

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 12 2021

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

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

Plaintiffs,

vs.

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

Defendants.

Case No.: CIVDS2017663

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

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

DEMAND OVER \$25,000.00

1 Plaintiffs Benjamin Castaneda-Rivera and Shaynia Vernon (collectively, “Plaintiffs”)
2 hereby submit this Class and Representative 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 , on behalf of themselves and
5 a class of all other similarly situated current and former employees of Defendants for civil and
6 statutory penalties under the California Labor Code as follows:

7 **INTRODUCTION**

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

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. 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
22 226 and 2698 *et seq.*

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

26 **PARTIES**

27 7. Plaintiff Castaneda-Rivera began working for Defendant McLane/Suneast in or
28 about May 2015 as an overnight stocker. Throughout his employment with Defendant

1 McLane/Suneast, Plaintiff has been a non-exempt, hourly employee.

2 8. Plaintiff Vernon began working for Defendant McLane Foodservice on or about
3 October 16, 2006. Throughout her employment with Defendant McLane Foodservice, Plaintiff
4 has been 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 226 and 2698 *et seq.*

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

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

26 13. 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

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

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

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

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

CLASS ACTION ALLEGATIONS

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

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

b. Plaintiff Vernon seeks class certification of all current and former non-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 18. **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 19. **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 20. 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 21. **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 proper wage statements to
20 Plaintiffs and the Class in violation of Labor Code section 226.

21 22. **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). Specifically, whenever overtime wages were paid, the corresponding wage statements
26 did not identify the correct rates of pay. Instead, the wage statements showed overtime wages on

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

two separate line items, with each line item showing the base rate of pay, instead of one and one-half times the regular rate of pay. Plaintiffs allege that Defendants intentionally provided wage statements that displayed the incorrect overtime rate, and that Defendants did not have any good faith belief, in law or fact, as to its actions. Such inaccuracy caused injury to Plaintiffs and putative class members, as it precluded Plaintiffs and putative class members from being able to accurately calculate their wages. Accordingly, Plaintiffs are victims of Defendants' violation of California Labor Code section 226.

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

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

25. The prosecution of separate actions by the individual Class Members, even if possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual Class Members against Defendants and which would establish potentially incompatible standards of conduct for Defendants, and/or (b) adjudications with respect to individual Class Members which would, as a practical matter, be dispositive of the interest of the

1 other Class Members not parties to the adjudications or which would substantially impair or
2 impede the ability of the Class Members to protect their interests. Further, the claims of the
3 individual members of the Class are not sufficiently large to warrant vigorous individual
4 prosecution considering all of the concomitant costs and expenses.

5 26. Such a pattern, practice and uniform administration of corporate policy regarding
6 illegal payroll practices described herein is unlawful and creates an entitlement to recovery by
7 Plaintiffs and the Class identified herein, in a civil action, for applicable penalties, reasonable
8 attorneys' fees, and costs of suit according to the mandate of California Labor Code section 226
9 and Code of Civil Procedure section 1021.5.

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

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226**

15 **(BY PLAINTIFF CASTANEDA-RIVERA AND THE MCLANE/SUNEAST CLASS**
16 **AGAINST MCLANE/SUNEAST AND DOES 1 THROUGH 50; AND BY PLAINTIFF**
17 **VERNON AND THE MCLANE FOODSERVICE CLASS AGAINST MCLANE**
18 **FOODSERVICE AND DOES 1 THROUGH 50)**

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

21 29. Defendants failed in their affirmative obligation to provide accurate itemized
22 wage statements. Defendants, as a matter of policy and practice, did not provide accurate records
23 in violation of Labor Code section 226(a).

24 30. Plaintiff Castaneda-Rivera and McLane/Suneast Class Members were paid on an
25 hourly basis. As such, the wage statements provided to them should have reflected all applicable
26 hourly rates in effect during the pay period. The wage statements provided to Plaintiff
27 Castaneda-Rivera and the McLane/Suneast Class failed to accurately identify such information.
28 More specifically, whenever overtime wages were paid to McLane/Suneast Class Members, the

1 corresponding wage statement showed overtime wages on two separate line items, with each line
2 item showing the base rate of pay instead of one and one-half times the regular rate of pay.

