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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SAN BERNARDINO**

15 CHARLIE MCELHANON, as an individual
16 and on behalf of all others similarly situated,

17 Plaintiff,

18 vs.

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

22 Defendants.

CASE NO. CIVSB2214190

[Assigned for All Purposes to Hon. Joseph T.
Ortiz, Dept. S-17]

**STIPULATION FOR LEAVE TO FILE
FIRST AMENDED COMPLAINT AND
SETTLEMENT AND RELEASE OF
CLASS ACTION AND PAGA CLAIMS**

1 **STIPULATION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT AND**
2 **SETTLEMENT AND RELEASE OF CLASS ACTION AND PAGA CLAIMS**

3 This Stipulation for Leave to File First Amended Complaint and Settlement and Release of
4 Class Action and PAGA Claims (the “**Settlement Agreement**” or “**Agreement**”) is made and
5 entered into by and between and Plaintiff CHARLIE MCELHANON (“**McElhanon**” or “**Plaintiff**”
6 or “**Class Representative**”), on his own behalf and as a proposed representative on behalf of the
7 Class to be certified pursuant to this Settlement Agreement (as described in Paragraph 6, below) and
8 each of the members of the Class (each, individually, a “**Class Member**” and, collectively, “**Class**
9 **Members**”), on the one hand, and Defendant MCLANE/SUNEAST, INC. (“**MSE**”
10 (“**Defendant**”), on the other hand, in *McElhanon v. McLane/Suneast, Inc., et al.*, Superior Court of
11 the State of California for the County of San Bernardino, Case No. CIVSB2214190 (the
12 “**Litigation**” or “**Class Action**”).

13 This Settlement Agreement is subject to the terms and conditions hereof and the approval of
14 the Court. For purposes of this Settlement Agreement, Plaintiff and Defendant are each referred to
15 individually as a “**Party**” and collectively as the “**Parties.**”

16 **SETTLEMENT AMOUNT**

17 As described in detail hereafter, and pursuant to all of the terms and conditions set forth in
18 this Settlement Agreement, Defendant shall pay the total amount of Three Hundred Seventy-Five
19 Thousand Dollars (\$375,000.00) (the “**Gross Settlement Fund,**” “**GSF,**” or “**Settlement Fund**”),
20 to resolve all of the claims being released herein, as set forth in detail hereafter. This Settlement
21 Agreement is not subject to any reversion of funds to Defendant, such that the entire settlement
22 amount will be payable if the settlement becomes final as defined herein, and any amounts not
23 received via mail by any Class Members will be transmitted by the Settlement Administrator
24 pursuant to governing law to the California Unclaimed Property fund to be held there for the benefit
25 of such Class Members under California’s escheatment laws.

26 **BACKGROUND AND RECITALS**

27 1. On June 24, 2022, Plaintiff filed with the LWDA and thereafter served on Defendant
28 a notice under California Labor Code § 2699.3 stating he intended to serve as a proxy of the LWDA

1 to recover civil penalties on behalf of “Aggrieved Employees” (as defined in Paragraph **18**, below)
2 for various alleged violations of the California Labor Code and applicable California Industrial
3 Welfare Commission (“**IWC**”) Wage Orders.

4 2. On July 8, 2022, Plaintiff filed a putative class action against MSE in the San
5 Bernardino County Superior Court, assigned Case No. CIVSB2214190 therein (the “**Class**
6 **Action**”). On September 1, 2022, Plaintiff McElhanon filed a separate representative action against
7 MSE in the San Bernardino County Superior Court, assigned Case No. CIVSB2219102 (the “**PAGA**
8 **Action**”).

9 3. The Class Action and PAGA Action are collectively referred to herein as the
10 “**Actions.**”

11 4. The Parties engaged in an extensive informal exchange of documents and
12 information, including, *inter alia*, data regarding putative class members.

13 5. On September 26, 2023, the Parties participated in a private mediation with Mediator
14 Michael E. Dickstein, Esq. As a result of the mediation, the Parties have prepared and are entering
15 into this Settlement Agreement to resolve all of the claims being released herein.

16 6. For purposes of this Settlement Agreement only, the “**Class**” or “**Settlement Class**”
17 consists of:

18 All current and former employees employed by MSE and working in
19 California at any time during the time period from July 8, 2021
20 through and including December 31, 2023 (the “**Settlement Period**”)
21 whose wage statements include one or more of the following earnings
22 categories: (1) Break Time Pay, Training, Containers, Missed Load
23 Differential, Load Miles, and/or functionally equivalent earnings;
24 and/or (2) Piece-rate earnings, rest and recovery period earnings,
25 and/or non-productive time earnings (“**Earnings**”) at any time during
26 the Settlement Period.

27 7. Expressly excluded from the Class, but expressly included in the definition of
28 “Aggrieved Employees” set forth in Paragraph **18**, below, are any individuals who, as of the date

1 the Court grants preliminary approval of this settlement, have filed a pending, separate lawsuit as a
2 named plaintiff, individually and/or as a putative class or representative action, asserting claims
3 based on violations of any of the same statutes and/or regulations as those alleged to have been
4 violated in the Actions and/or who have released such claims.

5 8. No Admission of Liability by the Defendant. Defendant denies any liability or
6 wrongdoing of any kind associated with the Actions and the claims being released herein.
7 Defendant contends, among other things, that it has complied at all times with all applicable
8 California laws and asserts that the Class Members were properly issued accurate, itemized wage
9 statements, and otherwise treated at all times in compliance with California law. Neither this
10 Settlement Agreement nor any exhibit hereto, nor any other document pertaining to the settlement
11 contemplated herein, may be offered in any other case or proceeding as evidence of any admission
12 by Defendant of any liability on any claims for damages or other relief. Any stipulation or admission
13 by Defendant contained herein is made for settlement purposes only.

14 9. Nevertheless, in the interest of avoiding the costs and disruption of ongoing litigation
15 and resolving the claims asserted in the Litigation, the Parties believe that the settlement negotiated
16 between them and set forth in this Settlement Agreement is fair, reasonable, and adequate.

17 10. It is the desire of Plaintiff, on his own behalf and on behalf of the Class Members, as
18 well as on behalf of the California Labor and Workforce Development Agency and its constituent
19 departments, divisions and agencies (collectively, the “**LWDA**”) with respect to those claims
20 asserted under the California Labor Code Private Attorneys General Act (“**PAGA**”), Cal. Lab. Code
21 § 2698, *et seq.*, to fully, finally, and forever settle, compromise, and discharge the claims set forth
22 in Paragraphs **41** and **42** of this Settlement Agreement, as applicable).

23 **TERMS OF THE SETTLEMENT**

24 11. Conditional Leave to File First Amended Class Action Complaint. Solely for
25 purposes of this Settlement only, and the Court granting preliminary and final approval thereof, the
26 Parties hereby stipulate and agree, subject to the Court’s entry of such approval orders, that leave to
27 file the proposed First Amended Class Action Complaint (“**FAC**” or “**Operative Complaint**”),
28 attached hereto as **Exhibit A**, be granted, which pleads the claims alleged in the Class Action, PAGA

1 Action, and PAGA Notice, all of which were investigated, litigated, mediated, and resolved in the
2 Actions. Plaintiff's motion for preliminary approval of the Settlement will request conditional leave
3 to file the FAC solely for purposes of this Settlement, and all allegations therein shall be deemed to
4 relate back to the date of the filing of Plaintiff's original action asserting those claims, with
5 Defendant being relieved from having to file any response to the FAC and being deemed to have
6 generally and specifically denied all allegations contained in the FAC. Should, for whatever reason,
7 the Court require Defendant to file an answer to the FAC, then, Defendant will cooperate in doing
8 so. Should, for whatever reason, the settlement set forth in this Settlement Agreement not become
9 final, the FAC shall be deemed stricken, null, and void *ab initio*, with the previously filed Complaint
10 in the Class Action remaining the operative pleading.

11 12. Stipulation for Conditional Class Certification: The Parties stipulate and agree to the
12 conditional certification of the Settlement Class in the Class Action for purposes of this Settlement
13 Agreement only. Should, for whatever reason, the settlement set forth in this Settlement Agreement
14 not become final, the Parties' stipulation to such class certification as part of this settlement shall
15 become null and void *ab initio* and shall have no bearing on, and shall not be admissible in
16 connection with, the issue of whether or not certification would be appropriate in a non-settlement
17 context. Defendant expressly reserves its rights and declares that, to the extent Plaintiff may
18 otherwise be permitted to seek class certification, it intends to oppose class certification vigorously
19 should this settlement not become final and putative class action claims are allowed to be pursued
20 in the Litigation or any other action or proceeding.

21 13. Establishment of the Settlement Fund: This settlement is being made on a non-
22 reversionary basis, such that Defendant will pay the entirety of the agreed upon total settlement
23 amount of Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) (the "**Gross Settlement**
24 **Fund**" or "**GSF**").

25 14. The payment by Defendant of the total Settlement Fund of \$375,000.00, pursuant to
26 this Settlement Agreement, shall settle and forever resolve all of the Released Claims (as defined
27 below), and will include all payments to Participating Class Members (as defined below), Aggrieved
28 Employees (as defined below), and government taxing authorities (to the extent applicable), plus (a)

1 the costs of administration of the settlement, (b) all claimed and/or awarded attorneys' fees and
2 costs, (c) the claimed and/or awarded enhancement award to the Class Representative, and (d) all
3 payments to be made to the LWDA pursuant to PAGA. The settlement payments are not being
4 made for any other purpose and will not be construed as "compensation" for purposes of determining
5 eligibility for any health and welfare benefits, unemployment compensation, or other compensation
6 or benefits provided by Defendant. In addition, no individual receiving a payment based on this
7 Settlement shall be entitled to any additional or increased health, welfare, retirement, or other
8 benefits as a result of their participation in the Settlement and/or receipt of payment under this
9 Settlement.

