

Larry W. Lee (SBN 228175)
Kristen M. Agnew (SBN 247656)
Nicholas Rosenthal (SBN 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
Tel: (213) 488-6555
Fax: (213) 488-6554
lwlee@diversitylaw.com
kagnew@diversitylaw.com
nrosenthal@diversitylaw.com

William L. Marder, Esq. (SBN 170131)
POLARIS LAW GROUP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333
bill@polarislawgroup.com

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 FINAL APPROVAL OF CLASS AND
REPRESENTATIVE ACTION
SETTLEMENT**

Date: December 23, 2022

Time: 10:00 a.m.

Dept.: S-26

Complaint Filed: August 12, 2021

FAC Filed: September 8, 2022

Trial Date: None Set

1 **DECLARATION OF KRISTEN M. AGNEW**

2 I, Kristen M. Agnew, declare as follows:

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

8 **FAIRNESS OF SETTLEMENT**

9 2. I am one of the primary attorneys on this matter. The Stipulation for Leave to File
10 First Amended Complaint and Settlement and Release of Class Action and PAGA Claims
11 (“Settlement Agreement”) was the product of negotiation between highly able and experienced
12 attorneys on both sides who possessed the relevant data, which they carefully analyzed. Class
13 Counsel engaged in extensive factual investigation before settling. Plaintiffs propounded written
14 discovery relevant to the class and PAGA claims. Amongst other relevant topics, the discovery
15 required Defendants to provide documents and information relevant to class certification,
16 including the number of putative class members, Defendants’ policies and procedures with
17 respect to the display of the hourly rates of pay on wage statements, and payroll records of
18 putative class members.

19 3. Additionally, prior to the mediation, Defendants produced data relevant to the
20 potential value of the claims, including the number of putative class members/alleged aggrieved
21 employees and wage statements at issue in both actions. Defendants also produced exemplar
22 wage statements demonstrating that the alleged Section 226 violation had been corrected, as of
23 October 29, 2020. Using the information obtained through both formal and informal discovery, I
24 conducted a full damages and penalty analysis. Thus, I negotiated the settlement amount based
25 on a clear understanding of the maximum exposure in this case.

26 4. Based on my own independent investigation and evaluation, I am of the opinion
27 that the Settlement is fair, reasonable, and adequate and that the settlement is in the best interests
28 of the Class, in light of all known circumstances and the expenses and risks inherent in litigation.

1 I also believe in the fairness of the settlement based on factoring in the uncertainty and risks to
2 Plaintiffs involved in not prevailing at class certification and/or at trial, and the possibility of
3 appeals.

4 5. Diversity Law Group was retained based upon a contingency fee arrangement
5 wherein Plaintiffs' counsel agreed to advance all costs and receive no fee unless a recovery was
6 accomplished. Specifically, had Plaintiffs failed to prevail in this case, counsel for Plaintiffs
7 would have spent a significant amount of time, money and other resources without any benefit or
8 return. In addition, had Plaintiffs also failed to prevail in the present case, Defendant would have
9 been able to seek costs in connection with their defense of the case.

10 **ATTORNEYS' FEES & COSTS**

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

17 7. Since 2009, my primary area of practice has been employment litigation. I have
18 practiced law at two preeminent employment defense firms. From May 2009 to June 2011, I was
19 an associate at Ogletree, Deakins, Nash, Smoak & Stewart, P.C. I was also an associate, and then
20 senior associate, in the labor and employment practice group of Seyfarth Shaw, LLP from June
21 2011 to May 2016. At both Ogletree and Seyfarth, I represented a wide array of fortune 500
22 companies in employment litigation in both state and federal courts, as well as before
23 government agencies, including the California Department of Labor. My practice included the
24 defense of single plaintiff and multi-plaintiff lawsuits involving claims under the California Fair
25 Employment and Housing Act, the California Labor Code and the Fair Labor Standards Act. I
26 also handled a number of wage and hour class actions.

27 8. 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.

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

13 10. I have been approved as class counsel in a number of class actions by the Superior
14 Courts of California and United States District Courts, including: *Antonio Becerra-Mata v. PSC*
15 *Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-00030; *Andrew*
16 *Vasquez v. Earthbound Farm, LLC*, San Benito County Superior Court Case No. CU-17-00171;
17 *Fransisco Pulido v. Westrock Services, Inc.*, San Benito County Superior Court Case No. CU-18-
18 00074; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court
19 Case No. BC608609; *John Obiols v. Lockheed Martin Corporation*, Santa Clara County Superior
20 Court Case No. 17CV314178; *Eric Chavez v. Converse, Inc.*, N.D. Cal. Case No. 15-cv-03746-
21 NC.; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court Case No. 1-16-
22 CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*, Santa Clara County
23 Superior Court Case No. 17CV306751; *Foaad Hanna v. Equinix, LLC*, Santa Clara County
24 Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los Angeles County
25 Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville Community Hospital*,
26 Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v. Pacific Racing*
27 *Association*, Alameda County Superior Court Case No. RG18908139; *Lao v. H&M Hennes &*
28 *Mauritz*, N.D. Cal. Case No. 16-cv-00333-EJD; and *Chavez v. Converse*, Case Number N.D.

