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Superior Court of California
County of Los Angeles

JAN 13 2017

Sherri H. Carter, Executive Officer/Clerk
By: Stephanie Amador, Deputy
Stephanie Amador

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
LOS ANGELES COUNTY

SAEED HESAMI, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

COMMUNITY BANK and DOES 1 through 10,
inclusive,

Defendants.

Case No. BC 640235 *Dept 307*

FIRST AMENDED COMPLAINT FOR:

(1) Overtime Compensation (Labor Code §§
510, 1194)
(2) Overtime Compensation (Bus. & Prof.
Code § 17200);
(3) Meal and Rest Period Violations (Labor
Code §§ 226.7, 512)
(4) Meal and Rest Period Violations (Bus. &
Prof. Code § 17200)
(5) Unreimbursed Business Expenses (Labor
Code § 2802)
(6) Unlawful Wage Statements (Labor Code
§§ 226, 1174)
(7) Waiting Time Penalties (Labor Code §
203)
(8) PAGA (Labor Code § 2699)

[CLASS ACTION] *By Fax*

1 Plaintiff Saeed Hesami, on behalf of himself and all others similarly situated, complains and
2 alleges as follows:

3 **A. INTRODUCTION**

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 damages, restitution, declaratory relief, equitable relief, penalties, and reasonable attorneys’ fees and
6 costs, on behalf of Plaintiff and all other individuals who are or have been employed as Business
7 Relationship Managers by Defendant Community Bank (hereafter “Defendant”), in California during
8 the four years prior to the filing of this action. Saeed Hesami brings this complaint on behalf of
9 similarly situated Business Relationship Managers who were (a) not paid overtime compensation; (b)
10 not provided meal and rest breaks; (c) not reimbursed for ordinary business expenses; (d) not
11 provided lawful wage statements, and (d) not timely and properly paid all their wages at time of
12 separation.

13 2. The “Class Period” is designated as the period from four years prior to the filing of
14 this Complaint through the time the Court certifies this case as a class action. The violations of
15 California’s wage and hour laws, as described more fully below, have been ongoing for at least four
16 years prior to the filing of this action, are continuing at present, and will continue unless and until
17 enjoined by the Court.

18 **B. JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over the claims brought under the California Labor Code
20 and California’s Unfair Competition Law, Business & Professions Code § 17200 *et seq.*

21 4. Venue is proper in this Court pursuant to Code of Civil Procedure § 395.5. Defendant
22 conducts business within this judicial district and some of the harms complained of herein occurred
23 within this judicial district.

24 **C. PARTIES**

25 5. During the Class Period, Plaintiff Saeed Hesami was employed by Defendant as a
26 Business Relationship Manager in Los Angeles County, California.

27 6. During the Class Period, Defendant Community Bank is a business providing
28 financial services with its principal place of business in Pasadena, California.

1 of their time away from the Defendant's places of business selling or obtaining orders or contracts,
2 and (h) did not earn more than 50% of their compensation in a bona fide commission plan. Thus,
3 Plaintiff and the class members were not exempt from the overtime requirements of California law
4 for these reasons.

5 11. Defendant failed to provide and document uninterrupted off-duty meal breaks of at
6 least 30 minutes for the class in the number, length and manner as required. Defendant has failed to
7 authorize and permit rest breaks for the class in the number, length and manner as required. At no
8 time has the Plaintiff or the class entered into any written agreement with Defendant expressly or
9 impliedly waiving their right to their meal or rest breaks. Plaintiff and the class were injured by
10 Defendant's failure to provide meal and rest breaks.

11 12. Defendant willfully, intentionally and knowingly did not provide Plaintiff and all
12 members of the class with accurate itemized statements showing all of the information required
13 pursuant to Labor Code §§ 226 and 1174 and Plaintiff and other members of the class were injured
14 thereby.

15 13. Defendant has maintained company-wide policies and/or practices that require class
16 members to pay the ordinary business expenses of Defendant without reimbursement. For example,
17 Business Relationship Managers are forced to bear the costs of travel, parking, mileage, and mobile
18 telephone charges without reimbursement by Defendant. Moreover, Defendant's policy and practice
19 of having class members pay for Defendant's ordinary business expenses also causes class members
20 to forfeit their wages to Defendant.

21 14. Plaintiff and other formerly employed class members were not timely and properly
22 paid all of their wages at time of termination. Plaintiff and other class members did not absent or
23 secret themselves from timely and properly receiving their final wages at time of termination.

