

1 DAVID G. SPIVAK (SBN 179684)
2 david@spivaklaw.com
3 MARALLE MESSRELIAN (SBN 316974)
4 maralle@spivaklaw.com
5 MAYA CHEAITANI (SBN 335777)
6 maya@spivaklaw.com
7 THE SPIVAK LAW FIRM
8 16530 Ventura Blvd., Suite 203
9 Encino, CA 91436
10 Telephone (213) 725-9094
11 Facsimile (213) 634-2485

12 Attorneys for Plaintiff,
13 JOSE ORDAZ, and all others similarly situated
14 (Additional attorneys for Plaintiff on next page)

15 **IN THE UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 JOSE ORDAZ, on behalf of himself, all
18 others similarly situated, and as an
19 “aggrieved employee” on behalf of other
20 “aggrieved employees” under the Labor
21 Code Private Attorneys General Act of
22 2004,

23 *Plaintiff,*

24 vs.

25 MCLANE/SUNEAST, INC., a Texas
26 corporation; MCLANE COMPANY,
27 INC., a Texas corporation; MCLANE
28 FOODSERVICE, INC., a Texas
corporation; MCLANE FOODSERVICE
DISTRIBUTION, INC., a North Carolina
corporation; ~~MCLANE BEVERAGE
DISTRIBUTION, INC., a Texas~~

Case No.: CIVSB2108567 (5:21-cv-1591)

CLASS ACTION

**FIRST AMENDED COMPLAINT
FOR:**

1. Failure to Provide Meal and Rest Periods (Lab. Code §§ 226.7, 512 and 1198);
2. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
3. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 201.3, 202, and 203);



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(213) 725-9094 Tel
(213) 634-2485 Fax
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1 corporation; and DOES 1–50, inclusive,

2 *Defendants.*

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6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
SpivakLaw.com

ADDITIONAL ATTORNEY FOR PLAINTIFF

Walter Haines (SBN 71075)

whaines@uelglaw.com

UNITED EMPLOYEES LAW GROUP, PC

4276 Katella Ave, #301

Los Alamitos, CA 90720

Telephone: (562) 256-1047

Facsimile: (562) 256-1006



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 Plaintiff, JOSE ORDAZ (hereafter "Plaintiff"), on behalf of himself and all
 2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class and representative action against Defendant
 5 MCLANE/SUNEAST, INC., a Texas corporation, MCLANE COMPANY, INC., a
 6 Texas corporation, MCLANE FOODSERVICE, INC., a Texas corporation,
 7 MCLANE FOODSERVICE DISTRIBUTION, INC., a North Carolina corporation,
 8 and DOES 1–50, inclusive (collectively "Defendants") for alleged violations of the
 9 California Labor Code, Industrial Welfare Commission Order No. 9–2001
 10 (hereafter "the Wage Order"), and the Business and Professions Code.

11 2. As set forth in more detail below, Plaintiff alleges that Defendants are
 12 liable to him and other similarly situated current and former employees in California
 13 for unpaid wages and other related relief. These claims are based on Defendants'
 14 alleged failures to: (1) Provide all meal and rest periods in compliance with
 15 California law, (2) Pay all wages earned for all hours worked at the correct rates of
 16 pay, (3) Indemnify Plaintiff and the below-described Class for reasonable expenses
 17 incurred while performing their duties, (4) Provide accurate and complete itemized
 18 written wage statements, (5) Timely pay all final wages upon termination of
 19 employment, and (6) Fairly compete. Accordingly, Plaintiff now seeks to recover
 20 unpaid wages and related relief through this class action.

22 **PARTIES**

23 3. Plaintiff JOSE ORDAZ is a resident of California. On or about July 3,
 24 2019, Defendants began to employ Plaintiff as an hourly maintenance mechanic.
 25 Defendants continuously employed him in this capacity from his date of hire until
 26 on or about January 14, 2021, when his employment ended.

27 4. At all relevant times, Plaintiff was an "employee" within the meaning
 28 of Title 8 California Code of Regulations § 11090 and an "aggrieved employee"



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 (213) 725-9094 Tel
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1 within the meaning of Labor Code § 2699(c).

2 5. Defendant MCLANE/SUNEAST, INC., is a corporation organized
3 and existing under the laws of Texas and a citizen of California based on Plaintiff's
4 information and belief.

5 6. Defendant MCLANE COMPANY, INC., is a limited liability
6 company organized and existing under the laws of Texas and a citizen of California
7 based on Plaintiff's information and belief.

8 7. Defendant MCLANE FOODSERVICE, INC., is a limited liability
9 company organized and existing under the laws of Texas and a citizen of California
10 based on Plaintiff's information and belief.

11 8. Defendant MCLANE FOODSERVICE DISTRIBUTION, INC., is a
12 limited liability company organized and existing under the laws of North Carolina
13 and a citizen of California based on Plaintiff's information and belief.

14 9. Plaintiff is ignorant of the true names, capacities, relationships, and
15 extents of participation in the conduct alleged herein of the Defendants sued as
16 DOES 1–50, inclusive, but is informed and believes and thereon alleges that said
17 Defendants are legally responsible for the wrongful conduct alleged herein and
18 therefore sues these Defendants by such fictitious names. Plaintiff will amend the
19 Complaint to allege the true names and capacities of the DOE Defendants when
20 ascertained.

21
22 10. Plaintiff is informed and believes and thereon alleges that, at all
23 relevant times herein, all Defendants were the agents, employees, servants, masters,
24 and/or employers of the remaining Defendants, and, in doing the things hereinafter
25 alleged, were acting within the course and scope of such agency or employment and
26 with the approval and ratification of each of the other Defendants.

27 11. At all relevant times, in perpetrating the acts and omissions alleged
28 herein, Defendants and each of them acted pursuant to and in furtherance of a policy



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1 and/or practice, or lack thereof, which resulted in Defendants not paying Plaintiff
 2 and other members of the below-described class in accordance with applicable laws
 3 as alleged herein.

4 12. Plaintiff is informed and believes and thereon alleges that each and
 5 every one of the acts and omissions alleged herein was performed by, and/or
 6 attributable to, all Defendants, each acting as agents and/or employees, and/or under
 7 the direction and control of each of the other Defendants, and that said acts and
 8 failures to act were within the course and scope of said agency, employment, and/or
 9 direction and control.

