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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
07/27/2021 at 01:02:00 PM
Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

SERGIO RODRIGUEZ MEDINA, as an
individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

G & M OIL COMPANY, INC., a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2020-00009858-CU-OE-CTL

[Assigned for all purposes to the Hon. Richard S.
Whitney, Department C-68]

**FIRST AMENDED PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

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

DEMAND OVER \$25,000.00

Complaint Filed: February 21, 2020
Trial Date: None

1 Plaintiff Sergio Rodriguez Medina ("Plaintiff") hereby submits this First Amended
2 PAGA Representative Action Complaint ("Complaint") against Defendant G & M Oil Company,
3 Inc. ("Defendant") and Does 1 through 50 (collectively, "Defendants") on behalf of himself and
4 all other similarly situated current and former employees of Defendants for penalties for failure
5 to provide complete and accurate itemized wage statements in violation of the California Labor
6 Code as follows:

7 **INTRODUCTION**

8 1. This representative action is within the Court's jurisdiction under California
9 Labor Code §§ 226 and 2698, *et seq.*

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 provide accurate itemized wage statements
15 to Plaintiff and other employees.

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

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of the California Labor Code
22 §§ 226 and 2698, *et seq.*

23 6. Venue is proper because Defendants do business in San Diego County, and
24 Plaintiff worked for Defendants in San Diego County.

25 **PARTIES**

26 7. Plaintiff was employed by Defendants from 2013 until on or about January 2,
27 2020. Throughout his employment with Defendants, Plaintiff was a non-exempt employee and
28 was paid hourly.

1 8. During his employment with Defendants, Plaintiff worked overtime and was paid
2 overtime adjustment wage payments, including without limitation “OT Bonus” wages.

3 9. Plaintiff was and is the victim of the policies, practices, and customs of
4 Defendants complained of in this action in ways that have deprived him of the rights guaranteed
5 by California Labor Code §§ 226 and 2698, *et seq.*

6 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant was
7 and is a California corporation doing business in the State of California. Plaintiff is informed
8 and believes, and based thereon alleges, that Defendant owns and operates convenience stores
9 and fueling stations throughout the State of California, including numerous locations in the San
10 Diego County.

11 11. Plaintiff is informed and believes and thereon alleges that at all times herein
12 mentioned Does 1 through 50, are and were corporations, business entities, individuals, and
13 partnerships, licensed to do business and actually doing business in the State of California.

14 12. As such, and based upon all the facts and circumstances incident to Defendants’
15 business, Defendants are subject to California Labor Code §§ 226 and 2698, *et seq.*

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

24 14. At all times herein mentioned, each of said Defendants participated in the doing
25 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
26 Defendants, and each of them, were the agents, servants and employees of each of the other
27 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
28 acting within the course and scope of said agency and employment.

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

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

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

FIRST CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17, as though fully set forth herein.

19. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from January 6, 2019, through the present, for Defendants' violations of Labor Code § 226(a).

20. Labor Code § 226(a) requires employers to provide itemized wage statements to its employees that identify accurate information, including without limitation, all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at

each hourly rate by the employee. Defendants failed in their affirmative obligation to provide accurate itemized wage statements in violation of Labor Code § 226(a).

21. Plaintiff and Aggrieved Employees were paid hourly as non-exempt employees. As such, the wage statements should have complied with all of the enumerated requirements set forth in Labor Code § 226(a). The wage statements issued to Plaintiff and Aggrieved Employees, however, failed to identify the necessary information, including without limitation, the applicable hourly rates of pay and number of hours worked. Specifically, whenever Plaintiff and Aggrieved Employees were paid overtime adjustment wage payments, such as “OT Bonus” wages (which is an overtime wage payment), the wage statements provided to them failed to identify the applicable hourly rates of pay and number of hours worked used to calculate such overtime wages. Instead, Defendants only identified the amount of wages earned as a lump sum, without any breakdown as to hourly rates of pay and applicable number of hours worked. This is a direct violation of Labor Code § 226(a)(9).

22. On or about January 6, 2020, Plaintiff sent written notice to the California Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code § 226(a), pursuant to Labor Code § 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). To date, the LWDA has not responded to Plaintiff’s written notice. Pursuant to Labor Code § 2699.3, Plaintiff also sent written notice of Defendants’ violations of the Labor Code to Defendants via certified mail.

23. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violations of Labor Code § 226(a) for the time period described above, on behalf of himself and other Aggrieved Employees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself 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 the full amount of civil penalties and for costs and attorneys’ fees, pursuant to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and Code of Civil Procedure § 1021.5; and

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

2
3 DATED: July 27, 2021

DIVERSITY LAW GROUP, P.C.

4
5 By: 

Larry W. Lee

6 Mai Tulyathan

7 Attorneys for Plaintiff and the Aggrieved
8 Employees

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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On July 27, 2021, I served the following document(s) described as: **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action as follows:

Jeffrey S. Ranen
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Brendan T. Sapien
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Attorneys for Defendant G & M Oil Company, Inc.

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the One Legal E-Filing System at the website www.onelegal.com, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on July 27, 2021, at Los Angeles, California.



Erika Mejia