

5/11
10B

Filed MAY 11 2022
BRANDON E. RILEY, CLERK
By [Signature]
DEPUTY

BY FAX

APR 12 2022

Larry W. Lee (State Bar No. 228175)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

Attorneys for Plaintiff, the Class, and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

MARTIN MORENO, as an individual and
on behalf of all others similarly situated,

Plaintiffs,

vs.

MEDLINE INDUSTRIES, L.P., an Illinois
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2020-7446

(Assigned to the Hon. Erin Guy Castillo, Dept.
10B)

~~PROPOSED~~ ORDER GRANTING
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT

Date: Date: May 11, 2022, ~~May 12, 2022, or~~
~~May 13, 2022~~

Time: 9:00 a.m.

Dept.: 10B.

Complaint Filed: September 8, 2020

FAC Filed: January 14, 2022

Trial: Not Set

1 Plaintiff Martin Moreno's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on April 11, 2022, and a hearing
3 came before this Court on May 11, 2022.

4 The Court has considered the Class Action Settlement Agreement ("Settlement
5 Agreement") entered into by Plaintiff and Defendant Medline Industries, L.P. ("Defendant") and
6 all other papers filed in this action.

7 NOW THEREFORE, IT IS HEREBY ORDERED:

8 1. This Court grants preliminary approval of the Settlement Agreement between
9 Plaintiff and Defendant filed herewith. The Settlement Agreement is attached to the Declaration of
10 Mai Tulyathan as Exhibit A. The Settlement Agreement appears to be fair, adequate, and
11 reasonable to the Class.

12 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
13 their counsel of record in the Litigation, have reached an agreement to settle the class and PAGA
14 claims in the Litigation as set forth in the Settlement Agreement, on behalf of the Class as defined
15 below and in the Settlement Agreement.

16 3. This Order incorporates by reference the definitions in the Settlement, and all
17 capitalized terms defined therein shall have the same meaning in this Order as set forth in the
18 Settlement Agreement.

19 4. The Court hereby approves the terms and conditions provided for in the Settlement
20 Agreement. The Court finds that on a preliminary basis the Settlement Agreement falls within the
21 range of reasonableness of a settlement, including the amount of the PAGA penalties, and appears
22 to be presumptively valid, subject only to any objections that may be raised at the final fairness
23 hearing and final approval by the Court. It appears to the Court on a preliminary basis that the
24 settlement is fair, adequate, and reasonable as to all potential Class Members when balanced
25 against the probable outcome of further litigation relating to liability and damages issues. It also
26 appears that investigation, research, and court proceedings have been conducted so that counsel for
27 the Settling Parties are able to reasonably evaluate their respective positions. It appears to the
28 Court that settlement at this time will avoid substantial additional costs by all Settling Parties, as

1 well as avoid the delay and risks that would be presented by the further prosecution of the
2 Litigation. It also appears that settlement has been reached as a result of intensive, serious, and
3 non-collusive arm's length negotiations.

4 5. The Settlement is not a concession or admission and shall not be used against
5 Defendant as an admission or indication with respect to any claim of any fault or omission by
6 Defendant. Whether or not the Settlement is finally approved, neither the Settlement, nor any
7 document, statement, proceeding, or conduct related to the Settlement, nor any reports or accounts
8 thereof, shall in any event be construed as, offered or admitted into evidence as, received as, or
9 deemed to be in evidence for any purpose adverse to Defendant, including, but not limited to,
10 evidence of a presumption, concession, indication, or admission by Defendant of any liability,
11 fault, wrongdoing, omission, concession, or damage.

12 6. The Court preliminarily finds that, for settlement purposes only, the Class meets the
13 requirements for certification under Section 382 of the California Code of Civil Procedure in that:
14 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
15 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
16 community of interest amongst the members of the Class with respect to the subject matter of the
17 litigation; (c) Plaintiff's claims are typical of the claims of the members of the Class; (d) the Class
18 Representative will fairly and adequately protect the interests of the members of the Class; (e) a
19 class action is superior to other available methods for the efficient adjudication of the controversy;
20 and (f) Class Counsel are qualified to act as counsel for the Plaintiff in his individual capacity and
21 as the representative of the Class.