10 **CLASS ALLEGATIONS**

11 13. This action has been brought and may be maintained as a class action
 12 pursuant to California Code of Civil Procedure § 382 because there is a well-defined
 13 community of interest among the persons who comprise the readily ascertainable
 14 class defined below and because Plaintiff is unaware of any difficulties likely to be
 15 encountered in managing this case as a class action.

16 14. **Class Definition:** The Class is defined as follows: All individuals
 17 currently and formerly employed in California as non-exempt, hourly employees
 18 by Defendants, including but not limited to maintenance mechanics, drivers, and
 19 persons in similar positions at any time during the period beginning four years prior
 20 to the filing of this action and ending on the date that final judgment is entered in
 21 this action (“Class” or “Class Members”).

22 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff
 23 reserves the right to amend or modify the class definition with greater specificity,
 24 by further division into subclasses and/or by limitation to particular issues.

25 16. **Numerosity:** The Class Members are so numerous that the individual
 26 joinder of each individual Class Member is impractical. While Plaintiff does not
 27 currently know the exact number of Class Members, Plaintiff is informed and
 28



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believes that the actual number exceeds the minimum required for numerosity under California laws.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

B. Whether Defendants weekly failed to pay all wages earned to the Class Members for all hours worked at the correct rates of pay;

C. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

D. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate written wage statements;

E. Whether Defendants willfully failed to provide the Class Members with timely final wages upon termination of employment;

F. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

G. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

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(213) 725-9094 Tel
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1 Class Members on a bi-weekly basis and paid them at an hourly rate of pay. At all
 2 relevant times, Defendants classified Plaintiff and the Class Members as non-
 3 exempt employees entitled to the protections of both the Labor Code and the Wage
 4 Order.

5 24. At all relevant times, Plaintiff and the Class Members have worked
 6 over 8 hours in one workday and/or over 40 hours in one workweek. Therefore,
 7 Plaintiff and the Class Members often qualified for at least one meal break and two
 8 rest breaks during their shifts. For example, during his employment with
 9 Defendants, Plaintiff, on average, worked ten (10) hours in a workday. Despite this,
 10 Defendants failed to provide Plaintiff and the Class Members with all timely rest
 11 and meal periods pursuant to California law, including but not limited to, two timely
 12 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays
 13 they worked more than 10 hours. Defendants' supervisors also often interrupted
 14 Plaintiff and the Class Members' meal periods by calling them on their personal
 15 mobile phones to discuss work-related matters and to assign more tasks. Further,
 16 due to the workload and low-staffing levels, Defendants denied Plaintiff and the
 17 Class Members their 30-minute duty-free meal periods within the first 5 hours of
 18 work. Around three times per week, Defendants tasked Plaintiff and the Class
 19 Members with road calls, where they drove to long-distance locations like San
 20 Diego or Los Angeles, to complete assigned repair-work on company trucks. The
 21 transportation manager, Richard Amezcua, instructed Plaintiff and the other Class
 22 Members that they could not stop on the road to take their timely meal periods, and
 23 to always take their meal breaks or rest periods after they had completed their
 24 assigned repair-work. Richard Amezcua informed Plaintiff that "the drivers come
 25 first, and that's how McLane makes money." If Plaintiff and the Class Members
 26 did not follow these instructions, management threatened to write them up for
 27 "insubordination".
 28



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25. Plaintiff and the Class Members clocked-out for their meal periods using a computer system. When Plaintiff and the Class Members took late meal periods due to the workload or the assigned road-calls, Jessica Black (shop supervisor), under Richard Amezcua's direction, instructed Plaintiff and the Class Members to sign time-correction sheets that falsely indicated they took timely, off-duty meal periods. Defendants forced Plaintiff and the Class Members to sign time-correction sheets even if Plaintiff and the Class Members had been on the road and were not able to take their meal periods. Management also threatened to take disciplinary action against Plaintiff and the Class Members if they did not agree to these time-corrections. If the Class Members were written-up enough times, their employment would be terminated.

26. At all relevant times, Defendants failed to authorize and permit rest periods to Plaintiff and the Class Members in violation of California law. Due to the high workload, Defendants failed to authorize and permit Plaintiff and the Class Members to take 10-minute, paid, duty-free rest breaks every 4 hours worked or major fraction thereof. On those seldom occasions where Plaintiff and the Class Members took timely rest breaks, Defendants interrupted them with demands that they help drivers and perform related job duties. Defendants did not seek an exemption from the rest period protections of the Wage Order from California Divisions of Labor Standards Enforcements. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the Class Members with timely rest breaks and/or meal periods in compliance with California law.

27. At all relevant times, Defendants required Plaintiff and the Class Members to work on-call shifts. Defendants often required Plaintiff and the Class Members to remain on-call for 24 hours a day, for up to 7 days a week. However, Defendants did not pay Plaintiff and the Class Members minimum, overtime, and



1 double-time wages for such on-call shifts. During such on-call shifts, Defendants
2 restricted Plaintiff and the Class Members in the types of activities they could
3 perform and required them to stay available at all times. Defendants prohibited
4 Plaintiff and the Class Members from consuming alcohol during the waiting periods
5 of on-call shifts, and required them to stay within 20-minute driving distance from
6 their work area. Defendants required Plaintiff and the Class Members to always
7 monitor their phones for work-related calls. Under threat of disciplinary action,
8 Defendants required Plaintiff and the Class Members to respond and show-up to
9 work within 20-minutes of such calls. Defendants, however, compensated the
10 employees only when they arrived to work, and only for the period they actually
11 worked. Consequently, Defendants failed to compensate Plaintiff and the Class
12 Members for all hours worked.

13
14 28. At all relevant times, Defendants required Plaintiff and the Class
15 Members to incur certain business expenses in the course of performing their duties.
16 Defendants required Plaintiff and the Class Members to use their personal mobile
17 phones in the course of performing their duties. Defendants communicated with
18 Plaintiff and the Class Members by phone regarding work instructions, scheduling,
19 or to resolve work-related issues, and did not provide mobile phones or an
20 alternative to them for this purpose. Further, Defendants required Plaintiff and the
21 Class Members to monitor their personal mobile phones at all times when working
22 on-call shifts. Defendants did not reimburse Plaintiff and the Class Members for
23 their mobile phone expenses.

