simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this
15 Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations
16 in the written notice.

17 19. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
18 penalties for Defendants' violations against all aggrieved employees for the period described above.

19 **FIRST CAUSE OF ACTION**

20 **Violation of Labor Code §§ 2698 et seq.**

21 **(By Plaintiff on Behalf of All Aggrieved Employees Against All Defendants)**

22 20. The preceding paragraphs are re-alleged and incorporated by this reference.

23 21. Plaintiff brings this cause of action as a proxy for the State of California and in this
24 capacity, seeks penalties on behalf of all aggrieved employees for Defendants' violations of Sections
25 201-204, 210, 226, 226.3, 233, 246, 248.5, 510, 558, 1194, and 2698 et seq.

26 22. Section 233 provides that an employer must permit an employee to use accrued sick
27 leave in accordance with Section 246.5 at the employee's then current rate of entitlement. Section 246
28 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick

1 leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer
2 must calculate and compensate based on one of two calculations: (i) "Paid sick time for nonexempt
3 employees shall be calculated in the same manner as the regular rate of pay for the workweek in which
4 the employee uses paid sick time, whether or not the employee actually works overtime in that
5 workweek," or (ii) "Paid sick time for nonexempt employees shall be calculated by dividing the
6 employee's total wages, not including overtime premium pay, by the employee's total hours worked in
7 the full pay periods of the prior 90 days of employment."

8 23. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and
9 aggrieved employees at the incorrect rate of pay. Plaintiff and aggrieved employees regularly use
10 accrued sick leave in workweeks in which they also earn non-discretionary incentives, including for
11 example Service Awards. As a matter of policy and practice, Defendants pay Plaintiff and aggrieved
12 employees at the base hourly rate of pay, as opposed to the regular rate of pay, which would consider all
13 non-discretionary incentive wages in addition to their base hourly wages, or the rate resulting from
14 dividing the employees' total wages, not including overtime premium pay, by the employees' total
15 hours worked in the full pay periods of the prior 90 days of employment, as required by Section 246.
16 This results in underpayments of sick pay wages to Plaintiff and aggrieved employees.

17 24. Section 204 provides that wages generally are due and payable twice during each
18 calendar month and to be paid no later than the payday for the next regular payroll period. Consistent
19 with Section 204, Section 246 specifically requires that vested sick pay wages are due and to be paid no
20 later than the payday for the next regular payroll period after accrued sick leave is used as paid sick
21 time. Similarly, Section 201 provides that if an employer discharges an employee, the wages earned and
22 unpaid at the time of discharge are due and payable immediately. Section 202 provides that an
23 employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her
24 employment, unless the employee has given seventy-two (72) hours previous notice of his or her
25 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. The
26 Labor Code penalizes untimely payments. For example, Section 210 provides penalties for violations of
27 Section 204.

1 25. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
2 sick pay wages and thus do not timely pay Plaintiff and aggrieved employees all owing and underpaid
3 sick pay wages. As a result, Defendants violate Sections 201-204, 233, and 246, among other Labor
4 Code provisions. On information and belief, Defendants were advised by skilled lawyers and knew, or
5 should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations, especially
6 since the California Supreme Court has explained that "[c]ourts have recognized that 'wages' also
7 include those benefits to which an employee is entitled as a part of his or her compensation, including
8 money, room, board, clothing, vacation pay, and sick pay." *Murphy v. Kenneth Cole Prods., Inc.*, 40
9 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay Plaintiff
10 and aggrieved employees all sick pay wages due, Defendants are subject to applicable penalties.

11 26. Section 510 and the applicable IWC Wage Order provide that "[a]ny work in excess of
12 eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight
13 hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no
14 less than one and one-half times the regular rate of pay for an employee" and that "[a]ny work in excess
15 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
16 an employee." Section 1198 makes unlawful conditions of labor that are prohibited by the applicable
17 IWC Wage Order.

18 27. As a matter of policy and practice, Defendants fail to pay all overtime wages due to
19 Plaintiff and aggrieved employees who regularly work hours entitled to overtime wages and double-
20 time wages in workweeks in which they also earn non-discretionary incentives, including for example
21 Service Awards. As a matter of policy and practice, Defendants fail to consider such remuneration when
22 paying overtime wages and double-time wages. Defendants thus underpay overtime wages and double-
23 time wages to Plaintiff and aggrieved employees.

24 28. As alleged herein and as a matter of policy and practice, Defendants routinely underpay
25 overtime wages and double-time wages and thus do not timely pay Plaintiff and aggrieved employees
26 all owing and underpaid overtime wages and double-time wages. On information and belief, Defendants
27 were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as
28 it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiff and

aggrieved employees all overtime wages and double-time wages due, Defendants are subject to applicable penalties.

29. As a result of the above-referenced violations and as a matter of policy and practice, Defendants also routinely fail to provide accurate itemized wage statements to Plaintiff and other non-exempt employees. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable rates of pay in effect during the pay period, the gross wages earned, and the net wages earned. Because of Defendants' sick pay, overtime, and double-time violations, Defendants fail to furnish Plaintiff and aggrieved employees with wage statements that accurately itemize and show all applicable rates of pay, gross wages earned, and net wages earned.

30. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and aggrieved employees to applicable penalties, attorneys' fees, and costs of suit. As such, Plaintiff brings this cause of action as a proxy for the State of California for violations committed against all similarly situated aggrieved employees of Defendants.

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. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699, and for costs and attorneys' fees;

2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699, Code of Civil Procedure section 1021.5, and any other applicable laws; and

3. For such other and further relief that the Court may deem just and proper.

DATED: January 21, 2021

DIVERSITY LAW GROUP, P.C.

By: 

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