24 **E. CLASS ACTION ALLEGATIONS**

25 15. Plaintiff brings this action, on behalf of himself and all others similarly situated, as a
26 class action pursuant to Code of Civil Procedure § 382. The class, and subclasses, that Plaintiff seeks
27 to represent is composed of and defined as follows:

28 All persons who are or have been employed, at any time from four years prior to

1 the filing of this Complaint through the date of the Court's granting of class
2 certification in this matter, by Community Bank in California under the job title
3 Business Relationship Manager or the functional equivalent however titled.

4 Plaintiff further alleges subclasses as set forth below:

5 The Unreimbursed Business Expense subclass:

6 All persons who are or have been employed, at any time from four years prior to
7 the filing of this Complaint through the date of the Court's granting of class
8 certification in this matter, by Community Bank in California under the job title
9 Business Relationship Manager or the functional equivalent however titled who
10 have not been reimbursed for all ordinary business expenses.

11 The Waiting Time Penalty subclass:

12 All persons who have been employed and separated from employment (either
13 by involuntary termination or resignation), at any time from three years prior to
14 the filing of the Complaint through the date of the Court's granting of class
15 certification in this matter, by Community Bank in California under the job title
16 Business Relationship Manager or the functional equivalent however titled and
17 who did not timely receive all of their wages at time of separation.

18 16. This action has been brought and may properly be maintained as a class action under
19 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
20 the proposed class is easily ascertainable, and Plaintiff is a proper representative of the class and
21 subclasses:

22 a. Numerosity: The potential members of the class as defined are numerous and
23 therefore joinder of all the members of the Class is impracticable.

24 b. Commonality: There are questions of law and fact common to Plaintiff and
25 the class that predominate over any questions affecting only individual members of the class.

26 These common questions of law and fact include, but are not limited to, the following:

27 (i) Whether Defendant's policy of classifying all Business Relationship
28 Managers as exempt is legal under California law;

1 (ii) Whether Defendant's policy of not providing meal periods is legal
2 under California law;

3 (iii) Whether Defendant's policy of not making rest periods available is
4 legal under California law;

5 (v) Whether Defendant's policy of not paying for ordinary business
6 expenses is legal under California law; and,

7 (vi) Whether Defendant's wage statements violate California law.

8 c. Typicality: Plaintiff's claims are typical of the claims of the class and sub-
9 classes. Plaintiff and other Business Relationship Managers sustained injuries and damages,
10 and were deprived of property rightly belonging to them, arising out of and caused by
11 Defendant's common course of conduct in violation of law as alleged herein, in similar ways
12 and for the same types of expenses.

13 d. Adequacy of Representation: Plaintiff is a member of the class and sub-classes
14 and will fairly and adequately represent and protect the interests of the class. Plaintiff's
15 interests do not conflict with those of other class members. Counsel who represent Plaintiff
16 are competent and experienced in litigating large wage and hour class actions and will devote
17 sufficient time and resources to the case and otherwise adequately represent the class.

18 e. Superiority of Class Action: A class action is superior to other available means
19 for the fair and efficient adjudication of this controversy. Individual joinder of all Business
20 Relationship Managers is not practicable, and questions of law and fact common to the class
21 predominate over any questions affecting only individual members of the class. Each class
22 member has been damaged or may be damaged in the future by reason of Defendant's
23 unlawful policies and/or practices as alleged herein. Certification of this case as a class action
24 will allow those similarly situated persons to litigate their claims in the manner that is most
25 efficient and economical for the parties and the judicial system. Certifying this case as a class
26 action is superior because Plaintiff seeks relief that will affect all Business Relationship
27 Managers in a common way, and will also allow for efficient and full disgorgement of the ill-
28 gotten gains Defendant has enjoyed by maintaining its unlawful business policies and

1 practices, and will thereby effectuate California's strong public policy of protecting
2 employees from deprivation or offsetting of compensation earned in their employment. If this
3 action is not certified as a Class Action, it will be impossible as a practical matter for many or
4 most Business Relationship Managers to bring individual actions to recover monies
5 unlawfully withheld from their lawful compensation due from Defendant due to the relatively
6 small amounts of such individual recoveries relative to the costs, burdens, and risks of
7 litigation.

8 **FIRST CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION**

10 **(Labor Code §§ 510, 1194)**

11 **(Claim by the Class)**

12 17. Plaintiff incorporates the allegations contained in the previous paragraphs of this
13 complaint as if fully set forth herein.

