

BY FAX

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Attorneys for Plaintiff and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN**

SARAH MALAGA, as an individual and on
behalf of other similarly aggrieved
employees,

Plaintiff,

vs.

COMMUNITY BANKER SERVICES
CORPORATION, a California
corporation; WESTAMERICA
BANCORPORATION, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.:

CIV 23 00292

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

FILED

FEB -6 2023

JAMES H. KIM
COURT EXECUTIVE OFFICER
MARIN CO. SUPERIOR COURT

BY:

N. JOHNSON

1 Plaintiff Sarah Malaga (“Plaintiff”) hereby submits this complaint (“Complaint”) against
2 Defendants Community Banker Services Corporation, Westamerica Bancorporation, and Does 1
3 through 50 (collectively, “Defendants”), on behalf of herself and all other similarly aggrieved
4 employees of Defendants for penalties for violation of the California Labor Code as follows:

5 **INTRODUCTION**

6 1. This Complaint is within the Court’s jurisdiction under California Labor Code §§
7 201-204, 221-225.5, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, the Private Attorneys
8 General Act (“PAGA”), and the applicable Wage Orders of the California Industrial Welfare
9 Commission (“IWC”).

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to pay minimum, regular, and overtime wages
15 for all hours worked, failing to timely pay wages upon separation of employment, unlawfully
16 deducting wages from employees, and failing to provide accurate itemized wage statements to its
17 employees in the State of California.

18 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 have engaged in, among other things a system of willful violations of the California Labor Code
20 and the applicable IWC Wage Orders, by creating and maintaining policies, practices, and
21 customs that knowingly deny employees the above stated rights and benefits.

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of the California Labor Code §§
24 201-204, 221-225.5, 226, 510, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable
25 IWC Wage Orders.

26 6. Venue is proper in Marin County, because Defendants do business in Marin
27 County.

28 ///

1 **PARTIES**

2 7. Plaintiff was employed by Defendants from on or about October 25, 2021, until
3 on or about May 25, 2022. Plaintiff worked as non-exempt employee, hourly employee.

4 8. Plaintiff was and is the victims of the policies, practices, and customs of
5 Defendants complained of in this action in ways that have deprived her of the rights guaranteed
6 by California Labor Code §§ 201-204, 221-225.5, 226, 510, 558, 1194, 1197, 1197.1, and 2698,
7 *et seq.*, and the applicable IWC Wage Orders.

8 9. Plaintiff is informed and believes, and based thereon alleges, that Community
9 Banker Services Corporation was and is a California corporation that provides financial services
10 and does business in the State of California, including in Marin County, California.

11 10. Plaintiff is informed and believes, and based thereon alleges, that Westamerica
12 Bancorporation was and is a California corporation that provides financial services and does
13 business in the State of California, including in Marin County, California.

14 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
15 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
16 and partnerships, licensed to do business and actually doing business in the State of California.
17 As such and based upon all the facts and circumstances incident to Defendants' business,
18 Defendants are subject to the California Labor Code and IWC Wage Orders.

19 12. Plaintiff does not know the true names or capacities, whether individual, partner
20 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
21 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
22 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
23 based thereon alleges that each of said fictitious defendants was responsible in some way for the
24 matters alleged herein and proximately caused Plaintiff and members of the general public and
25 class to be subject to the illegal employment practices, wrongs, and injuries complained of
26 herein.

27 13. At all times herein mentioned, each of said Defendants participated in the doing
28 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore,

1 Defendants, and each of them, were the agents, servants, and employees of each of the other
2 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
3 acting within the course and scope of said agency and employment.

4 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting
7 within the course and scope of such agency, employment, joint venture, or concerted activity. To
8 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
9 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
10 Defendants.

11 15. At all times herein mentioned, Defendants, and each of them, were members of,
12 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
13 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

14 16. At all times herein mentioned, the acts and omissions of various Defendants, and
15 each of them, concurred and contributed to the various acts and omissions of each and all of the
16 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
17 herein mentioned, Defendants, and each of them, ratified each and every act or omission
18 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
19 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
20 damages as herein alleged.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

23 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

24 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
25 though fully set forth herein.

26 18. Plaintiff brings this cause of action as a proxy for the State of California and in
27 this capacity, seeks penalties on behalf of all Aggrieved Employees from November 30, 2021,
28 through the present, for Defendants' violations of Labor Code §§ 201-204, 221-225.5, 226, 510,

1 558, 1194, 1197, and 1197.1, arising from Defendants practice and policy of: (a) failing to pay
2 all minimum, regular, and overtime wages owed, in violation of Labor Code §§ 201-204, 221-
3 225.5, 510, 558, 1194, 1197, and 1197.1; (b) failing to pay all wages owed upon separation of
4 employment, in violation of Labor Code §§ 201-203; and (c) failing to provide accurate itemized
5 wage statements, in violation of Labor Code § 226(a)

6 19. Labor Code §§ 201-204, 510, 558, 1194, 1197, and 1197.1 require an employer to
7 pay employees regular, minimum, and overtime wages for all hours worked. Defendants failed
8 to comply with the Labor Code by failing to pay all earned regular, minimum, and overtime
9 wages to Plaintiff and Aggrieved Employees.