10 15. Calculation of Net Settlement Fund: The total sum from which Participating Class
11 Members will be paid (the "**Net Settlement Fund**" or "**NSF**") shall be the Gross Settlement Fund
12 less the following: Settlement Administration Costs, PAGA Amount (as defined below), Attorneys'
13 Fees and Costs, and Enhancement Award. The remaining sum after all these deductions shall
14 represent the NSF, which will be used to calculate the settlement share that each Participating Class
15 Member will receive if this settlement becomes Final as defined in Paragraph **16**, below.

16 16. Effective Date: This Settlement Agreement shall become effective when the
17 settlement is considered to be Final. For purposes of this Settlement Agreement, "**Final Approval**"
18 means the Court's determination that the Settlement is fair, reasonable, and adequate, granting of
19 final approval of the Settlement, and entry of judgment based thereon, and "**Final Approval Order**"
20 means the Court's order determining the Settlement to be fair, reasonable, and adequate and granting
21 final approval of the Settlement and judgment based thereon. For purposes of this Settlement
22 Agreement, "**Effective Date**" and "**Final**" mean: (i) in the event that the Settlement has received
23 Final Approval by the Court, and regardless of whether any timely objections thereto have been
24 filed or withdrawn, then upon the passage of the applicable date for any interested party to seek
25 appellate review of the Court's Final Approval Order without a timely appeal being filed, and the
26 dismissals with prejudice of the Actions being effectuated; or, (ii) in the event that a timely appeal
27 of the Court's Final Approval Order has been filed, then the Settlement Agreement shall be final
28 when the applicable appellate court has rendered a final decision or opinion affirming the Court's

1 Final Approval Order without material modification, the applicable date for seeking further
2 appellate review has passed without further appellate review being sought, and the dismissals with
3 prejudice of the Actions have been effectuated. In the event that the Court fails to approve the
4 Settlement, or if the appropriate appellate court fails to approve the Settlement, and/or Plaintiff fails
5 to effectuate the dismissals of the Class Action and the PAGA Action as specified: (1) this
6 Settlement Agreement shall have no force and effect and the Parties shall be restored to their
7 respective positions prior to entering into it, and no Party shall be bound by any of the terms of the
8 Settlement Agreement; (2) Defendant shall have no obligation to make any payments to the LWDA,
9 Class Members, Plaintiff, or Plaintiff's Counsel; and (3) any preliminary approval order and/or Final
10 Approval Order shall be vacated.

11 17. Mediation and Settlement Communications: The Settlement Agreement and all
12 negotiations, statements, proceedings, and data relating thereto shall be deemed confidential
13 mediation settlement communications and not subject to disclosure for any purpose in any
14 proceeding, except only as required to obtain approval of and implement this Settlement and/or to
15 enforce this Settlement after final approval thereof is granted by the Court.

16 18. PAGA Settlement: The amount of Twelve Thousand Dollars (\$12,000.00) out of
17 the GSF shall be allocated to penalties under PAGA ("**PAGA Amount**"), subject to the Court's
18 final approval, of which 75% of that amount will be paid to the LWDA out of the GSF ("**LWDA**
19 **Payment**"), and the remaining 25% will be distributed to the "Aggrieved Employees" ("**Aggrieved**
20 **Employee Payment**"), subject to the further terms of this Agreement, below. For purposes of this
21 Settlement, "**Aggrieved Employee(s)**" shall have the same meaning and composition as the "Class."
22 The time period applicable to Aggrieved Employees' and the LWDA's release under PAGA is June
23 24, 2021 through the date the Court grants preliminary approval of the Settlement Agreement (the
24 "**PAGA Period**").

25 19. Attorneys' Fees and Costs: "**Class Counsel**" or "**Plaintiff's Counsel**" means
26 Nicholas J. Ferraro, Esq. and Lauren N. Vega, Esq. of Ferraro Vega Employment Lawyers, Inc.
27 Subject to approval of the Court, Plaintiff's Counsel shall be appointed as counsel for the Class, and
28 may apply for an award of attorneys' fees and costs and expenses incurred in connection with the

1 prosecution of this matter, and all of the work remaining to be performed by Class Counsel in
2 documenting the Settlement, securing Court approval of the Settlement (including all related
3 appellate work), carrying out their duties to see that the Settlement is fairly administered and
4 implemented, and obtaining entry of the final judgment approving this Settlement, dismissal of the
5 Class Action with prejudice and dismissal of the PAGA Action without prejudice, in an amount of
6 up to one-third (33 1/3%) of the GSF for attorneys' fees (\$125,000.00) and in an amount of up to
7 \$30,000.00 for reimbursement of reasonable costs and expenses (together, "**Attorneys' Fees and**
8 **Costs**"). Amounts awarded by the Court for Attorneys' Fees and Costs shall be paid from the GSF.

9 20. Enhancement Award: Subject to approval by the Court, Plaintiff shall be appointed
10 as representative of the Class, and he may each seek an award in the amount of up to \$10,000.00 in
11 consideration for serving as representative of the Class ("**Enhancement Award**"). The
12 Enhancement Award is in addition to the Individual Settlement Payment to which Plaintiff is
13 otherwise entitled as a Settlement Class Member.

14 21. In the event lesser sums are awarded for Attorneys' Fees and Costs than those
15 referenced in Paragraph **19**, above, or for the Enhancement Award referenced in Paragraph **20**,
16 above, the approval by the Court of any such lesser sum(s) shall not be grounds for Plaintiff and/or
17 Class Counsel to terminate the Settlement, but such an order shall be appealable by them. In the
18 event that such an appeal is filed, administration of the Settlement shall be stayed pending resolution
19 of the appeal. Thereafter, if after the exhaustion of such appellate review, any additional amounts
20 remain that are distributable to the Participating Class Members, the cost of administration of such
21 additional payments will be paid out of such additional amounts and will not be chargeable to or
22 payable by Defendant. Any amount not awarded for Attorneys' Fees and Costs or the Enhancement
23 Award, but which is not challenged via appeal by Plaintiff and/or Class Counsel, shall be added to
24 the NSF and distributed to the Participating Class Members in accordance with the terms of this
25 Settlement Agreement.

26 22. Costs of Administration: Subject to Court approval, the Parties designate Simpluris
27 to administer the Settlement ("**Settlement Administrator**"), with a preliminary budget to
28 administer the settlement for fees and costs of up to \$30,000.00 ("**Settlement Administration**

1 **Costs**”). The Settlement Administrator’s duties of administration shall include, without limitation,
2 receiving the Class List to be produced by Defendant and updating it prior to the Notice being
3 mailed, printing and mailing the Notice, performing necessary additional skip traces on Notices
4 and/or checks returned as undeliverable, calculating Class Members’ estimated and final shares of
5 the NSF, preparing and mailing of settlement checks, establishing a settlement website as described
6 hereafter, responding to Class Member inquiries as appropriate, preparing any appropriate tax forms
7 in connection with the settlement payments and remitting those forms and any required payments
8 to the appropriate governmental agencies, and generally performing all normal and customary duties
9 associated with the administration of such settlements. All fees and costs for the Settlement
10 Administrator’s services will be paid out of the GSF.

11 23. No Claim Form Required: Only Participating Class Members shall share in the NSF
12 referred to in Paragraph 15, as set forth in more detail in Paragraph 25 hereafter. Participating Class
13 Members shall not be required to complete a claim form. Class Members will be mailed a Notice
14 of Class Action Settlement (“**Notice**”), in substantially the form attached hereto as **Exhibit B**,
15 subject to approval by the Court, informing them of the terms of the Settlement and providing them
16 with an estimate of their share of the NSF. Class Members who do not timely and properly elect to
17 opt out of the Settlement (“**Participating Class Member(s)**”) will be mailed a check representing
18 their payment under the Settlement, in accordance with the terms of this Settlement Agreement.

19 24. Class Size: The size and membership of the Class as of May 26, 2023 is estimated
20 to comprise 2,338 employees who received 16,065 wage statements containing the earnings
21 categories at issue. If that aggregate number of such wage statements issued to Class Members
22 exceeds that estimate of 16,065 by more than 10% (which is 17,672 wage statements) (the
23 “**Buffer**”), then:

- 24 a. Defendant may agree to proceed with the Settlement by increasing the GSF
25 by the amount of the GSF divided by 17,672 for each additional wage
26 statement in excess of the Buffer (e.g., if the number of such wage statements
27 increase by 11%, Defendant may increase the GSF by 1%); or
28 b. Defendant may elect to end the Settlement Period on the date at which the

1 wage statements reached 17,672.
2 Defendant also may decline to exercise either of the foregoing options. In that event, and if the
3 Parties have not been able to otherwise reach an agreement as to whether any terms of the settlement
4 should be changed instead and in what manner within 10 court days after learning that the Buffer
5 would be exceeded, Plaintiff shall have the right within two court days thereafter to terminate this
6 Settlement Agreement and the Parties will be restored to their respective positions prior to entering
7 into this Settlement Agreement. However, Defendant shall remain responsible for all Settlement
8 Administration Costs incurred through termination of the Settlement Agreement.

9 25. Calculation of Participating Class Members' Shares of the Net Settlement Fund:
10 Defendant shall calculate and provide to the Settlement Administrator, from Defendant's records as
11 reflected on the Class List (as defined below), the number of pay periods during which each Class
12 Member was issued one or more wage statements reflecting the payment of Earnings during the
13 Settlement Period ("**Pay Periods**"). Each Class Member's share of the NSF ("**Individual**
14 **Settlement Share(s)**") will be calculated initially for purposes of mailing the Notice by multiplying
15 the NSF by a fraction, the numerator of which is the Class Member's total number of Pay Periods,
16 and the denominator of which is the total number of Pay Periods of all Class Members. Each
17 Participating Class Member's final Individual Settlement Share for purposes of payment will be
18 calculated by multiplying the NSF by a fraction, the numerator of which is the Participating Class
19 Member's total number of Pay Periods, and the denominator of which is the total number of Pay
20 Periods of all Participating Class Members. The dollar amount of any Individual Settlement Shares
21 of Class Members who timely and properly opt-out of participating in the settlement will be added
22 to the NSF and distributed to the Participating Class Members in accordance with the terms of this
23 Settlement Agreement.