14 18. California Wage Order 4-2001, 8 C.C.R. § 11040, and Labor Code § 510 state that an
15 employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours
16 worked in excess of 40 per week and/or 8 per day.

17 19. Class members regularly work more than 40 hours per week and/or 8 hours per day
18 but are not paid overtime.

19 20. Class members do not meet any of the tests for exempt status under the California
20 Wage Orders and/or the California Labor Code.

21 21. Defendant has violated California labor law by not paying the required overtime pay
22 to Plaintiff and the members of the Class.

23 22. Pursuant to Labor Code § 218.6, Plaintiff requests prejudgment interest on all wages
24 from the date the wages were due and payable.

25 23. Pursuant to California Labor Code §§ 218.5 and 1194, Plaintiff requests an order
26 requiring Defendant to pay damages of all overtime wages due to them and the members of the class
27 in an amount to be proved at hearing as well as attorneys' fees and costs.

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1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PAY OVERTIME COMPENSATION**

3 **(Bus. & Prof. Code § 17203)**

4 **(Claim by the Class)**

5 24. Plaintiff incorporates the allegations contained in the previous paragraphs of this
6 Complaint as if fully set forth herein.

7 25. California Labor Code § 510 and Wage Order 4-2001, 8 C.C.R. § 11040, state that an
8 employee must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours
9 worked in excess of 40 per week or 8 per day. Plaintiff and the class are not "exempt" because, *inter*
10 *alia*, they did not and do not perform work directly related to the management or general business
11 operations of either Defendant or Defendant's customers, they are/were primarily engaged in inside
12 sales and sales related activities, and they did not and do not spend a majority of their time on
13 exempt tasks.

14 26. Defendant has committed an act of unfair competition by not paying the required
15 overtime pay to Plaintiff and the class.

16 27. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
17 order requiring Defendant to make restitution of all overtime wages due to them and the members of
18 the class in an amount to be proved at hearing, an injunction and declaratory relief to enjoin
19 Defendant from such contact in the future, and reasonable attorneys' fees and costs per CCP §
20 1021.5.

21 **THIRD CAUSE OF ACTION**

22 **MEAL AND REST BREAK VIOLATIONS**

23 **(Labor Code § 512 and IWC Order 4-2001)**

24 **(Claim on behalf of the class)**

25 28. Plaintiff incorporates the allegations contained in the previous paragraphs of this
26 Complaint as if fully set forth herein.

27 29. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed to
28 provide and document meal and rest period breaks for the class in the number, length and manner as

1 required. At no time has the Plaintiff or the class entered into any written agreement with Defendant
2 expressly or impliedly waiving their right to their meal and rest breaks. Plaintiff and the class have
3 been injured by Defendant's failure to comply with Labor Code § 512 and IWC Wage Order 4-2001
4 and are thus entitled to the wages set forth in Labor Code § 226.7.

5 **FOURTH CAUSE OF ACTION**

6 **MEAL AND REST BREAK VIOLATIONS**

7 **(Bus. & Prof. Code § 17203)**

8 **(Claim on behalf of the class)**

9 30. Plaintiff incorporates the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 31. In violation of Labor Code § 512 and IWC Wage Order 4-2001, Defendant failed to
12 provide and document meal and rest period breaks for the class in the number, length and manner as
13 required. At no time has the Plaintiff or the class entered into any written agreement with Defendant
14 expressly or impliedly waiving their right to their meal and rest breaks. Plaintiff and the class have
15 been injured by Defendant's failure to comply with Labor Code § 512 and IWC Wage Order 4-2001
16 and are thus entitled to the wages set forth in Labor Code § 226.7.

17 32. Defendant has committed an act of unfair competition by not providing meal and rest
18 breaks in the number, length and manner as required by law.

19 33. Pursuant to California Business & Professions Code § 17203, Plaintiff requests an
20 order requiring Defendant to make restitution of all wages due to them and the members of the class
21 in an amount to be proved at hearing, an injunction and declaratory relief to enjoin Defendant from
22 such contact in the future, and reasonable attorneys' fees and costs per CCP § 1021.5.

23 **FIFTH CAUSE OF ACTION**

24 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

25 **(Labor Code § 2802)**

26 **(Claim by the Unreimbursed Business Expense Subclass)**

27 34. Plaintiff incorporates the allegations contained in the previous paragraphs of this
28 Complaint as if fully set forth herein.

