

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
Max W. Gavron (State Bar No. 291697)

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, Esq. (State Bar No. 170131)

Polaris Law Group LLP

501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333

Attorneys for Plaintiff and the Class

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

MARY GALLEGOS, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

HANFORD COMMUNITY HOSPITAL,
a California corporation; ADVENTIST
HEALTH SYSTEM/WEST, a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 20C-0064

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES FOR:**

**(1) VIOLATION OF CAL. LABOR CODE
§ 226(a);**

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

DEMAND OVER \$25,000.00

1 Plaintiff Mary Gallegos (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendants Hanford Community Hospital, Adventist Health
3 System/West, and Does 1 through 50 (hereinafter collectively referred to as “Defendants”) on
4 behalf of herself and a class of all other similarly situated current and former employees of
5 Defendants for penalties for violations of the California Labor Code, including without
6 limitation, failure to provide employees with accurate itemized wage statements as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code
9 sections 226 and 2698.

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 in Defendants’ failure to provide accurate payroll
15 records.

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 employees the
19 above stated rights and benefits.

20 **JURISDICTION AND VENUE**

21 5. The Court has jurisdiction over the violations of California Labor Code section
22 226, and California’s Private Attorney General Act (the “PAGA”), California Labor Code
23 section 2698, *et seq.*

24 6. Venue is proper in Kings County because Defendants operate a hospital in Kings
25 County, and Plaintiff was employed by Defendants in Kings County.

26 **PARTIES**

27 7. Plaintiff was employed by Defendants from approximately November 2017,
28 through May 15, 2019, as an hourly, non-exempt employee.

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 her of the rights guaranteed
3 by California Labor Code section 226, and the PAGA.

4 9. Plaintiff is informed and believes that Hanford Community Hospital is a
5 California non-profit corporation that maintains operations in the State of California, including
6 locations in Hanford, California.

7 10. Plaintiff is informed and believes that Adventist Health System/West is a
8 California non-profit corporation that maintains operations in the State of California, including
9 locations in Hanford, California.

10 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 herein mentioned Defendants are and were business entities, individuals, and partnerships,
12 licensed to do business and actually doing business in the State of California. As such, and based
13 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
14 California Labor Code section 226 and the PAGA.

15 12. Plaintiff does not know the true names or capacities, whether individual, partner
16 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
17 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
18 complaint when the true names and capacities are known. Plaintiff is informed and believes and
19 based thereon alleges that each of said fictitious defendants was responsible in some way for the
20 matters alleged herein and proximately caused Plaintiff and members of the general public and
21 class to be subject to the illegal employment practices, wrongs and injuries complained of 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 section 382. Plaintiff proposes the following classes:

- 19 a. all current and former California non-exempt employees of Defendants who
20 were paid shift premium wages—including night shift, evening shift and
21 weekend shift differentials—at any time between February 24, 2019, through
22 the present (the “Shift Premium Class”);
- 23 b. all current and former California non-exempt employees of Defendants who
24 earned overtime at any time between February 24, 2019, through the present
25 (the “Overtime Class”) (collectively referred to as the “Class” or “Class
26 Members”).

27 18. **Numerosity:** The members of the Class are so numerous that joinder of all
28 members would be impractical, if not impossible. The identity of the members of the Class is

1 readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is
2 informed and believes, and based thereon alleges, that Defendants failed to provide proper
3 payroll records in violation of Labor Code section 226.

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

10 20. Defendants uniformly administered a corporate policy, practice of failing to
11 provide proper payroll records in violation of Labor Code section 226. Plaintiff is informed and
12 believes, and based thereon alleges, that this corporate conduct is accomplished with the
13 advanced knowledge, intent and willfulness.

14 21. **Common Question of Law and Fact:** There are predominant common questions
15 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
16 concerning Defendants' policy and practice of failing to provide proper payroll records in
17 violation of Labor Code section 226.

18 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
19 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
20 as the Class members. As with other non-exempt California employees, Plaintiff was not
21 provided proper and accurate itemized wage statements. Specifically, when shift premium
22 wages—including night shift, evening shift and weekend shift differentials—were paid, the wage
23 statements failed to identify the total hours worked. When the hours shown on the wage
24 statements were added up, they do not equal the actual total hours worked during the pay period.
25 Further, whenever overtime wages were paid, the wage statements issued to the Class did not
26 identify the overtime rate as 1.5 times employees' regular rate of pay. Rather, the overtime rates
27 appeared as the regular hourly rate of pay. Therefore, Defendants violated Labor Code section
28 226 by not providing the requisite itemized wage statement to Plaintiff. Therefore, Plaintiff is a

1 member of the Class and have suffered the alleged violations of California Labor Code section
2 226.