24 29. Defendants failed to issue to Plaintiff and the Class Members complete
25 and accurate wage statements as a result of their failure to state all hours worked at
26 the correct rates of pay, and all wages earned including rest period and meal period
27 premium wages. Defendants also failed to timely pay Plaintiff and the Class
28 Members all earned wages described above during and at the conclusion of



1 employment. Moreover, Defendants failed to maintain accurate employee records
2 of Plaintiff and the Class Members.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE REST BREAKS AND MEAL PERIODS**

5 **(Lab. Code §§ 226.7, 512, and 1198)**

6 **(By Plaintiff and the Class against all Defendants)**

7 30. Plaintiff incorporates all paragraphs of this Complaint as if fully
8 alleged herein.

9 31. At all relevant times during the applicable limitations period, Plaintiff
10 and the Class Members have been employees of Defendants and entitled to the
11 benefits and protections of California Labor Code §§ 226.7, 512, 1198, and the
12 Wage Order.

13 32. In relevant part, California Labor Code § 1198 states:

14 The maximum hours of work and the standard conditions
15 of labor fixed by the commission shall be the maximum
16 hours of work and the standard conditions of labor for
17 employees. The employment of any employee for longer
18 hours than those fixed by the order or under conditions
19 of labor prohibited by the order is unlawful.

20 33. In relevant part, California Labor Code § 512 states:

21 An employer shall not employ an employee for a work
22 period of more than five hours per day without providing
23 the employee with a meal period of not less than 30
24 minutes, except that if the total work period per day of
25 the employee is no more than six hours, the meal period
26 may be waived by mutual consent of both the employer
27 and employee.

28 An employer shall not employ an employee for a work
period of more than 10 hours per day without providing
the employee with a second meal period of not less than



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(213) 725-9094 Tel
(213) 634-2485 Fax
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30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

34. In relevant part, § 12 of the Wage Order states:

Rest Periods

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

35. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee...

(B) An employer may not employ an employee for a work period of more than ten (10) hours pre day without



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(213) 725-9094 Tel
(213) 634-2485 Fax
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1 providing the employee with a second meal period of not
 2 less than 30 minutes, except that if the total hours worked
 3 is no more than 12 hours, the second meal period may be
 4 waived by mutual consent of the employer and the
 employee only if the first meal period was not waived.

5 (C) Unless the employee is relieved of all duty during a
 6 30 minute meal period, the meal period shall be
 7 considered an “on duty” meal period and counted as time
 8 worked. An “on duty” meal period shall be permitted
 9 only when the nature of the work prevents and employee
 10 from being relieved of all duty and when by written
 11 agreement between the parties an on-the-job meal period
 12 is agreed to. The written agreement shall state that the
 employee may, in writing, revoke the agreement at any
 time.

13 (D) If an employer failed to provide an employee with
 14 a meal period in accordance with the applicable
 15 provisions of this order, the employer shall pay the
 16 employee on (1) hour of pay at the employee’s regular
 17 rate of compensation for each workday that the meal
 period is not provided.

18 36. In relevant part, California Labor Code § 226.7 states:

19 (b) An employer shall not require an employee to
 20 work during a meal or rest period mandated pursuant to
 21 an applicable statute, or applicable regulation, standard,
 22 or order of the Industrial Welfare Commission, the
 Occupational Safety and Health Standards Board, or the
 Division of Occupational Safety and Health.

23 (c) If an employer fails to provide an employee a meal
 24 period or rest period in accordance with a state law,
 25 including, but not limited to, an applicable statute or
 26 applicable regulation, standard, or order of the Industrial
 27 Welfare Commission, the Occupational Safety and
 28 Health Standards Board, or the Division of Occupational
 Safety and Health, the employer shall pay the employee
 one additional hour of pay at the employee’s regular rate



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1 of compensation for each work day that the meal or rest
2 period is not provided.

3 37. Pursuant to California Labor Code § 512 and the Wage Order,
4 Plaintiff and the Class Members were entitled to uninterrupted meal periods of at
5 least 30 minutes for each day they worked five or more hours. Pursuant to
6 California Labor Code § 512, they were also entitled to a second 30-minute meal
7 period when they worked more than 10 hours in a workday.

8 38. Pursuant to the Wage Order, Plaintiff and the Class Members were
9 entitled to be provided with net rest breaks of at least ten minutes for each four-
10 hour period of work, or major fraction thereof.

11 39. Defendants intentionally failed to provide Plaintiff and the Class
12 Members with all required 30-minute duty-free meal periods and 10-minute rest
13 periods free from any work duties in accordance with the Wage Order.

14 40. At all relevant times, Defendants intentionally and improperly failed
15 to provide all timely duty-free rest breaks and/or meal periods to Plaintiff and the
16 Class Members as required by law, including but not limited to, second meal
17 periods and third rest periods on days they work directly or are on-call for more
18 than 10 hours in a workday. Defendants also did not pay premium wages to Plaintiff
19 and the Class Members on days they did not provide them with one or more timely
20 meal and rest periods as required by California law.

21 41. Plaintiff is informed and believes and thereon alleges that, at all
22 relevant times within the applicable limitations period, Defendants had a policy,
23 practice, or a lack of a policy which resulted in Defendants not providing the Class
24 with all off-duty meal periods and rest breaks required by California law.

25 42. As a result of Defendants' unlawful conduct, Plaintiff and the Class
26 Members have suffered damages in an amount, subject to proof, to the extent they
27 were not paid additional wages owed for all meal periods and rest breaks not
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1 provided to them.

2 43. By reason of the above, pursuant to California Labor Code § 226.7,
3 Plaintiff and the Class Members are entitled to premium wages for workdays in
4 which one or more off-duty meal periods were not provided to them, and for
5 workdays in which one or more rest breaks were not provided to them.