1 Defendant's failure to maintain accurate itemized wage statements was willful, knowing, intentional,
2 and the result of Defendant's custom, habit, pattern and practice. Defendant's failure to maintain
3 accurate itemized wage statements was not the result of isolated, sporadic or unintentional behavior.
4 Due to Defendant's failure to comply with the requirements of Labor Code §§ 226 and 1174,
5 Plaintiff and other Business Relationship Managers were injured thereby.

6 43. Such a pattern and practice as alleged herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and Business Relationship Managers identified herein for all damages and
8 penalties pursuant to Labor Code §§ 226 and 1174.5, including interest thereon, penalties, attorneys'
9 fees and costs.

10 **SEVENTH CAUSE OF ACTION**

11 **FAILURE TO PAY WAGES AT TERMINATION**

12 **(Labor Code §§ 201-203)**

13 **(Claim by Waiting Time Penalty Subclass)**

14 44. Plaintiff incorporates the allegations contained in the previous paragraphs of this
15 Complaint as if fully set forth herein.

16 45. Labor Code § 201 provides: "If an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately."

18 46. Labor Code § 202 provides: "If an employee not having a written contract for a
19 definite period quits his or her employment, his or her wages shall become due and payable not later
20 than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her
21 intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

22 47. Labor Code § 203 provides: "If an employer willfully fails to pay, without abatement
23 or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an
24 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
25 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
26 wages shall not continue for more than 30 days."

27 48. Plaintiff and other formerly employed Business Relationship Managers in the Waiting
28 Time Penalties subclass were discharged by Defendant or voluntarily quit. Defendant, in violation of

1 California Labor Code §§ 201 and 202, has a consistent and uniform policy, practice and procedure
2 of willfully failing to timely pay the wages to its former employees. Plaintiff and other formerly
3 employed Business Relationship Managers did not secret or absent themselves from Defendant nor
4 refuse to accept the earned and unpaid wages from Defendant.

5 49. As a result of Defendant’s violations of Labor Code §§ 201-202, Defendant is liable
6 for waiting time penalties to Plaintiff and the members of the Waiting Time Penalties subclass.

7 **EIGHTH CAUSE OF ACTION**

8 **(Labor Code § 2699 et seq.)**

9 50. Plaintiff incorporates the allegations contained in the previous paragraphs of this
10 Complaint as if fully set forth herein.

11 51. As alleged above, Defendant failed to comply with the California Labor Code. As
12 such, Plaintiff is an “aggrieved employee” as defined in Labor Code § 2699(a). Pursuant to Labor
13 Code § 2699, the Labor Code Private Attorneys General Act of 2004, Plaintiff brings this action on
14 behalf of himself and other current and former Business Relationship Managers against Community
15 Bank and seeks recovery of applicable civil penalties as follows:

16 a. where civil penalties are specifically provided in the Labor Code for
each of the violations alleged herein, Plaintiff seeks recovery of such penalties;

17 b. where civil penalties are not established in the Labor Code for each of
18 the violations alleged herein, Plaintiff seeks recovery of the penalties established
19 in § 2699(e) of the Labor Code Private Attorneys General Act of 2004, and in
accordance with § 200.5 of the Labor Code.

20 52. On November 3, 2016, Plaintiff caused to be served written notice via certified mail
21 to the Labor and Workforce Development Agency and to Defendant Community Bank of Plaintiff’s
22 intent to amend the complaint to add a cause of action pursuant to Labor Code § 2699 *et seq.*

23 53. The LWDA did not respond to the notice within the time provided by Labor Code §
24 2699.3.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff requests the following relief:

- 27 1. For an Order certifying the proposed class and subclasses and designating this
28 action as a class action pursuant to CCP § 382;

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2. For a declaratory and injunctive relief;
3. For an Order appointing Plaintiff and his counsel to represent the proposed classes, as defined in this Complaint;
4. For compensatory damages according to proof;
5. For an order requiring Defendant to provide an accounting of all wages and all sums unlawfully charged back and withheld from compensation due to Plaintiff and the other members of the proposed class;
6. For interest according to proof;
7. For penalties alleged herein;
8. For reasonable attorneys' fees and costs; and
9. For such other relief the Court deems just and proper.

DATED: January 13, 2017

WYNNE LAW FIRM



By: Edward J. Wynne

Attorneys for Plaintiff Saeed Hesami,
individually and on behalf of all others similar
situated