10 20. Specifically, whenever Plaintiff and Aggrieved Employees worked in excess of 8
11 hours a day and/or 40 hours a week, Defendants failed to pay employees all minimum, regular,
12 and overtime wages owed. Instead, Defendants docked employee wages to conform to a set
13 amount, and thus Plaintiff and Aggrieved Employees were not paid minimum, regular, and
14 overtime wages for all hours worked.

15 21. Labor Code § 221 provides, in pertinent part, “[i]t shall be unlawful for any
16 employer to collect or receive from an employee any part of wages theretofore paid by said
17 employer to said employee.” As a pattern and practice, Defendants failed to comply with Labor
18 Code § 221.

19 22. In this regard, Defendants suffered and permitted employees to work in excess of
20 8 hours in a workday and/or over 40 hours in a workweek without overtime pay. Specifically,
21 Defendants docked the pay of employees who worked overtime hours. Rather than pay all
22 minimum, regular, and overtime wages owed, Defendants docked employee wages to conform to
23 a set amount. Thus, Defendants unlawfully and routinely docked wages from employees and are
24 in violation of the California Labor Code.

25 23. Plaintiff and Aggrieved Employees have yet to receive all of the wages owed to
26 them, including the minimum, regular, and overtime wages. As such, Plaintiff and Aggrieved
27 Employees did not receive all of their wages upon termination of employment. Thus, this
28 violates Labor Code §§ 201-203 as Defendants have failed to pay all wages owed upon

1 separation of employment.

2 24. As another violation, Defendants have also failed in their affirmative obligation to
3 provide accurate itemized wage statements to Plaintiff and Aggrieved Employees, in violation of
4 Labor Code § 226(a). Labor Code § 226(a) requires employers to provide itemized wage
5 statements to its employees that identify accurate information, including without limitation, total
6 hours worked by the employee, gross wages earned, net wages earned, and the applicable hourly
7 rate of pay and number of hours worked.

8 25. Here, Plaintiff and Aggrieved Employees were not provided accurate itemized
9 wage statements that listed the requirements under Labor Code § 226(a). In particular, as a result
10 of the underpayment and/or nonpayment of wages alleged above, the wage statements provided
11 to Plaintiff and Aggrieved Employees displayed inaccurate net wages earned, gross wages
12 earned, and hours worked, in violation of Labor Code § 226(a).

13 26. As a separate violation of Labor Code § 226(a), the wage statements issued to
14 Plaintiff and Aggrieved Employees failed to identify the applicable hourly rate of pay and
15 number of hours worked for regular hours and accurate total hours worked.

16 27. On or about November 30, 2022, Plaintiff sent written notice to the California
17 Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code
18 §§ 201-204, 221-225.5, 226, 510, 558, 1194, 1197, and 1197.1, pursuant to Labor Code § 2698,
19 *et seq.*, the Private Attorneys General Act (“PAGA”). In addition to the LWDA, Plaintiff also
20 sent her written notice to Defendants via certified mail according to Labor Code § 2699.3.

21 28. As of the date of the filing of this Complaint, the LWDA has not responded to
22 Plaintiff’s written notice nor indicated that it intends to investigate the Labor Code violations
23 provided for in the written notice.

24 29. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
25 and all applicable civil penalties for Defendants’ violations of Labor Code §§ 201-204, 221-
26 225.5, 226, 510, 558, 1194, 1197, and 1197.1, for the time period described above, on behalf of
27 herself and other Aggrieved Employees.

1 **PRAYER FOR RELIEF**

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

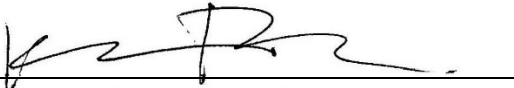
4 2. Upon the First Cause of Action, for the full amount of penalties pursuant to
5 California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

6 3. On all causes of action for attorneys' fees and costs as provided by California
7 Labor Code §§ 218.5 and 2699, and Code of Civil Procedure § 1021.5; and

8 4. For such other and further relief the Court may deem just and proper.
9

10 DATED: February 3, 2023

DIVERSITY LAW GROUP, P.C.

11
12 By: 

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Mai Tulyathan

Attorneys for Plaintiff and Aggrieved Employees
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