6 **SECOND CAUSE OF ACTION**

7 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

8 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

9 **(By Plaintiff and the Class against Defendants)**

10 44. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged
11 herein.

12 45. At all relevant times, Plaintiff and the other Class Members have been
13 non-exempt employees of Defendants and entitled to the benefits and protections
14 of California Labor Code §§ 510, 1194, 1197, and 1198 and the Wage Order.

15 46. § 2 of the Wage Order defines “hours worked” as “the time during
16 which an employee is subject to the control of an employer, and includes all the
17 time the employee is suffered or permitted to work, whether or not required to do
18 so.”

19 47. § 3 of the Wage Order states:

20 (A) Daily Overtime - General Provisions

21
22 (1) The following overtime provisions are applicable to employees 18
23 years of age or over and to employees 16 or 17 years of age who are
24 not required by law to attend school and are not otherwise prohibited
25 by law from engaging in the subject work. Such employees shall not
26 be employed more than eight (8) hours in any workday or more than
27 40 hours in any workweek unless the employee receives one and one-
28 half (1 ½) times such employee’s regular rate of pay for all hours
worked over 40 hours in the workweek. Eight (8) hours of labor
constitutes a day’s work. Employment beyond eight (8) hours in any



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1 workday or more than six (6) days in any workweek is permissible
 2 provided the employee is compensated for such overtime at not less
 3 than:

4 (a) One and one-half (1 ½) times the employee's regular rate of pay
 5 for all hours worked in excess of eight (8) hours up to and including
 6 12 hours in any workday, and for the first eight (8) hours worked on
 7 the seventh (7th) consecutive day of work in a workweek.

8 (b) Double the employee's regular rate of pay for all hours worked in
 9 excess of 12 hours in any workday and for all hours worked in excess
 10 of eight (8) hours on the seventh (7th) consecutive day of work in a
 11 workweek.

12 (c) The overtime rate of compensation required to be paid to a
 13 nonexempt full-time salaried employee shall be computed by using
 14 the employee's regular hourly salary as one-fortieth (1/40) of the
 15 employee's weekly salary.

16 48. Section 4 of the Wage Order requires an employer to pay non-exempt
 17 employees at least the minimum wage set forth therein for all hours worked, which
 18 consists of all hours that an employer has actual or constructive knowledge that
 19 employees are working.

20 49. Labor Code § 510 states:

21 Eight hours of labor constitutes a day's work. Any work in excess of
 22 eight hours in one workday and any work in excess of 40 hours in any
 23 one workweek and the first eight hours worked on the seventh day of
 24 work in any one workweek shall be compensated at the rate of no less
 25 than one and one-half times the regular rate of pay for an employee.
 26 Any work in excess of 12 hours in one day shall be compensated at
 27 the rate of no less than twice the regular rate of pay for an employee.
 28 In addition, any work in excess of eight hours on any seventh day of
 a workweek shall be compensated at the rate of no less than twice the
 regular rate of pay of an employee. Nothing in this § requires an
 employer to combine more than one rate of overtime compensation in
 order to calculate the amount to be paid to an employee for any hour
 of overtime work.



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1 50. Labor Code § 1194 invalidates any agreement between an employer
2 and an employee to work for less than the minimum wage required under the
3 applicable Wage Order.

4 51. Labor Code § 1197 makes it unlawful for an employer to pay an
5 employee less than the minimum wage required under the applicable Wage Order
6 for all hours worked during a payroll period.

7 52. Labor Code § 1198 makes it unlawful for an employer to employ an
8 employee under conditions that violate the Wage Order.

9 53. In conjunction, these provisions of the Labor Code require employers
10 to pay non-exempt employees no less than their agreed-upon or statutorily
11 mandated wage rates for all hours worked, including unrecorded hours when the
12 employer knew or reasonably should have known that employees were working
13 during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575,
14 585.)

15 54. At all relevant times during the applicable limitations period,
16 Defendants failed to compensate Plaintiff and the Class Members for all hours
17 worked, including but not limited to, overtime wages during on-call shifts for all
18 overtime hours they worked at the correct rates of pay.

19 55. Plaintiff is informed and believes and thereon alleges that, at all
20 relevant times, Defendants maintained a policy and/or practice, or lack thereof,
21 which resulted in Defendants' failure to compensate Plaintiff and the other Class
22 Members for all hours worked as required by California law.

23 56. As a result of Defendants' unlawful conduct, Plaintiff and the other
24 Class Members have suffered damages, in an amount subject to proof, to the extent
25 they were not paid the full amount of wages earned during each pay period during
26 the applicable limitations period, including minimum and overtime wages.



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57. Pursuant to Labor Code § 1194, Plaintiff, on behalf of himself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

THIRD CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiff and the Class against all Defendants)

58. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

59. At all relevant times, Plaintiff and the Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of the California Labor Code §§ 1198 and 2802 and the Wage Order.

60. In pertinent part, California Labor Code § 2802(a) states:

“An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

61. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

62. At all relevant times during the applicable limitations period, Defendants required Plaintiff and the Class Members to incur certain business expenses which they failed to indemnify them for both during and after their employment ended. At all relevant times, Defendants required Plaintiff and the Class Members to use their personal mobile phones for work-related activities without reimbursing them for such expenses.

63. Plaintiff is informed and believes and thereon alleges that, at all



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Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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1 relevant times, Defendants maintained a policy and/or practice, or lack thereof,
 2 which resulted in Defendants' failure to indemnify Plaintiff and the Class Members
 3 for the reasonable expenses they incurred during the course of performing their
 4 duties.

5 64. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and
 6 the Class Members are entitled to reimbursement for all necessary expenditures
 7 and losses and interest thereon, due and owing to them within four years of the date
 8 of the filing of the Complaint until the entry of judgment.

9 65. Accordingly, with respect to this cause of action, on behalf of himself
 10 and the Class Members, Plaintiff prays for the above stated relief, costs, and all
 11 reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise
 12 permitted by law.

13 **FOURTH CAUSE OF ACTION**
 14 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**
 15 **(Lab. Code § 226)**

16 **(By Plaintiff and the Class against all Defendants)**

17 66. Plaintiff incorporates all paragraphs of the Complaint as if fully
 18 alleged herein.

