

Larry W. Lee (State Bar No. 228175)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
Diversity Law Group, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**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

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) VIOLATION OF LABOR CODE §
226(A);
- (2) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.*

DEMAND OVER \$25,000.00

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

7 **INTRODUCTION**

8 1. This class and representative action is within the Court's jurisdiction under
9 California 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 Class Members.

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

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

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

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

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

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

27 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or

1 joint venturer of, or working in concert with each of the other co-Defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity.
3 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
4 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

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

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

16 CLASS ACTION ALLEGATIONS

17 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
18 California Code of Civil Procedure § 382. Plaintiff proposes the following class: All current
19 and former non-exempt employees of Defendants in the State of California who were paid
20 overtime adjustment wages, including without limitation "OT Bonus" wages, at any time
21 between February 21, 2019, through the present (the "Class").

22 18. Plaintiff further reserves the right to amend such Class definition based upon
23 further discovery.

24 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
25 that joinder of all members would be impractical, if not impossible. The identities of the
26 members of the Class are readily ascertainable by review of Defendants' records, including
27 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendants
28 failed to provide accurate itemized wage statements to employees that identified the correct

1 hourly rates of pay and number of hours worked for overtime adjustment wages, including
2 without limitation "OT Bonus" wages, in violation of Labor Code § 226(a).

3 20. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
4 necessary steps to represent fairly and adequately the interests of the Class defined above.
5 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the Class and
6 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
7 actions in the past and currently have a number of wage-and-hour class actions pending in
8 California state and federal courts.

9 21. Defendants uniformly administered a corporate policy and practice of failing to
10 provide accurate itemized wage statements to Plaintiff and the Class that identified the correct
11 hourly rates of pay and number of hours worked for overtime adjustment wages, including
12 without limitation "OT Bonus" wages, in violation of Labor Code § 226(a).

13 22. Plaintiff is informed and believes, and based thereon alleges, that this corporate
14 conduct is accomplished with the advance knowledge and designed intent to willfully and
15 intentionally fail to accurately record proper rates of pay and hours worked.

16 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
17 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
18 Code § 226(a).

19 24. **Common Question of Law and Fact:** There are predominant common questions
20 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
21 concerning Defendants' policy and practice of failing to provide accurate itemized wage
22 statements to Plaintiff and the Class that identified the correct hourly rates of pay and applicable
23 number of hours worked for overtime adjustment wages, including without limitation "OT
24 Bonus" wages, in violation of Labor Code § 226(a).

25 25. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
26 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
27 as the Class Members. As with other California non-exempt employees of Defendants, Plaintiff
28 worked overtime and was paid overtime adjustment wages, including without limitation "OT

1 Bonus” wages. However, whenever such wages were paid to Plaintiff, Plaintiff’s wage
2 statements failed to identify the applicable rates of pay and number of hours worked that applied
3 to any such wage payments, including the “OT Bonus” wages. While such wage payments were
4 overtime wage payments, Defendants do not identify what applicable hourly rates and hours
5 worked were applied to such payments, in violation of Labor Code § 226(a)(9). Therefore,
6 Plaintiff is a member of the Class and has suffered the alleged violations of California Labor
7 Code § 226(a).

8 26. The California Labor Code upon which Plaintiff bases these claims are broadly
9 remedial in nature. These laws and labor standards serve an important public interest in
10 establishing minimum working conditions and standards in California. These laws and labor
11 standards protect the average working employee from exploitation by employers who may seek
12 to take advantage of superior economic and bargaining power in setting onerous terms and
13 conditions of employment.

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

24 28. The prosecution of separate actions by the individual Class Members, even if
25 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
26 to individual Class Members against the Defendants and which would establish potentially
27 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
28 individual Class Members which would, as a practical matter, be dispositive of the interest of the

1 other Class Members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class Members to protect their interests. Further, the claims of the
3 individual Class Members are not sufficiently large to warrant vigorous individual prosecution
4 considering all of the concomitant costs and expenses.

5 29. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal employee compensation described herein is unlawful and creates an entitlement to
7 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
8 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
9 § 226 and Code of Civil Procedure § 1021.5.

10 30. Proof of a common business practice or factual pattern, which the named Plaintiff
11 experienced and is a representative of, will establish the right of each of the members of the
12 Plaintiff Class to recovery on the causes of action alleged herein.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226(A)**

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

16 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
17 though fully set forth herein.

18 32. Labor Code § 226(a) requires employers to provide itemized wage statements to
19 its employees that identify accurate information, including without limitation, all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours worked at
21 each hourly rate by the employee. Defendants failed in their affirmative obligation to provide
22 accurate itemized wage statements in violation of Labor Code § 226(a).

23 33. Plaintiff and the Class were paid hourly as non-exempt employees. As such, the
24 wage statements should have complied with all of the enumerated requirements set forth in
25 Labor Code § 226(a). The wage statements provided to Plaintiff and Class Members, however,
26 failed to identify the necessary information, including without limitation, the applicable hourly
27 rates of pay and number of hours worked. Specifically, whenever Plaintiff and Class Members
28 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 had a policy and practice of only identifying 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 policy and practice is a direct violation of Labor Code § 226(a).

34. Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of Labor Code § 226.

SECOND CAUSE OF ACTION

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

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

35. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 34, as though fully set forth herein.

36. 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) as alleged above. Specifically, Defendants violated Labor Code § 226(a) by failing to provide accurate itemized wage statements to Plaintiff and other Aggrieved Employees that identified the applicable hourly rates of pay and hours worked for overtime adjustment wages, including without limitation "OT Bonus" wages. As such, Plaintiff has suffered the alleged violations of California Labor Code § 226(a).

37. 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

1 Defendants via certified mail.

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

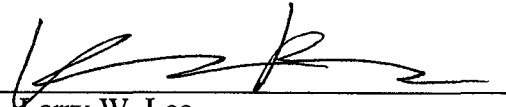
5 **PRAYER FOR RELIEF**

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

- 8 1. For an order certifying the proposed Class;
9 2. For an order appointing Plaintiff as the representative of the Class;
10 3. For an order appointing Counsel for Plaintiff as Class Counsel;
11 4. Upon the First Cause of Action, for penalties and/or damages pursuant to
12 California Labor Code § 226, *et seq.*, and for interest, costs and attorneys' fees;
13 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
14 to the PAGA, Labor Code § 2698, *et seq.*, Labor Code § 226.3, and for costs and attorneys' fees;
15 6. On all causes of action for attorneys' fees and costs as provided by California
16 Labor Code §§ 226 and 2699, and Code of Civil Procedure § 1021.5; and;
17 7. For such other and further relief that the Court may deem just and proper.
18

19 DATED: February 21, 2020

DIVERSITY LAW GROUP, P.C.

20
21 By: 

Larry W. Lee

Mai Tulyathan

22 Attorneys for Plaintiff, the Class, and the Aggrieved
23 Employees
24
25
26
27
28