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Attorneys for Plaintiffs
SHAYNIA VERNON and BENJAMIN CASTANEDA-RIVERA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SHAYNIA VERNON, as an individual and on
behalf of all others similarly situated;
BENJAMIN CASTANEDA-RIVERA, as an
individual and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MCLANE/SUNEAST, INC., a Texas
corporation; MCLANE FOODSERVICE,
INC., a Texas corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2123367

[Assigned for All Purposes to Hon. David
Cohn, Dept. S-26]

**DECLARATION OF KRISTEN M.
AGNEW IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: August 30, 2022
Time: 10:00 a.m.
Dept.: S-26

Complaint Filed: August 12, 2021
Trial Date: None Set

1 I, Kristen Agnew, declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
3 California, and am with the law firm Diversity Law Group, P.C., counsel of record for Plaintiffs
4 Shaynia Vernon and Benjamin Castaneda-Rivera (“Plaintiffs”). I have personal knowledge of the
5 facts set forth below and if called to testify I could and would do so competently.

6 **PROCEDURAL HISTORY**

7 2. From the inception of the case, Class Counsel has zealously represented the
8 interests of the putative class.

9 3. On January 3, 2020, Plaintiff Shaynia Vernon (“Vernon”) filed a notice with the
10 Labor Workforce & Development Agency (“LWDA”) alleging claims against Defendant McLane
11 Foodservice, Inc. (“McLane Foodservice” or “MFS”) for violation of Labor Code section 226.

12 4. On January 28, 2020, Vernon commenced a putative class and representative action
13 against McLane Foodservice, in the Riverside County Superior Court, entitled *Shaynia Vernon v.*
14 *McLane Foodservice, Inc.*, Case No. RIC2000406 (“*Vernon Action*”). In the *Vernon Action*,
15 Vernon alleged a class-wide claim for violation of Labor Code section 226. Vernon also asserted
16 a derivative representative Private Attorneys General Act of 2004, California Labor Code section
17 2698, *et seq.* (“PAGA”) claim predicated on McLane Foodservice’s alleged violation of Labor
18 Code section 226.

19 5. On August 21, 2020, Plaintiff Benjamin Castaneda-Rivera (“Castaneda-Rivera”)
20 filed a notice with the LWDA alleging claims against Defendant McLane/Suneast, Inc.
21 (“McLane/Suneast” or “MSE”) for violation of Labor Code section 226.

22 6. On September 1, 2020, Castaneda-Rivera filed a separate putative class and
23 representative action against McLane/Suneast in the San Bernardino County Superior Court,
24 entitled *Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.*, Case No. CIVDS2017663.
25 Castaneda-Rivera alleged class and representative claims for violation of Labor Code section 226.

26 7. On January 12, 2021, Castaneda-Rivera filed a consolidated First Amended Class
27 and Representative Action Complaint for Damages, which added Vernon as a named plaintiff and
28 McLane Foodservice as a named defendant (the “Consolidated Action”).

1 8. On March 2, 2021, Vernon dismissed the earlier-filed *Vernon* Action without
2 prejudice.

3 9. On March 16, 2021, Defendants removed the Consolidated Action to the United
4 States District Court for the Central District of California (the “Federal Action”).

5 10. On April 15, 2021, Plaintiff filed a Second Amended Complaint in the Federal
6 Action. As set forth in the Second Amended Complaint, Plaintiffs allege that Defendants failed to
7 provide Class Members with proper and accurate itemized wage statements, in violation of Labor
8 Code section 226(a). Specifically, whenever overtime wages were paid, the corresponding wage
9 statements did not identify the correct rates of pay. Instead, the wage statements showed overtime
10 wages on two separate line items, with each line item showing the base rate of pay, instead of one
11 and one-half times the regular rate of pay. Plaintiffs further allege that Defendants intentionally
12 provided wage statements that displayed the incorrect overtime rate, and that Defendants did not
13 have any good faith belief, in law or fact, as to their actions. Plaintiffs allege that such inaccuracy
14 caused injury to Class Members, as it precluded employees from being able to accurately calculate
15 their wages.

16 11. On August 12, 2021, Vernon and Castaneda-Rivera filed a separate class action
17 complaint against McLane/Suneast and McLane Foodservice in the San Bernardino County
18 Superior Court, entitled *Shaynia Vernon and Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.*
19 *and McLane Foodservice, Inc.*, Case No. CIVSB2123367 (“State Court Class Action”). The
20 complaint alleged a single class-wide claim for violation of Labor Code section 226.7, predicated
21 on Defendants’ alleged failure to pay meal and rest break premium payments at the regular rate of
22 pay.

23 12. On October 1, 2021, Castaneda-Rivera filed another complaint against
24 McLane/Suneast entitled *Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.*, in the San
25 Bernardino County Superior Court, assigned Case No. CIVSB2128980 therein (the “State Court
26 PAGA Action”), alleging a derivative PAGA claim based on the alleged underpaid Section 226.7
27 payments to employees of MSE.

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14. On September 18, 2020, in response to Vernon's request for informal discovery in the *Vernon* Action, McLane Foodservice provided an estimate of the number of non-exempt employees employed through January 28, 2020, as well as the number of overtime wage statements issued to the employees during this period. McLane Foodservice also produced a copy of Vernon's wage statements.

16. On or about June 10, 2021, I met and conferred with defense counsel, as required by Rule 26(f) of the Federal Rules of Civil Procedure. During the meet and confer, defense counsel articulated Defendant's position that, under the California Court of Appeal's recent published decision in *General Atomics v. Superior Court*, 64 Cal. App. 5th 987 (2021), Defendants' wage statements are legally compliant with Labor Code section 226(a)'s requirements.

18. Plaintiffs also propounded written discovery relevant to the class and PAGA claims alleged in the Federal Action. Amongst other relevant topics, the discovery required Defendants to provide documents and information relevant to class certification, including the number of putative class members, Defendants' policies and procedures with respect to the display of the hourly rates of pay on wage statements, and payroll records of putative class members.

20. Prior to the mediation, Defendants produced data relevant to the potential value of the claims, including the number of putative class members/alleged aggrieved employees and wage

1 statements at issue in both actions. Defendant also produced exemplar wage statements
2 demonstrating that the alleged Section 226 violation had been corrected, as of October 29, 2020.
3 Using the data provided by Defendants, I conducted a full damage analysis.

4 21. I also extensively met and conferred with defense counsel regarding the underlying
5 merits of the State Court Class Action and State Court PAGA Action. Defense counsel provided
6 information demonstrating that employees rarely earned both non-discretionary incentive wages
7 and meal/rest period premiums in the same workweek. In reviewing Plaintiffs' own wage
8 statements, I confirmed that there were only a few workweeks in which Plaintiffs received both
9 incentive wages and meal/rest period premium compensation. Defense counsel further represented
10 that the alleged unpaid meal/rest period compensation and derivative waiting time penalties was
11 less than \$5,000.

12 **MEDIATION**

13 22. On December 10, 2021, the Parties engaged in an all-day mediation session before
14 Mr. Rotman. In light of the limited damages at issue in the State Court Class Action and State
15 Court PAGA Action, the Parties agreed to focus mediation on the wage statement claims alleged
16 in the Federal Action.

17 23. During the mediation, counsel zealously advocated on behalf of their respective
18 clients. The Parties spoke at length about the strengths and weaknesses of each sides' claims and
19 defenses, the certifiability of the claims, and the scope of Defendants' liability. The Parties gained
20 valuable insight and exchanged significant information about their respective positions.

21 24. After a full day of negotiation, the Parties were able to reach an agreement for
22 settlement and the key terms. The Parties thereafter worked to memorialize the terms of the
23 settlement in a long-form settlement agreement.

24 25. On or about May 12, 2022, the Parties executed a Stipulation for Leave to File First
25 Amended Complaint and Settlement and Release of Class Action and PAGA Claims ("Settlement
26 Agreement" or "Agreement") resolving all claims alleged in the Federal Action.

27 26. As a condition of settlement, Plaintiffs agreed to the dismissal of the State Court
28 PAGA Action *without* prejudice. The Parties further agreed to stipulate to the filing of a First

1 Amended Individual and Class Action Complaint for Damages (“Operative Complaint”). The
2 Operative Complaint pleads the claims alleged in the Federal Action and limits the claims
3 originally alleged in this State Court Class Action to individual, non-class claims solely on behalf
4 of Plaintiffs. A copy of the proposed Operative Complaint is attached as **Exhibit A** to the
5 Settlement Agreement.

6 **SUMMARY OF THE MONETARY TERMS OF THE PROPOSED SETTLEMENT**

7 27. Attached hereto as **Exhibit 1** is true and correct copy of the Settlement Agreement.

8 28. As defined by the Settlement Agreement, the proposed Class consists of the
9 following groups of employees: (i) all current and former non-exempt employees employed by
10 MSE and working in California at any time during the time period from April 6, 2019 through and
11 including October 29, 2020 (the “MSE Settlement Period”) who were paid overtime wages at any
12 time during the MSE Settlement Period (“MSE Subclass”); and (ii) all current and former non-
13 exempt employees employed by MFS and working in California at any time during the time period
14 from January 28, 2019 through and including October 29, 2020 (the “MFS Settlement Period”)
15 who were paid overtime wages at any time during the MFS Settlement Period (“MFS Subclass”).
16 *See* Settlement Agreement (“SA”) § 8. The are approximately 1,452 employees that comprise the
17 Class. *See id.* at § 25.

18 29. Class Members may opt-out of the Settlement if they so choose. *See* SA § 27.
19 However, in light of the binding nature of a PAGA judgment on non-party employees, any Class
20 Member who opts out of the Settlement Agreement for purpose of the proposed class action
21 settlement will still be bound by the release of the PAGA claims. *Id.* at § 28.

22 30. The Settlement Agreement requires Defendants to pay the gross settlement amount
23 of Four Hundred Thousand Dollars (\$400,000.00) (“Gross Settlement Fund” or “GSF”). *See* SA §
24 14. The amount of the Gross Settlement Fund was calculated with, and is premised on, Defendants’
25 representation that Class Members received 31,013 wage statements reflecting the payment of
26 overtime wage statements during the Settlement Periods. *See id.* at §§ 8, 25. If the actual number
27 of overtime wage statements exceeds 32,564, Defendants will have the option to increase the
28 amount of the Gross Settlement Fund in proportion to the increase or end the Settlement Periods

1 on the date at which the overtime wage statements reached 32,564. *See id.* at § 25.

2 31. The Settlement allocates Ten Thousand Dollars (\$10,000.00) of the Gross
3 Settlement Fund to PAGA penalties (“PAGA Amount”). *See* SA § 19. Pursuant to the PAGA,
4 seventy-five percent of the PAGA Amount, *i.e.*, the sum of Seven Thousand Five Hundred Dollars
5 (\$7,500.00), shall be paid to the LWDA. *See id.* The remaining twenty-five percent of the PAGA
6 Amount, *i.e.*, the sum of Two Thousand Five Hundred Dollars (\$2,500.00), shall be distributed to
7 Aggrieved Employees.¹ *See id.*

8 32. The balance of the Gross Settlement Fund remaining after deduction of the
9 approved Settlement Administration Costs, the PAGA Amount, Attorneys’ Fees and Costs, and
10 Enhancement Awards (“Net Settlement Fund” or “NSF”), will be available for distribution to
11 Participating Class Members (*i.e.*, Class Members who do not opt-out). *See* SA §§ 16, 24. The
12 amount allocated to each Participating Class Member will be based on the number of wage
13 statements with overtime wages paid to each Class Member during the applicable Settlement
14 Periods. *See id.* at § 26. Class Members do not need to do anything should they wish to receive
15 their share of the settlement funds. *See id.* at § 24

16 33. As part of the Settlement Agreement, Defendants do not object to Plaintiffs’ request
17 for an Enhancement Award in the amount Ten Thousand Dollars (\$10,000.00) each. *See* SA § 21.
18 This amount is intended to compensate Plaintiffs for their efforts and work in prosecuting this case,
19 including meeting and communicating with their counsel, reviewing the pleadings in this case, and
20 for executing a general release under California Civil Code § 1542. Plaintiffs expressly
21 acknowledge that the Court has final discretion in any Enhancement Award.

22 34. Pursuant to the Settlement Agreement, Defendants also agree to not oppose Class
23 Counsel’s request for attorney’s fees up to thirty-five percent (35%) of the Gross Settlement Fund,
24 *i.e.*, the sum of One Hundred Forty Thousand Dollars (\$140,000.00), plus up to Thirty Thousand
25 Dollars (\$30,000.00) for reimbursement of litigation costs, subject to the Court finally approving
26

27 ¹ The Aggrieved Employees have the same composition as the Class and will be subject to the
28 same Settlement Periods. *See* SA § 19.

1 this Settlement. *See* SA § 20. Any portion of the requested attorneys' fees and/or litigation costs
2 not awarded to Class Counsel shall be added to the Net Settlement Fund. *See id.* at § 22. Class
3 Counsel expressly acknowledges that the Court has final discretion in any fee award.

4 35. Finally, the Settlement Agreement provides for the payment of the fees and
5 expenses reasonably incurred by the Settlement Administrator. The Parties have received a quote
6 from Simpluris for a fee of approximately Twenty Thousand Dollars (\$20,000.00). *See* SA § 23.
7 Any portion of the Settlement Administration Costs not used or approved by the Court shall be
8 added to the Net Settlement Fund. *See id.* The Parties believe that the administration fee is
9 reasonable and should be approved.

10 **PAYMENTS TO SETTLEMENT CLASS MEMBERS**

11 36. Assuming that the Court approves the Enhancement Awards for both Plaintiffs
12 (\$20,000.00), attorney's fees (\$140,000.00), litigation costs (\$30,000.00), the PAGA Amount
13 (\$10,000.00) and the Settlement Administrator's costs (\$20,000.00), I estimate that the Net
14 Settlement Amount will total \$180,000.