24 26. Calculation of Aggrieved Employees' Shares of the Aggrieved Employee Payment:
25 Defendant shall calculate and provide to the Settlement Administrator, from Defendant's records as
26 reflected on the Class List (as defined below), the number of pay periods during which each
27 Aggrieved Employee was issued one or more wage statements reflecting the payment of Earnings
28 during the PAGA Period ("**PAGA Pay Periods**"). Aggrieved Employees will receive their pro rata

1 share of the Aggrieved Employee Payment of the PAGA Amount based on the number of PAGA
2 Pay Periods during the PAGA Period, regardless of whether they submit a timely and valid Request
3 for Exclusion from the Settlement Agreement.

4 27. Right to Opt Out, Object, and/or Dispute Wage Statements: The Notice will be
5 mailed to all Class Members and will advise each Class Member of their right to opt out of the
6 Settlement Agreement, object to all or any part of the Settlement Agreement, and/or dispute the
7 number of Pay Periods credited to them. Any Class Member who wishes to opt out of the Settlement
8 Agreement as to the proposed class action settlement, object to the Settlement Agreement as to the
9 proposed class action settlement, and/or dispute the number of Pay Periods credited to them for
10 purposes of the proposed class action settlement, must do so in writing to the Settlement
11 Administrator postmarked no later than forty-five (45) calendar days from the date of mailing of the
12 Notice to the Class Members (“**Response Deadline**”). However, there is no right to opt out of or
13 object to the PAGA settlement under this Settlement Agreement, and any Class Member who opts
14 out of the Settlement Agreement for purposes of the proposed class action settlement will still be
15 bound by the release of PAGA claims set forth in Paragraph 42, below.

16 28. Opting Out of the Proposed Class Action Settlement: A request to opt out of and be
17 excluded from the proposed class action settlement under this Settlement Agreement (“**Request for**
18 **Exclusion**”) must include: (i) the full name, current mailing address, signature, and last four digits
19 of the Social Security number of the Class Member seeking exclusion; (ii) the case name and number
20 of the Litigation; and (iii) a statement that the Class Member seeks to be excluded from the
21 Settlement Agreement which is the same or substantially similar to the following language: “I elect
22 to opt-out of the *McElhanon v. McLane/Suneast, Inc., et al.* class action settlement. I understand
23 that by doing so, I will not participate in the settlement, and will not receive any money from it.” In
24 the event that ten percent (10%) or more of the Class Members submit a timely and valid Request
25 for Exclusion, Defendant will have the option to rescind and terminate the Settlement resulting in
26 both Parties returning to their pre-settlement positions in the Litigation. Should the 10% threshold
27 for opt outs be exceeded, the Settlement Administrator shall notify lead counsel for all Parties via
28 email immediately, and Defendant shall have ten (10) calendar days from the date of the Settlement

1 Administrator's email to exercise its option to rescind and terminate the Settlement as referenced in
2 this Paragraph. Defendant, however, shall pay all Settlement Administration Costs incurred by the
3 Settlement Administrator up to the date of Defendant's notice to rescind.

4 29. Objecting to the Proposed Class Action Settlement: An objection to the proposed
5 class action settlement under this Settlement Agreement ("**Objection**"), must include: (i) the full
6 name, current mailing address, signature, and last four digits of the Social Security number of the
7 objecting Class Member; (ii) the case name and number of the Litigation; (iii) a statement indicating
8 the legal and factual grounds for the objection; (iv) a statement indicating whether the objecting
9 Class Member is represented by counsel and identifying any such counsel; and (v) a statement
10 indicating whether the objecting Class Member intends to appear for and wishes to be heard at the
11 Final Approval Hearing.

12 30. Disputing Pay Periods: A Class Member's dispute of the number of Pay Periods
13 credited to them and used to calculate the Class Member's Individual Settlement Share for purposes
14 of the proposed class action settlement under this Settlement Agreement ("**Pay Periods Dispute**")
15 must include: (i) the full name, current mailing address, telephone number, signature, and last four
16 digits of the Social Security number of the disputing Class Member; (ii) the case name and number
17 of the Litigation; (iii) a statement indicating that the Class Member seeks to dispute the number of
18 Pay Periods credited to them, the time period(s) the Class Member was issued wage statements
19 reflecting the payment of Earnings by Defendant while working in California during the Settlement
20 Period, and the number of Pay Periods that the Class Member contends should be credited to them;
21 and (iv) documentation and/or other facts supporting the Class Member's position. In response to
22 any timely Pay Periods Dispute, Defendant will first verify the information contained in the
23 disputing Class Member's personnel file and Defendant's payroll records. Unless the Class Member
24 can establish that the number of Pay Periods credited to them is incorrect, by providing
25 documentation in support thereof or other details to substantiate their position, the total number of
26 Wage Statements established by Defendant's records will control. Class Counsel and Defendant's
27 Counsel will then make a good faith effort to resolve the dispute informally before the Final
28 Approval Hearing. If counsel for the Parties cannot agree, the dispute shall be resolved by the

1 Settlement Administrator before the Final Approval Hearing, who shall examine the records
2 provided by the Defendant and the Class Member and shall be the final arbiter of disputes relating
3 to a Class Member's Wage Statements for purposes of administering notice of the Settlement,
4 subject to final review, determination, and approval by the Court.

5 31. Funding of Settlement: Within fifteen (15) calendar days following the occurrence
6 of the Effective Date of the Settlement as defined above, Defendant shall transfer the amount of the
7 GSF to a Qualified Settlement Fund account ("**Settlement Account**") established by the Settlement
8 Administrator. Thereafter, the Settlement Administrator shall distribute the funds as soon as is
9 practical in accordance with the terms of this Settlement Agreement and as ordered by the Court.
10 No funds will be payable by Defendant prior to that time.

11 32. Payment Procedures: Within ten (10) business days after Defendant deposits the
12 GSF into the Settlement Account created by the Settlement Administrator, the Settlement
13 Administrator shall distribute payment of the approved Individual Settlement Payments to
14 Participating Class Members (as provided in Paragraph 25, above), Aggrieved Employee PAGA
15 Payments to Aggrieved Employees (as provided in Paragraph 26, above), Attorneys' Fees and Costs
16 to Class Counsel, Enhancement Award to the Class Representative, LWDA Payment to the LWDA,
17 and Settlement Administration Costs to the Settlement Administrator, in accordance with this
18 Settlement Agreement and as ordered by the Court.

19 33. Tax Treatment of Settlement Payments: Each Individual Settlement Share will be
20 allocated 100% as statutory non-wage damages and each Aggrieved Employee Payment will be
21 allocated 100% as civil penalties. No Individual Settlement Share or Aggrieved Employee Payment
22 shall be subject to reduction for payroll taxes, contributions and/or withholdings.

23 34. Each recipient of any monies paid in accordance with this Settlement Agreement is
24 responsible for any taxes associated with the monies received by each recipient.

25 35. If required by state or federal tax requirements, the Settlement Administrator will
26 prepare a Form 1099 for Settlement Class Members for their Individual Settlement Share and/or
27 Aggrieved Employees for their Aggrieved Employment Payment. The Settlement Administrator
28 will be responsible for preparing these forms timely and correctly. Settlement Class Members and

1 Aggrieved Employees will be responsible for correctly characterizing the compensation that they
2 receive pursuant to the Form 1099 and for payment of any taxes owing on said amount.

3 36. The Parties acknowledge and agree that neither they nor their attorneys have made
4 any representations regarding the tax consequences of any and all payments made under this
5 Settlement Agreement. Settlement Class Members and Aggrieved Employees will be required to
6 pay all federal, state, or local taxes, if any, which are required by law to be paid with respect to any
7 and all payments made to them under the Settlement. The Parties further agree that Defendant shall
8 have no legal obligation to pay, on behalf of Settlement Class Members or Aggrieved Employees,
9 any taxes, deficiencies, levies, assessments, fines, penalties, interest or costs, which may be required
10 to be paid with respect to the settlement payments.

11 37. Tax Treatment of Enhancement Award and Class Counsel's Award of Attorneys'
12 Fees and Costs: The Class Representative and Class Counsel will receive an IRS Form 1099 for the
13 Class Representative's Enhancement Award and Class Counsel's award of Attorneys' Fees and
14 Costs, which will be prepared by the Settlement Administrator. The Class Representative and Class
15 Counsel will be solely responsible for correctly characterizing this compensation for tax purposes
16 and for payment of any taxes owing on said amounts. Prior to receiving the payments specified
17 herein, the Class Representative and Class Counsel each shall deliver to the Settlement
18 Administrator any necessary tax forms requested by the Settlement Administrator.

19 38. Undistributed Funds: Individual Settlement Payment checks will remain valid and
20 negotiable for one hundred and eighty (180) days after the date of issuance. If an Individual
21 Settlement Payment check is returned before the expiration of the 180-day period ("Returned
22 Check"), then, within five (5) days of receipt of the Returned Check, the Settlement Administrator
23 shall undertake a skip-trace search for an alternate mailing address and re-mail the Returned Check
24 to an alternate mailing address (if one is located), under a cover letter indicating that the Returned
25 Check will continue to be valid and negotiable for thirty (30) days after the date of re-mailing. In
26 the event that any checks mailed to Settlement Class Members are not cashed, deposited, or
27 otherwise negotiated within the 180-day period, no forwarding address can be located for a Returned
28 Check, or a Returned Check is re-mailed but not cashed, deposited, or otherwise negotiated within

1 the 30-day period from the re-mailing of the Returned Check, then the checks shall be cancelled by
2 the Settlement Administrator, and the funds associated with such cancelled checks shall be
3 transmitted by the Settlement Administrator pursuant to governing law to the California State
4 Controller Unclaimed Property fund to be held there for the benefit of such Class Members under
5 California's escheatment laws, and such Class Members shall nevertheless be bound to the
6 Settlement and the Final Approval Order. The Parties agree this disposition results in no "unpaid
7 residue" under California Code of Civil Procedure § 384(b), as the entire NSF shall be paid to
8 Participating Class Members, whether or not their Individual Settlement Payment checks are cashed.

