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584253 / \$435.00

**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, INC., an
Illinois corporation; and DOES 1 through
50, inclusive,

Defendants.

Case No.: STK-CV-1006-2020-7446

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CAL. LABOR CODE §
2698, ET SEQ.**

DEMAND OVER \$25,000.00

FILED
SUPERIOR COURT-STOCKTON
2020 SEP -8 PM 4:10
BRANDON E. RILEY, CLERK
BY [Signature]
DEPUTY

1 Plaintiff Martin Moreno ("Plaintiff") submits this PAGA Representative Action Complaint
2 ("Complaint") against Defendant Medline Industries, Inc. ("Defendant") and DOES 1-50
3 (collectively, "Defendants"), on behalf of himself and the aggrieved current and former employees
4 of Defendants for penalties and/or damages for failure to provide accurate itemized wage
5 statements, in violation of the California Labor Code as follows:

6 INTRODUCTION

7 1. This Complaint is within the Court's jurisdiction under California Labor Code §§
8 226(a) and 2698, *et seq.*, and the applicable Wage Orders of the California Industrial Welfare
9 Commission ("IWC").

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

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to provide accurate itemized wage statements to
16 its employees.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code and the
19 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
20 knowingly deny employees the above stated rights and benefits.

21 JURISDICTION AND VENUE

22 5. The Court has jurisdiction over the violations of the California Labor Code §§
23 226(a) and 2698, *et seq.*

24 6. Venue is proper in San Joaquin County because Defendant does business in San
25 Joaquin County, and Plaintiff worked for Defendant in Tracy, California.

26 PARTIES

27 7. Plaintiff is a former employee of Defendant. Plaintiff was employed by Defendant
28 as a Warehouse Operator from on or about January 16, 2020, until on or about July 27, 2020.

1 During his employment with Defendant, Plaintiff was a non-exempt employee, and was paid
2 hourly.

3 8. During his employment with Defendants, Plaintiff regularly worked overtime and
4 was paid overtime wages.

5 9. During his employment with Defendants, Plaintiff was also paid shift differential
6 wages.

7 10. As such, Plaintiff was and is the victim of the policies, practices, and customs of
8 Defendants complained of in this action in ways that have deprived him of the rights guaranteed by
9 California Labor Code §§ 226(a) and 2698, *et seq.*

10 11. Plaintiff is informed and believes, and based thereon alleges that Defendant is an
11 Illinois corporation that manufactures and distributes medical supplies to various healthcare
12 providers across the United States and in the State of California. Plaintiff is informed and
13 believes, and based thereon alleges, that Defendant operates and maintains business locations in
14 Tracy, California.

15 12. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
16 mentioned Defendants are and were business entities, individuals, and partnerships, licensed to do
17 business and actually doing business in the State of California. As such, and based upon all the
18 facts and circumstances incident to Defendants' business, Defendants are subject to the California
19 Labor Code.

20 13. Plaintiff does not know the true names or capacities, whether individual, partner or
21 corporate, of the Defendants sued herein as Does 1 through 50, inclusive, and for that reason, said
22 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
23 Complaint when the true names and capacities are known. Plaintiff is informed and believes and
24 based thereon alleges that each of said fictitious Defendants was responsible in some way for the
25 matters alleged herein and proximately caused Plaintiff and members of the general public and
26 class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

27 14. At all times herein mentioned, each of said Defendants participated in the doing of
28 the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the

1 Defendants, and each of them, were the agents, servants and employees of each of the other
2 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
3 within the course and scope of said agency and employment.

4 15. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
7 the course and scope of such agency, employment, joint venture, or concerted activity. To the
8 extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
9 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
10 Defendants.

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

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

21 **FIRST CAUSE OF ACTION**

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

23 **(PRIVATE ATTORNEYS GENERAL ACT)**

24 **(BY PLAINTIFF AND THE AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

25 18. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 17 as though
26 fully set forth herein.