15 37. Based on the size of the Class, the number of pay periods at issue and the amount
16 of the Gross Settlement Fund, employees will be entitled to recover, on average, up to \$123.96
17 each, or \$5.80 per overtime wage statement received during the Settlement Periods. The amount
18 any particular Class Member will be entitled to recover will be greater or lower than this average
19 depending on the number of overtime wage statements he or she received, with some entitled to
20 receive more, and others less, and the number of opt-outs received. This is fair, as it directly
21 allocates greater recovery to individual Class Members who have allegedly suffered greater harm.
22 The Settlement Agreement Individual Settlement Shares shall be allocated as 100% to statutory
23 non-wage damages. *See* SA § 34.

24 38. In addition to the Individual Settlement Shares, Class Members are also entitled to
25 receive a pro rata share of the Aggrieved Employee Payment. *See* SA §§ 19, 27. As detailed in the
26 Settlement, the amount of the payment will be based on the number of overtime wage statements
27 the employee received during the applicable PAGA Periods. *See id.* at § 27. All Class Members,
28 including those who opt-out of the class settlement, shall receive a portion of the Aggrieved

1 Employee Payment. *See id.* at § 28. The Aggrieved Employee Payment shall be allocated as 100%
2 civil penalties. *See* SA § 34.

3 39. Participating Class Members and Aggrieved Employees will have 180 days from
4 the mailing of the settlement payment to cash the check. *See* SA at § C-24. After the expiration of
5 180 days, the funds represented by uncashed settlement checks will be remitted to the California
6 State Controller’s Office—Office of Unclaimed Property Fund in the name of the Participating
7 Class Member or Aggrieved Employee. *Id.*

8 **STRENGTHS AND WEAKNESSES OF PLAINTIFF’S CLAIMS AND POTENTIAL**
9 **RECOVERABLE DAMAGES AND PENALTIES**

10 40. Based on an analysis of the facts and legal contentions in this case, documents and
11 information from Defendants, I negotiated the settlement with a clear understanding of the value
12 of the class and representative PAGA claims. I took into account the risk of not having the claims
13 certified and the risk of not prevailing at trial, even if the claims are certified.

14 41. Plaintiffs’ class and PAGA claims are predicated on Defendants’ alleged failure to
15 provide accurate itemized wage statements, in violation of Labor Code section 226(a). Section
16 226(a) is clear and unequivocal in its mandate that employers furnish wage statements that include,
17 among other items of information, “all applicable hourly rates in effect during the pay period.” *See*
18 Cal. Lab. Code § 226(a)(9). Here, Plaintiffs contend that the wage statements provided to Class
19 Members do not accurately identify the correct overtime rate. More specifically, the wage
20 statements display overtime wages on two-lines, with both lines listing the base hourly rate of pay.
21 Thus, a reasonable employee reviewing his or her wage statement would believe their overtime
22 rate of pay is significantly higher than what they were paid.

23 42. Plaintiffs’ claims are contested. Defendants contend that recent state appellate court
24 cases have held that section 226(a)(9) allows employers to display the base rate paid for overtime
25 hours separately from the overtime premium rate paid for overtime hours, including *General*
26 *Atomics*, 64 Cal. App. 5th 987.

27 43. Counsel further argued that, even if Plaintiffs established a technical violation of
28 the statute, the alleged violation was not a “knowing and intentional failure” by Defendants to

1 comply with Labor Code section 226(a), and penalties are therefore unwarranted. As framed by
2 defense counsel, there was no injury because employees could promptly and easily determine from
3 the wage statements alone the applicable overtime rate, and no employees were underpaid for any
4 hours worked. Furthermore, because the alleged violation did not result in the underpayment of
5 wages, defense counsel argued that any award of PAGA penalties would be subject to significant
6 reduction. In this respect, counsel argued that several factors supported the award of modest, if not
7 nominal, penalties, including the absence of willfulness. Defendants further argue that a court
8 would not award duplicative statutory and PAGA civil penalties for the same alleged wage
9 statement violations

10 44. The data produced by Defendants indicates that 1,452 Class Members received
11 approximately 31,013 overtime wage statements during the Settlement Periods. Thus, the
12 maximum Labor Code section 226(e) penalties total \$3,028,700 [(\$50 x 1,452) + (\$100 x 29,561)].

13 45. The Class and Aggrieved Employees completely overlap. The data produced by
14 Defendant indicates there were approximately 31,013 pay periods in which Aggrieved Employees
15 received an overtime wage statement during the PAGA Periods. Applying the standard civil
16 penalty of \$100 per pay period, yields \$3,101,300 in potential civil penalties under PAGA.

17 46. However, I believe it is unrealistic to assume that the Court will award the full
18 amount of PAGA penalties if Plaintiffs prevail at trial. Indeed, the potential recovery is uncertain
19 because the Court can decline to award the full amount of PAGA penalties where "...if, based on
20 the facts and circumstances of the particular case, to do otherwise, would result in an award that is
21 unjust, arbitrary and oppressive, or confiscatory." *See* Cal. Labor Code § 2699(e)(2).

22 47. Under the facts of this case, I appreciate the risk that Defendants could present a
23 persuasive argument to reduce the amount of PAGA penalties at trial. As shown in the Court of
24 Appeal's decision in *Carrington v. Starbucks Corp.*, while the plaintiff prevailed on his PAGA
25 claim upon trial, the trial court reduced the maximum PAGA penalty amount by 90%, citing the
26 employer's good faith attempt at complying with the law. 30 Cal. App. 5th 504, 517 (2018). Upon
27 review, the Court of Appeal found such reduction to be proper. *Id.* at 539. Thus, assuming that the
28 Court uses *Carrington* as a benchmark and assesses PAGA penalties of approximately 10% of the

1 total maximum, a more realistic estimate of the PAGA penalties at issue is \$310,130.

2 48. Based on the class data provided by Defendants, I estimate that Defendants'
3 maximum liability exposure is approximately \$3,338,830.

4 **THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE**

5 49. The Gross Settlement Fund is approximately 11.98% of the maximum recovery of
6 the class and representative PAGA claims.

7 50. Based on my own independent investigation and evaluation, I am of the opinion
8 that the settlement for the consideration and on the terms set forth in the Settlement Agreement is
9 fair, reasonable, and adequate and that the settlement is in the best interests of the Settlement Class,
10 in light of all known circumstances and the expenses and risks inherent in litigation. I also believe
11 in the fairness of the settlement based on factoring in the uncertainty and risks to Plaintiff involved
12 in not prevailing on the class claims at trial and the possibility of appeal.

13 **NOTICE TO THE LWDA**

14 51. Concurrent with the filing of the Motion for Preliminary Approval of Class Action
15 and PAGA Settlement, my office uploaded the Motion, Settlement Agreement, and proposed order
16 to the LWDA's website.

17 **ATTORNEY EXPERIENCE**

18 52. Class Counsel has a great deal of experience in wage and hour class action litigation
19 and has been approved as class counsel in a number of class actions. My co-counsel and I can and
20 will adequately represent the Class Members in this action. I have no conflicts with the Class and
21 will adequately represent the Class.

22 53. My qualifications are as follows: I was the 2003 recipient of the Spelman
23 Presidential Scholarship to Emory University School of Law. During law school, I was a summer
24 associate at the law firm of Sonnenschein, Nath and Rosenthal, and clerked with the Atlanta office
25 of the Equal Employment Opportunity Commission. I received my J.D. from Emory University in
26 2006 and was admitted to the California Bar in December 2006. Following law school, I was an
27 associate at Sonnenschein from September 2006 to May 2009.

28 54. Since 2009, my primary area of practice has been employment litigation. I have

1 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
2 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
3 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
4 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
5 companies in employment litigation in both state and federal courts, as well as before government
6 agencies, including the California Department of Labor. My practice included the defense of single
7 plaintiff and multi-plaintiff lawsuits involving claims under the California Fair Employment and
8 Housing Act, the California Labor Code and the Fair Labor Standards Act. I also handled a number
9 of wage and hour class actions.

10 55. As an associate at Ogletree and Seyfarth, I served as the lead associate on a number
11 of wage and hour class actions, including *Martha Cardenas v. Gold's Gym*, Los Angeles County
12 Superior Court Case No. BC445112; *Nathaniel Werner v. Crown Equipment Corporation*, Los
13 Angeles County Superior Court Case No. BC439428; *Christopher Williams v. Allstate Insurance*
14 *Co.*, Los Angeles County Superior Court Case No. BC382577; *Hwang v. Caltech*, Los Angeles
15 County Superior Court Case No. BC464894; *Melissa Roberts v. Zale Delaware, Inc.*, Los Angeles
16 Superior Court Case No. BC523610; *Michael Oliver v. Konica Minolta Business Solutions U.S.A.,*
17 *Inc.*, Santa Clara County Superior Court Case No. 114-CV-263183; *Tessa Hodge v. Zale*
18 *Delaware, Inc., d/b/a Piercing Pagoda*, San Bernardino Superior Court Case No CIVVS1301632;
19 *Warren v. Paychex, Inc.*, N.D. Cal. Case No. 3:10-cv-02006; *Tapia v. Zale Delaware Inc. et al*,
20 S.D. Cal. Case No. 3:13-cv-01565; and *Benjamin Burgess et al v. Tesoro Refining and Marketing*
21 *Company et al*, C.D. Cal. Case No. 2:10-cv-05870.

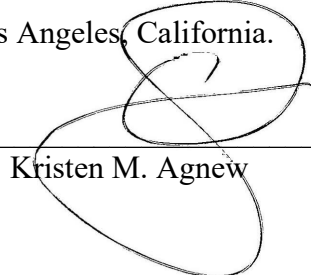
22 56. I also second chaired two jury trials where I represented the prevailing defendant.
23 Both cases involved employees who brought claims against their former employers pursuant to
24 the Fair Employment & Housing Act. The cases are: *Jeff Cowell v. Eaton Aerospace LLC et al*,
25 Los Angeles County Superior Court Case No. BC401543; and *Richard Gulden v. Pratt & Whitney*
26 *Rocketdyne Inc. et al.*, Los Angeles County Superior Court Case No. BC468909.

27 57. In June 2016, I joined Diversity Law Group, P.C. where I spend most of my time
28 handling employment cases. I primarily represent employees.

58. I have been approved as class counsel in numerous wage/hour class actions that have been granted class certification and final approval, including: *Antonio Becerra-Mata v. PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court Case No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara County Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Cody Wirbick v. Sundt Construction, Inc.*, U.S. District Court for the Eastern District of California Case No. 2:19-cv-02067-MCE-CKD; *Jose Vasquez Ruiz v. Perdue Foods, LLC*, Sonoma County Superior Court Case No. SCV 264649; *Delmer Wood III v. Reeve Trucking Company Inc.*, San Joaquin Superior Court Case No. STK-CV-UOE-2018-0004414; *Eric Chavez v. Converse, Inc.*, U.S. District Court for the Northern District of California Case No. 15-cv-03746-NC; *Jharett Siron v. Raypak, Inc.*, Ventura County Superior Court Case No. 56-2019-00527959-CU-OE-VTA; *Prexxie Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No. 19CV345211; and *Markham v. Quik Stop Markets, Inc.*, Santa Clara Superior Court Case No. 19CV341582.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this June 1, 2022, at Los Angeles, California.



Kristen M. Agnew

EXHIBIT 1

DIVERSITY LAW GROUP, P.C.

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Attorneys for Defendants McLANE/SUNEAST, INC. and McLANE FOODSERVICE, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SHAYNIA VERNON, as individual and on
behalf of all others similarly situated;
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Defendants.

CASE NO. CIVSB2123367

[Assigned for All Purposes to Hon. David
Cohn, Dept. S26]

**STIPULATION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT AND
SETTLEMENT AND RELEASE OF
CLASS ACTION AND PAGA CLAIMS**

STIPULATION FOR SETTLEMENT AND RELEASE OF
CLASS ACTION AND PAGA CLAIMS

This Stipulation for Settlement and Release of Class Action and PAGA Claims (the “**Settlement Agreement**” or “**Agreement**”) is made and entered into by and between and Plaintiffs SHAYNIA VERNON (“**Vernon**”) and BENJAMIN CASTANEDA-RIVERA (“**Castaneda-Rivera**”) (collectively, “**Plaintiffs**” or “**Class Representatives**”), on their own behalves and as proposed representatives on behalf of the Class to be certified pursuant to this Settlement Agreement (as described in Paragraph 8, below) and each of the members of the respective Class (each, individually, a “**Class Member**” and, collectively, “**Class Members**”), on the one hand, and Defendants MCLANE/SUNEAST, INC. (“**MSE**”) and MCLANE FOODSERVICE, INC. (“**MFS**”) (collectively, “**Defendants**”), on the other hand, in *Vernon, et al. v. McLane/Suneast, Inc., et al.*, Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2123367 (the “**Litigation**” or “**State Court Class Action**”).

This Settlement Agreement is subject to the terms and conditions hereof and the approval of the Court. For purposes of this Settlement Agreement, Plaintiffs and Defendants are each referred to individually as a “**Party**” and collectively as the “**Parties**.”

SETTLEMENT AMOUNT

As described in detail hereafter, and pursuant to all of the terms and conditions set forth in this Settlement Agreement, Defendants shall pay the total amount of Four Hundred Thousand Dollars (\$400,000.00) (the “**Gross Settlement Fund**,” “**GSF**,” or “**Settlement Fund**”), to resolve all of the claims being released herein, as set forth in detail hereafter. This Settlement Agreement is not subject to any reversion of funds to Defendants, such that the entire settlement amount will be payable if the settlement becomes final as defined herein, and any amounts not received via mail by any Class Members will be transmitted by the Settlement Administrator pursuant to governing law to the California Unclaimed Property fund to be held there for the benefit of such Class Members under California’s escheatment laws.