19 67. At all relevant times during the applicable limitations period, Plaintiff
 20 and the other Class Members have been employees of Defendants and entitled to
 21 the benefits and protections of California Labor Code § 226.

22 68. Pursuant to California Labor Code § 226(a), Plaintiff and the other
 23 Class Members were entitled to receive, bi-weekly or at the time of each payment
 24 of wages, an accurate itemized statement showing:

- 25 (1) Gross wages earned,
 26 (2) Total hours worked by the employee, except for any employee whose
 27 compensation is solely based on a salary and who is exempt from payment of
 28



1 overtime under subdivision (a) of § 515 or any applicable order of the Industrial
2 Welfare Commission,

3 (3) The number of piece rate units earned and any applicable piece rate if
4 the employee is paid on a piece-rate basis,

5 (4) All deductions, provided that all deductions made on written orders of
6 the employee may be aggregated and shown as one item,

7 (5) Net wages earned,

8 (6) The inclusive dates of the period for which the employee is paid,

9 (7) The name of the employee and his or her social security number,
10 except that by January 1, 2008, only the last four digits of his or her social security
11 number or an employee identification number other than a social security number
12 may be shown on the itemized statement,

13 (8) The name and address of the legal entity that is the employer, and

14 (9) All applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.
16

17 69. Pursuant to California Labor Code § 226(e), an employee suffering
18 injury as a result of a knowing and intentional failure by an employer to comply
19 with subdivision (a) is entitled to recover the greater of all actual damages or fifty
20 dollars (\$50) for the initial pay period in which a violation occurs and one hundred
21 dollars (\$100) per employee for each violation in a subsequent pay period, not to
22 exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an
23 award of costs and reasonable attorneys' fees.

24 70. Pursuant to California Labor Code § 226(e), an employee is deemed to
25 suffer injury if the employer fails to provide a wage statement. Also, an employee
26 is deemed to suffer injury if the employer fails to provide accurate and complete
27 information as required by California Labor Code § 226(a) and the employee cannot
28 "promptly and easily determine" from the wage statement alone one or more of the



1 following:

2 A. The amount of the gross wages or net wages paid to the
3 employee during the pay period or any of the other information required to be
4 provided on the itemized wage statement pursuant to California Labor Code
5 § 226(a);

6 B. Which deductions the employer made from gross wages to
7 determine the net wages paid to the employee during the pay period;

8 C. The name and address of the employer and, if the employer is a
9 farm labor contractor, as defined in subdivision (b) of § 1682 of the California
10 Labor Code, the name and address of the legal entity that secured the services of
11 the employer during the pay period; and

12 D. The name of the employee and only the last four digits of his or
13 her social security number or an employee identification number other than a social
14 security number.

15 71. “Promptly and easily determine,” as stated in California Labor Code §
16 226(e), means a reasonable person would be able to readily ascertain the
17 information without reference to other documents or information.

18 72. As alleged herein, Defendants failed to provide Plaintiff and the other
19 Class Members with all meal and rest periods in compliance with California law.
20 They also failed to provide them with premium wages on workdays they failed to
21 provide them with one or more meal and/or rest periods in compliance with
22 California law. Further, Defendants failed to compensate Plaintiff and the other
23 Class Members for all hours worked. As a result, Defendants have failed to properly
24 itemize Plaintiff and the other Class Members’ gross and net wages earned, total
25 hours worked, hourly rate of pay, the corresponding number of hours worked at
26 each hourly rate, and other requirements of California Labor Code § 226. As a
27 result, Defendants have violated California Labor Code § 226.
28



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(213) 725-9094 Tel
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73. Defendants' failure to provide Plaintiff and the other Class Members with accurate wage statements was knowing and intentional. Plaintiff and the Class Members complained about Defendants' Labor Code violations to management. Plaintiff and the Class Members notified Defendants that they failed to provide them with duty-free meal and rest periods, Defendants ignored their complaints. Defendants had the ability to provide Plaintiff and the other Class Members with accurate wage statements but intentionally provided wage statements that Defendants knew were not accurate.

74. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records and/or has led to the submission of inaccurate information about wages to state and federal government agencies. Further, Plaintiff and the other Class Members were not able to ascertain from the wage statements whether Defendants complied with their obligations under California Labor Code § 226(a).

75. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.



1 76. Accordingly, with respect to this cause of action, on behalf of himself
 2 and the other
 3 Class Members, Plaintiff prays for the herein stated relief and for an award of all
 4 reasonable costs and attorneys' fees, including interest thereon, as permitted by law,
 5 all in amounts subject to proof.

6 **FIFTH CAUSE OF ACTION**

7 **WAITING TIME PENALTIES**

8 **(Lab. Code §§ 201, 201.3, 202, and 203)**

9 **(By Plaintiff and the Class against all Defendants)**

10 77. Plaintiff incorporates all paragraphs of this Complaint as if fully
 11 alleged herein.

12 78. At all relevant times during the applicable limitations period, Plaintiff
 13 and the Class have been non-exempt employees of Defendants and entitled to the
 14 benefits and protections of California Labor Code §§ 201–203, and the Wage
 15 Order.

16 79. Labor Code § 201 provides that all earned and unpaid wages of an
 17 employee who is discharged are due and payable immediately at the time of
 18 discharge.
 19

20 80. Labor Code § 202 provides that all earned and unpaid wages of an
 21 employee who quits after providing at least 72-hours notice before quitting are due
 22 and payable at the time of quitting and that all earned and unpaid wages of an
 23 employee who quits without providing at least 72-hours notice before quitting are
 24 due and payable within 72 hours.

25 81. Labor Code § 201.3 requires temporary services employers to pay the
 26 employee's wages on a weekly basis. Defendants paid Plaintiff and the Class
 27 Members on a bi-weekly basis.

28 82. By failing to pay earned minimum and premium wages to Plaintiff and



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1 the Class, Defendants failed to timely pay them all earned and unpaid wages in
2 violation of Labor Code § 201 or § 202.