1 Cal. Case No. 5:16-cv-333 EJD.

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

7 12. I have spent approximately 111.20 hours of work on this case. This includes time
8 spent drafting the various pleadings and discovery, significant meet and confers, analyzing the
9 policies and class payroll information, and engaging in settlement activities. I also anticipate
10 spending an additional five hours preparing for and attending the final approval hearing,
11 conferring and reviewing e-mails and other written communications with counsel for
12 Defendants, the Settlement Administrator, and Class Members regarding post final approval
13 matters, including payments and related issues. Attached hereto as **Exhibit A** is a summary of
14 the time I have spent on this case.

15 13. The total lodestar for my hours will be approximately \$81,340 based on an hourly
16 rate of \$700.00 per hour (116.20 x \$700). Since at least 2017, I have been approved at an hourly
17 rate of \$650.00 per hour by various Courts, in a number of matters, including: *Antonio Becerra-*
18 *Mata v. PSC Industrial Outsourcing, LP*, San Benito County Superior Court Case No. CU-15-
19 00030; *Kosal So v. Owens-Brockway Glass Container, Inc.*, Los Angeles County Superior Court
20 Case No. BC608609; *Sarah Rodriguez v. Manpower, Inc.*, Santa Clara County Superior Court
21 Case No. 1-16-CV-294904; *Shannon Sanchez v. American Para Professional Systems, Inc.*,
22 Santa Clara County Superior Court Case No. 17CV306751. More recently, I have been approved
23 at an hourly rate of \$700.00 per hour by the following courts: *Foaad Hanna v. Equinix, LLC*,
24 Santa Clara County Superior Court Case No. 18CV339365; *Alicia Harris v. 24 Seven LLC*, Los
25 Angeles County Superior Court Case No. BC720144; *Mary Della Maggiora v. Watsonville*
26 *Community Hospital*, Santa Cruz Superior Court Case No. 18CV00191; *Michael Randolph v.*
27 *Pacific Racing Association*, Alameda County Superior Court Case No. RG18908139; *Prexxie*
28 *Pascual and Arturo Fonseca v. Satellite Healthcare, Inc.*, Santa Clara Superior Court Case No.

1 19CV345211; *Chavez v. Converse, Inc.*, United States District Court, Northern District of
2 California Case No. 15-cv-03746-NC; and *Carrillo v. New Balance Athletics, Inc.*, Santa Clara
3 Superior Court Case No. 19CV352469.

4 **ENHANCEMENT AWARD TO PLAINTIFFS**

5 14. Plaintiffs devoted a great deal of time and work assisting Class Counsel in the
6 case. Throughout this litigation, Plaintiffs, who are former employees of Defendants, have
7 cooperated immensely with my office and have taken many actions to protect the interests of the
8 Class. For example, Plaintiffs provided valuable information regarding the wage statement
9 policies and procedures of Defendants. Plaintiffs also made themselves available to answer
10 questions during the mediation, and carefully reviewed the settlement documents with counsel.

11 15. At the same time, Plaintiffs also faced many risks in participating as class
12 representatives in this matter. Plaintiffs faced actual risks with their future employment, as
13 putting themselves on public record in an employment lawsuit could affect their likelihood for
14 future employment. Moreover, because the claims alleged by Plaintiffs involved the payment of
15 costs to the prevailing party, Plaintiffs could have possibly faced paying the costs of Defendant
16 had they not prevailed in this action.

17 16. Furthermore, as part of this settlement, Plaintiffs are executing a general release
18 of all claims against Defendants.

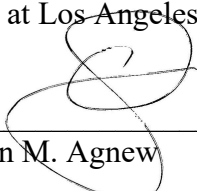
19 **NOTICE TO LWDA**

20 17. On September 7, 2022, Plaintiffs uploaded the Court's Order Granting
21 Preliminary Approval to the LWDA's website.

22 18. On December 1 2022, Plaintiffs uploaded this Motion and Proposed Order to the
23 LWDA's website.