BACKGROUND AND RECITALS

1. On January 28, 2020, Plaintiff Vernon filed a putative class and representative action

1 against MFS in the Riverside County Superior Court, assigned Case No. RIC2000406 therein
2 (“**Vernon Action**”). On September 1, 2020, Plaintiff Castaneda-Rivera filed a separate putative
3 class and representative action against MSE in the San Bernardino County Superior Court, assigned
4 Case No. CIVDS2017663. On January 12, 2021, Plaintiff Castaneda-Rivera filed a consolidated
5 First Amended Class and Representative Action Complaint for Damages, which added Plaintiff
6 Vernon as a named plaintiff and MFS as a named defendant (the “**Consolidated Action**”), and
7 Plaintiff Vernon dismissed the earlier-filed Vernon Action without prejudice.

8 2. On March 16, 2021, Defendants removed the Consolidated Action to the United
9 States District Court for the Central District of California (the “**Federal Action**”), wherein it
10 commenced and was ultimately assigned Case No. 5:21-cv-00465 therein. On April 15, 2021,
11 Plaintiffs filed a Second Amended Class and Representative Action Complaint for Damages in the
12 Federal Action.

13 3. On August 12, 2021, Plaintiffs filed a separate class action complaint against
14 Defendants MSE and MFS in the State Court Class Action, alleging putative class action claims for
15 underpaid meal and rest break premium payments pursuant to Cal. Lab. Code § 226.7 (“Section
16 226.7”).

17 4. On October 1, 2021, Plaintiff Castaneda-Rivera filed another complaint against
18 Defendant MSE entitled *Benjamin Castaneda-Rivera v. McLane/Suncoast, Inc.*, in the San
19 Bernardino County Superior Court, assigned Case No. CIVSB2128980 therein (the “**State Court**
20 **PAGA Action**”), alleging a derivative PAGA claim for underpaid Section 226.7 payments.

21 5. The State Court Class Action and State Court PAGA Action are collectively referred
22 to herein as the “**State Court Section 226.7 Actions.**”

23 6. The Parties engaged in an extensive informal exchange of documents and
24 information, including, *inter alia*, data regarding putative class members.

25 7. On December 10, 2021, the Parties participated in a private mediation with Mediator
26 David Rotman. As a result of the mediation, the Parties have prepared and are entering into this
27 Settlement Agreement to resolve all of the claims being released herein.

28 8. For purposes of this Settlement Agreement only, the “**Class**” or “**Settlement Class**”

1 consists of:

2 (i) All current and former non-exempt employees employed by MSE and
3 working in California at any time during the time period from April 6, 2019 through and including
4 October 29, 2020 (the “**MSE Settlement Period**”) who were paid overtime wages at any time
5 during the MSE Settlement Period (“**MSE Subclass**”); and

6 (ii) All current and former non-exempt employees employed by MFS and
7 working in California at any time during the time period from January 28, 2019 through and
8 including October 29, 2020 (the “**MFS Settlement Period**”) who were paid overtime wages at any
9 time during the MFS Settlement Period (“**MFS Subclass**”).

10 Together, the MSE Subclass and MFS Subclass constitute the Class/Class Members, and the
11 MSE Settlement Period and MFS Settlement Period are collectively referred to herein as the
12 “**Settlement Periods.**” Expressly excluded from the Class are any individuals who, as of the date
13 the Court grants preliminary approval of this settlement, have filed a pending, separate lawsuit as a
14 named plaintiff, individually and/or as a putative class or representative action, asserting claims
15 based on violations of any of the same statutes and/or regulations as those alleged to have been
16 violated in the Federal Action and/or the State Court Section 226.7 Actions (collectively referred to
17 herein as the “**Actions**”) and/or who have released such claims.

18 9. No Admission of Liability by the Defendants. Defendants deny any liability or
19 wrongdoing of any kind associated with the Actions and the claims being released herein.
20 Defendants contend, among other things, that they have complied at all times with all applicable
21 California laws and assert that the Class Members were properly issued accurate, itemized wage
22 statements, and otherwise treated at all times in compliance with California law. Neither this
23 Settlement Agreement nor any exhibit hereto, nor any other document pertaining to the settlement
24 contemplated herein, may be offered in any other case or proceeding as evidence of any admission
25 by Defendants of any liability on any claims for damages or other relief. Any stipulation or
26 admission by Defendants contained herein is made for settlement purposes only.

27 10. Nevertheless, in the interest of avoiding the costs and disruption of ongoing litigation
28 and resolving the claims asserted in the Litigation, the Parties believe that the settlement negotiated

1 between them and set forth in this Settlement Agreement is fair, reasonable, and adequate.

2 11. It is the desire of Plaintiffs, on their own behalves and on behalf of the Class
3 Members, as well as on behalf of the California Labor and Workforce Development Agency and its
4 constituent departments, divisions and agencies (collectively, the "LWDA") with respect to those
5 claims asserted under the California Labor Code Private Attorneys General Act ("**PAGA**"), Cal.
6 Lab. Code § 2698, *et seq.*, to fully, finally, and forever settle, compromise, and discharge the claims
7 set forth in Paragraphs 42 and 43 of this Settlement Agreement, as applicable.

8 **TERMS OF THE SETTLEMENT**

9 12. Conditional Leave to File First Amended Class Action Complaint. Solely for
10 purposes of this Settlement only, and the Court granting preliminary and final approval thereof, the
11 Parties hereby stipulate and agree, subject to the Court's entry of such approval orders, that leave to
12 file the proposed First Amended Class Action Complaint for Damages & Representative Action
13 Under the Labor Code Private Attorneys General Act ("**FAC**" or "**Operative Complaint**"), attached
14 hereto as **Exhibit A**, be granted, which pleads the claims alleged in the Federal Action and limits
15 the claims originally alleged in this State Court Section 226.7 Class Actions to individual, non-class
16 claims solely on behalf of and/or related to Plaintiffs, all of which were investigated, litigated,
17 mediated, and resolved in the Actions. Plaintiff's motion for preliminary approval of the Settlement
18 will request conditional leave to file the FAC solely for purposes of this Settlement, and all
19 allegations therein shall be deemed to relate back to the respective dates of the filing of Plaintiffs'
20 original actions asserting those claims, with Defendants being relieved from having to file any
21 response to the FAC and being deemed to have generally and specifically denied all allegations
22 contained in the FAC. Should, for whatever reason, the Court require Defendant to file an answer
23 to the FAC, then, Defendant will cooperate in doing so. Should, for whatever reason, the settlement
24 set forth in this Settlement Agreement not become final, the FAC shall be deemed stricken, null,
25 and void ab initio, with the previously filed Complaint in the State Court Class Action remaining
26 the operative pleading.

27 13. Stipulation for Conditional Class Certification: The Parties stipulate and agree to the
28 conditional certification of the Settlement Class in the State Court Class Action for purposes of this

1 Settlement Agreement only. Should, for whatever reason, the settlement set forth in this Settlement
2 Agreement not become final, the Parties' stipulation to such class certification as part of this
3 settlement shall become null and void *ab initio* and shall have no bearing on, and shall not be
4 admissible in connection with, the issue of whether or not certification would be appropriate in a
5 non-settlement context. Defendants expressly reserve their rights and declare that, to the extent
6 Plaintiffs may otherwise be permitted to seek class certification, they intend to oppose class
7 certification vigorously should this settlement not become final and putative class action claims are
8 allowed to be pursued in the Litigation or any other action or proceeding.

9 14. Establishment of the Settlement Fund: This settlement is being made on a non-
10 reversionary basis, such that Defendants will pay the entirety of the agreed upon total settlement
11 amount of Four Hundred Thousand Dollars (\$400,000.00) ("**Settlement Fund**").

12 15. The payment by Defendants of the total Settlement Fund of \$400,000.00, pursuant
13 to this Settlement Agreement, shall settle and forever resolve all of the Released Claims (as defined
14 below), and will include all payments to Participating Class Members (as defined below), Aggrieved
15 Employees (as defined below), and government taxing authorities (to the extent applicable), plus (a)
16 the costs of administration of the settlement, (b) all claimed and/or awarded attorneys' fees and
17 costs, (c) the claimed and/or awarded enhancement awards to the Class Representatives, and (d) all
18 payments to be made to the LWDA pursuant to PAGA. The settlement payments are not being
19 made for any other purpose and will not be construed as "compensation" for purposes of determining
20 eligibility for any health and welfare benefits, unemployment compensation, or other compensation
21 or benefits provided by Defendants. In addition, no individual receiving a payment based on this
22 Settlement shall be entitled to any additional or increased health, welfare, retirement, or other
23 benefits as a result of their participation in the Settlement and/or receipt of payment under this
24 Settlement.

25 16. Calculation of Net Settlement Fund: The total sum from which Participating Class
26 Members will be paid (the "**Net Settlement Fund**" or "**NSF**") shall be the Gross Settlement Fund
27 less the following: Settlement Administration Costs, PAGA Amount (as defined below), Attorneys'
28 Fees and Costs, and Enhancement Awards. The remaining sum after all these deductions shall

1 represent the NSF, which will be used to calculate the settlement share that each Participating Class
2 Member will receive if this settlement becomes Final as defined in Paragraph 17, below.

3 17. Effective Date: This Settlement Agreement shall become effective when the
4 settlement is considered to be Final. For purposes of this Settlement Agreement, “**Final Approval**”
5 means the Court’s determination that the Settlement is fair, reasonable, and adequate, granting of
6 final approval of the Settlement, and entry of judgment based thereon, and “**Final Approval Order**”
7 means the Court’s order determining the Settlement to be fair, reasonable, and adequate and granting
8 final approval of the Settlement and judgment based thereon. For purposes of this Settlement
9 Agreement, “**Effective Date**” and “**Final**” mean: (i) in the event that the Settlement has received
10 Final Approval by the Court, and regardless of whether any timely objections thereto have been
11 filed or withdrawn, then upon the passage of the applicable date for any interested party to seek
12 appellate review of the Court’s Final Approval Order without a timely appeal being filed, and the
13 dismissals with prejudice of the Federal Action and without prejudice of the State Court PAGA
14 Action being effectuated; or, (ii) in the event that a timely appeal of the Court’s Final Approval
15 Order has been filed, then the Settlement Agreement shall be final when the applicable appellate
16 court has rendered a final decision or opinion affirming the Court’s Final Approval Order without
17 material modification, the applicable date for seeking further appellate review has passed without
18 further appellate review being sought, and the dismissals with prejudice of the Federal Action and
19 without prejudice of the State Court PAGA Action has been effectuated. In the event that the Court
20 fails to approve the Settlement, or if the appropriate appellate court fails to approve the Settlement,
21 and/or Plaintiffs fail to effectuate the dismissals of the Federal Action and the State Court PAGA
22 Action as specified: (1) this Settlement Agreement shall have no force and effect and the Parties
23 shall be restored to their respective positions prior to entering into it, and no Party shall be bound
24 by any of the terms of the Settlement Agreement; (2) Defendants shall have no obligation to make
25 any payments to the LWDA, Class Members, Plaintiffs, or Plaintiffs’ Counsel; and (3) any
26 preliminary approval order and/or Final Approval Order shall be vacated.

27 18. Mediation and Settlement Communications: The Settlement Agreement and all
28 negotiations, statements, proceedings, and data relating thereto shall be deemed confidential

1 mediation settlement communications and not subject to disclosure for any purpose in any
2 proceeding, except only as required to obtain approval of and implement this Settlement and/or to
3 enforce this Settlement after final approval thereof is granted by the Court.

4 19. PAGA Settlement: The amount of Ten Thousand Dollars (\$10,000) out of the GSF
5 shall be allocated to penalties under PAGA (“**PAGA Amount**”), subject to the Court’s final
6 approval, of which 75% of that amount will be paid to the LWDA out of the GSF (“**LWDA**
7 **Payment**”), and the remaining 25% will be distributed to the “Aggrieved Employees” (“**Aggrieved**
8 **Employee Payment**”), subject to the further terms of this Agreement, below. For purposes of this
9 Settlement, “Aggrieved Employee(s)” shall have the same meaning and composition as the “Class”
10 (and the defined Subclasses thereof) and be subject to the same Settlement Periods (“**PAGA**
11 **Periods**”).

12 20. Attorneys’ Fees and Costs: “**Class Counsel**” or “**Plaintiffs’ Counsel**” means Larry
13 W. Lee, Esq., Kristen M. Agnew, Esq. and Nicholas Rosenthal, Esq. of Diversity Law Group, P.C.,
14 and William L. Marder, Esq. of Polaris Law Group LLP. Subject to approval of the Court, Plaintiffs’
15 Counsel shall be appointed as counsel for the Class, and may apply for an award of attorneys’ fees
16 and costs and expenses incurred in connection with the prosecution of this matter, and all of the
17 work remaining to be performed by Class Counsel in documenting the Settlement, securing Court
18 approval of the Settlement (including all related appellate work), carrying out their duties to see that
19 the Settlement is fairly administered and implemented, and obtaining entry of the final judgment
20 approving this Settlement, dismissal of the Federal Action with prejudice and dismissal of the State
21 Court PAGA Action without prejudice, in an amount of up to thirty-five percent (35%) of the GSF
22 for attorneys’ fees and in an amount of up to \$30,000 for reimbursement of reasonable costs and
23 expenses (together, “**Attorneys’ Fees and Costs**”). Amounts awarded by the Court for Attorneys’
24 Fees and Costs shall be paid from the GSF.

25 21. Enhancement Award: Subject to approval by the Court, Plaintiffs shall be appointed
26 as representatives of the Class, and they may each seek an award in the amount of up to \$10,000 in
27 consideration for serving as a representative of the Class (“**Enhancement Award**”). The
28 Enhancement Award is in addition to the Individual Settlement Payment to which Plaintiffs are

1 otherwise entitled as Settlement Class Members.

2 22. In the event lesser sums are awarded for Attorneys' Fees and Costs than those
3 referenced in Paragraph 20, above, or for the Enhancement Awards referenced in Paragraph 21,
4 above, the approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiffs and/or
5 Class Counsel to terminate the Settlement, but such an order shall be appealable by them. In the
6 event that such an appeal is filed, administration of the Settlement shall be stayed pending resolution
7 of the appeal. Thereafter, if after the exhaustion of such appellate review, any additional amounts
8 remain that are distributable to the Participating Class Members, the cost of administration of such
9 additional payments will be paid out of such additional amounts and will not be chargeable to or
10 payable by Defendants. Any amount not awarded for Attorneys' Fees and Costs or the Enhancement
11 Awards, but which is not challenged via appeal by Plaintiffs and/or Class Counsel, shall be added
12 to the NSF and distributed to the Participating Class Members in accordance with the terms of this
13 Settlement Agreement.