9 **NOTICE TO THE CLASS**

10 39. Compilation of Class List: The Parties agree that within thirty (30) calendar days
11 after preliminary approval of this Settlement Agreement by the Court, Defendant will provide a final
12 "Class List" to the Settlement Administrator, which list shall include the following most up to date
13 information about each Class Member in an electronic format: (a) full name; (b) most current
14 mailing address and phone number as reflected in Defendant's personnel records; (c) Social Security
15 Number; (d) hire date of record with Defendant and termination date of record if applicable; (e)
16 number of Pay Periods for each Class Member during the Settlement Period; and (f) number of
17 PAGA Pay Periods for each Aggrieved Employee during the PAGA Period. The Class List provided
18 to, updated and maintained by the Settlement Administrator shall be used only by the Settlement
19 Administrator and only for purposes of administering the settlement as provided for in this
20 Agreement, and the Settlement Administrator shall not disclose the contents thereof except as
21 expressly permitted under this Agreement. The restrictions on the use and disclosure of the Class
22 List and the Class Data List (as defined below) shall be deemed, upon entry of the Court's Order
23 granting preliminary approval of this Settlement, to be a protective order entered by the Court
24 subject to full enforcement by the Parties to this Agreement and the Court, and by taking on the
25 administration of the Settlement, the Settlement Administrator agrees that it and its employees,
26 agents and representatives are bound by such protective order. The Settlement Administrator will
27 update addresses contained in the Class List prior to the mailing of the Notice to the Class, by using
28 the U.S. Postal Service's National Change of Address Database. Once the final Class List has been

1 received from Defendant, and updated as stated herein, the list shall then be referred to as the “**Class**
2 **Data List.**” In response to any contention by an individual that they are a Class Member who was
3 omitted from the Class Data List, made on or before the Response Deadline, Defendant will first
4 verify the information contained in the personnel file of the individual at issue and Defendant’s
5 payroll records. Unless the individual at issue can establish that they should have been included in
6 the Class Data List, by way of supporting documentation, Defendant’s records will control. Class
7 Counsel and Defendant’s Counsel will then make a good faith effort to determine whether or not
8 the individual at issue is a Class Member. If counsel for the Parties cannot agree, then the Settlement
9 Administrator shall determine whether the individual at issue is a Class Member, who shall examine
10 the records provided by the Defendant and the individual at issue, and shall be the final arbiter of
11 whether or not the individual at issue is a Class Member, subject to final review, determination, and
12 approval by the Court. Nothing herein limits the provisions or applicability of Paragraph **24**, above.

13 40. Dissemination of Notice of Class Action Settlement: Within ten (10) business days
14 of its receipt of the Class List, the Settlement Administrator will send the Notice to the Class
15 Members, by first-class mail, at their most current address of record or such other address as located
16 by the Settlement Administrator in conformity with Paragraph **39**, in the form attached hereto as
17 **Exhibit B** or as otherwise approved by the Court.

18 **RELEASE BY PARTICIPATING CLASS MEMBERS**

19 **AND BY THE LWDA AND AGGRIEVED EMPLOYEES**

20 41. Release by Participating Class Members:

21 a. The “**Released Parties**” shall include McLane/Suneast, Inc. and its affiliates, parent
22 companies (including McLane Company, Inc.), subsidiaries, shareholders, officers, partners,
23 directors, members, owners, servants, employees, employers, agents, contractors, attorneys,
24 insurers, predecessors, representatives, accountants, executors, successors, and assigns, past,
25 present, and future, and each and all of their respective shareholders, officers, partners, directors,
26 members, owners, servants, employees, employers, agents, contractors, attorneys, insurers,
27 predecessors, representatives, accountants, executors, successors, assigns, and pension, profit
28 sharing, retirement savings, health and welfare, and any other employee benefit plans of any nature

1 and the respective trustees, administrators, sponsors, fiduciaries, successors, agents, and employees
2 of all such plans, past, present, and future, and all persons acting under, by, through, or in concert
3 with any of them (collectively, the “Released Parties”).

4 b. The “**Released Claims**” shall include any and all allegations, claims, debts, rights,
5 demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’
6 fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties,
7 liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and
8 remedies, of any and every kind, contingent or accrued, that have been or reasonably could have
9 been alleged or asserted in the FAC and/or any of the pleadings filed in the Actions based on the
10 factual and/or legal violations allegations contained therein, and in any notice Plaintiff sent to the
11 LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained
12 therein, including, without limitation, for failure to furnish accurate itemized wage statements
13 arising out of, based on, or related to any type of violation of Cal. Lab. Code §§ 226, 226.2, 226.3,
14 and 1174, and/or civil penalties pursuant to PAGA, based in whole or in part on any direct or
15 imputed violation of any federal, state, local or administrative constitution, charter, law, rule,
16 regulation or ordinance, during the Settlement Period.

17 c. Upon the Settlement Administrator’s receipt of the GSF from Defendant, Plaintiff
18 and the Participating Class Members shall be deemed to have released the Released Parties of and
19 from all Released Claims that arose, accrued and/or have been asserted during the Settlement
20 Period.

21 42. Release by the LWDA and the Aggrieved Employees: Upon the Settlement
22 Administrator’s receipt of the GSF from Defendant, Plaintiff, the LWDA and the Aggrieved
23 Employees shall be deemed to have released the Released Parties of and from all claims for any
24 civil penalties recoverable under the California Labor Code, including PAGA, as well as costs and
25 attorneys’ fees related thereto, predicated on any violations of California Labor Code sections 226,
26 226.2, 226.3 and/or 1174 that arose, accrued and/or have been asserted during the PAGA Period.

27 **ADDITIONAL RELEASE BY CLASS REPRESENTATIVE**

28 43. In addition to the releases set forth in Paragraphs **41** and **42**, Plaintiff, for himself

1 alone as an individual, releases the Released Parties of and from any and all claims, debts, liabilities,
2 demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, actions or causes of
3 action of every kind or nature, contingent or accrued, which do or may exist as of the date of the
4 execution of this Settlement Agreement and through and including the date of Final Approval of
5 this Settlement Agreement, including without limitation any claimed violations of California Labor
6 Code sections 226, 226.2, 226.3, 1174. In connection therewith, Plaintiff waives the provisions of
7 California Civil Code Section 1542, which states:

8 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**
9 **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO**
10 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**
11 **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**
12 **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**
13 **DEBTOR OR RELEASED PARTY.**

14 **INJUNCTION BARRING PURSUIT OF RELEASED CLAIMS**

15 44. As part of the Final Approval of the Settlement, Plaintiff, Participating Class
16 Members, the LWDA and Aggrieved Employees shall be enjoined from filing, initiating, or
17 continuing to prosecute any actions, claims, complaints, or proceedings in court, arbitration, with
18 the California Division of Labor Standards Enforcement ("DLSE"), with the LWDA, or with any
19 other entity, with respect to the claims released as described in Paragraphs **41** and **42**, above. This
20 settlement is conditioned upon the release by Participating Class Members, Plaintiff, Aggrieved
21 Employees, and the LWDA as described in Paragraphs **41** and **42**, above, and upon covenants by
22 each of them that they will not and cannot bring or participate in any actions, lawsuits, proceedings,
23 complaints, or charges brought individually, by the DLSE, the LWDA, or by any other agency,
24 persons or entity in any court, arbitration or before any administrative body with respect to the
25 claims released as described in Paragraphs **41** and **42**, above, nor will any of them contest or interfere
26 with efforts by Defendant or by any other Released Parties to oppose any attempt to bring such
27 released claims against any of them. Additionally, it is agreed herein that neither injunctive nor
28 declaratory relief, nor any equitable relief, will be ordered by the Court against Defendant in Final

1 Approval of the Settlement, which will otherwise be grounds for Defendant rescinding and
2 terminating this Settlement Agreement.

3 **DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL**

4 45. The Parties shall promptly seek the Court's approval of this Settlement. Plaintiff's
5 counsel will prepare Plaintiff's motion for preliminary approval. Not later than five (5) court days
6 prior to the submission of the motion for preliminary approval of this Settlement Agreement to the
7 Court, Class Counsel will submit a near-final draft thereof (including all supporting papers and
8 proposed order) to counsel for Defendant for their review and comment. As soon as practicable
9 after execution of this Settlement Agreement, the Class Representative and Class Counsel shall
10 apply to the Court for the entry of a preliminary approval order which would accomplish the
11 following:

- 12 a. Schedule a hearing ("**Final Approval Hearing**") on the question of whether
13 the Settlement, including, *inter alia*, the payment of Attorneys' Fees and
14 Costs, Enhancement Award, and PAGA Amount should be finally approved
15 as fair, reasonable, and adequate, and finally resolving any outstanding issues
16 or disputes remaining from the administration of the notice of the settlement;
- 17 b. Provide that Plaintiff has conditional leave to file the FAC on the terms set
18 forth in this Agreement;
- 19 c. Conditionally certify the Class for purposes of the Settlement only;
- 20 d. Approve, as to form and content, the proposed Notice;
- 21 e. Direct the mailing of the Notice by first class mail to the Class Members;
- 22 f. Preliminarily approve the Settlement and monetary allocations for
23 awards/payments of Attorneys' Fees and Costs, Settlement Administration
24 Costs, Enhancement Award, and PAGA Amount, subject to the final review
25 and approval by the Court;
- 26 g. Preliminarily approve Simpluris as the Settlement Administrator;
- 27 h. Preliminarily approve and appoint Plaintiff as representative of the Class; and
- 28 i. Preliminarily approve and appoint Plaintiff's Counsel as counsel for the

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Class.

46. Plaintiff’s Counsel shall be responsible for ensuring that all required submittals and notifications to the LWDA under PAGA regarding this Settlement are made by Plaintiff, and shall submit evidence thereof to the Court with his motion for preliminary approval of this Settlement Agreement.