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

26 Executed on this 1st day of December 2022, at Los Angeles, California.

27
28 

Kristen M. Agnew

EXHIBIT A

Vernon/Castaneda-Rivera v. McLane/Suneast
Time and Task Chart for Kristen M. Agnew

Hours	Description of Work
4.90	Initial research and review of background facts in preparation for filing of <i>Shaynia Vernon v. McLane Foodservice, Inc.</i> , Case No. RIC2000406 (“ <i>Vernon</i> Action”); confer with co-counsel re theories of liability and conduct research re same.
2.50	Draft PAGA letter and <i>Vernon</i> Complaint.
1.30	Draft request for informal discovery in <i>Vernon</i> Action; meet and confer with defense counsel re wage statement count for putative class members; review and analyze exemplar wage statements.
1.70	Meet and confer with defense counsel re initial status conference in <i>Vernon</i> Action; draft and revise initial joint report.
.90	Draft First Amend Class and Representative Action Complaint in <i>Vernon</i> Action.
2.20	Meet and confer with defense counsel re June 29, 2020 status conference in <i>Vernon</i> Action; draft and revise joint report.
1.50	Draft PAGA letter and complaint in <i>Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.</i> , Case No. CIVDS2017663; confer with co-counsel re theories of liability and conduct research re same.
3.30	Meet and confer with defense counsel re initial status conference in <i>Castaneda-Rivera</i> ; draft initial joint report; prepare for and appear at initial status conference.
3.80	Meet and confer with defense counsel re consolidation of the <i>Vernon</i> Action and <i>Castaneda-Rivera</i> ; draft proposed consolidated FAC; draft joint stipulation to consolidate the cases; meet and confer with defense counsel re proposed FAC and revisions to joint stipulation; confer with co-counsel re same.
6.20	Conduct legal research re statute of limitations and relation back; prepare memorandum to file re same; meet and confer with defense counsel re joint stipulation re statute of limitations; draft joint stipulation.
1.10	Meet and confer with defense counsel re request for dismissal of <i>Vernon</i> Action; draft proposed request for dismissal.
5.40	Review Defendant’s Notice of Removal of <i>Castaneda-Rivera</i> (“Federal Action”); conduct legal research re grounds for remand; prepare memorandum to file re same; confer with co-counsel re litigation strategy in federal court.
2.90	Meet and confer with defense counsel re motion to dismiss FAC in Federal Action and extension of responsive pleading deadline; draft joint stipulation to continue responsive pleading deadline and leave to file SAC in Federal

	Action; draft proposed SAC in Federal Action; confer with co-counsel re same.
4.70	Review order setting scheduling conference in Federal Action; meet and confer with defense counsel regarding Rule 26(f) Joint Report; draft Plaintiff's portion of joint report; confer with co-counsel re same; prepare for and appear at scheduling conference in Federal Action
2.80	Draft initial disclosures in Federal Action; analysis and strategy re discovery needed in Federal Action.
2.10	Draft requests for production of documents and interrogatories in Federal Action.
3.00	Conduct legal research re penalties for non-payment of meal/rest period premiums at regular rate of pay; review and analyze Plaintiffs' wage statements re payment of meal/rest period premiums; confer with co-counsel re new theory of liability.
4.90	Draft class action complaint in <i>Shaynia Vernon and Benjamin Castaneda-Rivera v. McLane/Suneast, Inc. and McLane Foodservice, Inc.</i> , Case No. CIVSB2123367 ("State Court Class Action") and representative PAGA complaint in <i>Benjamin Castaneda-Rivera v. McLane/Suneast, Inc.</i> , in the San Bernardino County Superior Court, assigned Case No. CIVSB2128980 therein (the "State Court PAGA Action"), alleging underpaid Section 226.7 premiums; confer with co-counsel re revisions to same.
2.20	Meet and confer with defense counsel re mediation of Federal Action, State Court Class Action and PAGA Action; draft and revise data request for mediation.
3.50	Review complaints in related class actions; meet and confer with plaintiffs' counsel in related class actions; confer with co-counsel re same.
2.70	Meet and confer with defense counsel re anticipated motion to consolidate the Federal Action with related class actions; conduct research re grounds to oppose motion; confer with co-counsel re same.
9.20	Draft mediation statement; prepare analysis of liability and damages exposure model; confer with co-counsel re same.
7.60	Prepare for and attend mediation.
10.40	Draft and revise Stipulation for Leave to File First Amended Complaint and Settlement and Release of Class Action and PAGA Claims ("Settlement Agreement" or "Agreement") and exhibits; meet and confer with defense counsel re proposed revisions to Settlement Agreement and exhibits; confer with co-counsel re same.
11.90	Draft Motion for Preliminary Approval of Class and PAGA Settlement and supporting declarations; conduct legal research re same; confer with settlement administrator re declaration in support of preliminary approval; prepare for and appear at preliminary approval hearing; revise notice to class members.

1.20	Confer with administrator re data and administration of settlement; review and finalize class notice; review and respond to calls from class members re settlement.
7.30	Draft Motion for Final Approval of Class and PAGA Settlement and supporting declarations; confer with settlement administrator re declaration re administration of settlement.
111.20	TOTAL HOURS