14 23. Costs of Administration: Subject to Court approval, the Parties designate Simpluris
15 to administer the Settlement ("**Settlement Administrator**"), with a preliminary budget to
16 administer the settlement for fees and costs of up to \$20,000.00 ("**Settlement Administration**
17 **Costs**"). The Settlement Administrator's duties of administration shall include, without limitation,
18 receiving the Class List to be produced by Defendants and updating it prior to the Notice being
19 mailed, printing and mailing the Notice, performing necessary additional skip traces on Notices
20 and/or checks returned as undeliverable, calculating Class Members' estimated and final shares of
21 the NSF, preparing and mailing of settlement checks, establishing a settlement website as described
22 hereafter, responding to Class Member inquiries as appropriate, preparing any appropriate tax forms
23 in connection with the settlement payments and remitting those forms and any required payments
24 to the appropriate governmental agencies, and generally performing all normal and customary duties
25 associated with the administration of such settlements. All fees and costs for the Settlement
26 Administrator's services will be paid out of the GSF.

27 24. No Claim Form Required: Only Participating Class Members shall share in the NSF
28 referred to in Paragraph 16, as set forth in more detail in Paragraph 26 hereafter. Participating Class

Members shall not be required to complete a claim form. Class Members will be mailed a Notice of Class Action Settlement (“**Notice**”), in substantially the form attached hereto as **Exhibit B**, subject to approval by the Court, informing them of the terms of the Settlement and providing them with an estimate of their share of the NSF. Class Members who do not timely and properly elect to opt out of the Settlement (“**Participating Class Member(s)**”) will be mailed a check representing their payment under the Settlement, in accordance with the terms of this Settlement Agreement.

25. Class Size: The size and membership of the MSE Subclass is estimated to comprise 956 employees who received 18,520 overtime wage statements. The size and membership of the MFS Subclass is estimated to comprise 496 employees who received 12,493 overtime wage statements. If the actual aggregate total number of wage statements issued to Class Members exceeds 31,013 by more than 5%, rounded up to the next whole number (i.e., more than 32,564 wage statements) (the “**Buffer Wage Statements**”), then:

- a. Defendants may agree to proceed with the Settlement by increasing the GSF by the amount of the GSF divided by 31,013 for each additional wage statement in excess of the Buffer; or
- b. Defendants may elect to end the Settlement Periods on the date at which the wage statements reached 32,564.

Defendants also may decline to exercise either of the foregoing options. In that event, and if the Parties have not been able to otherwise reach an agreement as to whether any terms of the settlement should be changed instead and in what manner within 10 court days after learning that the Buffer would be exceeded, Plaintiffs shall have the right within two court days thereafter to terminate this Settlement Agreement and the Parties will be restored to their respective positions prior to entering into this Settlement Agreement. However, Defendants shall remain responsible for all Settlement Administration Costs incurred through termination of the Settlement Agreement.

26. Calculation of Participating Class Members’ Shares of the Net Settlement Fund: Defendants shall calculate and provide to the Settlement Administrator, from Defendants’ records as reflected on the Class List (as defined below), the number of wage statements with overtime wages paid to each Class Member during the applicable Settlement Periods (“**Wage Statements**”).

1 Each Class Member's share of the NSF ("**Individual Settlement Share(s)**") will be calculated
2 initially for purposes of mailing the Notice by multiplying the NSF by a fraction, the numerator of
3 which is the Class Member's total number of Wage Statements, and the denominator of which is
4 the total number of Wage Statements of all Class Members. Each Participating Class Member's
5 final Individual Settlement Share for purposes of payment will be calculated by multiplying the NSF
6 by a fraction, the numerator of which is the Participating Class Member's total number of Wage
7 Statements, and the denominator of which is the total number of Wage Statements of all
8 Participating Class Members. The dollar amount of any Individual Settlement Shares of Class
9 Members who timely and properly opt-out of participating in the settlement will be added to the
10 NSF and distributed to the Participating Class Members in accordance with the terms of this
11 Settlement Agreement.

12 27. Calculation of Aggrieved Employees' Shares of the Aggrieved Employee Payment:
13 Defendants shall calculate and provide to the Settlement Administrator, from Defendants' records
14 as reflected on the Class List (as defined below), the number of pay periods during which each
15 Aggrieved Employee was issued one or more Wage Statements during the applicable PAGA Periods
16 ("**Pay Periods**"). Aggrieved Employees will receive their pro rata share of the Aggrieved Employee
17 Payment of the PAGA Amount based on the number of Wage Statements he or she received during
18 the applicable PAGA Periods, regardless of whether they submit a timely and valid Request for
19 Exclusion from the Settlement Agreement.

20 28. Right to Opt Out, Object, and/or Dispute Wage Statements: The Notice will be
21 mailed to all Class Members and will advise each Class Member of their right to opt out of the
22 Settlement Agreement, object to all or any part of the Settlement Agreement, and/or dispute the
23 number of Wage Statements credited to them. Any Class Member who wishes to opt out of the
24 Settlement Agreement as to the proposed class action settlement, object to the Settlement Agreement
25 as to the proposed class action settlement, and/or dispute the number of Wage Statements credited
26 to them for purposes of the proposed class action settlement, must do so in writing to the Settlement
27 Administrator postmarked no later than forty-five (45) calendar days from the date of mailing of the
28 Notice to the Class Members ("**Response Deadline**"). However, there is no right to opt out of or

1 object to the PAGA settlement under this Settlement Agreement, and any Class Member who opts
2 out of the Settlement Agreement for purposes of the proposed class action settlement will still be
3 bound by the release of PAGA claims set forth in Paragraph 43, below.

4 29. Opting Out of the Proposed Class Action Settlement: A request to opt out of and be
5 excluded from the proposed class action settlement under this Settlement Agreement (“**Request for**
6 **Exclusion**”) must include: (i) the full name, current mailing address, signature, and last four digits
7 of the Social Security number of the Class Member seeking exclusion; (ii) the case name and number
8 of the Litigation; and (iii) a statement that the Class Member seeks to be excluded from the
9 Settlement Agreement which is the same or substantially similar to the following language: “I elect
10 to opt-out of the *Vernon, et al. v. McLane/Suneast, Inc., et al.* class action settlement. I understand
11 that by doing so, I will not participate in the settlement, and will not receive any money from it.” In
12 the event that ten percent (10%) or more of the Class Members submit a timely and valid Request
13 for Exclusion, Defendants will have the option to rescind and terminate the Settlement resulting in
14 both Parties returning to their pre-settlement positions in the Litigation. Should the 10% threshold
15 for opt outs be exceeded, the Settlement Administrator shall notify lead counsel for all Parties via
16 email immediately, and Defendants shall have ten (10) calendar days from the date of the Settlement
17 Administrator’s email to exercise their option to rescind and terminate the Settlement as referenced
18 in this Paragraph. Defendants, however, shall pay all Settlement Administration Costs incurred by
19 the Settlement Administrator up to the date of Defendants’ notice to rescind.

20 30. Objecting to the Proposed Class Action Settlement: An objection to the proposed
21 class action settlement under this Settlement Agreement (“**Objection**”), must include: (i) the full
22 name, current mailing address, signature, and last four digits of the Social Security number of the
23 objecting Class Member; (ii) the case name and number of the Litigation; (iii) a statement indicating
24 the legal and factual grounds for the objection; (iv) a statement indicating whether the objecting
25 Class Member is represented by counsel and identifying any such counsel; and (v) a statement
26 indicating whether the objecting Class Member intends to appear for and wishes to be heard at the
27 Final Approval Hearing.

28 31. Disputing Wage Statements: A Class Member’s dispute of the number of Wage

1 Statements credited to them and used to calculate the Class Member's Individual Settlement Share
2 for purposes of the proposed class action settlement under this Settlement Agreement ("**Wage**
3 **Statements Dispute**") must include: (i) the full name, current mailing address, telephone number,
4 signature, and last four digits of the Social Security number of the disputing Class Member; (ii) the
5 case name and number of the Litigation; (iii) a statement indicating that the Class Member seeks to
6 dispute the number of Wage Statements credited to them, the time period(s) the Class Member
7 performed overtime work for Defendants in a non-exempt position in California during the
8 applicable Settlement Periods, and the number of Wage Statements that the Class Member contends
9 should be credited to them; and (iv) documentation and/or other facts supporting the Class
10 Member's position. In response to any timely Wage Statements Dispute, Defendants will first verify
11 the information contained in the disputing Class Member's personnel file and Defendants' payroll
12 records. Unless the Class Member can establish that the number of Wage Statements credited to
13 them is incorrect, by providing documentation in support thereof or other details to substantiate their
14 position, the total number of Wage Statements established by Defendants' records will control.
15 Class Counsel and Defendants' Counsel will then make a good faith effort to resolve the dispute
16 informally before the Final Approval Hearing. If counsel for the Parties cannot agree, the dispute
17 shall be resolved by the Settlement Administrator before the Final Approval Hearing, who shall
18 examine the records provided by the Defendants and the Class Member and shall be the final arbiter
19 of disputes relating to a Class Member's Wage Statements. The Settlement Administrator's
20 determination regarding any such dispute shall be final for purposes of administering notice of the
21 Settlement, subject to final review, determination, and approval by the Court.

22 32. Funding of Settlement: Within fifteen (15) calendar days following the occurrence
23 of the Effective Date of the Settlement as defined above, Defendants shall transfer the GSF in the
24 amount of Four Hundred Thousand Dollars (\$400,000.00) to a Qualified Settlement Fund account
25 ("**Settlement Account**") established by the Settlement Administrator. Thereafter, the Settlement
26 Administrator shall distribute the funds as soon as is practical in accordance with the terms of this
27 Settlement Agreement and as ordered by the Court. No funds will be payable by Defendants prior
28 to that time.

1 33. Payment Procedures: Within ten (10) business day after Defendants deposit the GSF
2 into the Settlement Account created by the Settlement Administrator, the Settlement Administrator
3 shall distribute payment of the approved Individual Settlement Payments to Participating Class
4 Members (as provided in Paragraph 26, above), Employee PAGA Payments to Aggrieved
5 Employees (as provided in Paragraph 27, above), Attorneys' Fees and Costs to Class Counsel,
6 Enhancement Awards to the Class Representatives, LWDA Payment to the LWDA, and Settlement
7 Administration Costs to the Settlement Administrator, in accordance with this Settlement
8 Agreement and as ordered by the Court.

9 34. Tax Treatment of Settlement Payments: Each Individual Settlement Share will be
10 allocated 100% as statutory non-wage damages and each Aggrieved Employee Payment will be
11 allocated 100% as civil penalties. No Individual Settlement Share or Aggrieved Employee Payment
12 shall be subject to reduction for payroll taxes, contributions and/or withholdings.

13 35. Each recipient of any monies paid in accordance with this Settlement Agreement is
14 responsible for any taxes associated with the monies received by each recipient.

15 36. If required by state or federal tax requirements, the Settlement Administrator will
16 prepare a Form 1099 for Settlement Class Members for their Individual Settlement Share and/or
17 Aggrieved Employees for their Aggrieved Employment Payment. The Settlement Administrator
18 will be responsible for preparing these forms timely and correctly. Settlement Class Members and
19 Aggrieved Employees will be responsible for correctly characterizing the compensation that they
20 receive pursuant to the Form 1099 and for payment of any taxes owing on said amount.

21 37. The Parties acknowledge and agree that neither they nor their attorneys have made
22 any representations regarding the tax consequences of any and all payments made under this
23 Settlement Agreement. Settlement Class Members and Aggrieved Employees will be required to
24 pay all federal, state, or local taxes, if any, which are required by law to be paid with respect to any
25 and all payments made to them under the Settlement. The Parties further agree that Defendants
26 shall have no legal obligation to pay, on behalf of Settlement Class Members or Aggrieved
27 Employees, any taxes, deficiencies, levies, assessments, fines, penalties, interest or costs, which
28 may be required to be paid with respect to the settlement payments.

1 38. Tax Treatment of Enhancement Awards and Class Counsel's Award of Attorneys'
2 Fees and Costs: The Class Representatives and Class Counsel will receive an IRS Form 1099 for
3 the Class Representatives' respective Enhancement Awards and Class Counsel's award of
4 Attorneys' Fees and Costs, which will be prepared by the Settlement Administrator. The Class
5 Representatives and Class Counsel will be solely responsible for correctly characterizing this
6 compensation for tax purposes and for payment of any taxes owing on said amounts. Prior to
7 receiving the payments specified herein, the Class Representatives and Class Counsel each shall
8 deliver to the Settlement Administrator any necessary tax forms requested by the Settlement
9 Administrator.

10 39. Undistributed Funds: Individual Settlement Payment checks will remain valid and
11 negotiable for one hundred and eighty (180) days after the date of issuance. If an Individual
12 Settlement Payment check is returned before the expiration of the 180-day period ("Returned
13 Check"), then, within five (5) days of receipt of the Returned Check, the Settlement Administrator
14 shall undertake a skip-trace search for an alternate mailing address and re-mail the Returned Check
15 to an alternate mailing address (if one is located), under a cover letter indicating that the Returned
16 Check will continue to be valid and negotiable for thirty (30) days after the date of re-mailing. In
17 the event that any checks mailed to Settlement Class Members are not cashed, deposited, or
18 otherwise negotiated within the 180-day period, no forwarding address can be located for a Returned
19 Check, or a Returned Check is re-mailed but not cashed, deposited, or otherwise negotiated within
20 the 30-day period from the re-mailing of the Returned Check, then the checks shall be cancelled by
21 the Settlement Administrator, and the funds associated with such cancelled checks shall be
22 transmitted by the Settlement Administrator pursuant to governing law to the California State
23 Controller Unclaimed Property fund to be held there for the benefit of such Class Members under
24 California's escheatment laws, and such Class Members shall nevertheless be bound to the
25 Settlement and the Final Approval Order. The Parties agree this disposition results in no "unpaid
26 residue" under California Code of Civil Procedure § 384(b), as the entire NSF shall be paid to
27 Participating Class Members, whether or not their Individual Settlement Payment checks are cashed.