DUTIES OF THE PARTIES FOLLOWING PRELIMINARY APPROVAL

47. Plaintiff’s counsel will prepare Plaintiff’s motion for final approval. Not later than five (5) calendar days prior to the submission of the motion seeking Final Approval, Class Counsel will submit a near-final draft thereof (including all supporting papers and proposed order) to counsel for Defendant for their review and comment. In conjunction with the request for Final Approval of the Settlement provided for in this Settlement Agreement, Class Counsel will submit a proposed Final Approval Order and Judgment that provides for the following:

- a. Granting final approval of the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;
- b. Approving and awarding Attorneys’ Fees and Costs to Class Counsel;
- c. Approving and awarding the Enhancement Award to the Class Representative;
- d. Approving and awarding all payments specified in this Settlement Agreement to the LWDA, Aggrieved Employees, and Participating Class Members;
- e. Permanently enjoining and restraining Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA from and against initiating or pursuing any claims settled herein and released by this Settlement Agreement; and
- f. Entering judgment in accordance with the terms of this Settlement Agreement, including without limitation the permanent injunction provisions.

1 **PARTIES' AUTHORITY**

2 48. The signatories hereto hereby represent that they are fully authorized to enter into
3 this Settlement Agreement and bind the Parties hereto to the terms and conditions hereof.

4 **MUTUAL FULL COOPERATION**

5 49. The Parties agree to fully cooperate with each other to accomplish the terms of this
6 Settlement Agreement, including but not limited to execution of such documents and to take such
7 other actions as may reasonably be necessary to implement the terms of this Settlement Agreement.
8 The Parties shall use their best efforts, including all efforts contemplated by this Settlement
9 Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to
10 effectuate this Settlement Agreement and the terms set forth herein. As soon as practicable after
11 execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of
12 Defendant and its counsel, take all necessary steps to secure the Court's preliminary approval and
13 final approval of this Settlement Agreement.

14 **NO PRIOR ASSIGNMENTS**

15 50. The Parties hereto represent, covenant, and warrant that they have not, directly or
16 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any
17 person or entity any portion of any liability, claim, demand, action, cause of action, or rights herein
18 released and discharged except as set forth herein.

19 **CONSTRUCTION**

20 51. The Parties hereto agree that the terms and conditions of this Settlement Agreement
21 are the result of lengthy, intensive, arms-length mediated negotiations between the Parties,
22 conducted under the auspices of mediator Michael Dickstein, a highly respected and experienced
23 class action mediator. The Parties further agree that they have each had a full opportunity to
24 negotiate the terms and conditions of this Agreement. Accordingly, the Parties expressly waive the
25 common-law and statutory rule of construction that ambiguities should be construed against the
26 drafter of an agreement, and agree, covenant, and represent that the language in all parts of this
27 Agreement shall be in all cases construed as a whole, according to its fair meaning.
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1 Agreement as confidential and not publicly disclose the same except as set forth herein and in
2 Paragraph **58**, below. Except as set forth in Paragraph **58**, below, or as otherwise agreed in writing
3 between the Parties, both before and following the execution of this Settlement Agreement by the
4 Parties and their counsel, there will be no direct or indirect comment or publication by Plaintiff and
5 Class Counsel (lead or otherwise) of the settlement in terms of affirmative or responsive media
6 statements/comments, press releases or conferences, website postings or content, social media
7 postings or content, other Internet postings or content, subscribed email messages, newsletters,
8 disseminated updates, mass mailings, or any other comment or publication to the press, media or
9 public at large. This shall not apply to or limit the public filing of motions or other case materials
10 by Class Counsel in the Litigation related to seeking and obtaining Court approval of the proposed
11 settlement and the related awards of attorneys' fees and costs, enhancements and the other relief set
12 forth in this Settlement Agreement, or to communications between Class Counsel, Plaintiff, and/or
13 Class Members in the Litigation, except that prior to the filing of the motion for preliminary approval
14 of the Settlement in the Litigation, Class Counsel shall not discuss the Settlement with Class
15 Members other than the named Plaintiff. Class Counsel may otherwise state only that the Litigation
16 has been settled on terms mutually agreeable to the Parties. The Parties understand and agree that
17 there may be media coverage of the settlement of the Litigation not initiated by Plaintiff, directly or
18 indirectly. It is also agreed and understood that the Parties may disclose the settlement to their
19 families, plus their legal, tax, or accounting advisors, insurance companies, or as required by law,
20 regulatory rules or regulatory requirements.

21 **WEBSITE**

22 58. The Parties agree that the Settlement Administrator may use U.S. Mail and an
23 information-only website ("Settlement Website") to provide notice and information about the
24 Settlement to Class Members, if required by the Court or requested by the Parties. Any Settlement
25 Website is to be established by the Settlement Administrator solely for purposes of the
26 administration of the Settlement, and the domain name used for the website will be subject to
27 Defendant's reasonable approval. Not later than the date that the Settlement Administrator must
28 remit any funds associated with cancelled Individual Settlement Payment checks, as set forth in

1 Paragraph 37, the Settlement Website will be taken down. No new information about the settlement
2 may be posted on any of Class Counsel's websites except as expressly set forth herein without
3 Defendant's prior written consent, and the information about the Action currently posted on Class
4 Counsel's law firm website will be removed within 60 calendar days after the Effective Date.

5 **COUNTERPARTS**

6 59. This Settlement Agreement may be executed in counterparts, and when each Party
7 has signed and delivered at least one such counterpart, each counterpart shall be deemed an original,
8 and, when taken together with other signed counterparts, shall constitute one Settlement Agreement,
9 which shall be binding upon and effective as to all Parties.

10 **GOVERNING LAW**

11 60. The Parties agree that California law governs the interpretation and application of
12 this Settlement Agreement, except to the extent governed by federal law in which case federal law
13 will apply.

14 **MISCELLANEOUS PROVISIONS**

15 61. Each Party to Bear Own Costs. Except as specifically provided herein, the Parties
16 hereto will bear responsibility for their own attorneys' fees and costs, taxable or otherwise, incurred
17 by them or arising out of or related to this Litigation, and will not seek reimbursement thereof from
18 any Party to this Agreement.

19 62. Severability. If any of the above provisions are found null, void, or inoperative, for
20 any reason, the remaining provisions will remain in full force and effect. Notwithstanding, the
21 invalidation in whole or in part of any material term of this Agreement, including but not limited to
22 all the terms and provisions specified in the releases of claims, will invalidate this Agreement in its
23 entirety unless the Parties subsequently agree in writing that the remaining provisions will remain
24 in force and effect.

25 63. Non-Evidentiary Use. Neither the fact of this Agreement, the existence of this
26 Agreement, the terms of this Agreement, nor any order or action pursuant thereto may be referred
27 to, relied upon, cited, or used as evidence by any of the Parties, Class Members, or their respective
28 counsel in the Litigation or in any other action or proceeding; provided, however, that nothing

1 contained in this section shall prevent this Agreement from being used, offered, or received in
2 evidence in any proceeding to enforce, construe, or finalize this Agreement.

3 64. Advice of Counsel. The Parties to this Agreement are represented by competent
4 counsel, and they have had an opportunity to consult with counsel. The Parties to this Agreement
5 agree that it reflects their good faith compromise of the claims raised in this action, based upon their
6 assessment of the mutual risks and costs of further litigation and the assessments of their respective
7 counsel.

8
9 EACH OF THE UNDERSIGNED ACKNOWLEDGE THAT EACH HAS READ THE
10 FOREGOING AGREEMENT AND ACCEPTS AND AGREES TO THE PROVISIONS
11 CONTAINED THEREIN, AND HEREBY EXECUTES IT VOLUNTARILY WITH FULL
12 KNOWLEDGE OF ITS CONSEQUENCES.

13
14 **IT IS SO STIPULATED AND AGREED:**

15
16 DATED: Jan 18, 2024

Charlie McElhanon

CHARLIE MCELHANON
Plaintiff and Proposed Class Representative

17
18 DATED: 1/18/2024 | 9:52 AM EST

MCLANE SUNEAST, INC.

By: *Larry Parsons*

Name: Larry Parsons

Title: Chief Administrative Officer

1 **AGREED AND APPROVED AS TO FORM AND CONTENT:**

2
3 DATED: Jan 18, 2024

**FERRARO VEGA EMPLOYMENT LAWYERS,
INC.**

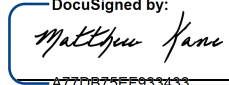
4
5 By: 

Nicholas J. Ferraro, Esq.
Lauren N. Vega, Esq.

6
7 *Attorneys for Plaintiff* CHARLIE MCELHANON

8 DATED: 1/18/2024 | 10:00 AM EST

BAKER & HOSTETLER LLP

9
10 By: 

Matthew C. Kane, Esq.
Sylvia J. Kim, Esq.
Amy E. Beverlin, Esq.
Kerri H. Sakaue, Esq.

11
12
13 *Attorneys for Defendant* MCLANE/SUNEAST, INC.

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Attorneys for Plaintiff Charlie McElhanon

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

CHARLIE MCELHANON, individually and on
behalf of all others similarly situated and the
State of California under the Private Attorneys
General Act,

Plaintiffs,

vs.

MCLANE/SUNEAST, INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. CIVSB 2214190

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Wage Statement Violations
2. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff CHARLIE MCELHANON, individually and on behalf of all others similarly situated
2 and the State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 MCLANE/SUNEAST, INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging
5 as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure § 382 for
8 McLane/Suneast’s violations of the California Labor Code.

9 2. Plaintiff alleges that McLane/Suneast failed to comply with Labor Code section 226’s
10 itemized wage statement requirements, rendering the wage statements issues to employees non-
11 compliant and precluding Plaintiff and putative class members from being able to accurately calculate
12 or verify their wages and earnings.

13 **JURISDICTION & VENUE**

14 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution as the causes of action are premised upon violations of California law.