22 7. The Court hereby conditionally certifies the following Class for settlement purposes
23 only:

24 All non-exempt persons who have been employed by Defendant in
25 the State of California at any time during the Class Period, who
26 received one or more wage statements during the Class Period (the
 "Class").

27 Should for whatever reason the Settlement Agreement not become Final, this Order shall
28 be rendered null and void and shall be vacated and the Parties shall revert back to their respective

1 positions as of before entering the Settlement Agreement. The fact that the Parties were willing to
2 stipulate to certification of a class as part of the Settlement Agreement shall have no bearing on, or
3 be admissible in connection with, the Litigation or the issue of whether a class should be certified
4 in a non-settlement context.

5 8. The Court provisionally appoints and designates: (a) Plaintiff Martin Moreno as the
6 Class Representative, and (b) Larry W. Lee and Mai Tulyathan of Diversity Law Group, P.C. and
7 William L. Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel are
8 authorized to act on behalf of the Class with respect to all acts or consents required by, or which
9 may be given, pursuant to the Settlement Agreement, and such other acts reasonably necessary to
10 finalize the Settlement Agreement and its terms.

11 9. The Court hereby approves, as to form and content, the Notice of Proposed
12 Settlement of Class PAGA Action and Hearing Date for Final Court Approval ("Class Notice") to
13 be sent to Class Members, which is attached as Exhibit A to the Settlement Agreement. The Court
14 finds that distribution of the Class Notice to Class Members substantially in the manner and form
15 set forth in the Settlement Agreement and this Order meets the requirements of due process and
16 shall constitute due and sufficient notice to all parties entitled thereto.

17 10. The Court appoints and designates ILYM Group, Inc. as the Settlement
18 Administrator. The Court hereby directs the Settlement Administrator to provide the approved
19 Class Notice to Class Members using the procedures set forth in the Settlement Agreement.

20 11. Any Class Member may choose to opt out of and be excluded from the settlement
21 as provided in the Settlement Agreement and Class Notice, and by following the instructions for
22 requesting exclusion. Any person who timely and properly opts out of the settlement will not be
23 bound by the Settlement Agreement or have any right to object, appeal, or comment thereon. Any
24 requests for exclusion must be in writing and signed by each such Class Member opting-out and
25 must otherwise comply with the requirements delineated in the Class Notice. Class Members who
26 have not requested exclusion by submitting a valid and timely exclusion request, by the deadline,
27 shall be bound by all determinations of the Court, the Settlement Agreement, and Judgment.

28 12. Any Class Member may object to the Settlement Agreement or express his or her

1 views regarding the Settlement Agreement. Class Members who wish to object to the Settlement
2 Agreement shall have forty-five (45) calendar days from the mailing of the Class Notice within
3 which to postmark a written objection to the Settlement Agreement, pursuant to the requirements
4 provided in the Class Notice, for return to the Settlement Administrator.

5 13. The Parties are directed to implement the settlement in accordance with and subject
6 to the terms of the Settlement Agreement and this Order.

7 14. A final fairness hearing on the question of whether the proposed Settlement
8 Agreement, the allocation of payments to Participating Class Members, attorneys' fees and costs to
9 Class Counsel, the payment to the Settlement Administrator, the payment to the Labor and
10 Workforce Development Agency, and the Class Representative Service Award Payment should be
11 finally approved as fair, reasonable, and adequate as to the members of the Class is hereby set for
12 September 15, 2022 at 9:00am in this Court.

13 15. The Motion for Final Approval shall be filed by the Class Representative no later
14 than sixteen (16) court days before the Settlement Fairness Hearing.

15 16. The Court reserves the right to adjourn or continue the date of the Settlement
16 Fairness Hearing and all dates provided for in the Settlement Agreement without further notice to
17 the Class, and retains jurisdiction to consider all further applications arising out of or connected
18 with the Class Settlement Agreement.

19 **IT IS SO ORDERED.**

20
21 DATED: May 11, 2022

22 
23 _____
24 HON. ERIN GUY CASTILLO
25 SUPERIOR COURT OF CALIFORNIA
26
27
28