NOTICE TO THE CLASS

40. Compilation of Class List: The Parties agree that within thirty (30) calendar days after preliminary approval of this Settlement Agreement by the Court, Defendants will provide a final “**Class List**” to the Settlement Administrator, which list shall include the following most up to date information about each Class Member in an electronic format: (a) full name; (b) most current mailing address and phone number as reflected in Defendants’ personnel records; (c) Social Security Number; (d) hire date of record with Defendants and termination date of record if applicable; (e) number of Wage Statements for each Class Member during the applicable Settlement Periods; and (f) number of Pay Periods for each Aggrieved Employee during the applicable PAGA Periods. The Class List provided to, updated and maintained by the Settlement Administrator shall be used only by the Settlement Administrator and only for purposes of administering the settlement as provided for in this Agreement, and the Settlement Administrator shall not disclose the contents thereof except as expressly permitted under this Agreement. The restrictions on the use and disclosure of the Class List and the Class Data List (as defined below) shall be deemed, upon entry of the Court’s Order granting preliminary approval of this Settlement, to be a protective order entered by the Court subject to full enforcement by the Parties to this Agreement and the Court, and by taking on the administration of the Settlement, the Settlement Administrator agrees that it and its employees, agents and representatives are bound by such protective order. The Settlement Administrator will update addresses contained in the Class List prior to the mailing of the Notice to the Class, by using the U.S. Postal Service’s National Change of Address Database. Once the final Class List has been received from Defendants, and updated as stated herein, the list shall then be referred to as the “**Class Data List**.” In response to any contention by an individual that they are a Class Member who was omitted from the Class Data List, made on or before the Response Deadline, Defendants will first verify the information contained in the personnel file of the individual at issue and Defendants’ payroll records. Unless the individual at issue can establish that they should have been included in the Class Data List, by way of supporting documentation, Defendants’ records will control. Class Counsel and Defendants’ Counsel will then make a good faith effort to determine whether or not the individual at issue is a Class Member. If counsel for the Parties cannot agree, then the Settlement

1 Administrator shall determine whether the individual at issue is a Class Member, who shall examine
 2 the records provided by the Defendants and the individual at issue, and shall be the final arbiter of
 3 whether or not the individual at issue is a Class Member, subject to final review, determination, and
 4 approval by the Court. Nothing herein limits the provisions or applicability of Paragraph 25, above.

5 41. Dissemination of Notice of Class Action Settlement: Within ten (10) business days
 6 of its receipt of the Class List, the Settlement Administrator will send the Notice to the Class
 7 Members, by first-class mail, at their most current address of record or such other address as located
 8 by the Settlement Administrator in conformity with Paragraph 40, in the form attached hereto as
 9 Exhibit B or as otherwise approved by the Court.

10 **RELEASE BY PARTICIPATING CLASS MEMBERS AND THE LWDA AND**
 11 **AGGRIEVED EMPLOYEES**

12 42. Release by Participating Class Members:

13 a. The “**Released Parties**” shall include McLane/Suneast, Inc. and McLane
 14 Foodservice, Inc., and each of their respective affiliates, parent companies (including McLane
 15 Company, Inc.), subsidiaries, shareholders, officers, partners, directors, members, owners,
 16 servants, employees, employers, agents, contractors, attorneys, insurers, predecessors,
 17 representatives, accountants, executors, successors, and assigns, past, present, and future, and each
 18 and all of their respective shareholders, officers, partners, directors, members, owners, servants,
 19 employees, employers, agents, contractors, attorneys, insurers, predecessors, representatives,
 20 accountants, executors, successors, assigns, and pension, profit sharing, retirement savings, health
 21 and welfare, and any other employee benefit plans of any nature and the respective trustees,
 22 administrators, sponsors, fiduciaries, successors, agents, and employees of all such plans, past,
 23 present, and future, and all persons acting under, by, through, or in concert with any of them
 24 (collectively, the “Released Parties”).

25 b. The “**Released Claims**” shall include any and all allegations, claims, debts, rights,
 26 demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’
 27 fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties,
 28 liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and

1 remedies, of any and every kind, contingent or accrued, that have been or reasonably could have
2 been alleged or asserted in the FAC and/or any of the pleadings filed in the Federal Action based
3 on the factual and/or legal violations allegations contained therein, and in any notice Plaintiffs sent
4 to the LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained
5 therein, including, without limitation, for failure to furnish accurate itemized wage statements
6 arising out of, based on, or related to any violation of Cal. Lab. Code § 226, and/or civil penalties
7 pursuant to PAGA, based in whole or in part on any direct or imputed violation of any federal,
8 state, local or administrative constitution, charter, law, rule, regulation or ordinance, during the
9 applicable Settlement Periods.

10 c. Upon the Settlement Administrator's receipt of the GSF from Defendants, Plaintiffs
11 and the Participating Class Members who are members of the MSE Subclass shall be deemed to
12 have released the Released Parties of and from all Released Claims that arose, accrued and/or have
13 been asserted during the MSE Settlement Period.

14 d. Upon the Settlement Administrator's receipt of the GSF from Defendants, Plaintiff
15 and the Participating Class Members who are members of the MFS Subclass shall be deemed to
16 have released the Released Parties of and from all Released Claims that arose, accrued and/or have
17 been asserted during the MFS Settlement Period.

18 43. Release by the LWDA and the Aggrieved Employees:

19 a. Upon the Settlement Administrator's receipt of the GSF from Defendants, Plaintiffs,
20 the LWDA and the Aggrieved Employees who are members of the MFS Subclass shall be deemed
21 to have released the Released Parties of and from all claims for any civil penalties recoverable under
22 the California Labor Code, including PAGA, as well as costs and attorneys' fees related thereto,
23 predicated on any violations of California Labor Code section 226 that arose, accrued and/or have
24 been asserted during the MFS Settlement Period.

25 b. Upon the Settlement Administrator's receipt of the GSF from Defendants, Plaintiffs,
26 the LWDA and the Aggrieved Employees who are members of the MSE Subclass shall be deemed
27 to have released the Released Parties of and from all claims for any civil penalties recoverable under
28 the California Labor Code, including PAGA, as well as costs and attorneys' fees related thereto,

1 predicated on any violations of California Labor Code section 226 that arose, accrued and/or have
2 been asserted during the during the MSE Settlement Period.

3 a. In addition, upon the Settlement Administrator's receipt of the GSF from
4 Defendants, Plaintiffs and the LWDA shall be deemed to have released the Released Parties of and
5 from all claims for any civil penalties recoverable under the California Labor Code, including
6 PAGA, as well as costs and attorneys' fees related thereto, predicated on any violations of California
7 Labor Code section 226.7 Action as to the Plaintiffs only that arose, accrued and/or have been
8 asserted during the applicable Settlement Periods. The release set forth in this paragraph shall not
9 be construed as a release and/or waiver of any potential claim for violation of California Labor Code
10 section 226.7, including derivative claims for any civil penalties recoverable under the California
11 Labor Code (including PAGA), that could be brought by an Aggrieved Employee other than
12 Plaintiffs and/or the by the LWDA on behalf of Aggrieved Employees other than Plaintiffs.

13 **ADDITIONAL RELEASE BY CLASS REPRESENTATIVE**

14 44. In addition to the releases set forth in Paragraphs 42 and 43, Plaintiffs, for themselves
15 alone as individuals, release the Released Parties of and from any and all claims, debts, liabilities,
16 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of
17 action of every kind or nature, contingent or accrued, which do or may exist as of the date of the
18 execution of this Settlement Agreement and through and including the date of Final Approval of
19 this Settlement Agreement, including without limitation any claimed violations of California Labor
20 Code sections 226 and 226.7 of any type. In connection therewith, Plaintiffs waive the provisions
21 of California Civil Code Section 1542, which states:

22 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
23 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
24 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
25 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
26 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
27 **DEBTOR OR RELEASED PARTY.**
28

1 **INJUNCTION BARRING PURSUIT OF RELEASED CLAIMS**

2 45. As part of the Final Approval of the Settlement, Plaintiffs, Participating Class
3 Members, the LWDA and Aggrieved Employees shall be enjoined from filing, initiating, or
4 continuing to prosecute any actions, claims, complaints, or proceedings in court, arbitration, with
5 the California Division of Labor Standards Enforcement (“**DLSE**”), with the LWDA, or with any
6 other entity, with respect to the claims released as described in Paragraphs 42 and 43, above. This
7 settlement is conditioned upon the release by Participating Class Members, Plaintiffs, Aggrieved
8 Employees, and the LWDA as described in Paragraphs 42 and 43, above, and upon covenants by
9 each of them that they will not and cannot bring or participate in any actions, lawsuits, proceedings,
10 complaints, or charges brought individually, by the DLSE, the LWDA, or by any other agency,
11 persons or entity in any court, arbitration or before any administrative body with respect to the
12 claims released as described in Paragraphs 42 and 43, above, nor will any of them contest or interfere
13 with efforts by Defendants or by any other Released Parties to oppose any attempt to bring such
14 released claims against any of them. Additionally, it is agreed herein that neither injunctive nor
15 declaratory relief, nor any equitable relief, will be ordered by the Court against Defendants in Final
16 Approval of the Settlement, which will otherwise be grounds for Defendants rescinding and
17 terminating this Settlement Agreement.

18 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

19 46. The Parties shall promptly seek the Court’s approval of this Settlement. Plaintiffs’
20 counsel will prepare Plaintiffs’ motion for preliminary approval. Not later than five (5) court days
21 prior to the submission of the motion for preliminary approval of this Settlement Agreement to the
22 Court, Class Counsel will submit a near-final draft thereof (including all supporting papers and
23 proposed order) to counsel for Defendants for their review and comment. As soon as practicable
24 after execution of this Settlement Agreement, the Class Representatives and Class Counsel shall
25 apply to the Court for the entry of a preliminary approval order which would accomplish the
26 following:

27 47. Schedule a hearing (“**Final Approval Hearing**”) on the question of whether the
28 Settlement, including, *inter alia*, the payment of Attorneys’ Fees and Costs, Enhancement Award,

1 and PAGA Amount should be finally approved as fair, reasonable, and adequate, and finally
 2 resolving any outstanding issues or disputes remaining from the administration of the notice of the
 3 settlement;

- 4 a. Provide that Plaintiff has conditional leave to file the FAC on the terms set
 5 forth in this Agreement;
- 6 b. Conditionally certify the Class for purposes of the Settlement only;
- 7 c. Approve, as to form and content, the proposed Notice;
- 8 d. Direct the mailing of the Notice by first class mail to the Class Members;
- 9 e. Preliminarily approve the Settlement and monetary allocations for
 10 awards/payments of Attorneys' Fees and Costs, Settlement Administration
 11 Costs, Enhancement Awards, and PAGA Amount, subject to the final review
 12 and approval by the Court;
- 13 f. Preliminarily approve Simpluris as the Settlement Administrator;
- 14 g. Preliminarily approve and appoint Plaintiffs as representatives of the Class;
 15 and
- 16 h. Preliminarily approve and appoint Plaintiffs' Counsel as counsel for the
 17 Class.

18 48. Plaintiffs' Counsel shall be responsible for ensuring that all required submittals and
 19 notifications to the LWDA under PAGA regarding this Settlement are made by Plaintiffs.

20 **DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL**

21 49. Plaintiffs' counsel will prepare Plaintiffs' motion for final approval. Not later than
 22 five (5) calendar days prior to the submission of the motion seeking Final Approval, Class Counsel
 23 will submit a near-final draft thereof (including all supporting papers and proposed order) to counsel
 24 for Defendants for their review and comment. In conjunction with the request for Final Approval
 25 of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed
 26 Final Approval Order and Judgment that provides for the following:

- 27 a. Granting final approval of the Settlement, adjudging the terms thereof to be
 28 fair, reasonable, and adequate, and directing consummation of its terms and

provisions;

- b. Approving and awarding Attorneys' Fees and Costs to Class Counsel;
- c. Approving and awarding the Enhancement Award to the Class Representatives;
- d. Approving and awarding all payments specified in this Settlement Agreement to the LWDA, Aggrieved Employees, and Participating Class Members;
- e. Permanently enjoining and restraining Plaintiffs, Participating Class Members, Aggrieved Employees, and the LWDA from and against initiating or pursuing any claims settled herein and released by this Settlement Agreement; and
- f. Entering judgment in accordance with the terms of this Settlement Agreement, including without limitation the permanent injunction provisions.

PARTIES' AUTHORITY

50. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

MUTUAL FULL COOPERATION

51. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to execution of such documents and to take such other actions as may reasonably be necessary to implement the terms of this Settlement Agreement. The Parties shall use their best efforts, including all efforts contemplated by this Settlement Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and their counsel, take all necessary steps to secure the Court's preliminary approval and final approval of this Settlement Agreement.

NO PRIOR ASSIGNMENTS

52. The Parties hereto represent, covenant, and warrant that they have not, directly or

1 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
2 person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein
3 released and discharged except as set forth herein.

4 **CONSTRUCTION**

5 53. The Parties hereto agree that the terms and conditions of this Settlement Agreement
6 are the result of lengthy, intensive, arms-length mediated negotiations between the Parties,
7 conducted under the auspices of mediator David Rotman, a highly respected and experienced class
8 action mediator. The Parties further agree that they have each had a full opportunity to negotiate
9 the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the common-
10 law and statutory rule of construction that ambiguities should be construed against the drafter of an
11 agreement, and agree, covenant, and represent that the language in all parts of this Agreement shall
12 be in all cases construed as a whole, according to its fair meaning.

