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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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.: 5:21-cv-00465-JWH-SP

**SECOND 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.*;**

1 Plaintiffs Benjamin Castaneda-Rivera and Shaynia Vernon (collectively,
 2 “Plaintiffs”) hereby submit this Second Amended Class and Representative Action
 3 Complaint (“Complaint”) against Defendants McLane/Suneast, Inc.
 4 (“McLane/Suneast”) and McLane Foodservice, Inc. (“McLane Foodservice”)
 5 (collectively, “Defendants”) and Does 1 through 50 , on behalf of themselves and a
 6 class of all other similarly situated current and former employees of Defendants for
 7 civil and statutory penalties under the California Labor Code as follows:

8 **INTRODUCTION**

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

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

14 3. Plaintiffs are informed and believe, and based thereon allege, that
 15 Defendants, jointly and severally, have acted intentionally and with deliberate
 16 indifference and conscious disregard to the rights of all employees in Defendants’
 17 failure to provide accurate itemized wage statements to Plaintiffs and Class
 18 Members.

19 4. Plaintiffs are informed and believe, and based thereon allege, that
 20 Defendants have engaged in, among other things a system of willful violations of
 21 the California Labor Code by creating and maintaining policies, practices and
 22 customs that knowingly deny employees the above stated rights and benefits.

23 **JURISDICTION AND VENUE**

24 5. Defendant maintains that the Court has jurisdiction over this action
 25 under the Class Action Fairness Act. Plaintiff reserves the right to challenge
 26 Defendant’s jurisdiction analysis at the appropriate time.

27 6. Venue is proper in the United States District Court, Central District of
 28 California because Defendants provide services in San Bernardino County, and

1 Plaintiff Castaneda-Rivera is currently employed by McLane/Suneast in San
2 Bernardino County.

3 PARTIES

4 7. Plaintiff Castaneda-Rivera began working for Defendant
5 McLane/Suneast in or about May 2015 as an overnight stocker. Throughout his
6 employment with Defendant McLane/Suneast, Plaintiff Castaneda-Rivera has been
7 a non-exempt, hourly employee.

8 8. Plaintiff Vernon began working for Defendant McLane Foodservice
9 on or about October 16, 2006. Throughout her employment with Defendant
10 McLane Foodservice, Plaintiff Vernon has been a non-exempt, hourly employee.

11 9. Plaintiffs were and are the victim of the policies, practices, and
12 customs of Defendants complained of in this action in ways that have deprived
13 them of the rights guaranteed by California Labor Code sections 226 and 2698 *et*
14 *seq.*

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

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

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

26 13. Plaintiffs do not know the true names or capacities, whether
27 individual, partner or corporate, of the defendants sued herein as Does 1 through
28 50, inclusive, and for that reason, said defendants are sued under such fictitious

1 names, and Plaintiffs pray for leave to amend this complaint when the true names
2 and capacities are known. Plaintiffs are informed and believe, and based thereon
3 allege, that each of said fictitious defendants was responsible in some way for the
4 matters alleged herein and proximately caused Plaintiffs and members of the
5 general public and class to be subject to the illegal employment practices, wrongs
6 and injuries complained of herein.

7 14. At all times herein mentioned, each of said Defendants participated in
8 the doing of the acts hereinafter alleged to have been done by the named
9 Defendants; and furthermore, the Defendants, and each of them, were the agents,
10 servants and employees of each of the other Defendants, as well as the agents of all
11 Defendants, and at all times herein mentioned, were acting within the course and
12 scope of said agency and employment.

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

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

25 17. At all times herein mentioned, the acts and omissions of various
26 Defendants, and each of them, concurred and contributed to the various acts and
27 omissions of each and all of the other Defendants in proximately causing the
28 injuries and damages as herein alleged. At all times herein mentioned, Defendants,

1 and each of them, ratified each and every act or omission complained of herein. At
 2 all times herein mentioned, Defendants, and each of them, aided and abetted the
 3 acts and omissions of each and all of the other Defendants in proximately causing
 4 the damages as herein alleged.