16 4. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

18 5. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California economy so as to render the exercise of jurisdiction over them by the
21 California courts consistent with traditional notions of fair play and substantial justice.

22 6. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

PARTIES

A. Plaintiff Charlie McElhanon

7. Plaintiff McElhanon is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about December 2021 to March 2022. Plaintiff worked as a Class A Truck Driver engaged in interstate commerce.

8. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest under the Second Cause of Action in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

9. Defendant McLane/Suneast, Inc. is a Texas corporation that maintains operations and conducts business throughout the State of California, including in this county.

10. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

11. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

12. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

13. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

14. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

15. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

16. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and

litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

17. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

18. Plaintiff's and the class members' pay statements list gross amounts in the Earnings column, without corresponding information in the Rate and/or Hours/Unts column, resulting in a facial violation of Labor Code section 226(a) and 226.2, to the extent those earning categories fall within the latter statute.

19. Plaintiff alleges that McLane/Suneast intentionally provided wage statements that displayed the incomplete information without legal justification or good faith belief for its actions.

20. Labor Code § 226(a)(3) and (9) requires McLane/Suneast to issue wage statements to Plaintiff and Class Members showing the total number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate basis, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

1 21. Labor Code § 226.2(a)(2) requires McLane/Suneast to issue wage statements to
2 Plaintiff and Class Members compensated on a piece-rate basis during any pay period showing the
3 total hours of compensable rest and recovery periods with the rate of compensation and, for other
4 nonproductive time, the total hours of other nonproductive time with the rate of compensation.

5 22. As illustrative examples of Plaintiff's wage statements:

6 a. Plaintiff's wage statement for the pay period of 12/19/2021 to 01/01/2022
7 contains an earning category for "Break Time Pay."

8 b. Plaintiff's wage statement for the pay period of 01/02/2022 to 01/15/2022
9 contains earning categories for "Break Time Pay," "Training," "Containers,"
10 and "Load Miles."

11 c. Plaintiff's wage statement for the pay period of 01/16/2022 to 01/29/2022
12 contains earning categories for "Break Time Pay" and "Missed Load
13 Differential."

14 23. The violations alleged in this action occur on other wage statements issued to Plaintiff
15 and are not limited to the three above-mentioned illustrative examples and/or types of violations of
16 Labor Code §§ 226 and 226.2.

17 24. For the aforementioned wage statements, McLane/Suneast did not list the compensable
18 rate in effect under the "Rate" column on the wage statements.

19 25. Additionally, for these wage statements, McLane/Suneast did not list the applicable
20 hours or units under the "Hrs/Unts" column.

21 26. These violations occurred as part of McLane/Suneast's systemic practice of issuing
22 similarly formatted wage statements to Plaintiff and Class Members, whereby McLane/Suneast
23 omitted the required information with respect to *inter alia* Break Time Pay, Training, Containers,
24 Missed Load Differential, Load Miles, and/or functionally equivalent earnings, and for other piece-
25 rate earnings, rest and recovery period earnings, nonproductive time earnings, and/or hourly wages
26 that must be stated on employee wage statements with the number of piece-rate units earned or total
27 applicable hours, along with the corresponding piece or rate of compensation in effect for each
28 respective earnings, as applicable.

1 27. To the extent one or more of the earnings categories represent piece rate earnings, the
2 wage statements issued to Plaintiff and Class Members do not state the total number of piece-rate units
3 earned and any applicable piece rate in violation of Labor Code § 226(a)(3).

4 28. To the extent one or more of the earnings categories represent hourly earnings, the
5 wage statements issued to Plaintiff and Class Members do not state all applicable hourly rates in effect
6 during the pay period and the corresponding number of hours worked at each hourly rate by the
7 employee in violation of Labor Code § 226(a)(9).

8 29. To the extent one or more of the earnings categories are for employees compensated
9 on a piece-rate basis during a pay period, the wage statements issued to Plaintiff and Class Members
10 do not state the total hours of compensable rest and recovery periods or the rate of compensation, in
11 violation of Labor Code §§226, 226.2(a)(2)(A).

12 30. To the extent one or more of the earnings categories are for employees compensated
13 on a piece-rate basis during a pay period and the earnings are for other nonproductive time, the wage
14 statements issued to Plaintiff and Class Members do not state the total hours of other nonproductive
15 time or the rate of compensation, in violation of Labor Code §§226, 226.2(a)(2)(B).

16 31. Defendants knowingly and intentionally failed in their affirmative obligation to provide
17 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
18 Class Members. The wage statements issued to Plaintiff and Class Members each pay period did not
19 accurately state all of the information required by Labor Code §§ 226 and 226.2.

20 32. These violations caused injury to Plaintiff and other Class Members, as it precluded
21 them from being able to accurately calculate or determine their wages and earnings from their wage
22 statements alone.

23 33. McLane/Suneast's pattern, practice and uniform administration of corporate policy
24 regarding non-compliant wage statements is unlawful and results in liability to Plaintiff and the Class
25 for penalties, attorneys' fees, and costs of suit, as provided in California Labor Code section 226, 226.2
26 and Code of Civil Procedure section 1021.5.

1 **FIRST CAUSE OF ACTION**

2 **WAGE STATEMENT VIOLATIONS**

3 **Violation of Labor Code §§ 226 and 226.2**

4 34. All outside paragraphs of this Complaint are incorporated into this section.

5 35. This cause of action is brought by a wage statement subclass pursuant to Labor Code
6 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
7 pay period, and which further provide a private right of action for an employer's failure to comply
8 with this obligation.

9 36. Defendants knowingly and intentionally failed in their affirmative obligation to provide
10 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
11 class members. Specifically, the wage statements issued to Plaintiff and class members each pay
12 period did not accurately state all of the information required by Labor Code §§ 226(a)(1)-(9) and
13 226.2.

14 37. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
15 accurate itemized wage statements, causing confusion and concealing wage and premium
16 underpayments.

17 38. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
18 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
19 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
20 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
21 Code section 226(e).

22 **SECOND CAUSE OF ACTION**

23 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

24 **Violation of Labor Code §§ 2698 *et seq.***

25 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

26 39. All outside paragraphs of this Complaint are incorporated into this section.
27
28

1 40. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
2 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
3 codified as Labor Code section 2698 *et seq.*:

4 a. All current and former non-exempt employees who worked for Defendants in
5 California at any time from one year prior to the postmark date of the initial
6 PAGA notice through date of trial.

7 41. Plaintiff reserves the right to amend, supplement, or add to this description of the
8 aggrieved employees, according to proof.

9 42. The State of California, via the Labor and Workforce Development Agency
10 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
11 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
12 files suit is always the real party in interest.”])

13 43. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
14 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
15 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
16 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
17 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
18 former employees pursuant to the procedures specified in Section 2699.3.

19 44. Labor Code section 2699(f) provides: “For all provisions of this code except those for
20 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
21 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
22 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
23 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period
24 for each subsequent violation.”

25 45. Any allegations regarding violations of the IWC Wage Orders are enforceable as
26 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
27 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
28

1 46. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
2 penalties under the PAGA.

3 47. On or about **June 24, 2022**, Plaintiff paid the requisite PAGA filing fee and provided
4 written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of
5 Defendants' alleged Labor Code violations, including the facts and theories to support the alleged
6 violations.

7 48. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor
8 Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set
9 forth herein (the "PAGA notice").

10 49. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
11 written PAGA notice from the LWDA.

12 50. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
13 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
14 providing a description of any actions taken to cure the alleged violations.

15 51. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
16 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
17 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
18 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

19 52. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
20 Complaint, Defendants committed the following violations and are liable for all corresponding civil
21 penalties:

- 22 a. ***Non-Compliant Wage Statements/Piece-Rate.*** Violation of Labor Code §§
23 226, 226.2, 226.3.

24 53. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations
25 alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants
26 pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the
27 extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of all statutory penalties;
- f. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 218.5.
- g. For this action to be maintained as a representative action under the PAGA;
- h. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- i. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- j. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699, and Code of Civil Procedure section 1021.5; and
- k. For such other relief the Court deems just and proper.

Dated: January 16, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorney for Plaintiff Charlie McElhanon

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3160 Camino del Rio South, Suite 308
San Diego, California 92108

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Facsimile: 619-350-6855
www.ferrarovega.com

June 24, 2022

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

McLane/Suneast, Inc.
4747 McLane Parkway
Temple, TX 76504

- PAGA Notice & Filing Fee -

Submitted electronically to the California
Labor and Workforce Development
Agency on **06/24/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of CHARLIE MCELHANON, JR. (“Claimant”), and all other similarly situated “aggrieved employees” under California Labor Code section 2699.3 against MCLANE/SUNEAST, INC., along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of all other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendants employ aggrieved employees like Claimant in the State of California. Claimant and the other aggrieved employees were at all times entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Claimant worked for Defendants from December 2021 through March 2022. Claimant worked as a truck driver.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the “aggrieved employees” and the “PAGA Period”) whose wage statements reflect sums without the corresponding piece-rate and/or hourly rate in effect for those earnings. These earnings categories include, but are not limited to, Break Time Pay, Training, Containers, Missed Load Differential, and Load Miles, among others.

Claimant seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.2, 226.3

Defendants violated Labor Code sections 226(a) and 226.2(a) with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list the information required by Labor Code sections 226(a)(3) and (9) and 226.2(a)(2)(A).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, “an accurate itemized statement in writing” showing, in relevant part, (3) the number of piece-rate units earned and applicable piece rate in effect and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Labor Code sections 226.2(a)(2)(A) and (B), state that wage statements for employees compensated on a piece-rate-basis must specify the total hours of compensable rest and recovery periods and other non-productive time, the applicable rates of compensation, and the gross wages paid for those periods.

As illustrated below on Claimant’s wage statements, by failing to list all applicable hourly and/or piece-rates in effect during the pay period, Defendants violated Labor Code section 226(a)(3) and/or (9) as well as Labor Code section 226.2(a)(2), to the extent any of these earnings categories compensate for rest and recovery periods or other non-productive time.