13 **CAPTIONS AND INTERPRETATIONS**

14 54. Paragraph titles or captions contained herein are inserted as a matter of convenience
15 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement
16 Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not
17 merely a recital.

18 **MODIFICATION**

19 55. This Settlement Agreement may not be changed, altered, or modified, except in
20 writing and signed by the Parties hereto, and approved by the Court. This Settlement Agreement
21 may not be discharged except by performance in accordance with its terms or by a writing signed
22 by the Parties hereto.

23 **INTEGRATION CLAUSE**

24 56. This Settlement Agreement contains the entire agreement between the Parties
25 relating to the settlement and the transaction contemplated hereby, and all prior or contemporaneous
26 agreements, understandings, representations, and statements, whether oral or written and whether
27 by a Party or such Party's legal counsel, are merged herein. No rights hereunder may be waived
28 except in writing.

1 **BINDING ON ASSIGNS**

2 57. This Settlement Agreement shall be binding upon and inure to the benefit of the
3 Parties hereto and their respective heirs, trustees, executors, administrators, successors, and assigns.

4 **SIGNATORIES**

5 58. It is agreed that because of the large number of Participating Class Members, it is
6 impossible or impractical to have each Participating Class Member execute this Settlement
7 Agreement. As such, Plaintiffs are signing on behalf of the Participating Class Members. In
8 addition, the Notice will advise all Participating Class Members of the binding nature of the release
9 of claims under the Settlement and that such shall have the same force and effect as if this Settlement
10 Agreement were executed by each Participating Class Member.

11 **CONFIDENTIALITY**

12 59. Plaintiffs and Class Counsel will maintain the proposed settlement and this
13 Settlement Agreement as confidential and not publicly disclose the same except as set forth herein
14 and in Paragraph 60, below. Except as set forth in Paragraph 60, below, or as otherwise agreed in
15 writing between the Parties, both before and following the execution of this Settlement Agreement
16 by the Parties and their counsel, there will be no direct or indirect comment or publication by
17 Plaintiffs and Class Counsel (lead or otherwise) of the settlement in terms of affirmative or
18 responsive media statements/comments, press releases or conferences, website postings or content,
19 social media postings or content, other Internet postings or content, subscribed email messages,
20 newsletters, disseminated updates, mass mailings, or any other comment or publication to the press,
21 media or public at large. This shall not apply to or limit the public filing of motions or other case
22 materials by Class Counsel in the Litigation related to seeking and obtaining Court approval of the
23 proposed settlement and the related awards of attorneys' fees and costs, enhancements and the other
24 relief set forth in this Settlement Agreement, or to communications between Class Counsel,
25 Plaintiffs, and/or Class Members in the Litigation, except that prior to the filing of the motion for
26 preliminary approval of the Settlement in the Litigation, Class Counsel shall not discuss the
27 Settlement with Class Members other than the named Plaintiffs. Class Counsel may otherwise state
28 only that the Litigation has been settled on terms mutually agreeable to the Parties. The Parties

1 understand and agree that there may be media coverage of the settlement of the Litigation not
2 initiated by Plaintiffs, directly or indirectly. It is also agreed and understood that the Parties may
3 disclose the settlement to their families, plus their legal, tax, or accounting advisors, insurance
4 companies, or as required by law, regulatory rules or regulatory requirements.

5 **WEBSITE**

6 60. The Parties agree that the Settlement Administrator may use U.S. Mail and an
7 information-only website ("Settlement Website") to provide notice and information about the
8 Settlement to Class Members. The Settlement Website is to be established by the Settlement
9 Administrator solely for purposes of the administration of the Settlement, and the domain name used
10 for the website will be subject to Defendants' reasonable approval. Not later than the date that the
11 Settlement Administrator must remit any funds associated with cancelled Individual Settlement
12 Payment checks, as set forth in Paragraph 39, the Settlement Website will be taken down. No
13 information about the Litigation or the settlement may be posted on any of Class Counsel's websites
14 except as expressly set forth herein without Defendants' prior written consent.

15 **COUNTERPARTS**

16 61. This Settlement Agreement may be executed in counterparts, and when each Party
17 has signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
18 and, when taken together with other signed counterparts, shall constitute one Settlement Agreement,
19 which shall be binding upon and effective as to all Parties.

20 **GOVERNING LAW**

21 62. The Parties agree that California law governs the interpretation and application of
22 this Settlement Agreement, except to the extent governed by federal law in which case federal law
23 will apply.

24 **MISCELLANEOUS PROVISIONS**

25 63. Each Party to Bear Own Costs. Except as specifically provided herein, the Parties
26 hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred
27 by them or arising out of or related to this Litigation, and will not seek reimbursement thereof from
28 any Party to this Agreement.

64. Severability. If any of the above provisions are found null, void, or inoperative, for any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the invalidation in whole or in part of any material term of this Agreement, including but not limited to all the terms and provisions specified in the releases of claims, will invalidate this Agreement in its entirety unless the Parties subsequently agree in writing that the remaining provisions will remain in force and effect.

65. Non-Evidentiary Use. Neither the fact of this Agreement, the existence of this Agreement, the terms of this Agreement, nor any order or action pursuant thereto may be referred to, relied upon, cited, or used as evidence by any of the Parties, Class Members, or their respective counsel in the Litigation or in any other action or proceeding; provided, however, that nothing contained in this section shall prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

66. Advice of Counsel. The Parties to this Agreement are represented by competent counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement agree that it reflects their good faith compromise of the claims raised in this action, based upon their assessment of the mutual risks and costs of further litigation and the assessments of their respective counsel.

EACH OF THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS CONSEQUENCES.

IT IS SO STIPULATED AND AGREED:

DATED: 05/02 _____, 2022

DocuSigned by:



BENJAMIN CASTANEDA-RIVERA

Plaintiff and Proposed Class Representative

1 DATED: T _____, 2022

DocuSigned by:

SHAYNIA VERNON

Plaintiff and Proposed Class Representative

2
3 DATED: _____, 2022

MCLANE/SUNEAST, INC.

4
5 By: _____

Charlyn Renfrow
Senior Director, Human Resources

6
7 DATED: _____, 2022

MCLANE FOODSERVICE, INC.

8
9 By: _____

Stuart Masters
Senior Director, Human Resources

10 **AGREED AND APPROVED AS TO FORM AND CONTENT:**

11 DATED: May 5, 2022

DIVERSITY LAW GROUP, P.C.

12
13 By: _____

Larry W. Lee, Esq.
Kristen M. Agnew, Esq.
Nicholas Rosenthal, Esq.

Attorneys for Plaintiffs BENJAMIN CASTANEDA-
RIVERA and SHAYNIA VERNON

14
15 DATED: May 4, 2022

POLARIS LAW GROUP LLP

DocuSigned by:

William Marder

16
17 By: _____

William L. Marder, Esq.

Attorneys for Plaintiffs BENJAMIN CASTANEDA-
RIVERA and SHAYNIA VERNON

18
19 DATED: _____, 2022

BAKER & HOSTETLER LLP

20
21 By: _____

Matthew C. Kane, Esq.
Sylvia J. Kim, Esq.
Amy E. Beverlin, Esq.

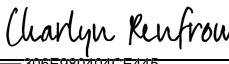
Attorneys for Defendants MCLANE/SUNEAST,
INC. and MCLANE FOODSERVICE, INC.

1 DATED: _____, 2022

SHAYNIA VERNON
Plaintiff and Proposed Class Representative

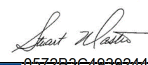
2
3 DATED: 5/6/2022 | 7:46 AM EDT
4 _____, 2022

MCLANE/SUNEAST, INC.

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By: 
306E980404CE445...
Charlyn Renfrow
Senior Director, Human Resources

6
7 DATED: 5/12/2022 | 7:13 PM EDT
8 _____, 2022

MCLANE FOODSERVICE, INC.

DocuSigned by:
By: 
8572B3C4939244C...
Stuart Masters
Senior Director, Human Resources

10 **AGREED AND APPROVED AS TO FORM AND CONTENT:**

11 DATED: _____, 2022

DIVERSITY LAW GROUP, P.C.

13 By: _____
14 Larry W. Lee, Esq.
15 Kristen M. Agnew, Esq.
16 Nicholas Rosenthal, Esq.
Attorneys for Plaintiffs BENJAMIN CASTANEDA-
RIVERA and SHAYNIA VERNON

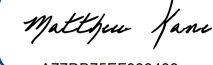
17 DATED: _____, 2022

POLARIS LAW GROUP LLP

19 By: _____
20 William L. Marder, Esq.
Attorneys for Plaintiffs BENJAMIN CASTANEDA-
RIVERA and SHAYNIA VERNON

21
22 DATED: 5/17/2022 | 12:05 PM EDT
23 _____, 2022

BAKER & HOSTETLER LLP

DocuSigned by:
By: 
A77DB75EF933433...
Matthew C. Kane, Esq.
Sylvia J. Kim, Esq.
Amy E. Beverlin, Esq.
Attorneys for Defendants MCLANE/SUNEAST,
INC. and MCLANE FOODSERVICE, INC.

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Attorneys for Plaintiffs and the Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

SHAYNIA VERNON, as an individual and
on behalf of all others similarly situated;
BENJAMIN CASTANEDA-RIVERA, as
an individual and on behalf of all others
similarly situated,

Plaintiffs,

vs.

MCLANE/SUNEAST, INC., a Texas
corporation; MCLANE FOODSERVICE,
INC., a Texas corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: CIVSB2123367

**FIRST AMENDED INDIVIDUAL AND CLASS
ACTION COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §
226.7;**
- (2) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, ET SEQ;**
- (3) VIOLATION OF LABOR CODE § 226;
AND**
- (4) VIOLATION OF CAL. LABOR CODE §§
2698, ET SEQ.;**

DEMAND OVER \$25,000.00

1 Plaintiffs Benjamin Castaneda-Rivera and Shaynia Vernon (collectively, "Plaintiffs")
2 hereby submit this First Amended Individual and Class Action Complaint ("Complaint") against
3 Defendants McLane/Suneast, Inc. ("McLane/Suneast") and McLane Foodservice, Inc. ("McLane
4 Foodservice") (collectively, "Defendants") and Does 1 through 50 as follows:

5 **CLASS AND REPRESENTATIVE ACTION INTRODUCTION**

6 1. This class and representative action is within the Court's jurisdiction under
7 California Labor Code sections 226 and 2698 *et. seq.*, and the applicable Wage Orders of the
8 California Industrial Welfare Commission ("IWC").

9 2. This class and representative action challenges systemic illegal employment
10 practices resulting in violations of the California Labor Code against individuals who worked for
11 Defendants.

12 3. Plaintiffs are informed and believe, and based thereon allege, 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 itemized wage
15 statements to Plaintiffs and Class Members.

16 4. Plaintiffs are informed and believe, and based thereon allege, 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. This Court has jurisdiction over the violations of California Labor Code sections
22 201, 202, 203, 226, 226.7 and 2698 *et. seq.*, and the UCL.

23 6. Venue is proper in San Bernardino County because Defendants provide services
24 in San Bernardino County, and Plaintiff Castaneda-Rivera was currently employed by
25 McLane/Suneast in San Bernardino County.

26 **PARTIES**

27 7. Plaintiff Castaneda-Rivera was employed by Defendant McLane/Suneast during
28 the approximate period of May 2015 to October 15, 2020. Throughout his employment with

1 Defendant McLane/Suneast, Plaintiff Castaneda-Rivera was a non-exempt, hourly employee.

2 8. Plaintiff Vernon was employed by Defendant McLane Foodservice during the
3 approximate period of October 16, 2006 to December 11, 2019. Throughout her employment
4 with Defendant McLane Foodservice, Plaintiff Vernon was a non-exempt, hourly employee.

5 9. Plaintiffs were and are the victim of the policies, practices, and customs of
6 Defendants complained of in this action in ways that have deprived them of the rights guaranteed
7 by California Labor Code sections 201, 202, 203, 226, 226.7 and 2698 *et. seq.*, and the UCL.

8 10. Plaintiffs are informed and believe, and based thereon allege, that
9 McLane/Suneast, Inc. is a Texas corporation that operates throughout California, including in
10 San Bernardino County.

11 11. Plaintiffs are informed and believe, and based thereon allege, that McLane
12 Foodservice, Inc. is a Texas corporation that operates throughout California, including in San
13 Bernardino County.

14 12. Plaintiffs are informed and believe, and based thereon allege, that at all times
15 herein mentioned Defendants are and were business entities, individuals, and partnerships,
16 licensed to do business and actually doing business in the State of California. As such, and based
17 upon all the facts and circumstances incident to Defendants' business, Defendants are subject to
18 the California Labor Code.

19 13. Plaintiffs do not know the true names or capacities, whether individual, partner or
20 corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
21 defendants are sued under such fictitious names, and Plaintiffs pray for leave to amend this
22 complaint when the true names and capacities are known. Plaintiffs are informed and believe,
23 and based thereon allege, that each of said fictitious defendants was responsible in some way for
24 the matters alleged herein and proximately caused Plaintiffs and members of the class to be
25 subject to the illegal employment practices, wrongs and injuries complained of herein.

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

1 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
2 acting within the course and scope of said agency and employment.

3 15. Plaintiffs are informed and believe, and based thereon allege, that at all times
4 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
5 joint venturer of, or working in concert with each of the other co-Defendants and was acting
6 within the course and scope of such agency, employment, joint venture, or concerted activity. To
7 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
8 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
9 Defendants.

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

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

20 **CLASS ACTION ALLEGATIONS**

21 18. **Definition:** The named individual Plaintiffs seek class certification, pursuant to
22 California Code of Civil Procedure section 382.

