

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
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
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 SANTA CLARA

MENCHILA VILLARUBIA WOODALL,
as an individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

VASONA MANAGEMENT, INC., an
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 20CV366143

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

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

DEMAND OVER \$25,000.00

1 Plaintiff Menchila Villarubia Woodall (“Plaintiff”) hereby submits this Class and
2 Representative Action Complaint (“Complaint”) against Defendant Vasona Management, Inc.
3 (“Defendant”) and Does 1 through 50 (hereinafter collectively referred to as “Defendants”) on
4 behalf of herself and the class of all other similarly situated current and former employees of
5 Defendant, for penalties and/or damages for failure to provide accurate itemized wage statements
6 under the California Labor Code as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code
9 sections 226 and 2698, *et seq.* and the applicable Wage Orders of the California Industrial
10 Welfare Commission (“IWC”).

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

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to provide complete and accurate wage
16 statements to Plaintiff and Class Members.

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

21 5. The policies, practices and customs of defendants described above and below
22 have resulted in unjust enrichment of Defendants and an unfair business advantage over
23 businesses that routinely adhere to the strictures of the California Labor Code.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over the violations of the California Labor Code
26 sections 226 and 2698, *et seq.*

27 7. Venue is proper because Defendant does business in Santa Clara County and
28 Plaintiff worked for Defendant in Gilroy, California.

PARTIES

8. Plaintiff was employed by Defendant as an on-site manager from in or around 2004 until on or about December 31, 2019.

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

10. Plaintiff is informed and believes and based thereon alleges Defendant Vasona Management, Inc. was and is a California corporation doing business in the State of California providing construction services in Southern California.

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

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

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

14. At all times herein mentioned, each of said defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were 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

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

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

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

17 CLASS ACTION ALLEGATIONS

18 18. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
19 California Code of Civil Procedure section 382 of the following class and sub-class:

- 20 a. All current and former California employees of Defendant who were paid wages
21 by Defendant at any time between April 6, 2019, through the present (the “Class”
22 or “Class Members”).
- 23 b. All current and former California non-exempt employees of Defendant who were
24 paid overtime wages at any time between April 6, 2019, through the present (the
25 “OT Wage Statement Sub-Class” or “OT Wage Statement Sub-Class Members”).

26 Plaintiff reserves the right to amend such class definitions based upon further discovery.

27 19. **Numerosity and Ascertainability:** The members of the Class are so numerous
28 that joinder of all members would be impractical, if not impossible. The identities of the

1 members of the Class are readily ascertainable by review of Defendant's records, including
2 payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendant
3 failed to provide accurate, itemized wage statements in violation of Labor Code section 226(a).

4 20. **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 21. **Common Question of Law and Fact:** There are predominant common questions
11 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
12 concerning Defendant's policy and practice of failing to provide accurate itemized wage
13 statements in violation of Labor Code section 226(a).

14 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
15 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
16 as the Class Members. As with other exempt and non-exempt California employees, Plaintiff
17 was not provided proper and accurate itemized wage statements. Specifically, Plaintiff received
18 wage statements from Defendant that omit the inclusive dates of the pay period, as required by
19 Labor Code section 226(a)(6). Indeed, rather than include both the pay period start and end dates,
20 the wage statements only identify the pay period end date. Additionally, Labor Code section
21 226(a)(9) requires that wage statements set forth all applicable hourly rates in effect during the
22 pay period and the corresponding number of hours worked at each hourly rate. However,
23 whenever overtime wages were paid, the wage statements issued to Plaintiff and other non-
24 exempt employees did not identify the overtime rate of pay. Rather, the wage statements only
25 identified the base rate of pay. As such, Plaintiff is a member of the Class and has suffered the
26 alleged violations of California Labor Code section 226.

27 23. The California Labor Code upon which Plaintiff bases these claims are broadly
28 remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

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

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

24 26. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class identified herein, in a civil action, for applicable penalties,
27 reasonable attorneys' fees, and costs of suit according to the mandate of California Labor Code
28 section 226 and Code of Civil Procedure section 1021.5.

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

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226**

6 **(BY PLAINTIFF, THE CLASS AND OT WAGE STATEMENT SUB-CLASS AGAINST**
7 **ALL DEFENDANTS)**

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

10 29. Defendant failed in its affirmative obligation to provide accurate itemized wage
11 statements. Defendant, as a matter of policy and practice, did not provide accurate records in
12 violation of Labor Code section 226.

13 30. The wage statements provided to Plaintiff and the Class failed to identify the
14 inclusive dates of the pay period, as required by Labor Code section 226(a)(6). The wage
15 statements omitted the pay period start date.

16 31. Additionally, Labor Code section 226(a)(9) requires that wage statements set
17 forth all applicable hourly rates in effect during the pay period and the corresponding number of
18 hours worked at each hourly rate. However, whenever overtime wages were paid, the wage
19 statements issued to Plaintiff and the OT Wage Statement Sub-Class did not identify the
20 overtime rate of pay. Rather, the wage statements only identified the base rate of pay.

21 32. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class
23 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code section
24 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate of
25 California Labor Code section 226.

26 //

27 //

28 //

1 **SECOND CAUSE OF ACTION**

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

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

4 33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 as
5 though fully set forth herein.

6 34. Plaintiff brings this cause of action on behalf of the State of California and seeks
7 penalties on behalf of all aggrieved employees from April 7, 2019, through the present, for
8 Defendant's violations of Labor Code section 226.

9 35. Defendant failed in its affirmative obligation to provide accurate itemized wage
10 statements. Specifically, the wage statements provided to Plaintiff and Aggrieved Employees
11 failed to identify the inclusive dates of the pay period, as required by Labor Code section
12 226(a)(6). Additionally, Labor Code section 226(a)(9) requires that wage statements set forth all
13 applicable hourly rates in effect during the pay period and the corresponding number of hours
14 worked at each hourly rate. However, whenever overtime wages were paid, the wage statements
15 issued to Plaintiff and Aggrieved Employees did not identify the overtime rate of pay. Rather,
16 the wage statements only identified the base rate of pay

17 36. On or about April 7, 2020, Plaintiff sent written notice to the California Labor &
18 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code section
19 226, pursuant to Labor Code section 2698 *et seq.*, the Private Attorneys General Act ("PAGA").

20 37. As of the date of the filing of this Complaint, the LWDA has yet to provide notice
21 to Plaintiff as to whether it intends to investigate the Labor Code violations provided for in the
22 written notice.

23 38. Pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all
24 applicable civil penalties for Defendant's violation of Labor Code section 226(a), for the time
25 period described above, on behalf of herself and other Aggrieved Employees.

26 **PRAYER FOR RELIEF**

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

1. For an order certifying the proposed Class and Sub-Class;
2. For an order appointing Plaintiff as the representative of the Class and Sub-Class as described herein;
3. For an order appointing counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for civil penalties according to proof pursuant to Labor Code section 2698 *et seq.*, and for costs and attorneys' fees;
6. On all causes of action for attorneys' fees and costs as provided by California Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: April 20, 2020

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Class