3 31. Plaintiff Vernon and McLane Foodservice Class Members were paid on an hourly
4 basis. As such, the wage statements provided to them should have reflected all applicable hourly
5 rates in effect during the pay period. The wage statements provided to Plaintiff Vernon and the
6 McLane Foodservice Class failed to accurately identify such information. More specifically,
7 whenever overtime wages were paid to McLane Foodservice Class Members, the corresponding
8 wage statement showed overtime wages on two separate line items, with each line item showing
9 the base rate of pay instead of one and one-half times the regular rate of pay.

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

15 **SECOND CAUSE OF ACTION**

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

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

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

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

27 35. Plaintiff Vernon brings this cause of action as a proxy for the State of California
28 and in this capacity, seeks penalties on behalf of all Aggrieved Employees from January 3, 2019,

1 through the present, for Defendant McLane Foodservice’s policy and practice of failing to
2 provide proper wage statements in violation of Labor Code section 226(a).

3 36. On or about August 21, 2020, Plaintiff Castaneda-Rivera sent written notice to the
4 California Labor & Workforce Development Agency (“LWDA”) of Defendant
5 McLane/Suneast’s violations of Labor Code section 226(a), pursuant to Labor Code section
6 2698, *et seq.*, the Private Attorney General Act (“PAGA”). To date, the LWDA has not
7 responded to Plaintiff Castaneda-Rivera’s written notice.

8 37. On or about January 3, 2020, Plaintiff Vernon sent written notice to the LWDA of
9 Defendant McLane Foodservice’s violations of Labor Code section 226(a), pursuant to Labor
10 Code section 2698, *et seq.*. To date, the LWDA has not responded to Plaintiff Vernon’s written
11 notice.

12 38. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any
13 and all applicable civil penalties for Defendants’ violation of Labor Code section 226(a) for the
14 time period described above, on behalf of themselves and other Aggrieved Employees.

15
16 **PRAYER FOR RELIEF**

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

- 19 1. For an order certifying the proposed Class;
20 2. For an order appointing Plaintiffs as the representatives of the Class;
21 3. For an order appointing counsel for Plaintiffs as Class Counsel;
22 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code
23 section 226, and for costs and attorneys’ fees;
24 5. Upon the Second Cause of Action, for civil penalties according to proof pursuant
25 to Labor Code section 2698, *et seq.*, and for costs and attorneys’ fees;
26 6. On all causes of action for attorneys’ fees and costs as provided by California
27 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and

28 //

1 7. For such other and further relief the Court may deem just and proper.

2
3 DATED: January 12, 2021

DIVERSITY LAW GROUP, P.C.

4
5 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiffs and the Class

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3 STATE OF CALIFORNIA]
4]ss.
5 COUNTY OF LOS ANGELES]

6 I am employed in the County of Los Angeles, State of California. I am over the age of
7 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
8 1250, Los Angeles, California 90071.

9 On January 12, 2021, I served the following document(s) described as: **FIRST**
10 **AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES**
11 on the interested parties in this action as follows:

12 Matthew C. Kane
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14 Amy E. Beverlin
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22 *MCLANE/SUNEAST, INC.*

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MCLANE/SUNEAST, INC.

23 X BY MAIL: by placing _____ the original or X a true and correct
24 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
25 attached mailing list. I am readily familiar with the firm's practice for collection and processing
26 of correspondence and other materials for mailing with the United States Postal Service. On this
27 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
28 collection and mailing on this date at the address above following our office's ordinary business
practices. The envelope(s) will be deposited with the United States Postal Service on this date,
in the ordinary course of business.

 X BY ELECTRONIC MAIL: by personally sending a true and correct copy
of the above-described document(s) to the party(ies) listed above or on the attached mailing list
from the e-mail server diversitylaw.com, to the electronic transmission address of the recipient(s)
indicated above or on the attached mailing list. I certify that said electronic transmission was
completed and that all pages were received by the party(ies) identified herein or on the attached
mailing list.

I declare under penalty of perjury under the laws of the State of California that the
above is true and correct. Executed on January 12, 2021, at Los Angeles, California.



Erika Mejia