23 a. Plaintiff Castaneda-Rivera seeks class certification of all current and
24 former non-exempt employees of Defendant McLane/Suneast, Inc. in the State of California who
25 were paid overtime wages at any time between April 6, 2019, through the present (the
26 “McLane/Suneast Class”); and

27 b. Plaintiff Vernon seeks class certification of all current and former non-
28 exempt employees of Defendant McLane Foodservice, Inc. in the State of California who were

1 paid overtime wages at any time between January 28, 2019, through the present (the “McLane
2 Foodservice Class”).¹

3 19. **Numerosity:** The members of the Class are so numerous that joinder of all
4 members would be impractical, if not impossible. The identity of the members of the Class is
5 readily ascertainable by review of Defendants’ records, including payroll records. Plaintiffs are
6 informed and believe, and based thereon allege, that Defendants failed to provide accurate
7 itemized wage statements to employees in violation of Labor Code section 226.

8 20. **Adequacy of Representation:** The named Plaintiffs are fully prepared to take all
9 necessary steps to represent fairly and adequately the interests of the Class defined above.
10 Plaintiffs’ attorneys are ready, willing, and able to fully and adequately represent the Class and
11 Plaintiffs. Plaintiffs’ attorneys have prosecuted and settled wage-and-hour class actions in the
12 past and currently have a number of wage-and-hour class actions pending in California state and
13 federal courts.

14 21. Defendants uniformly administered a corporate policy, practice of failing to
15 provide accurate itemized wage statements to Plaintiffs and the Class in violation of Labor Code
16 section 226.

17 22. **Common Question of Law and Fact:** There are predominant common questions
18 of law and fact and a community of interest amongst Plaintiffs and the claims of the Class
19 concerning Defendants’ policy and practice of failing to provide accurate itemized wage
20 statements to Plaintiffs and the Class in violation of Labor Code section 226.

21 23. **Typicality:** The claims of Plaintiffs are typical of the claims of all members of
22 the Class in that Plaintiffs suffered the harm alleged in this Complaint in a similar and typical
23 manner as the Class Members. As with other California non-exempt employees, Plaintiffs were
24 not provided proper and accurate itemized wage statements, in violation of Labor Code section
25 226(a). This included, without limitation, that whenever overtime wages were paid, the
26 corresponding wage statements did not identify the correct overtime rate. Instead, the wage
27 _____

28 ¹ The McLane/Suneast Class and McLane Foodservice Class shall be collectively referred to as the Class.

1 statements showed the overtime rate on two separate line items— “Overtime at Base Rate” and
2 “OT Premium”— the sum of which do not equal the effective overtime rate paid during the pay
3 period. Furthermore, the rate displayed as the “OT Premium” is inaccurate. In order to determine
4 the “OT Premium” rate an employee must multiply the displayed rate by .5. Plaintiffs allege that
5 Defendants intentionally provided wage statements that displayed the incorrect overtime rate,
6 and that Defendants did not have any good faith belief, in law or fact, as to its actions. Such
7 inaccuracy caused injury to Plaintiffs and putative class members, as it precluded them from
8 determining the amount of overtime wages owed to them and obstructed the accurate calculation
9 of their wages. Accordingly, Plaintiffs are victims of Defendants’ violation of California Labor
10 Code section 226.

11 24. The California Labor Code section upon which Plaintiffs base these claims is
12 broadly remedial in nature. These laws and labor standards serve an important public interest in
13 establishing minimum working conditions and standards in California. These laws and labor
14 standards protect the average working employee from exploitation by employers who may seek
15 to take advantage of superior economic and bargaining power in setting onerous terms and
16 conditions of employment.

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

27 26. The prosecution of separate actions by the individual Class Members, even if
28 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect

1 to individual Class Members against Defendants and which would establish potentially
2 incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to
3 individual Class Members which would, as a practical matter, be dispositive of the interest of the
4 other Class Members not parties to the adjudications or which would substantially impair or
5 impede the ability of the Class Members to protect their interests. Further, the claims of the
6 individual members of the Class are not sufficiently large to warrant vigorous individual
7 prosecution considering all of the concomitant costs and expenses.

8 27. Such a pattern, practice and uniform administration of corporate policy regarding
9 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
10 Plaintiffs and the Class identified herein, in a civil action, for applicable penalties, reasonable
11 attorneys' fees, and costs of suit according to the mandate of the California Labor Code and
12 Code of Civil Procedure section 1021.5.

13 28. Proof of a common business practice or factual pattern, which the named
14 Plaintiffs experienced and is representative of, will establish the right of each of the members of
15 the Class to recovery on the causes of action alleged herein.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 226.7**

18 **(BY PLAINTIFF CASTANEDA-RIVERA, AS AN INDIVIDUAL, AGAINST**
19 **MCLANE/SUNEAST AND DOES 1 THROUGH 50; AND BY PLAINTIFF VERNON, AS**
20 **AN INDIVIDUAL, AGAINST MCLANE FOODSERVICE AND DOES 1 THROUGH 50)**

21 29. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
22 though fully set forth herein.

23 30. Plaintiffs bring this cause of action in their individual capacities only. At all
24 relevant times, Defendants have been responsible for paying premium compensation for missed
25 meal/rest periods pursuant to Labor Code section 226.7 and the applicable IWC Wage Order.
26 Defendants, as a matter of corporate policy and procedure, regularly failed to pay such premium
27 compensation at the correct regular rate.

28 31. Plaintiff Castaneda-Rivera and Plaintiff Vernon earned non-discretionary

1 incentive pay, including without limitation, shift differentials. Such non-discretionary
2 remuneration, however, was not included in the regular rate of pay for purposes of paying
3 meal/rest period premium pay. Instead, during workweeks when Plaintiff Castaneda-Rivera and
4 Plaintiff Vernon earned non-discretionary incentive pay and meal/rest period premium wages,
5 the premium wages were paid at their base hourly rate of pay. Thus, the meal/rest period
6 premium wages were paid below the regular rate of pay, in violation of Labor Code section
7 226.7. As such, Plaintiff Castaneda-Rivera and Plaintiff Vernon are owed additional meal/rest
8 period premium pay.

9 32. Such a pattern, practice and uniform administration of corporate policy as
10 described herein is unlawful and creates an entitlement to recovery by Plaintiffs, in a civil action,
11 for the unpaid balance of the premium compensation pursuant to Labor Code section 226.7, and
12 the applicable IWC Wage Order, including interest thereon, penalties, including penalties
13 pursuant to Labor Code sections 201, 202 and 203, reasonable attorneys' fees, and costs of suit.

14 **SECOND CAUSE OF ACTION**

15 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.***

16 **(BY PLAINTIFF CASTANEDA-RIVERA, AS AN INDIVIDUAL, AGAINST**
17 **MCLANE/SUNEAST AND DOES 1 THROUGH 50; AND BY PLAINTIFF VERNON, AS**
18 **AN INDIVIDUAL, AGAINST MCLANE FOODSERVICE AND DOES 1 THROUGH 50)**

19 33. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
20 though fully set forth herein.

21 34. Plaintiffs bring this cause of action in their individual capacities only. Defendants,
22 and each of them, have engaged and continue to engage in unfair and unlawful business practices
23 in California by practicing, employing, and utilizing the employment practices outlined above,
24 including by failing to pay Plaintiff Castaneda-Rivera and Plaintiff Vernon meal/rest period
25 premium wages at the correct regular rate of pay that included all non-discretionary
26 remuneration, in violation of Labor Code section 226.7.

27 35. Defendants' utilization of such unfair and unlawful business practices constitutes
28 unfair and unlawful competition and provides an unfair advantage over Defendants' competitors.

1 36. Plaintiffs, in their individual capacity only, seek, full restitution of monies, as
2 necessary and according to proof, to restore any and all monies withheld, acquired and/or
3 converted by the Defendants by means of the unfair practices complained of herein.

4 37. Plaintiffs are informed and believe, and based thereon allege, that at all times
5 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
6 as proscribed by California Business & Professions Code section 17200, *et seq.*, including those
7 set forth herein above thereby depriving Plaintiffs the minimum working condition standards and
8 conditions due to them under the California laws as specifically described therein.

9 **THIRD CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE § 226**

11 **(BY PLAINTIFF CASTANEDA-RIVERA AND THE MCLANE/SUNEAST CLASS**
12 **AGAINST MCLANE/SUNEAST AND DOES 1 THROUGH 50; AND BY PLAINTIFF**
13 **VERNON AND THE MCLANE FOODSERVICE CLASS AGAINST MCLANE**
14 **FOODSERVICE AND DOES 1 THROUGH 50)**

15 38. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
16 though fully set forth herein.

17 39. Defendants failed in their affirmative obligation to provide accurate itemized
18 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
19 in violation of Labor Code section 226(a).

20 40. Plaintiff Castaneda-Rivera and McLane/Suneast Class Members were paid on an
21 hourly basis. As such, the wage statements provided to them should have reflected all applicable
22 hourly rates in effect during the pay period. The wage statements provided to Plaintiff
23 Castaneda-Rivera and the McLane/Suneast Class failed to accurately identify such information.
24 This included, without limitation, that whenever overtime wages were paid to McLane/Suneast
25 Class Members, the corresponding wage statements did not identify the correct overtime rate.
26 Instead, the wage statements showed the overtime rate on two separate line items— “Overtime at
27 Base Rate” and “OT Premium”— the sum of which do not equal the effective overtime rate paid
28 during the pay period. Furthermore, the rate displayed as the “OT Premium” is inaccurate. In

1 order to determine the “OT Premium” rate an employee must multiply the displayed rate by .5.

2 41. Plaintiff Vernon and McLane Foodservice Class Members were paid on an hourly
3 basis. As such, the wage statements provided to them should have reflected all applicable hourly
4 rates in effect during the pay period. The wage statements provided to Plaintiff Vernon and the
5 McLane Foodservice Class failed to accurately identify such information. This included, without
6 limitation, that whenever overtime wages were paid to McLane Foodservice Class Members, the
7 corresponding wage statements did not identify the correct overtime rate. Instead, the wage
8 statements showed the overtime rate on two separate line items— “Overtime at Base Rate” and
9 “OT Premium”— the sum of which do not equal the effective overtime rate paid during the pay
10 period. Furthermore, the rate displayed as the “OT Premium” is inaccurate. In order to determine
11 the “OT Premium” rate an employee must multiply the displayed rate by .5.

12 42. Such a pattern, practice and uniform administration of corporate policy as
13 described herein is unlawful and creates an entitlement to recovery by Plaintiffs and the Class
14 identified herein in a civil action, for all penalties pursuant to Labor Code section 226, including
15 interest thereon, attorneys’ fees, and costs of suit according to the mandate of California Labor
16 Code section 226.

17 **FOURTH CAUSE OF ACTION**

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

19 **(BY PLAINTIFF CASTANEDA-RIVERA, ON BEHALF OF THE STATE AND**
20 **AGGRIEVED EMPLOYEES, AGAINST MCLANE/SUNEAST AND DOES 1 THROUGH**
21 **50; AND BY PLAINTIFF VERNON, ON BEHALF OF THE STATE AND AGGRIEVED**
22 **EMPLOYEES, AGAINST MCLANE FOODSERVICE AND DOES 1 THROUGH 50)**

23 43. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as
24 though fully set forth herein.

25 44. Plaintiff Castaneda-Rivera brings this cause of action as a proxy for the State of
26 California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from
27 August 21, 2019, through the present, for Defendant McLane/Suneast’s policy and practice of
28 failing to provide proper wage statements in violation of Labor Code section 226(a).

1 45. Plaintiff Castaneda-Rivera also brings this cause of action as a proxy for the State
2 of California and in this capacity, seeks penalties on behalf of himself from July 28, 2020,
3 through the present, for Defendant McLane/Suneast's policy and practice of failing to pay meal
4 and rest period premium wages at the regular rate of pay, in violation of Labor Code section
5 226.7.

6 46. Plaintiff Vernon brings this cause of action as a proxy for the State of California
7 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from January 3, 2019,
8 through the present, for Defendant McLane Foodservice's policy and practice of failing to
9 provide proper wage statements in violation of Labor Code section 226(a).

10 47. Plaintiff Vernon also brings this cause of action as a proxy for the State of
11 California and in this capacity, seeks penalties on behalf of herself from July 28, 2020, through
12 the present, for Defendant McLane Foodservice's policy and practice of failing to pay meal and
13 rest period premium wages at the regular rate of pay, in violation of Labor Code section 226.7.

14 48. On or about August 21, 2020, Plaintiff Castaneda-Rivera sent written notice to the
15 California Labor & Workforce Development Agency ("LWDA") of Defendant
16 McLane/Suneast's violations of Labor Code section 226(a), pursuant to Labor Code section
17 2698, *et seq.*, the Private Attorney General Act ("PAGA"). On or about July 28, 2021, Plaintiff
18 Castaneda-Rivera sent a supplemental written notice to the LWDA of Defendant
19 McLane/Suneast's violations of Labor Code section 226.7, pursuant to Labor Code section 2698,
20 *et seq.* To date, the LWDA has not responded to Plaintiff Castaneda-Rivera's written notices.

21 49. On or about January 3, 2020, Plaintiff Vernon sent written notice to the LWDA of
22 Defendant McLane Foodservice's violations of Labor Code section 226(a), pursuant to Labor
23 Code section 2698, *et seq.* On or about July 28, 2021, Plaintiff Vernon sent a supplemental
24 written notice to the LWDA of Defendant McLane Foodservice's violations of Labor Code
25 section 226.7, pursuant to Labor Code section 2698, *et seq.* To date, the LWDA has not
26 responded to Plaintiff Vernon's written notices.

27 50. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any
28 and all applicable civil penalties for Defendants' violation of Labor Code section 226(a) for the

time period described above, on behalf of themselves and other Aggrieved Employees. Plaintiffs further seeks recovery of any and all applicable civil penalties for Defendants' violation of Labor Code section 226.7 for the time period described above, on behalf of themselves alone.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiffs as the representatives of the Classes;
3. For an order appointing counsel for Plaintiffs as Class Counsel;
4. Upon the First Cause of Action, for damages and/or penalties pursuant to California Labor Code sections 201, 202, 203 and 226.7, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for restitution to Plaintiffs of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code section 17200, *et seq.*, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for civil penalties according to proof pursuant to Labor Code section 2698, *et seq.*, and for costs and attorneys' fees
8. On all causes of action for attorneys' fees and costs as provided by California Labor Code sections 203, 226, 226.7 and 2698 *et. seq.*, and Code of Civil Procedure section 1021.5; and
9. For such other and further relief the Court may deem just and proper.