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

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

19 25. The prosecution of separate actions by the individual Class Members, even if
20 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
21 to individual Class Members against the Defendants and which would establish potentially
22 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
23 individual Class Members which would, as a practical matter, be dispositive of the interest of the
24 other Class Members not parties to the adjudications or which would substantially impair or
25 impede the ability of the Class Members to protect their interests. Further, the claims of the
26 individual members of the Class are not sufficiently large to warrant vigorous individual
27 prosecution considering all of the concomitant costs and expenses.

28 26. Such a pattern, practice and uniform administration of corporate policy regarding

1 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
2 Plaintiff and the Class identified herein, in a civil action, for applicable penalties, reasonable
3 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
4 *et seq.*, and Code of Civil Procedure section 1021.5.

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

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE § 226**

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

11 28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 27 as
12 though fully set forth herein.

13 29. Defendants failed in their affirmative obligation to provide accurate itemized
14 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
15 in violation of Labor Code section 226.

16 30. Plaintiff and the Class were paid on an hourly basis. As such, the wage
17 statements should have reflected the total hours worked, pursuant to Labor Code section 226(a).
18 The wage statements provided to Plaintiff and the Class failed to identify such information. More
19 specifically, when shift premium wages—including night shift, evening shift and weekend shift
20 differentials—were paid, the wage statements failed to identify the total hours worked. When the
21 hours shown on the wage statements were added up, they do not equal the actual total hours
22 worked during the pay period. Further, whenever overtime wages were paid, the wage
23 statements issued to the Class did not identify the overtime rate as 1.5 times employees' regular
24 rate of pay. Rather, the overtime rates appeared as the regular hourly rate of pay. Therefore,
25 Defendants violated Labor Code section 226 by not providing the requisite itemized wage
26 statement to Plaintiff.

27 31. Such a pattern, practice and uniform administration of corporate policy as
28 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class

1 identified herein, in a civil action, for all penalties pursuant to Labor Code section 226, including
2 interest thereon, attorneys' fees, and costs of suit according to the mandate of California Labor
3 Code section 226.

4 **SECOND CAUSE OF ACTION**

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

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

7 32. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 31 as
8 though fully set forth herein.

9 33. Plaintiff brings this cause of action as a proxy for the State of California and in
10 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violation of
11 Labor Code section 226(a) from February 20, 2019, through the present, arising from
12 Defendants' failure to provide proper and accurate itemized wage statements.

13 34. More specifically, when shift premium wages—including night shift, evening
14 shift and weekend shift differentials—are paid, the wage statements fail to identify the total
15 hours worked. Additionally, and as described above, whenever overtime wages are paid the
16 wage statements do not identify the correct overtime rate of 1.5 times the regular rate of pay.
17 Instead, the wage statements incorrectly identify the overtime rate as the base hourly rate of pay.
18 As a result, whenever shift premium wages and/or overtime are paid, when the hours shown on
19 the wage statements are added up, they do not equal the actual total hours worked during the pay
20 period. Therefore, Defendants violated Labor Code section 226(a) by not providing the requisite
21 itemized wage statement to Plaintiff and Aggrieved Employees.

22 35. On or about February 20, 2020, Plaintiff sent written notice to the California
23 Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code
24 section 226(a) pursuant to Labor Code section 2698, *et. seq.*

25 36. As of the date of this filing, the LWDA has not provided written notice regarding
26 whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice
27 and thus allowing Plaintiff to proceed under PAGA against Defendants for said violations.
28 Therefore, Plaintiff may seek any and all applicable penalties under PAGA.

37. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code section 226 for the time periods described above, as a proxy for the State of California and on behalf of other Aggrieved Employees.

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. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. Upon the First Cause of Action, for penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;
4. Upon the Second Cause of Action, for all applicable penalties under Labor Code section 2698, *et seq.*, and for attorney's fees and costs;
5. For attorneys' fees and costs as provided by California Labor Code section 226, and Code of Civil Procedure section 1021.5; and
6. For such other and further relief the Court may deem just and proper.

DATED: February 24, 2020

DIVERSITY LAW GROUP, P.C.

By:

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs and the Class