3 83. Plaintiff is informed and believes that Defendants' failures to timely
4 pay all final wages to him and the Class Members have been willful in that
5 Defendants have the ability to pay final wages in accordance with Labor Code
6 §§ 201, 201.3, and 202 but have intentionally adopted policies or practice that are
7 incompatible with those requirements.

8 84. Labor Code § 203 provides that the wages of an employee continue
9 on a daily basis as a penalty for up to 30 days where an employer willfully fails to
10 timely pay earned and unpaid wages to the employee in accordance with Labor
11 Code § 201, 201.3, or § 202.

12 85. Defendants failed to pay Plaintiff and the Class Members whose
13 employment ended all of the earned, but unpaid wages described above by the
14 conclusion of their employment.

15 86. Plaintiff is informed and believes that Defendants' failures to weekly
16 and timely pay Plaintiff and the Class all of their earned and unpaid wages have
17 been willful in that, at all relevant times, Defendants have deliberately maintained
18 policies and practices that violate the requirements of the Labor Code and the Wage
19 Order, even though at all relevant times, they have had the ability to comply with
20 those legal requirements.

21 87. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties
22 on behalf of himself and the Class, in amounts subject to proof not to exceed 30
23 days of waiting time penalties for each Class Member.

24 ///

25 ///

26 ///

27 ///

28 ///



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(213) 725-9094 Tel
(213) 634-2485 Fax
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SIXTH CAUSE OF ACTION**UNFAIR COMPETITION****(Bus. & Prof. Code §§ 17200, et seq.)****(By Plaintiff and the Class against all Defendants)**

88. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

89. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

90. The unlawful conduct of Defendants alleged herein amounts to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, et seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to, among other things, pay their employees premium wages for workdays in which they did not provide employees with one or more meal and rest periods, reimburse their employees for reasonable expenses incurred during the course of performing their duties, and pay them all earned wages for all regular and overtime hours worked.

91. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the other Class Members have suffered injuries in fact and lost money or property. Defendants deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and premium wages and reimbursement for expenses that Plaintiff and the other Class Members incurred during the course of performing their duties.

92. Pursuant to California Business & Professions Code § 17203, Plaintiff and the other Class Members are entitled to restitution of all monies rightfully



1 belonging to them that Defendants did not pay them, or that Defendants otherwise
2 retained by means of their unlawful and unfair business practices.

3 93. Plaintiff and the other Class Members are entitled to reasonable
4 attorneys' fees in connection with their unfair competition claims pursuant to
5 California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or
6 the common fund doctrine.

7 **SEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES**

9 **(By Plaintiff and the Class against all Defendants)**

10 94. Plaintiff incorporates all paragraphs of this Complaint as if fully
11 alleged herein.

12 95. The "Aggrieved Employees" are all members of the Class defined
13 above who Defendants employed during the period beginning March 26, 2020 and
14 ending on the date that final judgment is entered in this action.

15 96. Labor Code § 204 states

16 (a) All wages, other than those mentioned in Section 201, 201.3,
17 202, 204.1, or 204.2, earned by any person in any employment are
18 due and payable twice during each calendar month, on days
19 designated in advance by the employer as the regular paydays. Labor
20 performed between the 1st and 15th days, inclusive, of any calendar
21 month shall be paid for between the 16th and the 26th day of the
22 month during which the labor was performed, and labor performed
23 between the 16th and the last day, inclusive, of any calendar month,
24 shall be paid for between the 1st and 10th day of the following month.

25 ...

26 (b) (1) Notwithstanding any other provision of this section, all
27 wages earned for labor in excess of the normal work period shall be
28 paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of
subdivision (a) of Section 226 relating to total hours worked by the



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employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

97. Defendants paid wages to employees on regular intervals. Defendants, however, failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

98. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

99. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

100. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:



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1 A. For violations of California Labor Code § 204, one hundred
2 dollars (\$100.00) for each Aggrieved Employee for each initial violation and two
3 hundred dollars (\$200.00) for each Aggrieved Employee for each subsequent,
4 willful or intentional violation (penalty amounts established by California Labor
5 Code § 210).

6 B. For violations of California Labor Code § 226(a), two hundred
7 fifty dollars (\$250.00) for each Aggrieved Employee for initial violation and one
8 thousand dollars (\$1,000.00) for each Aggrieved Employee for each subsequent
9 violation (penalty amounts established by California Labor Code § 226.3).

10 C. For violations of California Labor Code §§ 510 and 512, fifty
11 dollars (\$50.00) for each Aggrieved Employee for initial violation and one hundred
12 dollars (\$100.00) for each Aggrieved Employee for each subsequent violation, per
13 pay period (penalty amounts established by California Labor Code § 558).

14 D. For violations of California Labor Code § 1174, five hundred
15 dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty
16 amounts established by Labor Code § 1174.5).

17 E. For violations of California Labor Code § 1197, one hundred
18 dollars (\$100.00) for each Aggrieved Employee for each initial and intentional
19 violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee
20 for each subsequent violation, per pay period (regardless of whether the initial
21 violations were intentionally committed) (penalty amounts established by
22 California Labor Code § 1197.1).

23 F. For violations of California Labor Code §§ 201, 202, 203,
24 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved
25 Employee per pay period for each initial violation and two hundred dollars
26 (\$200.00) for each Aggrieved Employee per pay period for each subsequent
27 violation (penalty amounts established by California Labor Code § 2699(f)(2)).
28



1 101. Plaintiff has complied with the procedures for bringing suit specified
 2 in California Labor Code § 2699.3. By letter dated March 26, 2021, Plaintiff filed
 3 written notice online with the Labor and Workforce Development Agency
 4 (“LWDA”) and gave written notice by certified mail to Defendants of the specific
 5 provisions of the California Labor Code alleged to have been violated, including
 6 the facts and theories to support the alleged violations. A true and correct copy of
 7 the notice to the LWDA dated March 26, 2021, is attached as Exhibit A. Plaintiff
 8 accompanied his LWDA notice with a fee in the amount of \$75.00. The LWDA
 9 has failed to take action in response within 65 calendar days of the date of
 10 Plaintiff’s notice, but Plaintiff anticipates that the LWDA will provide written
 11 notice to Plaintiff informing him that it does not intend to investigate these
 12 allegations.