DATED: April 15, 2022

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs and the Class

Vernon, et al. v. McLane/Suneast, Inc., et al.
Superior Court of the State of California for the County of San Bernardino
(Case No. CIVSB2123367)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

IF YOU ARE A CURRENT OR FORMER NON-EXEMPT EMPLOYEE OF MCLANE/SUNEAST, INC. AND/OR MCLANE FOODSERVICE, INC. (“DEFENDANTS”) IN THE STATE OF CALIFORNIA AND WERE PAID OVERTIME WAGES YOU MAY BE ABLE TO COLLECT MONEY FROM A CLASS ACTION SETTLEMENT.

The San Bernardino County Superior Court (“Court”) authorized this Notice to be sent by Simpluris (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.

PLEASE KEEP THE SETTLEMENT ADMINISTRATOR INFORMED OF YOUR ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE.

«BarcodeString»

SIMID «SIMID»

ATTN: «FirstName» «LastName»

«Address1» «Address2»

«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
 APPROXIMATELY
 \$«MERGED_EstSettAmnt_CALC»
 THROUGH THIS CLASS ACTION
 SETTLEMENT**

- Shaynia Vernon and Benjamin Castaneda-Rivera (“Named Plaintiffs”) have sued Defendants on behalf of themselves and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING

You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will **lose** any rights to sue Defendants separately for the same legal claims released by the settlement made in the lawsuit. The currently estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will make a final calculation of the amount of your settlement payment and mail your check to the address on file for you. Defendants have approved this Settlement and will not retaliate against you for participating in the Settlement.

**You Can ASK TO BE
 EXCLUDED FROM THE
 CLASS SETTLEMENT
 (Deadline: _____, 2022)**

If you ask to be excluded from the class settlement, you will get no payment from the class settlement amount, but you will keep any rights to sue Defendants separately for the same legal claims that otherwise would have been released by the settlement made in this lawsuit, subject to whatever defenses there may be to those claims, other than the PAGA claim. However, you may not request exclusion from the settlement of the PAGA

EXHIBIT B

	claim. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
You Can OBJECT TO THE SETTLEMENT	If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline, or you can appear at the Final Approval Hearing to make your objection in person. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. However, you may not object to the settlement of the PAGA claim. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Named Plaintiffs have asserted class-wide claims for violation of Labor Code section 226(a). The Named Plaintiffs also asserted a representative Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), claim predicated on Defendants’ alleged violations of Labor Code section 226(a).

The Named Plaintiffs alleged that Defendants failed to provide their respective employees with proper and accurate itemized wage statements, in violation of Labor Code section 226(a). The Named Plaintiffs alleged those violations included that whenever overtime wages were paid, the corresponding wage statements did not identify the correct rates of pay. Defendants deny the allegations in the lawsuit. Defendants assert compliance with all legal requirements and are resolving this action in order to avoid the risk and costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Shaynia Vernon and Benjamin Castaneda-Rivera), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Bernardino County Superior Court is in charge of the case. The lawsuit is known as *Vernon, et al. v. McLane/Suneast, Inc., et al.*, Case No. CIVSB2123367.

4. Why is there a Settlement?

The Court did not decide in favor of Named Plaintiffs or Defendants. Named Plaintiffs think they could have won at trial. Defendants think that they would have won at trial. But there was no trial. Instead, the parties agreed to a settlement. That way, they avoid the risks and cost of litigation, and the individuals potentially affected will get compensation. The class representatives and the attorneys think the settlement is best for Class Members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that the following individuals are Class Members:

- (1) All current and former non-exempt employees employed by McLane/Suneast, Inc. and working in California at any time during the time period from April 6, 2019 through and including October 29, 2020 (the “MSE Settlement Period”) who were paid overtime wages at any time during the MSE Settlement Period (“MSE Subclass”); and
- (2) All current and former non-exempt employees employed by McLane Foodservice, Inc. and working in California at any time during the time period from January 28, 2019 through and including October 29, 2020 (the “MFS Settlement Period”) who were paid overtime wages at any time during the MFS Settlement Period (“MFS Subclass”)

Together, the MSE Subclass and MFS Subclass make up the “Class” or “Class Members.” Expressly excluded from the Class are any individuals who, as of [date the Court granted preliminary approval of the settlement], have filed a pending, separate lawsuit as a named plaintiff, individually and/or as a putative class or representative action, asserting claims based on violations of any of the same statutes and/or regulations as those alleged to have been violated in the Actions and/or who have released such claims.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Defendants of \$400,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Settlement Fund”). The total amount to be distributed to Class Members who can be located and who do not exclude themselves from the settlement will be the value of the Settlement Fund after deducting the following (the “Net Settlement Fund”): (a) settlement administration costs presently budgeted to be up to \$20,000; (b) Enhancement Award in the amount of \$10,000 to each Named Plaintiff for their work and efforts in prosecuting this case, providing a general release, and for undertaking the risks of a costs award against them (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$140,000; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$30,000; and (f) PAGA Amount of \$10,000 for alleged civil penalties owed pursuant to the California Private Attorneys’ General Act. **Class Counsel’s attorneys’ fees and costs and Named Plaintiffs’ Enhancement Award remain subject to Court approval.**

By statute, the Labor and Workforce Development Agency will receive seventy-five percent of the PAGA Amount —*i.e.* the amount of \$7,500. Each Class Member will receive a portion of the remaining twenty-five percent of the PAGA Amount (“Aggrieved Employee Payment”).

No portion of the Net Settlement Fund will be returned to Defendants under any circumstances. Instead, any unclaimed settlement proceeds will be transferred to the California Secretary of State Controller’s Office—Office of Unclaimed Property Fund under the unclaimed property laws in the name of the Class Member.

7. How Much Will My Payment Be?

Your currently estimated share of the Net Settlement Fund is [INSERT AMOUNT].

For members of the MSE Subclass, this amount is based on the number of wage statements reflecting the payment of overtime wages that you received during the MSE Settlement Period, as compared to the total number of wage statements reflecting the payment of overtime wages issued to the MSE Subclass during the MSE Settlement

Period. Based on Defendants' records, the number of wage statements reflecting the payment of overtime wages that you received during the MSE Settlement Period is determined to be **.

For members of the MFS Subclass, this amount is based on the number of wage statements reflecting the payment of overtime wages that you received during the MFS Settlement Period, as compared to the total number of wage statements reflecting the payment of overtime wages issued to the MFS Subclass during the MFS Settlement Period. Based on Defendants' records, the number of wage statements reflecting the payment of overtime wages that you received during the MFS Settlement Period is determined to be **.

If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of wage statements identified, see below (Question 9).

8. How Do I Get a Payment?

To qualify for payment, you need not do anything. Following the Effective Date of final approval of the settlement, Defendants will submit the Settlement Fund to the Settlement Administrator. The Settlement Administrator will mail you a check after Defendants submit payment of the Settlement Fund to the Settlement Administrator.

9. What If I Believe the Information is Inaccurate?

If you believe the number of wage statements reflecting the payment of overtime wage statements credited to you is inaccurate, you may dispute it by sending a letter to Simpluris, [INSERT ADDRESS] no later than [RESPONSE DEADLINE]. Be sure to include: (i) your full name, current mailing address, telephone number, signature, and last four digits of your Social Security number; (ii) the case name (*Vernon, et al. v. McLane/Suneast, Inc., et al.*), and case number (CIVSB2123367); and (iii) a statement indicating that you seek to dispute the number of wage statements credited to you, the time period(s) you performed overtime work for MSE and/or MFS in a non-exempt position in California during the MSE and/or MFS Settlement Period, and the number of wages statements that you contend should be credited to you. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get a Class Settlement Payment?

Unless you request to be excluded from the class settlement, you will be a Participating Class Member.

If you are a Participating Class Member who is a member of the MSE Subclass, you will be giving up or "releasing" Defendants and the Released Parties from the following:

Any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys' fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in the FAC and/or any of the pleadings filed in the Federal Action based on the factual and/or legal violations allegations contained therein, and in any notice Plaintiffs sent to the LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained therein, including, without limitation, for failure to furnish accurate itemized wage statements arising out of, based on, or related to any violation of Cal. Lab. Code §

226, and/or civil penalties pursuant to PAGA, based in whole or in part on any direct or imputed violation of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance, during the MSE Settlement Period [April 6, 2019 through and including October 29, 2020].

If you are a Participating Class Member who is a member of the MFS Subclass, you will be giving up or “releasing” Defendants and the Released Parties from the following:

Any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in the FAC and/or any of the pleadings filed in the Federal Action based on the factual and/or legal violations allegations contained therein, and in any notice Plaintiffs sent to the LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained therein, including, without limitation, for failure to furnish accurate itemized wage statements arising out of, based on, or related to any violation of Cal. Lab. Code § 226, and/or civil penalties pursuant to PAGA, based in whole or in part on any direct or imputed violation of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance, during the MFS Settlement Period [January 28, 2019 through and including October 29, 2020].

11. What is the PAGA Release?

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim, nor may you object to that settlement.

If you are a member of the MSE Subclass, you will be giving up or “releasing” Defendants and the Released Parties from the following:

All claims for any civil penalties recoverable under the California Labor Code, including PAGA, as well as costs and attorneys’ fees related thereto, predicated on any violations of California Labor Code section 226 that arose, accrued and/or have been asserted during the during the MSE Settlement Period [April 6, 2019 through and including October 29, 2020]

If you are a member of the MFS Subclass, you will be giving up or “releasing” Defendants and the Released Parties from the following:

All claims for any civil penalties recoverable under the California Labor Code, including PAGA, as well as costs and attorneys’ fees related thereto, predicated on any violations of California Labor Code section 226 that arose, accrued and/or have been asserted during the during the MFS Settlement Period [January 28, 2019 through and including October 29, 2020].

12. How Do I Exclude Myself from the Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator that includes: (i) your full name, current mailing address, signature, and last four digits of your Social Security number; and (ii) a statement that you seek to be excluded from the *Vernon, et al. v. McLane/Suneast, Inc., et al.* class action settlement and understand that by doing so, will not participate in the settlement, and will not receive any money from it. You must mail your exclusion letter postmarked no later than [RESPONSE DEADLINE], to the Settlement Administrator at [INSERT ADDRESS].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the class settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendants in the future for the same class claims made in this lawsuit, at your own expense.

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive a portion of the Aggrieved Employee Payment and will be deemed to have released the PAGA claims.

13. If I Don’t Exclude Myself, Can I Sue Defendants or Get Money from the Settlement?

If you do not exclude yourself from the class settlement, you cannot sue Defendants for any of the claims that this settlement releases and resolves. If you have a pending lawsuit against Defendants, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is [RESPONSE DEADLINE].

Again, if you exclude yourself from this settlement, you cannot get money from this settlement.

14. How Do I Tell the Court that I Don’t Believe that the Settlement is Fair?

If you are a Class Member and you do not exclude yourself from the class settlement, you can object to the class settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the class settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you can do so in writing. All objections must be signed by you and must include: (i) your full name and current address, and contact information for any attorney representing you for the purposes of your objection; (ii) a written statement of the basis for your objection; and (iii) any copies of papers, briefs, or documents upon which the objection is based. You must mail your written objection postmarked no later than [REDACTED], 2022, to the Settlement Administrator at [REDACTED]. If you do not submit a written objection, you may still object by appearing at the Final Approval Hearing, which is set for [REDACTED], and stating your objection in person, provided that you did not exclude yourself from the Settlement. If you do not follow these procedures, you will be deemed not to have objected.

There is no right to object to the settlement of the PAGA claim.

15. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don’t like something about the class settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don’t want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you and

you will not receive settlement benefits under the class settlement if it is approved by the Court. However, if you file an objection, you will still receive settlement benefits under the class settlement if it is approved by the Court.

16. Do I Have a Lawyer in this Case?

In connection with the Preliminary Approval of the Settlement, the Court decided that the law firms of Diversity Law Group and Polaris Law Group LLP, which represent the Named Plaintiffs, are also qualified to represent you and all Class Members. You will not be charged for these lawyers. These law firms are referred to as “Class Counsel.” If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Attorneys for the Class and the Class Representative Be Paid?

The attorneys for the Named Plaintiffs and the class will be paid from the Settlement Fund. Class Counsel will ask the Court to approve up to \$140,000 in attorneys’ fees and for actual litigation costs incurred up to a maximum of \$30,000, the actual amount of which will be determined by the Court at the final approval hearing (see section 17 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, each Named Plaintiff will receive an Enhancement Award in an amount up to \$10,000 for their work and efforts in prosecuting this case, providing a general release, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable). The Enhancement Award will be paid from the Settlement Fund.

18. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable David Cohn on _____, 2022, at ____:00 a.m., in Department S-26 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415-0210, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct. You may also be able to attend the final approval via Zoom or other remote means.

Once final approval is granted by the Court, the Court will enter judgment against Defendants, and all Class Members who have not requested exclusion from the class will be deemed to have waived the Released Claims set forth above.

19. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

20. What is the Contact Information for the Court and Class Counsel?

The contact information for Class Counsel are below:

DIVERSITY LAW GROUP, P.C. Larry W. Lee Kristen M. Agnew Nicholas Rosenthal 515 S. Figueroa Street, Suite 1250 Los Angeles, CA 90071 Telephone: (213) 488-6555 lwlee@diversitylaw.com kagnew@diversitylaw.com nrosenthal@diversitylaw.com	POLARIS LAW GROUP LLP William L. Marder 501 San Benito Street, Suite 200 Hollister, CA 95023 Telephone: (831) 531-4214 bill@polarislawgroup.com
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WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

Vernon, et al. v. McLane/Suneast, Inc., et al.
c/o Simpluris

Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT DEFENDANTS, THEIR MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.