5 CLASS ACTION ALLEGATIONS

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

8 a. Plaintiff Castaneda-Rivera seeks class certification of all
 9 current and former non-exempt employees of Defendant McLane/Suncoast, Inc. in
 10 the State of California who were paid overtime wages at any time between April 6,
 11 2019, through the present (the “McLane/Suncoast Class”); and

12 b. Plaintiff Vernon seeks class certification of all current and
 13 former non-exempt employees of Defendant McLane Foodservice, Inc. in the State
 14 of California who were paid overtime wages at any time between January 28,
 15 2019, through the present (the “McLane Foodservice Class”).¹

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

22 20. **Adequacy of Representation:** The named Plaintiffs are fully
 23 prepared to take all necessary steps to represent fairly and adequately the interests
 24 of the Class defined above. Plaintiffs’ attorneys are ready, willing, and able to fully
 25 and adequately represent the Class and Plaintiffs. Plaintiffs’ attorneys have
 26 _____

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

1 prosecuted and settled wage-and-hour class actions in the past and currently have a
 2 number of wage-and-hour class actions pending in California state and federal
 3 courts.

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

7 22. **Common Question of Law and Fact:** There are predominant
 8 common questions of law and fact and a community of interest amongst Plaintiffs
 9 and the claims of the Class concerning Defendants' policy and practice of failing to
 10 provide proper wage statements to Plaintiffs and the Class in violation of Labor
 11 Code section 226.

12 23. **Typicality:** The claims of Plaintiffs are typical of the claims of all
 13 members of the Class in that Plaintiffs suffered the harm alleged in this Complaint
 14 in a similar and typical manner as the Class Members. As with other California
 15 non-exempt employees, Plaintiffs were not provided proper and accurate itemized
 16 wage statements, in violation of Labor Code section 226(a). Specifically, whenever
 17 overtime wages were paid, the corresponding wage statements did not identify the
 18 correct overtime rate. Instead, the wage statements showed the overtime rate on
 19 two separate line items— "Overtime at Base Rate" and "OT Premium"— the sum
 20 of which do not equal the effective overtime rate paid during the pay period.
 21 Furthermore, the rate displayed as the "OT Premium" is inaccurate. In order to
 22 determine the "OT Premium" rate an employee must multiply the displayed rate by
 23 .5. Plaintiffs allege that Defendants intentionally provided wage statements that
 24 displayed the incorrect overtime rate, and that Defendants did not have any good
 25 faith belief, in law or fact, as to its actions. Such inaccuracy caused injury to
 26 Plaintiffs and putative class members, as it precluded them from determining the
 27 amount of overtime wages owed to them and obstructed the accurate calculation of
 28 their wages. Accordingly, Plaintiffs are victims of Defendants' violation of

1 California Labor Code section 226.

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

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

20 26. The prosecution of separate actions by the individual Class Members,
21 even if possible, would create a substantial risk of (a) inconsistent or varying
22 adjudications with respect to individual Class Members against Defendants and
23 which would establish potentially incompatible standards of conduct for
24 Defendants, and/or (b) adjudications with respect to individual Class Members
25 which would, as a practical matter, be dispositive of the interest of the other Class
26 Members not parties to the adjudications or which would substantially impair or
27 impede the ability of the Class Members to protect their interests. Further, the
28 claims of the individual members of the Class are not sufficiently large to warrant

1 vigorous individual prosecution considering all of the concomitant costs and
2 expenses.

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

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

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE § 226**

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

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

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

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

1 overtime wages were paid to McLane/Suneast Class Members, the corresponding
2 wage statements did not identify the correct overtime rate. Instead, the wage
3 statements showed the overtime rate on two separate line items— “Overtime at
4 Base Rate” and “OT Premium”— the sum of which do not equal the effective
5 overtime rate paid during the pay period. Furthermore, the rate displayed as the
6 “OT Premium” is inaccurate. In order to determine the “OT Premium” rate an
7 employee must multiply the displayed rate by .5.

8 32. Plaintiff Vernon and McLane Foodservice Class Members were paid
9 on an hourly basis. As such, the wage statements provided to them should have
10 reflected all applicable hourly rates in effect during the pay period. The wage
11 statements provided to Plaintiff Vernon and the McLane Foodservice Class failed
12 to accurately identify such information. More specifically, whenever overtime
13 wages were paid to McLane Foodservice Class Members, the corresponding wage
14 statements did not identify the correct overtime rate. Instead, the wage statements
15 showed the overtime rate on two separate line items— “Overtime at Base Rate”
16 and “OT Premium”— the sum of which do not equal the effective overtime rate
17 paid during the pay period. Furthermore, the rate displayed as the “OT Premium”
18 is inaccurate. In order to determine the “OT Premium” rate an employee must
19 multiply the displayed rate by .5..

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

25 //

26 //

27 //

28 //

SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

39. As such, pursuant to Labor Code section 2699(a), Plaintiffs seek recovery of any 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.

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

DATED: April 13, 2021

DIVERSITY LAW GROUP, P.C.

By: _____

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