27 19. Plaintiff brings this cause of action as a proxy for the State of California, and in this
28 capacity, seeks penalties on behalf of all similar situated Aggrieved Employees of Defendants

1 from April 6, 2019, through the present, for Defendants' violations of Labor Code § 226(a).

2 20. Labor Code § 226(a) requires employers to provide itemized wage statements to its
3 employees that identify accurate information, including without limitation, total hours worked by
4 the employee and all applicable hourly rates of pay and hours worked. Defendants failed in their
5 affirmative obligation to provide accurate itemized wage statements in violation of Labor Code
6 section 226(a).

7 21. Defendants violated Labor Code § 226(a) by failing to provide accurate itemized
8 wage statements to Plaintiff and other Aggrieved Employees whenever shift differential wages
9 were paid. In this regard, whenever shift differential wages were paid to Plaintiff and other
10 Aggrieved Employees, the corresponding wage statements failed to identify the accurate total
11 hours worked in violation of Labor Code § 226(a)(2). Similarly, Plaintiff and other Aggrieved
12 Employees also cannot determine the total hours worked by way of mathematical calculation.
13 When the hours worked as listed on the wage statements were added up, they do not correspond to
14 the actual total hours worked in the particular pay period. This is a direct violation of Labor Code
15 § 226(a)(2).

16 22. As a separate violation, Defendants also violated Labor Code § 226(a) by failing to
17 provide accurate itemized wage statements to Plaintiff and other Aggrieved Employees whenever
18 overtime wages were paid. Specifically, whenever overtime wages were paid to Plaintiff and other
19 Aggrieved Employees, the corresponding wage statements did not identify the overtime rates of
20 pay as 1.5 times the regular rate of pay. Rather, the overtime rates of pay appeared on the
21 corresponding wage statements as various rates, none of which are equivalent to 1.5 times the base
22 rate of pay. Moreover, Plaintiff and other Aggrieved Employees cannot determine the correct
23 overtime rate, as adding up all the various rates listed on the overtime line-items does not
24 correspond to 1.5 times the base rate of pay. This is a direct violation of Labor Code § 226(a)(9).

25 23. As another violation of Labor Code § 226(a)(2), Defendants also failed to list the
26 accurate total hours worked whenever overtime wages were paid. Defendants do not list the
27 accurate total hours worked on wage statements whenever overtime wages were paid.
28 Furthermore, when the hours as listed on the wage statements are added up, they do not correspond

1 to the actual total hours worked in the particular pay period.

2 24. On or about August 4 and September 2, 2020, Plaintiff sent written notices to the
3 California Labor & Workforce Development Agency ("LWDA") of Defendants' afore-referenced
4 violations of Labor Code § 226(a), pursuant to Labor Code § 2699, *et seq.*, the Private Attorneys
5 General Act ("PAGA"). Plaintiff also provided notice of said Labor Code violations to Defendant
6 via certified mail pursuant to the PAGA.

7 25. As of the date of the filing of this Complaint, the LWDA has not responded nor
8 informed Plaintiff that it intends to investigate the Labor Code violations provided for in the
9 written notice.

10 26. As such, pursuant to Labor Code § 2699(a), Plaintiff and the Aggrieved Employees
11 may seek recovery of any and all applicable civil penalties on behalf of the State of California for
12 Defendants' violations of Labor Code § 226(a) for the time period described above.

13 **PRAYER FOR RELIEF**

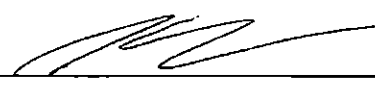
14 WHEREFORE, Plaintiff prays for judgment for himself and for all aggrieved current and
15 former employees against Defendants, jointly and severally, as follows:

16 1. Upon the First Cause of Action, for the full amount of civil penalties pursuant to
17 California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys' fees; and

18 2. For such other and further relief the Court may deem just and proper.
19

20 DATED: September 4, 2020

DIVERSITY LAW GROUP, P.C.

21
22 By: 

Larry W. Lee

Mai Tulyathan

23 Attorneys for Plaintiff and the Aggrieved
24 Employees
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