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11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **FOR THE COUNTY OF SAN BERNARDINO**

14
15 **BENJAMIN CASTANEDA-RIVERA**, as
16 an individual and on behalf of all others
similarly situated,

17 Plaintiff,

18 vs.

19
20 **MCLANE/SUNEAST, INC.**, a Texas
21 corporation; and DOES 1 through 50,
22 inclusive,

23 Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

OCT 01 2021

BY Sylvia Guajardo
SYLVIA GUAJARDO, DEPUTY

CIV SB 2128980

Case No.:

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF CAL. LABOR CODE §§
2698, ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Benjamin Castaneda-Rivera (“Plaintiff”) hereby submits this Representative
2 Action Complaint (“Complaint”) against Defendant McLane/Suneast, Inc. (“Defendant” or
3 “McLane/Suneast”) and Does 1 through 50 (collectively, “Defendants”), on behalf of himself
4 and other Aggrieved Employees of Defendant, for penalties under the California Labor Code as
5 follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 226.7 and 2698 *et seq.*, and the applicable Wage Orders of
9 the California Industrial Welfare Commission (“IWC”).

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

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees in Defendants’ failure to pay meal/rest period premium
15 wages at the regular rate of pay to Plaintiff and Aggrieved Employees.

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

20 **JURISDICTION AND VENUE**

21 5. This Court has jurisdiction over the violations of California Labor Code sections
22 201, 202, 203, 226.7 and 2698 *et seq.*

23 6. Venue is proper in San Bernardino County because Defendant provide services in
24 San Bernardino County, and Plaintiff was employed by Defendant in San Bernardino County.

25 **PARTIES**

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

1 8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
2 complained of in this action in ways that have deprived him of the rights guaranteed by
3 California Labor Code sections 201, 202, 203, 226.7 and 2698 *et seq.*

4 9. Plaintiff is informed and believes, and based thereon alleges, that
5 McLane/Suncoast, Inc. is a Texas corporation that operates throughout California, including in
6 San Bernardino County.

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

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

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

24 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
25 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
26 joint venturer of, or working in concert with each of the other co-Defendants and was acting
27 within the course and scope of such agency, employment, joint venture, or concerted activity. To
28 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the

1 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
2 Defendants.

3 14. At all times herein mentioned, Defendants, and each of them, were members of,
4 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
5 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

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

13 **FIRST CAUSE OF ACTION**

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

15 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
16 **AGAINST ALL DEFENDANTS)**

17 16. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 15 as
18 though fully set forth herein.

19 17. Plaintiff brings this cause of action as a proxy for the State of California and in
20 this capacity, seeks penalties on behalf of all Aggrieved Employees from July 28, 2020, through
21 the present, for Defendant's policy and practice of failing to pay meal and rest period premium
22 wages at the correct regular rate of pay that included all non-discretionary remuneration, in
23 violation of Labor Code section 226.7.

24 18. Plaintiff and Aggrieved Employees earned non-discretionary incentive pay,
25 including without limitation, shift differentials. Such non-discretionary remuneration, however,
26 was not included in the regular rate of pay for purposes of paying meal/rest period premium pay.
27 Instead, during workweeks when the employees earned non-discretionary incentive pay and
28 meal/rest period premium wages, the premium wages were paid at the employee's base hourly

1 rate of pay. Thus, the meal/rest period premium wages were paid below the regular rate of pay,
2 in violation of Labor Code section 226.7.

3 19. On or about July 28, 2021, Plaintiff sent written notice to the California Labor &
4 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections
5 201, 202, 203 and 226.7, pursuant to Labor Code section 2698, *et seq.*, the Private Attorney
6 General Act ("PAGA"). More than sixty-five days has elapsed since Plaintiff sent written notice.
7 To date, the LWDA has not responded to Plaintiff's written notice.

8 20. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
9 and all applicable civil penalties for Defendant's violation of Labor Code section 226(a) for the
10 time period described above, on behalf of himself and other Aggrieved Employees.

11 **PRAYER FOR RELIEF**

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

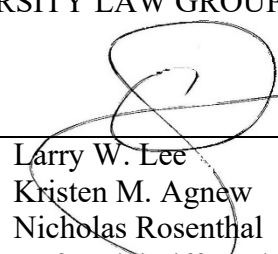
14 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to
15 Labor Code section 2698, *et seq.*, and for costs and attorneys' fees;

16 2. For attorneys' fees and costs as provided by California Labor Code section 2699,
17 and Code of Civil Procedure section 1021.5; and

18 3. For such other and further relief the Court may deem just and proper.

19
20
21 DATED: October 1, 2021

DIVERSITY LAW GROUP, P.C.

22
23 By: 
24 Larry W. Lee
25 Kristen M. Agnew
26 Nicholas Rosenthal
27 Attorneys for Plaintiffs and the Aggrieved
28 Employees