13 102. Pursuant to California Labor Code § 2699(g), Plaintiff and the
 14 Aggrieved Employees are entitled to an award of civil penalties, reasonable
 15 attorney’s fees and costs in connection with their claims for civil penalties.
 16

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, on behalf of himself and all others similarly
 19 situated, prays for relief and judgment against Defendants as follows:

- 20 A. An order that the action be certified as a class action;
- 21 B. An order that Plaintiff be appointed class representative;
- 22 C. An order that counsel for Plaintiff be appointed class counsel;
- 23 D. Unpaid Wages;
- 24 E. Actual Damages;
- 25 F. Statutory Damages;
- 26 G. Liquidated Damages;
- 27 H. Civil Penalties;
- 28 I. Restitution;



- 1 J. Declaratory and injunctive relief;
2 K. Equitable relief;
3 L. Pre-judgment interest;
4 M. Statutory penalties;
5 N. Costs of suit;
6 O. Interest;
7 P. Reasonable attorneys' fees; and
8 Q. Such other relief as the Court deems just and proper.
9

10 **DEMAND FOR JURY TRIAL**

11 Plaintiff, on behalf of himself and all others similarly situated, hereby
12 demands a jury trial on all issues so triable.
13

14 Respectfully submitted,
15

16 THE SPIVAK LAW FIRM

17 Dated: November 5, 2021

18 By /s/ David Spivak
19 DAVID SPIVAK,
20 MARALLE MESSRELIAN,
21 MAYA CHEAITANI, Attorneys for
22 Plaintiff, JOSE ORDAZ, and all others
23 similarly situated
24
25
26
27
28



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Employee Rights Attorneys
16530 Ventura Blvd., Ste. 203
Encino, CA 91436
(213) 725-9094 Tel
(213) 634-2485 Fax
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

March 23, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Jose Ordaz/McLane Foodservice*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Jose Ordaz (hereafter “Ordaz”) provides notice on behalf of himself and of all individuals currently and formerly employed in California as non-exempt, hourly employees, including but not limited to maintenance mechanics, drivers, and persons in similar positions, (hereafter referred to as “Aggrieved Employees,”) by McLane/Suneast, Inc., a Texas corporation, McLane Company, Inc., a Texas corporation, McLane Foodservice, Inc., a Texas corporation, McLane Foodservice Distribution, Inc., a North Carolina corporation, and McLane Beverage Distribution, Inc., a Texas corporation (hereafter collectively referred to as “McLane”) of violations of California Labor Code §§ 201, 202, 203, 204, 226, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, McLane has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Ordaz and the Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), paragraph 2, subdivision (F), and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

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Statement of Facts

On or about July 3, 2019, McLane began to employ Ordaz as an hourly maintenance mechanic. McLane continuously employed him in this capacity from his hire date until on or about January 14, 2021, when his employment ended.

At all relevant times, McLane issued wages to Ordaz and the Aggrieved Employees on a bi-weekly basis and paid them at an hourly rate of pay. At all relevant times, McLane classified Ordaz and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Ordaz and the Aggrieved Employees have worked over 8 hours in one workday and/or over 40 hours in one workweek. Despite this, McLane failed to provide Ordaz and the Aggrieved Employees with all timely rest and meal periods pursuant to California law, including, but not limited to, two timely 30-minute uninterrupted meal periods and three 10-minute rest periods on workdays they worked more than 10 hours. McLane supervisors also often interrupted Ordaz and the Aggrieved Employees' meal periods by calling them on their personal cellphones to discuss work-related matters and to assign more tasks. Further, due to the workload and low staffing levels, McLane denied Ordaz and the Aggrieved Employees their 30-minute duty-free meal period within the first 5 hours of work. Ordaz and the Aggrieved Employees clocked-out for their meal periods using a computer system. When Ordaz and the Aggrieved Employees took late meal periods due to the workload, McLane instructed Ordaz and the Aggrieved Employees to sign time-correction sheets that falsely indicated they took timely meal periods. McLane threatened to take disciplinary action against Ordaz and the Aggrieved Employees if they did not agree to these time-corrections.

At all relevant times, McLane failed to authorize and permit rest periods to Ordaz and the Aggrieved Employees in violation of California law. Due to high workload, McLane failed to authorize and permit Ordaz and the Aggrieved Employees to take 10-minute, paid, duty-free rest breaks every 4 hours worked

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or major fraction thereof. On those seldom occasions where Ordaz and the Aggrieved Employees took timely rest breaks, McLane interrupted them with demands that they help drivers and perform related job duties. McLane did not seek an exemption from the rest period protections of the Wage Order from the California Divisions of Labor Standards Enforcement. Furthermore, McLane failed to pay premium wages for days on which it failed to provide Ordaz and the Aggrieved Employees with timely rest breaks and/or meal periods in compliance with California law.

At all relevant times, McLane required Ordaz and the Aggrieved Employees to work on-call shifts. McLane often required Ordaz and the Aggrieved Employees to remain on-call for 24 hours a day, for up to 7 days a week. However, McLane did not pay Ordaz and the Aggrieved Employees minimum, overtime, and double-time wages for such on-call shifts. During such on-call shifts, McLane restricted Ordaz and the Aggrieved Employees in the types of activities they could perform and required them to stay available at all times. McLane prohibited Ordaz and the Aggrieved Employees from consuming alcohol during the waiting periods of on-call shifts, and required them to stay within 20-minute driving distance from their work area. McLane required Ordaz and the Aggrieved Employees to monitor their phones for work-related calls at all times. Under threat of disciplinary action, McLane required Ordaz and the Aggrieved Employees to respond and show-up to work within 20-minutes of such calls. McLane, however, compensated the employees only when they arrived to work, and only for the period they actually worked. Consequently, McLane failed to compensate Ordaz and the Aggrieved Employees for all hours worked.

At all relevant times, McLane required Ordaz and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. McLane required Ordaz and the Aggrieved Employees to use their personal cell phones in the course of performing their duties. McLane communicated with Ordaz and the Aggrieved Employees by phone regarding work instructions, scheduling, or to resolve work-related issues, and did not provide mobile phones or an alternative to them for this purpose. Further, McLane required Ordaz and the Aggrieved Employees to monitor their personal cellphones at all times when

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working on-call shifts. McLane did not reimburse Ordaz and the Aggrieved Employees for their cell phone expenses.

As a result of these aforementioned violations, McLane failed to provide Ordaz and the Aggrieved Employees with accurate written wage statements; failed to pay them all wages earned during employment; and failed to maintain accurate employee records with respect to Ordaz and the Aggrieved Employees as required under California law.

For the reasons herein, on behalf of himself and the Aggrieved Employees, Ordaz alleges that McLane committed the following violations of California Labor Code and the Wage Order:

- a) McLane failed to provide Ordaz and other Aggrieved Employees with all rest breaks and meal periods;
- b) McLane failed to compensate Ordaz and other Aggrieved Employees at one hour's pay for each day in which they were not provided the rest breaks required by law;
- c) McLane failed to compensate Ordaz and other Aggrieved Employees at one hour's pay for each day in which they were not provided the meal periods required by law;
- d) McLane failed to compensate Ordaz and other Aggrieved Employees for all hours worked at the correct rates of pay;
- e) McLane failed to indemnify Ordaz and other Aggrieved Employees for all business expenses;
- f) McLane failed to provide Ordaz and other Aggrieved Employees with accurate wage statements;

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- g) McLane failed to timely pay Ordaz and other Aggrieved Employees all earned and unpaid wages during their employment at McLane and at the time such employment ended; and
- h) McLane failed to maintain accurate and complete employment records for Ordaz and the Aggrieved Employees.

Accordingly, Ordaz now seeks civil penalties on behalf of himself and other Aggrieved Employees based on McLane' alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to:

“all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis...” (§ 1). Per § 2 (P): “Transportation Industry” means any industry, business or establishment operated for the **purpose of conveying persons or property from one place to another** whether by rail, highway, air or water and all operations and services in connection therewith; and also includes storing or warehousing of goods or property and the repairing, parking, rental, maintenance or cleaning of vehicles.” (emphasis added).

At all relevant times during the applicable limitations period, McLane operated food distribution services and Ordaz and the Aggrieved Employees performed the mechanical services in connection therewith. Accordingly, Ordaz and the Aggrieved Employees are entitled to the protections provided by the Wage Order.

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Failure To Provide Rest Breaks And Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was no waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the

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meal period may be waived by mutual consent of the employer and the employee...

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major

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fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

McLane intentionally and improperly failed to provide all timely duty-free rest breaks and/or meal periods to Ordaz and the Aggrieved Employees as required by law, including but not limited to, second meal periods and third rest periods on days they work directly or are on-call for more than 10 hours in a workday.

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McLane did not pay premium wages to Ordaz and the Aggrieved Employees on days it did not provide them with one or more timely meal and rest periods as required by California law. In failing to do so, McLane violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Ordaz seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

**Failure To Pay All Wages Earned For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states,

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“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and

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one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

At all relevant times during the applicable limitations period, McLane failed to compensate Ordaz and other Aggrieved Employees for all hours worked, including, but not limited to overtime wages during on-call shifts for all overtime hours they worked at the correct rates of pay.

Accordingly, Ordaz seeks civil penalties on behalf of himself and other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition

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to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);

2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each Aggrieved Employee for each initial and intentional violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages (penalties set by California Labor Code § 1197.1).

Failure to Reimburse for Expenses
(Lab. Code §§ 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

As describe above, during the applicable limitations period, McLane required Ordaz and other Aggrieved Employees to incur certain business expenses which it failed to indemnify them for both during and after their employment ended. Accordingly, Ordaz seeks civil penalties on behalf of himself and other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 2802, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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Failure To Provide Accurate Wage Statements
(Lab. Code § 226)

California Labor Code § 226 require employers to furnish employees with accurate itemized written wage statements showing:

- 1) gross wages earned,
- 2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- 4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- 5) net wages earned,
- 6) the inclusive dates of the period for which the employee is paid,
- 7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- 8) the name and address of the legal entity that is the employer, and
- 9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At relevant times during the applicable limitations period, McLane violated California Labor Code § 226, in that it failed to properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of California Labor Code § 226.

Accordingly, Ordaz seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial

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violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code sections 201–202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As a result of the above described violations, McLane failed to pay Ordaz and the Aggrieved Employees within the time periods set by California Labor Code § 204 in that it failed to pay them for all hours worked at the correct rates of pay and failed to pay them premium wages for days on which it failed to provide them with one or more rest or meal periods.

Accordingly, Ordaz seeks civil penalties on behalf of himself and Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204, and \$200 for each Aggrieved Employee, plus 25% of the amount unlawfully withheld from each Aggrieved Employee, for each subsequent violations (penalties set by Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

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Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

McLane failed to pay Ordaz and the Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with McLane. By failing to pay Ordaz and the Aggrieved Employees as set forth above by such time, McLane is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and the Aggrieved Employees, Ordaz seeks civil penalties from McLane as follows:

1. For violations of Labor Code § 201, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

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3. For violations of Labor Code § 203, \$100 per Aggrieved Employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per Aggrieved Employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 and 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

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Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of the Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.
 - (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
 - (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
 - (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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- (B) Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
- (C) All required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee's records shall be available for inspection by the employee upon reasonable request.
- (D) Clocks shall be provided in all major work areas or within a reasonable distance thereto insofar as practicable.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

McLane has failed to maintain the records required by section 1174 and the Wage Order, including but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Ordaz and the Aggrieved Employees. Accordingly, Ordaz seeks civil penalties on behalf of himself and the other aggrieved employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

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2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699, subdivision (f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Walter Haines, Esq.
Jose Ordaz

McLane/Suneast, Inc.
c/o Agent for Service of Process
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

McLane Company, Inc.
c/o Agent for Service of Process
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

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3/23/21

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McLane Foodservice Distribution, Inc.
c/o Agent for Service of Process
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

McLane Foodservice, Inc.
c/o Agent for Service of Process
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

McLane Beverage Distribution, Inc.
c/o Agent for Service of Process
CT Corporation System (C0168406)
818 West Seventh Street, Suite 930
Los Angeles, CA 90017