HOURS AND EARNINGS						TAXES		
Description	Rate	Current Hrs/Units	Current Earnings	YTD Hrs/Units	YTD Earnings	Description	Current	YTD
Break Time Pay			237.60		482.12	Fed Withholding	0.00	514.13
Containers	0.093212	3,325.00	309.93		1,796.72	Fed MED/EE	82.70	134.36
Driver Hours	14.000000	129.15	1,808.10	260.79	3,651.06	Fed OASDI/EE	353.60	574.50
Load Miles	0.460244	491.00	225.98		1,365.42	CA Withholding	0.00	224.90
Training			50.00		50.00	CA OASDI/EE	62.74	101.89
Containers			127.78		0.00			
Load Miles			97.56		0.00			
Sign-on bonus			2,000.00		2,000.00			
Containers	0.093211	3,986.00	371.54		0.00			
Containers	0.160164	792.00	126.85		0.00			
Load Miles	0.460231	519.00	238.86		0.00			
Load Miles	0.576700	189.00	108.99		0.00			
Unpaid Time		8.00	0.00	8.00	0.00			
CONTINUED ON NEXT PAGE						TOTAL:	499.04	1,549.78

Image 1: Claimant's Wage Statement for Pay Period of 01/02/2022 to 01/15/2022

HOURS AND EARNINGS						TAXES		
Description	Rate	Current Hrs/Units	Current Earnings	YTD Hrs/Units	YTD Earnings	Description	Current	YTD
Break Time Pay			172.80		654.92	Fed Withholding	392.81	906.94
Containers	0.093211	2,370.00	220.91		2,526.85	Fed MED/EE	43.67	178.03
Missed Load Differential			325.02		325.02	Fed OASDI/EE	186.71	761.21
Driver Hours	14.000000	103.32	1,446.48	364.11	5,097.54	CA Withholding	168.49	393.39
Load Miles	0.460200	372.00	171.20		1,878.11	CA OASDI/EE	33.08	134.97
Unpaid Time		8.00	0.00	16.00	0.00			
Containers	0.093213	5,463.00	509.22		0.00			
Load Miles	0.460229	742.00	341.49		0.00			
Sign-on bonus			0.00		2,000.00			
Training			0.00		50.00			
CONTINUED ON NEXT PAGE						TOTAL:	824.76	2,374.54

Image 2: Claimant's Wage Statement for Pay Period of 01/16/2022 to 01/29/2022

As illustrated in the above wage statement, Defendants list gross amounts in the Earnings column, without corresponding information in the Rate and/or Hours/Units column, resulting in a facial violation of Labor Code section 226(a) and 226.2, to the extent those earnings categories fall within the latter statute.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the rates paid or earned, and for which hours or units, without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated.

Thus, Claimant may recover civil penalties on behalf of himself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000), to the extent permitted by law, and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys' Fees and Costs Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect Claimant's individual interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred, and will continue to incur, attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

**Notice of Demand for Defendants
to Change Policies and Practices**

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Diamler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,



Nicholas J. Ferraro

Cc Claimant
 Lauren N. Vega, Esq.

McElhanon v. McLane/Suneast, Inc., et al.
Superior Court of the State of California for the County of San Bernardino
(Case No. CIVSB2214190)

NOTICE OF CLASS ACTION SETTLEMENT (“NOTICE”)

**IF YOU ARE A CURRENT OR FORMER EMPLOYEE OF MCLANE/SUNEAST, INC.
 (“DEFENDANT”) IN THE STATE OF CALIFORNIA YOU MAY BE ABLE TO COLLECT MONEY
 FROM A CLASS ACTION SETTLEMENT.**

*The San Bernardino County Superior Court (“Court”) authorized this Notice to be sent by Simpluris
 (“Settlement Administrator”). This is not an advertisement. This is not a solicitation from a lawyer.*

**PLEASE KEEP THE SETTLEMENT ADMINISTRATOR INFORMED OF YOUR
 ADDRESS IF YOU MOVE AFTER RECEIVING THIS NOTICE.**

«BarcodeString»
SIMID «SIMID»
ATTN: «FirstName» «LastName»
«Address1» «Address2»
«City» «Abbrev» «Zip»

**YOU ARE ESTIMATED TO RECEIVE
 APPROXIMATELY
 \$«MERGED_EstSettAmnt_CALC»
 THROUGH THIS CLASS ACTION
 SETTLEMENT**

- Charlie McElhanon (“Named Plaintiff”) has sued Defendant on behalf of himself and all other similarly situated employees.
- The parties to the lawsuit have reached a tentative settlement, and the Court has preliminarily approved it.
- The settlement resolves the lawsuit.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT

You Can DO NOTHING	You will receive a payment from the settlement. If you do nothing, you continue your participation in this lawsuit, and you will be impacted by the outcome of this case. You will receive a settlement payment; however, you will lose any rights to sue Defendant separately for the same legal claims released by the settlement made in the lawsuit. The currently estimated amount of your settlement payment is shown above. To receive your settlement payment, all you need to do is keep the Settlement Administrator informed of your current mailing address. Once the Court grants final approval of the settlement, the Settlement Administrator will make a final calculation of the amount of your settlement payment and mail your check to the address on file for you. Defendant has approved this Settlement and will not retaliate against you for participating in the Settlement.
You Can ASK TO BE EXCLUDED FROM THE CLASS SETTLEMENT (Deadline: , 2024)	If you ask to be excluded from the class settlement, you will get no payment from the class settlement amount, but you will keep any rights to sue Defendant separately for the same legal claims that otherwise would have been released by the settlement made in this lawsuit, subject to whatever defenses there may be to those claims, other than the PAGA claim. However, you may not request exclusion from the settlement of the PAGA

	claim. Important: You cannot ask to be excluded <u>and</u> still get a settlement payment.
You Can OBJECT TO THE SETTLEMENT	If you do not like the class settlement, you can send a written objection to the Settlement Administrator by the deadline, or you can appear at the Final Approval Hearing to make your objection in person. If your objection is overruled, you will still be bound by the terms of the settlement and will receive a settlement payment. However, you may not object to the settlement of the PAGA claim. Important: If you object to the settlement, you cannot also ask to be excluded.

THESE RIGHTS AND OPTIONS—AND THE DEADLINES TO EXERCISE THEM—ARE EXPLAINED IN THIS NOTICE.

The Court is in charge of this lawsuit and still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after appeals, if any, are resolved. **Please be patient.**

1. Why Should You Read This Notice?

You should read this Notice because you may be entitled to money from a class action settlement.

2. What is this Lawsuit About?

In the lawsuit, the Named Plaintiff has asserted class-wide claims for violations of California Labor Code sections 226(a) and 226.2. The Named Plaintiff also asserted a representative California Labor Code Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”), claim predicated on Defendant’s alleged violations of California Labor Code sections 226(a) and 226.2 and for related recordkeeping violations of California Labor Code section 1174.

The Named Plaintiff alleged that Defendant failed to provide its employees with proper and accurate itemized wage statements, in violation of California Labor Code section 226(a). Defendant denies the allegations in the lawsuit. Defendant asserts compliance with all legal requirements and is resolving this action in order to avoid the risk and costs of further legal proceedings.

3. Why is this a Class Action?

This lawsuit is a class action. In a class action, one or more persons, called a class representative (in this case, Charlie McElhanon), sue on behalf of people who allegedly have similar claims. All these people are a class or class members. One case resolves the issues for all class members, except for those who exclude themselves from the class. The San Bernardino County Superior Court is in charge of the case. The lawsuit is known as *McElhanon v. McLane/Suneast, Inc., et al.*, Case No. CIVSB2214190.

4. Why is there a Settlement?

The Court did not decide in favor of Named Plaintiff or Defendant. Named Plaintiff thinks he could have won at trial. Defendant thinks that it would have won at trial. But there was no trial. Instead, the parties agreed to a settlement. That way, they avoid the risks and cost of litigation, and the individuals potentially affected will get

compensation. The class representatives and the attorneys think the settlement is best for Class Members.

5. How Do I Know If I Am Part of the Settlement?

The Court has decided that the following individuals are Class Members:

All current and former employees employed by McLane/Suneast, Inc. and working in California at any time during the time period from July 8, 2021 through and including December 31, 2023 (the “Settlement Period”) whose wage statements include one or more of the following earnings categories: (1) Break Time Pay, Training, Containers, Missed Load Differential, Load Miles, and/or functionally equivalent earnings; and/or (2) Piece-rate earnings, rest and recovery period earnings, and/or non-productive time earnings (“Earnings”) at any time during the Settlement Period (“Class”).

Expressly excluded from the Class are any individuals who, as of [date the Court granted preliminary approval of the settlement], have filed a pending, separate lawsuit as a named plaintiff, individually and/or as a putative class or representative action, asserting claims based on violations of any of the same statutes and/or regulations as those alleged to have been violated in the lawsuit and/or who have released such claims.

6. What Does the Settlement Provide?

The proposed settlement provides for a cash payment by Defendant of \$375,000.00 to fully and finally resolve all claims in the lawsuit (referred to as the “Settlement Fund”). The total amount to be distributed to Class Members who can be located and who do not exclude themselves from the settlement will be the value of the Settlement Fund after deducting the following (the “Net Settlement Fund”): (a) settlement administration costs presently budgeted to be up to \$30,000 (b) Enhancement Award in the amount of \$10,000 to Named Plaintiff for his work and efforts in prosecuting this case, providing a general release, and for undertaking the risks of a costs award against him (in the event the outcome of this lawsuit was not favorable); (c) Class Counsel’s attorneys’ fees not to exceed \$125,000; (d) Class Counsel’s actual litigation costs and expenses as supported by declaration not to exceed \$30,000 and (f) PAGA Amount of \$12,000 for alleged civil penalties owed pursuant to the California Labor Code Private Attorneys General Act. **Class Counsel’s attorneys’ fees and costs and Named Plaintiff’s Enhancement Award remain subject to Court approval.**

By statute, the Labor and Workforce Development Agency will receive 75% of the PAGA Amount —i.e. the amount of \$9,000. Each Class Member will receive a portion of the remaining 25% of the PAGA Amount (“Aggrieved Employee Payment”).

No portion of the Net Settlement Fund will be returned to Defendant under any circumstances. Instead, any unclaimed settlement proceeds will be transferred to the California Secretary of State Controller’s Office—Office of Unclaimed Property Fund under the unclaimed property laws in the name of the Class Member.

7. How Much Will My Payment Be?

Your currently estimated share of the Net Settlement Fund is set forth on the first page above.

This amount is based on the number of pay periods during which you were issued one or more wage statements reflecting the payment of Earnings during the Settlement Period, as compared to the total number of pay periods during which the Class was issued one or more wage statements reflecting the payment of Earnings during the Settlement Period. Based on Defendant’s records, the number of pay periods you were issued one or more wage statements reflecting the payment of Earnings during the Settlement Period is <<pay_periods>>.

If this information appears correct, you do not need to do anything further to receive your settlement payment. If you disagree with the number of pay periods identified, see below (Question 9).

8. How Do I Get a Payment?

To qualify for payment, you need not do anything. Following the Effective Date of final approval of the settlement, Defendant will submit the Settlement Fund to the Settlement Administrator. The Settlement Administrator will mail you a check after Defendant submits payment of the Settlement Fund to the Settlement Administrator.

9. What If I Believe the Information is Inaccurate?

If you believe the number of pay periods reflecting the payment of Earnings credited to you is inaccurate, you may dispute it by sending a letter to Simpluris, [INSERT ADDRESS] no later than [RESPONSE DEADLINE]. Be sure to include: (i) your full name, current mailing address, telephone number, signature, and last four digits of your Social Security number; (ii) the case name (*McElhanon v. McLane/Suneast, Inc., et al.*) and case number (CIVSB2214190); and (iii) a statement indicating that you seek to dispute the number of pay periods credited to you, the time period(s) you were issued wage statements reflecting the payment of Earnings by Defendant in California during the Settlement Period, and the number of pay periods that you contend should be credited to you. Also attach a copy of any documentation you want to include to support your dispute.

10. What Am I Giving Up to Get a Class Settlement Payment?

Unless you request to be excluded from the class settlement, you will be a Participating Class Member.

If you are a Participating Class Member, you will be giving up or “releasing” Defendant and the Released Parties from the following:

Any and all allegations, claims, debts, rights, demands, charges, complaints, actions, causes of action, guarantees, costs, expenses, attorneys’ fees, economic damages, non-economic damages, restitution, civil penalties, statutory penalties, liquidated damages, punitive damages, interest, obligations, liabilities, or other monies and remedies, of any and every kind, contingent or accrued, that have been or reasonably could have been alleged or asserted in the FAC and/or any of the pleadings filed in the Actions based on the factual and/or legal violations allegations contained therein, and in any notice Plaintiff sent to the LWDA pursuant to PAGA based on the factual and/or legal violations allegations contained therein, including, without limitation, for failure to furnish accurate itemized wage statements arising out of, based on, or related to any violation of Cal. Lab. Code §§ 226, 226.2, 226.3, and 1174, and/or civil penalties pursuant to PAGA, based in whole or in part on any direct or imputed violation of any federal, state, local or administrative constitution, charter, law, rule, regulation or ordinance, during the Settlement Period [July 8, 2021 through and including December 31, 2023].

11. What is the PAGA Release?

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim, nor may you object to that settlement.

If you are a member of the Class, and without application of the exclusion described in Section 5 above, you will be giving up or “releasing” Defendant and the Released Parties from the following:

All claims for any civil penalties recoverable under the California Labor Code, including PAGA, as well as costs and attorneys’ fees related thereto, predicated on any violations of California Labor Code sections 226, 226.2, 226.3, and/or 1174 that arose, accrued and/or have been asserted during the during the PAGA Period [June 24, 2021 through and including December 31, 2023.

12. How Do I Exclude Myself from the Settlement?

To exclude yourself from the class settlement (also referred to as “opt-out”), you must mail a letter to the Settlement Administrator that includes: (i) your full name, current mailing address, signature, and last four digits of your Social Security number; and (ii) a statement that you seek to be excluded from the *McElhanon v. McLane/Suneast, Inc., et al.* class action settlement and understand that by doing so, will not participate in the settlement, and will not receive any money from it. You must mail your exclusion letter postmarked no later than [RESPONSE DEADLINE], to the Settlement Administrator at [INSERT ADDRESS].

If you submit a timely and valid “opt-out” request, you will no longer be a member of the class and you will not receive any money from the class settlement, or be able to object to the settlement, but you will not be legally bound by anything that happens regarding the class action portion of this lawsuit. You will keep any rights to sue (or continue to sue) Defendant in the future for the same class claims made in this lawsuit, at your own expense.

You may not opt-out, or request to be excluded, from the settlement of the PAGA claim. Thus, even if you submit a timely and valid “opt-out” request, you will still receive a portion of the Aggrieved Employee Payment and will be deemed to have released the PAGA claims.

13. If I Don’t Exclude Myself, Can I Sue Defendant or Get Money from the Settlement?

If you do not exclude yourself from the class settlement, you cannot sue Defendant for any of the claims that this settlement releases and resolves. If you have a pending lawsuit against Defendant, speak to your lawyer in that case immediately. You may have to exclude yourself from this case to continue on with your own lawsuit. Remember, the exclusion deadline is [RESPONSE DEADLINE].

Again, if you exclude yourself from this settlement, you cannot get money from this settlement.

14. How Do I Tell the Court that I Don’t Believe that the Settlement is Fair?

If you are a Class Member and you do not exclude yourself from the class settlement, you can object to the class settlement if you believe that the settlement is unfair or inadequate. You can give reasons why you think the Court should not approve the class settlement. If you object and follow the procedures set out in this section, your objection will be considered.

If you decide to object to the proposed settlement, you can do so in writing. All objections must be signed by you and must include: (i) your full name and current address, and contact information for any attorney representing you for the purposes of your objection; (ii) a written statement of the basis for your objection; and (iii) any copies of papers, briefs, or documents upon which the objection is based. You must mail your written objection postmarked no later than _____, 2024, to the Settlement Administrator at

_____. If you do not submit a written objection, you may still object by appearing at the Final Approval Hearing, which is set for _____, and stating your objection in person, provided that you did not exclude yourself from the Settlement. If you do not follow these procedures, you will be deemed not to have objected.

There is no right to object to the settlement of the PAGA claim.

15. What is the Difference Between Objecting and Excluding?

Objecting is simply telling the Court that you don't like something about the class settlement. You can object only if you stay in the class. Excluding yourself, on the other hand, is telling the Court that you don't want to be part of the class. If you exclude yourself, you have no basis to object because the case no longer affects you and you will not receive settlement benefits under the class settlement if it is approved by the Court. However, if you file an objection, you will still receive settlement benefits under the class settlement if it is approved by the Court.

16. Do I Have a Lawyer in this Case?

In connection with the Preliminary Approval of the Settlement, the Court decided that the law firm of Ferraro Vega Employment Lawyers, Inc., which represents the Named Plaintiff, are also qualified to represent you and all Class Members. You will not be charged for these lawyers. These law firms are referred to as "Class Counsel." If you want to be represented by your own lawyer, you may hire one at your own expense.

17. How Will the Attorneys for the Class and the Class Representative Be Paid?

The attorneys for the Named Plaintiff and the class will be paid from the Settlement Fund. Class Counsel will ask the Court to approve up to \$125,000 in attorneys' fees and for actual litigation costs incurred up to \$30,000 but subject to proof, the actual amount of which will be determined by the Court at the final approval hearing (see section 18 below for details as to when this hearing will take place). Class Members (like you) do not have to pay the fees and costs of Class Counsel. **If you elect, however, to hire your own lawyer, you have to make your own arrangements to compensate your lawyer.**

If approved by the Court, the Named Plaintiff will receive an Enhancement Award in an amount up to \$_____ for his work and efforts in prosecuting this case, providing a general release, and for undertaking the risks of costs (in the event the outcome of this lawsuit was not favorable). The Enhancement Award will be paid from the Settlement Fund.

18. Notice of Hearing on Final Approval and Objections to Class Action Settlement.

The Court has preliminarily approved the settlement and will hold a final approval hearing to decide whether to give final approval to the settlement. This hearing will be held before the Honorable Joseph T. Ortiz on _____, 2024, at __:00 a.m., in Department S-17 of the Superior Court of California for the County of San Bernardino, located at 247 West Third Street, San Bernardino, CA 92415-0210, to determine whether the proposed settlement is fair, reasonable, and adequate, and whether it should be finally approved by the Court. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long this decision will take. The final approval hearing may be continued without further notice. The Court may adjourn or continue the hearing from time to time, without further notification, as the Court may direct. You may also be able to attend the final approval via Zoom or other remote means.

Once final approval is granted by the Court, the Court will enter judgment against Defendant, and all Class Members who have not requested exclusion from the class will be deemed to have waived the Released Claims set forth above.

19. How Do I Get More Information?

This Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the Settlement Agreement by contacting Class Counsel.

20. What is the Contact Information for the Court and Class Counsel?

The contact information for Class Counsel are below:

FERRARO VEGA EMPLOYMENT
LAWYERS, INC.
Nicholas J. Ferraro
Lauren N. Vega
3160 Camino del Rio South, Suite 308
San Diego, CA 92108
Telephone: (619) 693-7727
lauren@ferrarovega.com
nick@ferrarovega.com

WHAT IF I HAVE QUESTIONS?

If you have any questions about the settlement, you may contact the Settlement Administrator:

McElhanon v. McLane/Suneast, Inc., et al.
c/o [insert]

Toll-Free Phone Number: [insert]

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE COURT CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

PLEASE DO NOT CONTACT DEFENDANT, ITS MANAGERS, OR ATTORNEYS FOR INFORMATION ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS.