

EXHIBIT 1

1 DAVID GLENN SPIVAK (SBN 179684)
david@spivaklaw.com
2 CAROLINE TAHMASSIAN (SBN 285680)
caroline@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485
7 Attorneys for Plaintiff(s),
8 DEJA NAIR, and all others similarly situated
(Additional attorneys for parties on following page)

9
10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA

12 DEJA NAIR, on behalf of herself and all others
13 similarly situated, and as an “aggrieved
14 employee” on behalf of other “aggrieved
15 employees” under the Labor Code Private
Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 MEDLINE INDUSTRIES, INC., an Illinois
19 corporation; MEDLINE INDUSTRIES
HOLDINGS, L.P., a Delaware limited
20 partnership; MEDLINE INDUSTRIES, LP, an
21 Illinois limited partnership; and DOES 1–50,
inclusive,

22 *Defendant(s).*
23
24
25
26
27
28

Case No. 2:22–CV–00331–DAD-JDP

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: December 22, 2021
Dept: The Honorable Dale A.
Drozdz, Courtroom: 4, 15th
floor

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8

11
12
13
14
15
16
17
18
19
20
21
22
23
24

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Deja Nair (“Plaintiff”) and defendants Medline Industries, Inc., Medline
3 Industries, LP, and Medline Industries Holdings, L.P. (“Defendants”). The Agreement refers to
4 Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Defendants Medline Industries, Inc., Medline Industries, LP, and Medline Industries Holdings,
8 L.P. captioned “DEJA NAIR, on behalf of herself and all others similarly situated, and as an
9 ‘aggrieved employee’ on behalf of other ‘aggrieved employees’ under the Labor Code Private
10 Attorneys General Act of 2004, *Plaintiff(s)*, vs. MEDLINE INDUSTRIES, INC., an Illinois
11 corporation; MEDLINE INDUSTRIES HOLDINGS, L. P., a Delaware limited partnership;
12 MEDLINE INDUSTRIES, LP, an Illinois limited partnership; and DOES 1-50, inclusive,
13 *Defendant(s)*,” initiated on December 22, 2021 and pending in United States District Court for
the Eastern District of California.

14 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
15 agreed to appoint to administer the Settlement.

16 1.3. “Administration Expenses Payment” means the amount approved by the Court that
17 the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees
18 and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court
in connection with Preliminary Approval of the Settlement.

19 1.4. “Aggrieved Employee” means a person employed by any Defendant in California
20 and classified as a non-exempt warehouse employee who worked in one or more of the positions
21 listed in Exhibit E during the PAGA Period.

22 1.5. “Class” means all persons employed by any Defendant in California and classified
23 as a non-exempt warehouse employee who worked in one or more of the positions listed in Exhibit
E during the Class Period.

24 1.6. “Class Counsel” means David Glenn Spivak of The Spivak Law Firm and Walter
25 L. Haines of United Employees Law Group.

26 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
27 mean the amounts approved by the Court to be allocated to Class Counsel for reimbursement of

1 reasonable attorneys' fees and expenses, respectively, incurred to prosecute the Action. The
2 Settlement is not contingent on approval of the full amount of the requested Class Counsel Fees
3 Payment and/or the Class Counsel Litigation Expenses Payment, and a Court order granting lesser
4 amounts than requested shall not invalidate the Settlement.

5 1.8. "Class Data" means each Class Member's name, last-known mailing address,
6 Social Security number, and number of Class Work Weeks and PAGA Pay Periods as reflected
7 in Defendants' systems of record.

8 1.9. "Class Member" or "Settlement Class Member" means a member of the Class, as
9 either a Participating Class Member or Non-Participating Class Member (including a Non-
10 Participating Class Member who qualifies as an Aggrieved Employee).

11 1.10. "Class Member Address Search" means the Administrator's investigation and
12 search for current Class Member mailing addresses using all reasonably available sources,
13 methods and means including, but not limited to, the National Change of Address database, skip
14 traces, and direct contact by the Administrator with Class Members.

15 1.11. "Class Notice" means the written notice approved by the Court to be mailed to
16 Class Members in English and Spanish advising them of their rights and options with respect to
17 the Settlement.

18 1.12. "Class Period" means the period from December 22, 2017 through preliminary
19 Court-approval of the Settlement.

20 1.13. "Class Representative" means Deja Nair, the named Plaintiff in the operative
21 complaint in the Action who is seeking Court approval to serve as the Class Representative.

22 1.14. "Class Representative Service Payment" means the amount approved by the Court
23 for the payment to the Class Representative for initiating the Action and providing services in
24 support of the Action. Plaintiff will not request more than \$20,000 as the Service Payment. The
25 Settlement is not contingent on approval of the full amount of the requested Service Payment, and
26 a Court order granting a lesser amount than requested shall not invalidate the Settlement.

27 1.15. "Class Work Week" means any week during the Class Period in which a Class
28 Member worked at least one day in one of the positions listed in Exhibit E.

1.16. "Court" means United States District Court for the Eastern District of California.

1.17. "Defendants" mean named Defendants Medline Industries, Inc., Medline
Industries, LP, and Medline Industries Holdings, L.P.

1.18. “Defense Counsel” means Michael J. Gray, Kelsey A. Israel-Trummel, and Efrat R. Schulman of Jones Day.

1.19. “Effective Date” means the date by which both of the following have occurred: (a) the court enters Judgment (as defined below) on its order granting final approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment or, if a timely appeal from the judgment is filed, the day after the appellate court has affirmed the judgment and issued a remittitur and any deadline to seek further review has expired. Plaintiff and Plaintiff’s Counsel waive their rights to appeal.

1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22. “Gross Settlement Amount” means \$1,100,000.00, which is the total amount Defendants agree to pay under the Settlement except for employer side taxes and except as provided in the Escalator Clause. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator’s Expenses and any other Settlement-related costs. Defendants shall not be required to pay any additional amounts to effectuate this Settlement, with the sole exception of employer-side payroll taxes on the portion of the Gross Settlement Amount allocated to wages.

1.23. “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Class Work Weeks worked during the Class Period.

1.24. “Individual PAGA Payment” means the amounts approved by the Court to be paid as each Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties pursuant to the version of Labor Code section 2699, subd. (i) in effect at the time the Action was filed.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval. A proposed Final Approval Order and Judgment form is attached as Exhibit D.

1 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (a).

3 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties approved by the
4 Court to be paid to the LWDA pursuant to the version of Labor Code section 2699, subd. (i) in
5 effect at the time the Action was filed.

6 1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
7 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
8 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
9 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
10 paid to Participating Class Members as Individual Class Payments.

11 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
12 Settlement by sending the Administrator a valid and timely Request for Exclusion.

13 1.30. “Notice Packet” means the Class Notice (Exhibit A) and the Work Week/Pay
14 Period Dispute form (Exhibit B, which shall be submitted to the Court for approval and, after any
15 Court-ordered revisions have been mailed, sent to Class Members by the Administrator, including
16 both English and Spanish versions.

17 1.31. “PAGA Pay Period” means any Pay Period during the PAGA Period in which an
18 Aggrieved Employee worked at least one day in one of the positions listed in Exhibit E.

19 1.32. “PAGA Period” means the period from October 29, 2020 through preliminary
20 Court-approval of the Settlement.

21 1.33. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

22 1.34. “PAGA Notice” means Plaintiff’s October 29, 2021 letter to Defendants and the
23 LWDA purporting to provide notice pursuant to Labor Code section 2699.3, subd.(a)(1)(A).

24 1.35. “PAGA Penalties” means the total amount approved by the Court to be allocated
25 from the Gross Settlement Amount as PAGA civil penalties in settlement of PAGA claims.

26 1.36. “Participating Class Member” means a Class Member who does not submit a valid
27 and timely Request for Exclusion from the Settlement or is not otherwise deemed by the Court to
28 have validly opted out of the Settlement.

1.37. “Plaintiff” means Deja Nair, the named plaintiff in the Action.

1.38. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
of the Settlement.

1 1.39. “Preliminary Approval Order” means the proposed Order Granting Preliminary
2 Approval and Approval of PAGA Settlement. A proposed Preliminary Approval Order form is
3 attached as Exhibit C.

4 1.40. “Released Class Claims” means the claims being released as described in
5 Paragraph 6.2 below.

6 1.41. “Released PAGA Claims” means the claims being released as described in
7 Paragraph 6.3 below.

8 1.42. “Released Parties” means: Defendants Medline Industries Inc., Medline
9 Industries, LP and Medline Industries Holdings, LP and their respective former and present
10 parents, subsidiaries, affiliated corporations and entities, and each of their respective current,
11 former, and future officers, directors, members, managers, employees, partners, shareholders,
12 investors, joint venturers and third-party agents, and any successors, assigns, legal
13 representatives, or any individual or entity which could be jointly or severally liable with
14 Defendants and all persons or entities acting by, through, under, or in concert with any of them.

15 1.43. “Request for Exclusion” means a Class Member’s submission of a written request
16 to be excluded from the Class Settlement signed by the Class Member.

17 1.44. “Response Deadline” means 60 days after the Administrator mails Notice Packets
18 to Class Members and Aggrieved Employees, and shall be the last date on which Class Members
19 may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail
20 his or her Objection to the Settlement, except that the Response Deadline for Class Members to
21 whom Notice Packets are resent after having been returned undeliverable to the Administrator
22 shall be 74 days after the Administrator’s initial Notice Packet mailing.

23 1.45. “Settlement” means the disposition of the Action effected by this Agreement and
24 the Judgment.

25 **2. RECITALS.**

26 2.1. On December 22, 2021, Plaintiff commenced this Action by filing a Complaint
27 alleging causes of action against Defendants for failure to pay wages, failure to provide meal
28 periods, failure to authorize and permit rest periods, failure to issue proper wage statements,
failure to timely pay wages, and related claims. On January 10, 2022, Plaintiff filed a First
Amended Complaint adding the PAGA cause of action. The First Amended Complaint is the

operative complaint in the Action (the “Operative Complaint.”). On or about February 18, 2022, Defendants removed the case to the United States District Court for The Eastern District of California. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint, deny that Plaintiff’s claims are suitable for class certification or adjudication on a representative basis, and deny any and all liability for the causes of action alleged.

2.2. Plaintiff purported to give timely written notice to Defendants and the LWDA pursuant to Labor Code section 2699.3, subd.(a)(1)(A) by sending the PAGA Notice.

2.3. On July 14, 2025, the Parties participated in an all-day mediation presided over by Hon. Ann I. Jones (Ret.) which led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through formal and informal discovery, the number of comparable employees, sample payroll records, sample time records, and related information. Plaintiff’s investigation was sufficient to satisfy the applicable criteria for court approval under Ninth Circuit law.

2.5. The Court has not granted class certification.

2.6. With the exception of *Frank Padilla v. Medline Industries, LP*, No. 5:25-cv-02254 (E.D. Cal.), *Sonia Arellano v. Medline Industries, LP*, No. CIVSB2524854 (San Bernardino Cty. Sup. Ct.) and *Nicole Fennoy v. Medline Industries, LP*, Case No. STK-CVUWT-2024-0007060 (San Joaquin Cty. Sup. Ct.), Defendants are unaware of any pending claims or notices to the LWDA that will be affected by the “Released Claims” provisions.

3. MONETARY TERMS.

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promises to pay \$1,100,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and

deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: The Court-approved Class Representative Service (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will file a motion seeking Court approval for any Class Representative Service Payment, noticed to be heard at the same time as the Final Approval Hearing. Plaintiff shall provide drafts of this motion and all supporting papers to Defense Counsel at least five (5) business days before they are filed for review and approval. Defense Counsel will not unreasonably withhold approval and will not oppose a request for \$20,000 or less. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. If the Court approves a Class Representative Service Payment greater than the amount requested, the additional amount shall be taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional amounts to Plaintiff. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of this Payment.

3.2.2. To Class Counsel: The Court-approved Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment . Plaintiff and/or Class Counsel will file a motion seeking Court approval of the Class Counsel Fees Payment and Class Litigation Expenses Payment, noticed to be heard at the same time as the Final Approval Hearing. Plaintiff shall provide drafts of this motion and all supporting papers to Defense Counsel at least five (5) business days before they are filed for review and approval. Defense Counsel will not unreasonably withhold approval and will not oppose requests for up to \$366,666.66 in Class Counsel fees or up to \$50,000.00 in Class Counsel litigation expenses, except that, if the Escalator Clause is triggered, Defendants will also not oppose a request for up to one-third (33 and 1/3 %) of the increase in the Gross Settlement Amount in additional Class Counsel fees. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net

1 Settlement Amount. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel
2 Litigation Expenses Payment greater than the amount requested, the additional amount shall be taken
3 out of the Gross Settlement Amount and Defendants will not be required to pay any additional
4 amounts to Class Counsel. Released Parties shall have no liability to Class Counsel or any other
5 attorney arising from any claim to any portion any Class Counsel Fee Payment and/or Class
6 Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees
7 Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel
8 assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and
9 the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies
10 Defendants, from any dispute or controversy regarding any division or sharing of any of these
11 Payments.

12 3.2.3. To the Administrator: The Court-approved Administration Expenses
13 Payment, which is anticipated to be not more than \$30,000. To the extent the Court approves an
14 Administration Expenses Payment that is less than \$30,000 or the Administrator charges less than
15 \$30,000, the Administrator will retain the remainder in the Net Settlement Amount. To the extent
16 the Court approves an Administration Expenses Payment that exceeds \$30,000, the additional
17 amount will be taken out of the Gross Settlement Amount and Defendants will not be required to
18 pay any additional amounts to the Administrator.

19 3.2.4. To Each Participating Class Member: An Individual Class Payment
20 calculated by (a) dividing the Net Settlement Amount by the total number of Class Work Weeks
21 and (b) multiplying the result by each Participating Class Member's Class Work Weeks.

22 3.2.4.1. Tax Allocation of Individual Class Payments. 50.00% of
23 each Participating Class Member's Individual Class Payment will be allocated to settlement of
24 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
25 reported on an IRS W-2 Form. The remaining 50.00% of each Participating Class Member's
26 Individual Class Payment will be allocated to settlement of claims for interest and penalties (the
27 "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be
28 reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability
for any employee taxes owed on their Individual Class Payment.

3.2.4.2. Effect of Non-Participating Class Members on Calculation
of Individual Class Payments. Non-Participating Class Members will not receive any Individual

1 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
2 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3 3.2.5. To the LWDA and Aggrieved Employees: The LWDA PAGA
4 Payment to the LWDA and the remaining 25% of the PAGA Penalties to Aggrieved Employees
5 as Individual PAGA Payments. Plaintiff will include requests for the Court to approve \$20,000 in
6 PAGA Penalties in her Preliminary Approval Motion and Final Approval Motion.

7 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
8 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties by the
9 total number of PAGA Period Pay Periods and (b) multiplying the result by each Aggrieved
10 Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and
11 liability for any taxes owed on their Individual PAGA Payment.

12 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
13 requested, the Administrator will allocate the remainder to the Net Settlement Amount. If the
14 Court approves PAGA Penalties greater than the amount requested, the additional amount will be
15 taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional
16 amounts in PAGA penalties to the LWDA or the Aggrieved Employees. The Administrator will
17 report the Individual PAGA Payments on IRS 1099 Forms.

18 **4. SETTLEMENT FUNDING AND PAYMENTS.**

19 4.1. Class Work Weeks and Aggrieved Employee Pay Periods. At the time of the July
20 14, 2025 mediation, Defendants estimated that there were 5,892 Class Members from December
21 22, 2017 to February 21, 2025 who collectively worked a total of 321,648 Class Work Weeks.

22 4.2. Class Data. No later than 15 business days after the Court grants Preliminary
23 Approval of the Settlement, Defendants will deliver the Class Data to the Administrator. To
24 protect Class Members' privacy rights, the Administrator must maintain the Class Data in
25 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and
26 restrict access to the Class Data to Administrator employees who need access to the Class Data
27 to effect and perform under this Agreement. To the extent Defendants discover any inaccuracies
28 in the Class Data, Defendants will provide corrected or updated Class Data as soon as reasonably
feasible. To the extent such corrected or updated Class Data is received by the Administrator after
Class Notices are mailed, the Parties and their counsel will work together in good faith to

1 determine how best to resolve any related issues.

2 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
3 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
4 taxes by transmitting the funds to the Administrator no later than 28 days after the Effective Date.

5 4.4. Payments from the Gross Settlement Amount. Within 14 days after Defendants
6 fund the Gross Settlement Amount and provided that Plaintiff has provided all necessary tax
7 forms, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA
8 Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel
9 Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative
10 Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation
11 Expenses Payment and the Class Representative Service Payment shall not precede disbursement
12 of Individual Class Payments and Individual PAGA Payments.

13 4.4.1. The Administrator will issue checks for the Individual Class Payments
14 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
15 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
16 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
17 not cashed by the void date. The Administrator will send checks for Individual Settlement
18 Payments to all Participating Class Members (including those for whom Notice Packet was
19 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
20 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
21 Employees (including those for whom Notice Packet was returned undelivered). The
22 Administrator may send Participating Class Members a single check combining the Individual
23 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
24 must update the recipients' mailing addresses using the National Change of Address Database.

25 4.4.2. The Administrator must conduct a Class Member Address Search for all
26 other Class Members whose checks are returned undelivered without USPS forwarding address.
27 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
28 forwarding address provided or to an address ascertained through the Class Member Address
Search. The Administrator need not take further steps to deliver checks to Class Members whose
re-mailed checks are returned as undelivered. The Administrator shall promptly send a
replacement check to any Class Member whose original check was lost or misplaced, requested

1 by the Class Member prior to the void date.

2 4.4.3. For any Class Member whose Individual Class Payment check or
3 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
4 shall transmit the funds represented by such checks to the California Controller's Unclaimed
5 Property Fund in the name of the Class Member thereby leaving no "unpaid residue."

6 4.4.4. The payment of Individual Class Payments and Individual PAGA
7 Payments shall not obligate Defendants to confer any additional benefits or make any additional
8 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
9 this Agreement.

10 **5. CONFIDENTIALITY.** Plaintiff and her counsel shall keep confidential all settlement
11 communications regarding the negotiation and drafting of the Parties' Class and PAGA
12 Settlement Term Sheet and this Agreement and all terms and other information regarding the
13 Settlement. Neither Party will initiate or have any contact with the press, respond to any press
14 inquiry, issue any press release, or make any other public or non-public representation regarding
15 the Class and PAGA Settlement Term Sheet, this Agreement, or negotiations, other than as
16 necessary to respond to Class Members who contact Class Counsel with questions about the
17 Settlement or to obtain court approval and effectuate the terms of the Settlement. Notwithstanding
18 this agreement to maintain confidentiality, Plaintiff and Class Counsel may disclose information
19 regarding the Settlement that is necessary to obtain tax advice to their accountants, who shall be
20 instructed to keep such information confidential and information necessary to pay their taxes to
21 tax authorities. This agreement to maintain confidentiality also does not prevent Plaintiff from
22 responding to lawfully issued court orders, subpoenas, and agency orders requiring the release of
23 information regarding the Settlement. In the event Plaintiff or Class Counsel receive a court order,
24 subpoena, or similar document requiring the release of information regarding the Settlement,
25 Plaintiff and Class Counsel agree to immediately notify Defendants of the requests and allow
26 Defendants time to oppose the release of such information.

27 **6. RELEASES OF CLAIMS.** As of the Effective Date, Plaintiff, Class Members, and Class
28 Counsel will release claims against all Released Parties as follows:

6.1 Plaintiff's Release. In addition to the Release by Participating Class Members

1 and Release of PAGA Claim set forth below, Plaintiff and her respective former and present
2 spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns hereby
3 fully and without limitation releases and discharges the Released Parties from any and all claims,
4 including but not limited to: any and all claims arising under the laws of the State of California;
5 all claims raised or that could have been raised in the Actions; all other statutory, constitutional,
6 contractual, and/or common law claims for wages, damages, restitution, unreimbursed expenses,
7 equitable relief, penalties, liquidated damages, and/or punitive damages (including, without
8 limitation, claims under any applicable Industrial Welfare Commission Wage Order, PAGA, or
9 any other provision of the California Labor Code); and any and all claims under Title VII of the
10 Civil Rights Act of 1964; 42 U.S.C. § 1981; the Age Discrimination In Employment Act; the
11 Americans With Disabilities Act; Sections 503 and 504 of the Rehabilitation Act of 1973; the
12 Family Medical Leave Act; the Fair Labor Standards Act; the Employee Retirement Income
13 Security Act; the Occupational Safety and Health Act; the Worker Adjustment and Retraining
14 Notification Act, as amended; the California Unfair Competition Law (Cal. Bus. & Prof. Code §
15 17200 et seq.); the California Fair Employment and Housing Act; any state, civil, or statutory
16 laws, including any and all human rights laws and laws against discrimination; any other federal,
17 state, or local statutes, codes, or ordinances; any common law, contract law, or tort law cause of
18 action; and any claims for interest, attorneys' fees, and/or costs. Plaintiff's Release does not
19 extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
20 unemployment benefits, disability benefits, social security benefits, workers' compensation
21 benefits that arose at any time, or based on occurrences outside the Class Period.

22 6.2 Plaintiff acknowledges that Plaintiff may discover facts or law different from, or
23 in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,
24 nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding
25 such different or additional facts or law or Plaintiff's discovery of them.

26 6.2.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
27 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
28 and benefits, if any, of section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims that the creditor or releasing party does
not know or suspect to exist in his or her favor at the time of executing the release,**

1 **and that if known, by him or her, would have materially affected his or her settlement**
2 **with the debtor or released party.**

3 Plaintiff agrees and acknowledges that this waiver of rights under Section 1542 extends
4 beyond the release and waiver provided in Paragraph 6.1.

5 6.3 Release by Participating Class Members: All Participating Class Members, on
6 behalf of themselves and their respective former and present spouses, representatives, agents,
7 attorneys, heirs, administrators, successors, and assigns, release the Released Parties from any
8 and all claims for damages and/or penalties that accrued during the Class Period, based on the facts
9 and claims alleged in the Action, including but not limited to any and all claims arising under Cal.
10 Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, the applicable IWC Wage
11 Orders, and Cal. Bus. & Prof. Code §§ 17200, *et seq.* This release covers, without limitation, any
12 and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other
13 counsel representing Plaintiff or Settlement Class Members, or by Plaintiff or Settlement Class
14 Members, or any of them, in connection with or related in any manner to the Action, the Settlement
15 of the Action, the administration of such Settlement, and/or the released claims, except to the extent
16 otherwise specified in the Agreement. Except as set forth in this Paragraph, Participating Class
17 Members do not release any other claims, including claims for vested benefits, wrongful
18 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
19 disability, social security, or workers' compensation.

20 6.4 Release of PAGA Claim. All Aggrieved Employees, on behalf of themselves and
21 their respective former and present spouses, representatives, agents, attorneys, heirs,
22 administrators, successors, assigns, and the State of California, release any and all claims for
23 PAGA penalties arising from the facts and theories alleged in the Action or the PAGA Notice that
24 accrued during the PAGA Period, based on the facts and claims alleged in the Action, including but
25 not limited to claims arising under Cal. Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197,
26 1198, and 2698, *et seq.* This release covers, without limitation, any and all claims for attorneys' fees,
27 costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or
28 Aggrieved Employees, or by Plaintiff or Aggrieved Employees, or any of them, in connection with or
29 related in any manner to the Action, the Settlement of the Action, the administration of such Settlement,
30 and/or the released claims, except to the extent otherwise specified in the Agreement.

1 **7. MOTION FOR PRELIMINARY APPROVAL.** Plaintiff agrees to prepare and file a
2 motion for preliminary approval (“Motion for Preliminary Approval”). A draft proposed Order
3 Granting Preliminary Approval and Approval of PAGA Settlement is attached as Exhibit C.

4 7.1 Plaintiff’s Responsibilities. At least five (5) business days before they are filed,
5 Plaintiff will prepare and deliver to Defense Counsel for review and approval all documents to be
6 filed in connection with her request for Preliminary Approval, including: (i) a draft of the notice,
7 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
8 of the Settlement under applicable Ninth Circuit authorities and a request for approval of the
9 PAGA Settlement under Labor Code Section 2699, subd. (f)(2); (ii) a draft proposed Order
10 Granting Preliminary Approval and Approval of PAGA Settlement materially consistent with
11 Exhibit C; (iii) a copy of the proposed Administrator’s bid for administering the Settlement; and
12 (v) a signed declaration from each Class Counsel firm attesting to their competency to represent
13 the Class Members and the timely transmission to the LWDA of all necessary PAGA documents,
14 including the initial notice of violations (Labor Code section 2699.3, subd. (a)(1)(A)), the
15 Operative Complaint (Labor Code section 2699, subd. (s)(1)), and this Agreement (Labor Code
16 section 2699, subd. (s)(2)). Defense Counsel will not unreasonably withhold approval

17 7.2 Responsibilities of Counsel. Class Counsel is responsible for expeditiously
18 finalizing and filing the Motion for Preliminary Approval no later than 45 days after the full
19 execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary
20 Approval; appearing in Court to advocate in favor of the Motion for Preliminary Approval; and
21 delivering the Court’s Preliminary Approval to the Administrator.

22 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
23 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
24 Defense Counsel will expeditiously work together on behalf of the Parties, and in good faith, to
25 resolve the disagreement. If the Court does not grant Preliminary Approval or conditions
26 Preliminary Approval on any material change to this Agreement, Class Counsel and Defense
27 Counsel will expeditiously work together on behalf of the Parties, and in good faith, to modify
28 the Agreement and otherwise satisfy the Court’s concerns, except that Defense Counsel reserves
the right to nullify the Agreement if the Court conditions approval on an increase in the Gross
Settlement Amount or orders any additional payments by Defendant.

1 **8. SETTLEMENT ADMINISTRATION.**

2 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
3 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
4 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
5 Agreement in exchange for the Administration Expenses Payment. The Parties and their Counsel
6 represent that they have no interest or relationship, financial or otherwise, with the Administrator
other than a professional relationship arising out of prior experiences administering settlements.

7 8.2 Employer Identification Number. The Administrator shall have and use its own
8 Employer Identification Number for purposes of calculating payroll tax withholdings and
9 providing reports state and federal tax authorities.

10 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
11 that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury
Regulation section 468B-1.

12 8.4 Notice to Class Members.

13 8.4.1 No later than three (3) business days after receipt of the Class Data, the
14 Administrator shall notify Class Counsel that the list has been received and state the number of
15 Class Members, Aggrieved Employees, Class Work Weeks, and PAGA Pay Periods in the Class
16 Data.

17 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
18 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
19 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Court-approved
20 Notice Packet. The first page of the Class Notice shall estimate the dollar amounts of any
21 Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the
22 number of Class Work Weeks and PAGA Pay Periods (if applicable) used to calculate these amounts.
Before mailing Notice Packets, the Administrator shall update Class Member addresses using the
National Change of Address database.

23 8.4.3 Not later than 3 business days after the Administrator’s receipt of any
24 Notice Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice
25 Packet using any forwarding address provided by the USPS. If the USPS does not provide a
26 forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail
27 the Notice Packet to the most current address obtained. The Administrator has no obligation to

1 make further attempts to locate or send Notice Packet to Class Members whose Notice Packet is
2 returned by the USPS a second time. Re-mailed Notice Packets shall inform Class Members of
3 their extended Response Deadline.

4 8.4.4 If the Administrator, Defendants or Class Counsel are contacted by or
5 otherwise discover any persons who believe they should have been included in the Class Data
6 and should have received Notice Packet prior to 14 days before the Final Approval Hearing, the
7 Parties will expeditiously meet and confer in good faith in an effort to agree on whether to include
8 them as Class Members. If the Parties agree, such persons will be Class Members entitled to the
9 same rights as other Class Members, and the Administrator will send, via email or overnight
10 delivery, a Class Notice requiring them to exercise options under this Agreement not later than
11 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are
12 later.

13 8.5 Requests for Exclusion (Opt-Outs).

14 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
15 Settlement must send the Administrator, by fax, email, or mail, a timely signed written Request
16 for Exclusion. A Request for Exclusion is a letter from a Class Member or his/her representative
17 that reasonably communicates the Class Member's election to be excluded from the Settlement
18 and includes the Class Member's name, address and email address or telephone number. To be
19 valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Class
20 Member's Response Deadline.

21 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
22 because it fails to contain all the information specified in the Class Notice. The Administrator
23 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
24 identity of the person as a Class Member and the Class Member's desire to be excluded. The
25 Administrator's determination shall be final and not appealable or otherwise susceptible to
26 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
27 the Administrator may demand additional proof of the Class Member's identity. The
28 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

8.5.3 Every Class Member who does not submit a timely and valid Request for
Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all

benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.3 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4 Every Class Member who submits a valid and timely Request for Exclusion or is otherwise deemed by the Court to have validly opted out of the Settlement is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. All Aggrieved Employees are eligible for an Individual PAGA Payment, regardless of whether they have opted out of the Settlement.

8.6 Challenges to Calculation of Class Work Weeks and/or PAGA Pay Period. Each Class Member and Aggrieved Employee shall have until their Response Deadline to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as Exhibit B, may be used for this purpose but is not required. Class Members and Aggrieved Employees may challenge their allocations by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member or Aggrieved Employee to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Work Weeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to the allocation of Class Work Weeks and/or Pay Periods to Defense Counsel and Class Counsel, including any supporting documentation and the Administrator's determination of the challenges.

8.7 Objections to Settlement.

8.7.1 Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.

8.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear

1 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
2 Hearing. A Participating Class Member who elects to send a written objection to the
3 Administrator must do so by their Response Deadline.

4 8.7.3 Non-Participating Class Members have no right to object to the Settlement.

5 8.7.4 Email Address and Toll-Free Number. The Administrator will maintain
6 and monitor an email address and a toll-free telephone number to receive Class Member calls,
7 faxes, and emails.

8 8.8 Requests for Exclusion (Opt-outs) and Exclusion List.

9 The Administrator will promptly review on a rolling basis Requests for Exclusion to
10 ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting
11 Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel
12 containing (a) the names and other identifying information of Class Members who have timely
13 submitted valid Requests for Exclusion (“Exclusion List”); (b) the names and other identifying
14 information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of
15 all Requests for Exclusion from Settlement submitted (whether valid or invalid).

16 8.9 Weekly Reports.

17 The Administrator must, on a weekly basis, provide written reports to Class Counsel and
18 Defense Counsel that, among other things, tally the number of: Notice Packets mailed or re-
19 mailed, Notice Packets returned undelivered, Requests for Exclusion (whether valid or invalid)
20 received, objections received, challenges to Class Work Weeks and/or Pay Periods received and/or
21 resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments
22 (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment
23 of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and
24 objections received.

25 8.10 Administrator’s Declaration.

26 Not later than 14 days before the date by which Plaintiff is required to file the Motion for
27 Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense
28 Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
compliance with all of its obligations under this Agreement, including, but not limited to, its
mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of
Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion

1 from Settlement it received (both valid or invalid), the number of written objections and attach
2 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
3 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
4 declaration(s) in Court.

5 **8.11 Final Report by Administrator.**

6 Within 10 days after the Administrator disburses all funds in the Gross Settlement
7 Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report
8 detailing its disbursements by employee identification number only of all payments made under
9 this Agreement. At least 15 days before any deadline set by the Court, the Administrator will
10 prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing
11 in Court attesting to its disbursement of all payments required under this Agreement. Class
12 Counsel is responsible for filing the Administrator's declaration in Court.

13 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** At the time of the July 14,
14 2025 mediation, Defendants estimated that there were 5,892 Class Members from December 22,
15 2017 to February 21, 2025. If the number of Class Members as of the date the Court approves the
16 settlement exceeds 5,892 by more than 10%, the Gross Settlement Amount will increase
17 proportionally according to the number of additional Class Members over 6,482 (e.g., for every
18 Class Member exceeding 6,482 Class Members, the Gross Settlement Amount shall increase by
19 \$186.69). If the Escalator Clause is triggered, Plaintiff will request up to one-third of (33 and 1/3
20 %) the total increased Gross Settlement Amount as the Class Counsel Fees Payment.

21 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
22 Exclusion identified in the Exclusion List exceeds 5% of the total of all Class Members,
23 Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree
24 that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
25 whatsoever, and that neither Party will have any further obligation to perform under this
26 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
27 Administration Expenses incurred to that point. In that event, the class will be decertified.
28 Defendants must notify Class Counsel and the Court of their election to withdraw not later than
seven (7) days after the Administrator sends the final Exclusion List to Defense Counsel.

1
2 **11. MOTION FOR FINAL APPROVAL.** Consistent with the timing required by the Federal
3 Rules of Civil Procedure, the Local Rules for the Eastern District of California, and any additional
4 Court-specific rules or guidance, Plaintiff will file in Court, a motion for final approval of the
5 Settlement that includes a request for approval of the PAGA settlement under Labor Code section
6 2699, subd. (s)(1), a Proposed Final Approval Order and a proposed Judgment (collectively
7 “Motion for Final Approval”). Plaintiff shall provide drafts of this motion and all supporting
8 papers to Defense Counsel at least five (5) business days before they are filed for review and
9 approval. Defense Counsel will not unreasonably withhold approval.

10 11.1 Response to Objections. Each Party retains the right to respond to any objection
11 raised by a Participating Class Member, including the right to file responsive documents in Court
12 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
13 by the Court.

14 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
15 Approval on any material change to the Settlement (including, but not limited to, the scope of
16 release to be granted by Class Members), the Parties will expeditiously work together in good
17 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
18 Approval. The Court’s decision to award less than the amounts requested for the Class
19 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
20 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
21 modification to the Agreement within the meaning of this paragraph.

22 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
23 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
24 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
25 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

26 11.4 Waiver of Right to Appeal. Plaintiff, Class Counsel, and all Participating Class
27 Members who do not object to the Settlement as provided in this Agreement waive all rights to
28 appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the
right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals.
The waiver of appeal does not include any waiver of the right to oppose such motions, writs or
appeals.

11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), each Party shall have thirty (30) days after the remittitur is issued to elect to nullify this Agreement by providing such notice to the other Party. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, with any additional Administration Expenses reasonably incurred after remittitur coming out of the Gross Settlement Amount. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. ADDITIONAL PROVISIONS.

12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit, that Plaintiff's claims can proceed on a class or representative basis, or that Defendants have any liability for any claims asserted. Nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,

1 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
2 Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical
3 obligations owed to Class Members.

4 12.3 Integrated Agreement. Upon execution by all Parties and their counsel, this
5 Agreement together with its attached exhibits shall constitute the entire agreement between the
6 Parties relating to the Settlement, superseding any and all oral representations, warranties,
7 covenants, or inducements made to or by any Party.

8 12.4 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
9 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
10 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
11 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
12 terms of this Agreement including any amendments to this Agreement.

13 12.5 Cooperation. The Parties and their counsel will cooperate with each other and
14 use their best efforts, in good faith, to implement the Settlement by, among other things,
15 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
16 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
17 the form or content of any document necessary to implement the Settlement, or on any
18 modification of the Agreement that may become necessary to implement the Settlement, the
19 Parties will seek the assistance of a Hon. Ann I. Jones.

20 12.6 No Prior Assignments. The Parties separately represent and warrant that they
21 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
22 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
23 action, or right released and discharged by the Party in this Settlement.

24 12.7 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
25 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
26 Settlement be relied upon as such within the meaning of United States Treasury Department
27 Circular 230 (31 CFR Part 10, as amended) or otherwise.

28 12.8 Modification of Agreement. This Agreement, and all parts of it, may be
amended, modified, changed, or waived only by an express written instrument signed by all
Parties or their representatives, and approved by the Court.

12.9 Agreement Binding on Successors. This Agreement will be binding upon, and

1 inure to the benefit of, the successors of each of the Parties.

2 12.10 Applicable Law. All terms and conditions of this Agreement and its exhibits will
3 be governed by and interpreted according to the internal laws of the state of California, without
4 regard to conflict of law principles.

5 12.11 Cooperation in Drafting. The Parties have cooperated in the drafting and
6 preparation of this Agreement. This Agreement will not be construed against any Party on the
7 basis that the Party was the drafter or participated in the drafting.

8 12.12 Confidentiality. To the extent permitted by law, all agreements made, and orders
9 entered during Action and in this Agreement relating to the confidentiality of information shall
10 survive the execution of this Agreement.

11 12.13 Use and Return of Class Data. Information provided to Class Counsel and all
12 copies and summaries of the Class Data provided to Class Counsel by Defendants in connection
13 with the mediation, other settlement negotiations, or in connection with the Settlement, may be
14 used only with respect to this Settlement, and no other purpose, and may not be used in any way
15 that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days
16 after the date when the Court discharges the Administrator's obligation to provide a Declaration
17 confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic
18 versions of Class Data received from Defendants unless, prior to the Court's discharge of the
19 Administrator's obligation, Defendants make a written request to Class Counsel for the return,
20 rather than the destructions, of Class Data.

21 12.14 Headings. The descriptive heading of any section or paragraph of this Agreement
22 is inserted for convenience of reference only and does not constitute a part of this Agreement.

23 12.15 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
24 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
25 weekend or federal legal holiday, such date or deadline shall be on the first business day
26 thereafter.

27 12.16 Notice. All notices, demands or other communications between the Parties in
28 connection with this Agreement will be in writing and deemed to have been duly given as of the
third business day after mailing by United States mail, or the day sent by email or messenger,
addressed as follows:

To Plaintiff:
David Glenn Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Kelsey A. Israel-Trummel
Jones Day
555 California Street, 26th Floor
San Francisco, California 94104
kitrummel@jonesday.com

12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

Dated: 04 / 09 / 2026

By: 
DEJA NAIR

Dated:

By: _____
Katherine Morgan
Deputy General Counsel, Medline
Industries, LP

MEDLINE INDUSTRIES, INC.

Dated:

By: _____
Katherine Morgan

To Plaintiff:
David Glenn Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendant:
Kelsey A. Israel-Trummel
Jones Day
555 California Street, 26th Floor
San Francisco, California 94104
kitrummel@jonesday.com

12.17 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

12.18 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement.

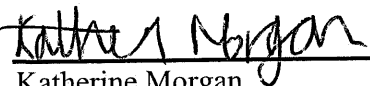
Dated:

By:

DEJA NAIR

Dated: April 10, 2026

By:



Katherine Morgan
Deputy General Counsel, Medline
Industries, LP

MEDLINE INDUSTRIES, INC.

Dated: April 10, 2026

By:



Katherine Morgan

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Deputy General Counsel, Medline
Industries, LP

MEDLINE INDUSTRIES, LP

Dated:

By: _____
Katherine Morgan
Deputy General Counsel, Medline
Industries, LP

MEDLINE INDUSTRIES
HOLDINGS, LP

THE SPIVAK LAW FIRM

Dated: 04 / 09 / 2026

By:  _____
DAVID GLENN SPIVAK, Attorneys
for Plaintiff, DEJA NAIR, and all others
similarly situated

UNITED EMPLOYEES LAW GROUP

Dated: 04/09/2026

By:  _____
WALTER L. HAINES, Attorneys for
Plaintiff, DEJA NAIR, and all others
similarly situated

JONES DAY

Dated:

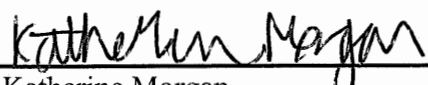
By: _____
KELSEY A. ISRAEL-TRUMMEL,
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Deputy General Counsel, Medline Industries, LP

MEDLINE INDUSTRIES, LP

Dated: April 10, 2026

By: 
Katherine Morgan
Deputy General Counsel, Medline Industries, LP

MEDLINE INDUSTRIES HOLDINGS, LP

THE SPIVAK LAW FIRM

Dated:

By: _____
DAVID GLENN SPIVAK, Attorneys for Plaintiff, DEJA NAIR, and all others similarly situated

UNITED EMPLOYEES LAW GROUP

Dated:

By: _____
WALTER L. HAINES, Attorneys for Plaintiff, DEJA NAIR, and all others similarly situated

JONES DAY

Dated: April 10, 2026

By: 
KELSEY A. ISRAEL-TRUMMEL, Attorneys for Defendants

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Deja Nair v. Medline Industries, LP. Et al.,
District Court for the Eastern District of California, Case No. 2:22-CV-00331-DAD-JDP

This is a court-authorized notice. It is not a solicitation and you are not being sued. Please read this notice carefully. Your legal rights are affected whether you act or do not act.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Medline Industries, Inc., Medline Industries, LP, and Medline Industries Holdings, L.P. (“Defendants”) for alleged violations of California’s labor laws. The Action was filed by one of Defendants’ former employees Deja Nair (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of persons employed by Defendants in California and classified as a non-exempt, hourly warehouse employees who worked for Defendants during the Class Period of December 22, 2017 through <<preliminary Court-approval of the Settlement>> in one of the positions included in the list attached to this Notice (“Class Members”) and (2) civil penalties under the California Private Attorney General Act (“PAGA”) for all persons employed by Defendants in California and classified as a non-exempt, hourly warehouse employees who worked for Defendants during the PAGA Period of October 29, 2020 through <<preliminary Court-approval of the Settlement>> in one of the positions included in the list attached to this Notice (“Aggrieved Employees”).

The Court has not made any determinations about the merits of Plaintiff’s claims or whether Defendants engaged in any unlawful conduct. To avoid the costs of further litigation, the parties have agreed upon a settlement that will resolve the class claims brought on behalf of the Class Members (“Class Settlement”) and the PAGA claims brought on behalf of the Aggrieved Employees (“PAGA Settlement”).

If you worked for Defendants during the Class Period and/or the PAGA Period in one of the qualifying roles, you have two basic options under the Settlement:

(1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and receive an Individual Class Payment and, if applicable, an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Class Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period claims against Defendants. Aggrieved Employees cannot opt out of the PAGA Settlement. If you are an Aggrieved Employee who opts out, you will still receive your Individual PAGA Payment and release your PAGA claims.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement. Further information about the Settlements and your options is included in the rest of this Notice.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and, if applicable, an Individual PAGA Payment. In exchange, you will give up your right to assert the claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	If you do not want to participate in the Settlement as a Settlement Class Member, you can opt-out by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. Even if you opt out of the Class portion of the proposed Settlement, you cannot opt-out of the PAGA portion of the proposed Settlement. See Section 6 of this Notice for more detail.
Participating Class Members Can Object to the Class Settlement Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement, including but not limited to the amounts that Class Counsel will request be paid to them in attorney's fees and costs and to the Plaintiff in the form of a Service Award. See Section 7 of this Notice for more detail.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing	The Court's Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost). Participating Class Members can verbally object to the Settlement at the Final Approval Hearing whether or not they submitted a written objection. See Section 8 of this Notice for more detail.
You Can Challenge the Calculation of Your Work Week / Pay Periods Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Class Work Weeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Work Weeks and number of PAGA Pay Periods you worked according to Defendants' records is stated in Section 4 below. If you disagree with either of these numbers, you must submit a challenge by <<RESPONSE DEADLINE>>. See Section 4 of this Notice for more detail.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee who claims that Defendants failed to pay wages, provide meal periods and rest periods, issue proper wage statements, and timely pay wages, resulting in various Labor Code violations. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the Private Attorneys General Act (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David Glenn Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants deny all alleged violations, deny that they owe Class Members or Aggrieved Employees any amounts, and assert that they have fully complied with the law. Nevertheless, in order to avoid further costs and time defending against the Action, Defendants agreed to settle the Action. The Court has not made a ruling on the merits of the case.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

The Court has not decided in favor of the Plaintiff or Defendants. Instead, both sides agreed to a settlement that is memorialized in the Class Action And Paga Settlement Agreement And Class Notice (“Settlement” or “Settlement Agreement”). The parties are now jointly asking the Court to enter a judgment ending the Action and enforcing the Agreement. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strengths and weaknesses of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

A. Gross Settlement Amount. The Settlement provides that Defendants will pay \$1,100,000.00 as the Gross Settlement Amount. This includes all costs and attorneys’ fees for Class Counsel. The Gross Settlement Amount is subject to increase if the total number of class members is greater than 6,482 by \$186.69 per additional Class Member.

B. Net Settlement Amount. The Net Settlement Amount is the portion of the Gross Settlement Amount that will be available for distribution to Settlement Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims, based on the number of Class Work Weeks they worked. The Net Settlement Amount is the Gross Settlement Amount less the following amounts, which are subject to Court-approval:

1. Attorney Fees and Costs. Up to \$366,666.66 (or 33.33% of the Gross Settlement Amount) to be paid to Class Counsel for attorneys’ fees and up to \$50,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action

without payment.

2. Class Representative Service Payment. Up to \$20,000.00 to be paid to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative Service Payment will be the only payment Plaintiff receives other than Plaintiff's Individual Class Payment and Individual PAGA Payment.

3. Administration Expenses. Up to \$30,000.00 to be paid to ILYM Group, Inc., the third-party settlement administrator responsible for administering the Settlement.

4. PAGA Penalties. Up to \$20,000.00 for PAGA Penalties, 75% of which will be paid to the LWDA as PAGA penalties and 25% of which will be allocated to Individual PAGA Payments to be paid to the Aggrieved Employees based on their PAGA Period Pay Periods, as explained further below in Section 4.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections. If the Court approves less than the amounts requested in Attorney Fees and Costs, the Class Representative Service Payment, Administrative Expenses, or PAGA Penalties, the Administrator will allocate the difference to the Net Settlement Amount. If the Court approves more than the amounts requested, the additional amount shall be taken out of the Gross Settlement Amount and Defendants will not be required to pay any additional amounts to Class Counsel.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 50.00% of each Individual Class Payment to taxable wages ("Wage Portion") and the remaining 50.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

E. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property Fund at (800) 992-4647.

F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than <<**RESPONSE DEADLINE**>>, that you wish to opt-out. Further information on how to opt out of the Settlement is included below in Section 6. You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and Plaintiff releases Defendants from civil penalties they may owe to the Aggrieved Employees.

G. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

H. Administrator. The Court has appointed a neutral company, ILYM Group, Inc. (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.

I. Participating Class Members' Release. As of the Effective Date, Participating Class Members, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against the "Released Parties" for any of the "Released Claims" that accrued during the "Class Period."

The "Released Parties" means Defendants Medline Industries Inc., Medline Industries, LP and Medline Industries Holdings, LP and their respective former and present parents, subsidiaries, affiliated corporations and entities, and each of their respective current, former, and future officers, directors, members, managers, employees, partners, shareholders, investors, joint venturers and third-party agents, and any successors, assigns, legal representatives, or any individual or entity which could be jointly or severally liable with Defendants and all persons or entities acting by, through, under, or in concert with any of them.

The "Released Claims" means: Any and all claims for damages and/or penalties that accrued during the Class Period, based on the facts and claims alleged in the Action, including but not limited to any and all claims arising under Cal. Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, the applicable IWC Wage Orders, and Cal. Bus. & Prof. Code §§ 17200, *et seq.* This release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements

incurred by Class Counsel or any other counsel representing Plaintiff or Settlement Class Members, or by Plaintiff or Settlement Class Members, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the released claims, except to the extent otherwise specified in the Agreement. Except as set forth in this Paragraph, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, or workers' compensation.

The "Class Period" means the period from December 22, 2017 through <<preliminary approval date>>.

J. The PAGA Release. All Aggrieved Employees, on behalf of themselves and their respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, assigns, and the State of California, release any and all claims for PAGA penalties arising from the facts and theories alleged in the Action or the PAGA Notice that accrued during the PAGA Period, based on the facts and claims alleged in the Action, including but not limited to claims arising under Cal. Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, and 2698, *et seq.* This release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements incurred by Class Counsel or any other counsel representing Plaintiff or Aggrieved Employees, or by Plaintiff or Aggrieved Employees, or any of them, in connection with or related in any manner to the Action, the Settlement of the Action, the administration of such Settlement, and/or the released claims, except to the extent otherwise specified in the Agreement.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

A. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Class Work Week worked by all Participating Class Members, and (b) multiplying the result by the number of Class Work Week worked by each individual Participating Class Member. Defendants' records show that you worked <<__>> Class Work Weeks during the Class Period. Based on this number, your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding). This is only a preliminary estimate. The actual amount you may receive likely will be different and will depend on a number of factors.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing 75% of the PAGA Penalty amount by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee. Defendants' records show that you worked <<__>> PAGA Pay Period during the PAGA Period. Based on this number, your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>. This is only a preliminary estimate. The actual amount you may receive likely will be different and will depend on a number of factors.

C. Class Work Weeks/PAGA Pay Periods Challenges. If you believe that an error was made in determining your Class Work Weeks or PAGA Pay Periods, you have until <<RESPONSE DEADLINE>> to challenge the number of Class Work Weeks and/or Pay Periods

credited to you. You can submit your challenge by signing and sending a letter to the Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this purpose. Section 9 of this Notice has the Administrator's contact information.

If you choose to challenge your Class Work Week or PAGA Pay Period counts, you will need to support your challenge by submitting copies of pay stubs or other records. The Administrator will accept Defendants' calculation of Class Work Weeks and/or Pay Periods based on Defendants' records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The parties will resolve Work Week and/or Pay Period challenges based on your submission and on input from Class Counsel and Defendants' Counsel. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Work Weeks and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

A. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member). If you are a Non-Participating Class Member who does not qualify as an Aggrieved Employee, you will not be mailed any check.

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

If you want to opt out of the Settlement, you should email, fax, or mail a timely written and signed Request for Exclusion by <<**RESPONSE DEADLINE**>>. Your Request for Exclusion should be a letter from you or your representative setting forth your name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. The Administrator will exclude you based on any writing communicating your request to be excluded. Be sure to sign your request, identify the Action as *Deja Nair vs. Medline Industries, Inc.*, Case No. 2:22-CV-00331-WBS-KJN, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). **The Administrator must be sent your request to be excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment even if you opt out.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. This means that, if you opt out of the Settlement as described under Section 6, you cannot object. A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is <<RESPONSE DEADLINE>>.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Deja Nair vs. Medline Industries, Inc.*, case no. 2:22-CV-00331-WBS-KJN, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Courtroom: 4, 15th floor of the United States District Court for the Eastern District of California, located at Courtroom 4, 15th floor located at Robert T. Matsui U.S. Courthouse, 501 I Street, Suite 8-240, Sacramento, CA 95814. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend yourself or hire a lawyer to attend on your behalf. The Court holds hearings virtually via Zoom and permits members of the public to access hearings telephonically by dialing 1-669-254-5252, using Meeting ID 161 413 4031 and 24 Passcode 125984, at the time of the hearing.

It is possible that the Court will reschedule the Final Approval Hearing. If you are planning to attend, you should check the Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or check the Court's Law and Motion calendar, available at <<<https://www.caed.uscourts.gov/caednew/index.cfm/judges/daily-calendar/?Date=&JudgeID=5017>>> to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<WEBSITE>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below. Case documents are also available via PACER at <<WEBSITE>>, entering the Case Number for the Action, Case No. No. 2:22-CV-00331-DAD-JDP.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David Glenn Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

Administrator:

Name of Company:	ILYM Group, Inc.
Email Address:	_____
Mailing Address:	_____
Telephone:	_____
Fax Number:	_____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800) 992-4647.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT B

CLASS WORK WEEKS/PAGA PAY PERIODS DISPUTE FORM

United States District Court for the Eastern District of California
Deja Nair v. Medline Industries, Inc., et al., Case No. No. 2:22-CV-00331-DAD-JDP

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX – XX - _

The amount of your estimated Settlement Award is based upon the number of eligible Class Work Weeks you worked between December 22, 2017 and <<the date the Court preliminarily approves this class action settlement>> and eligible PAGA Pay Periods you worked between October 29, 2020 and <<the date the Court preliminarily approves this class action settlement>>. “Class Work Week” means any week during the Class Period in which a you worked at least one day in one of the positions listed on the list attached to the Notice you received. “PAGA Pay Period” means any pay period during the PAGA Period in which you worked at least one day in one of the positions listed on the list attached to the Notice you received.

YOUR ELIGIBLE WORKWEEKS/ PAY PERIODS

Defendants’ records indicate that you worked <<number of Class Work Weeks>> Workweeks between December 22, 2017 and <<the date the Court preliminarily approves this class action settlement>> and <<number of PAGA Pay Periods>> PAGA Pay Periods between October 29, 2020 through <<the date the Court preliminarily approves this class action settlement>>.

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

If you wish to dispute the number of Class Work Weeks or PAGA Pay Periods credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as a postmark or delivery service date stamp). You may use this Work Week/PAGA Pay Period Dispute form for this purpose. You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect.

**UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF
WORKWEEKS OR PAGA PAY PERIODS CREDITED TO YOU, YOU DO NOT NEED
TO COMPLETE THIS FORM**

EXHIBIT C

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEJA NAIR, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MEDLINE INDUSTRIES, INC., an Illinois corporation; MEDLINE INDUSTRIES HOLDINGS, L.P., a Delaware limited partnership; MEDLINE INDUSTRIES, LP, an Illinois limited partnership; and DOES 1–50, inclusive,

Defendant(s).

Case No. No. 2:22–CV–00331–DAD-JDP

[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT

Action filed: December 22, 2021
Dept: The Honorable Dale A.
Drozd, Courtroom: 4, 15th
floor

The Motion of Plaintiff Deja Nair (hereafter referred to as “Plaintiff”) for Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court, The Honorable Dale A/ Drozd presiding. The Court having considered the Motion, the Class Action and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”),

1 and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined only that there is sufficient evidence to suggest that the proposed settlement might
6 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
7 the final hearing. The Court has additionally determined that there is sufficient evidence to
8 suggest that the proposed settlement of Plaintiff's PAGA claims merits settlement approval
9 pursuant to California Labor Code § 2699 *et seq.* The Court will make a determination at the
10 hearing on the motion for final approval of class action settlement (the "Final Approval Hearing")
11 as to whether the Settlement is fair, adequate and reasonable to the Settlement Class and merits
12 settlement approval pursuant to California Labor Code § 2699 *et seq.*
13

14 2. For purposes of this Preliminary Approval Order, the "Settlement Class" or
15 "Class" means (collectively "Class Members"), all persons employed by Defendants in California
16 and classified as a non-exempt, hourly warehouse employees who worked for Defendants during
17 the Class Period in one or more of the positions listed in Exhibit E attached to the Settlement
18 Agreement. The "Class Period" shall mean the period of time from December 22, 2017, through
19 the date of this Order.
20

21 3. This action is provisionally certified as a class action for purposes of settlement
22 only with respect to the proposed Settlement Class.
23

24 4. Not later than 15 business days after the Court grants Preliminary Approval of the
25 Settlement, Defendants will simultaneously deliver the Class Data to the Administrator. To
26 protect Class Members' privacy rights, the Administrator must maintain the Class Data in
27
28

1 confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and
2 restrict access to the Class Data to Administrator employees who need access to the Class Data
3 to effect and perform under this Agreement.

4 5. No later than three (3) business days after receipt of the Class Data, the
5 Administrator shall notify Class Counsel that the list has been received and state the number of
6 Class Members, PAGA Members, Class Work Weeks, and PAGA Pay Periods in the Class Data.

7 6. No later than 14 days after receiving the Class Data, the Administrator will send
8 to all Class Members identified in the Class Data, via first-class United States Postal Service
9 (“USPS”) mail, the Court-approved Notice Packet with Spanish translation substantially in the
10 forms attached to the Settlement Agreement as **Exhibits A and B**. Before mailing Notice Packets,
11 the Administrator shall update Class Member addresses using the National Change of Address
12 database.
13

14 7. Not later than 3 business days after the Administrator’s receipt of any Notice
15 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
16 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
17 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
18 Packet to the most current address obtained. The Administrator has no obligation to make further
19 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
20 the USPS a second time. Re-mailed Notice Packets shall inform Class Members of their extended
21 Response Deadline.
22

23 8. If the Administrator, Defendants or Class Counsel are contacted by or otherwise
24 discover any persons who believe they should have been included in the Class Data and should
25 have received Notice Packet prior to 14 days before the Final Approval Hearing, the Parties will
26
27
28

1 expeditiously meet and confer in good faith in an effort to agree on whether to include them as
2 Class Members. If the Parties agree, such persons will be Class Members entitled to the same
3 rights as other Class Members, and the Administrator will send, via email or overnight delivery,
4 a Class Notice requiring them to exercise options under this Agreement not later than 14 days
5 after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.
6

7 9. Requests for Exclusion. As further set forth in the Settlement, Class Members who
8 wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax,
9 email, or mail, a timely signed written Request for Exclusion. To be valid, a Request for
10 Exclusion must be timely faxed, emailed, or postmarked by the Class Member's Response
11 Deadline.

12 10. The Administrator may not reject a Request for Exclusion as invalid because it
13 fails to contain all the information specified in the Class Notice. The Administrator shall accept
14 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
15 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
16 determination shall be final and not appealable or otherwise susceptible to challenge.
17

18 11. Every Class Member who does not submit a timely and valid Request for Exclusion
19 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all
20 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
21 Members' Release under Paragraphs 6.3 of the Settlement, regardless whether the Participating
22 Class Member actually receives the Class Notice or objects to the Settlement.
23

24 12. Every Class Member who submits a valid and timely Request for Exclusion is a
25 Non-Participating Class Member and shall not receive an Individual Class Payment or have the
26 right to object to the class action components of the Settlement.
27
28

1 13. Challenges to Calculation of Class Work Weeks/PAGA Pay Periods. As further
2 set forth in the Settlement, each Class Member and Aggrieved Employee shall have until their
3 Response Deadline to challenge the number of Class Work Weeks and PAGA Pay Periods (if
4 any) allocated to the Class Member in the Class Notice. A Work Week Dispute form, attached as
5 Exhibit B to the Settlement, may be used for this purpose but is not required. In the absence of
6 any contrary documentation, the Administrator is entitled to presume that the Class Work Weeks
7 and PAGA Pay Periods contained in the Class Notice are correct so long as they are consistent
8 with the Class Data. The Administrator's determination of each Class Member's allocation of
9 Work Weeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to
10 challenge.

11
12 14. Objections to Settlement. As further set forth in the Settlement, only Participating
13 Class Members may object to the class action components of the Settlement and/or this
14 Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the
15 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class
16 Representative Service Payment.

17
18 15. Participating Class Members may send written objections to the Administrator, by
19 fax, email, or mail, by their Response Deadline. In the alternative, Participating Class Members
20 may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the
21 Final Approval Hearing.

22
23 16. Non-Participating Class Members have no right to object to any of the class action
24 components of the Settlement.

25 17. The Plaintiff's Motion for Final Approval of the Settlement must be accompanied
26 by a declaration from the Administrator attesting to its due diligence and compliance with all of
27
28

1 its obligations under the Settlement Agreement, including, but not limited to, its mailing of the
2 Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets,
3 attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it
4 received (both valid or invalid), the number of written objections and attach the Exclusion List.

5 18. The Court approves, as to form and content, the Class Notice in substantially the
6 form attached as Exhibit A to the Settlement Agreement and the Class Work Weeks/ PAGA Pay
7 Periods Dispute form in substantially the form attached as Exhibit B to the Settlement Agreement.

8 19. The Court approves, for settlement purposes only, David Glenn Spivak of The
9 Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

10 20. The Court approves, for settlement purposes only, Deja Nair as the Class
11 Representative.

12 21. The Court approves ILYM Group, Inc. as the Administrator.

13 22. The Court preliminarily approves Class Counsel's request for attorneys' fees and
14 costs subject to final review by the Court.

15 23. The Court preliminarily approves the estimated Administrator costs payable to the
16 Administrator subject to final review by the Court.

17 24. The Court preliminarily approves Plaintiff's Class Representative Service
18 Payment subject to final review by the Court.

19 25. A Final Approval Hearing shall be held on ____ at ____.m. in Courtroom 4, 15th
20 floor of the United States District Court for the Eastern District of California, located at Robert
21 T. Matsui U.S. Courthouse, 501 I Street, Suite 8-240, Sacramento, CA 95814 to consider the
22 fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this
23 Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees
24
25
26
27
28

1 and costs and the Class Representative Service Payment to the Class Representative. The notice
2 of motion and all briefs and materials in support of the motion for final approval of class action
3 settlement and motion for attorneys' fees and litigation costs shall be served and filed with this
4 Court on or before _____. Plaintiff's counsel must give notice to any objecting party of any
5 continuance of the hearing of the motion for final approval.
6

7 26. If for any reason the Court does not execute and file a Final Approval Order and
8 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
9 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
10 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
11 litigation, as more specifically set forth in the Settlement.

12 27. The Court expressly reserves the right to adjourn or continue the Final Approval
13 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
14 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
15

16 **IT IS SO ORDERED.**

17
18
19 _____
DATE

THE HONORABLE DALE A. DROZD

EXHIBIT D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DEJA NAIR, on behalf of herself and all others similarly situated, and as an “aggrieved employee” on behalf of other “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,

Plaintiff(s),

vs.

MEDLINE INDUSTRIES, INC., an Illinois corporation; MEDLINE INDUSTRIES HOLDINGS, L.P., a Delaware limited partnership; MEDLINE INDUSTRIES, LP, an Illinois limited partnership; and DOES 1–50, inclusive,

Defendant(s).

Case No. No. 2:22–CV–00331–DAD-JDP

**[PROPOSED] FINAL ORDER AND
JUDGMENT APPROVING CLASS
ACTION SETTLEMENT**

Action filed: December 22, 2021
Dept: The Honorable Dale A.
Droz, Courtroom: 4, 15th
floor

This matter came on for hearing on ____ at ____m. in Courtroom 4, 15th floor of the above-captioned court on Plaintiff’s Motion for Final Approval of the Class Action and PAGA Settlement Agreement and Class Notice (the “Settlement”) filed herewith which provides for a Gross Settlement Amount (“GSA”) of up to \$1,100,000.00 in compromise of all disputed claims on behalf of during the period of December 22, 2017 to [DATE OF PRELIMINARY

1 SETTLEMENT APPROVAL] (“Settlement Class Period”). All capitalized terms used herein
2 shall have the same meaning as defined in the Settlement.

3 In accordance with the Court’s prior Order Granting Preliminary Approval of Class
4 Action Settlement, Class Members have been given notice of the terms of the Settlement and the
5 opportunity to submit a claim, request exclusion, comment upon or object to it or to any of its
6 terms. Having received and considered the Settlement, the supporting papers filed by the Parties,
7 and the evidence and argument received by the Court in conjunction with the motions for
8 preliminary and final approval of the Settlement, the Court grants final approval of the Settlement
9 and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE FOLLOWING
10 DETERMINATIONS¹:

11
12 1. The Court has jurisdiction over the subject matter of the Action and over all Parties
13 to the Action, including all Class Members. Pursuant to this Court’s Order Granting Preliminary
14 Approval of Class Action Settlement of ___, the Notice Packet was sent to each Class Member
15 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
16 Settlement, their right to receive their proportional share of the Settlement, their right to request
17 exclusion, their right to comment upon or object to the Settlement, and their right to appear in
18 person or by counsel at the final approval hearing and be heard regarding final approval of the
19 Settlement. Adequate periods of time were provided by each of these procedures. No member of
20 the Settlement Class presented written objections to the proposed Settlement as part of this notice
21 process, stated an intention to appear, or actually appeared at the final approval hearing.

22 2. For purposes of this Final Order and Judgment, the Class Members are all persons
23
24
25

26 _____
27 ¹ A true and correct copy of the Court’s ruling on the Motion for Final Approval of Class Action
28 Settlement entered on [REDACTED] is attached hereto as **Exhibit A** and incorporated by reference.

1 employed by Defendants in California and classified as a non-exempt, hourly warehouse
2 employees who worked for Defendants during the Settlement Class Period.

3 3. The Court finds and determines that the notice procedure afforded adequate
4 protections to Class Members and provides the basis for the Court to make an informed decision
5 regarding final approval of the Settlement based on the responses of Class Members. The Court
6 finds and determines that the notice provided in this case was the best notice practicable, which
7 satisfied the requirements of law and due process as to all persons entitled to such notice. The
8 court further finds and determines that Settlement merits approval under California Labor Code
9 § 2699 *et seq.*

11 **Release by Plaintiff and Class Members.** The Parties agree that it is their intent that the
12 resolution set forth in this Settlement will release and discharge the Released Claims by way of
13 any further attempt, by lawsuit, administrative claim or action, arbitration, demand, or other action
14 of any kind by each and all of the Settlement Class Members (including participation to any extent
15 in any representative or collective action) against the Released Parties. This release will not take
16 effect until the Effective Date.

18 **PAGA Release.** All Aggrieved Employees, on behalf of themselves and their respective
19 former and present spouses, representatives, agents, attorneys, heirs, administrators, successors,
20 assigns, and the State of California, release any and all claims for PAGA penalties arising from the
21 facts and theories alleged in the Action or the PAGA Notice that accrued during the PAGA Period,
22 based on the facts and claims alleged in the Action, including but not limited to claims arising under
23 Cal. Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, and 2698, *et seq.* This
24 release covers, without limitation, any and all claims for attorneys' fees, costs or disbursements
25 incurred by Class Counsel or any other counsel representing Plaintiff or Aggrieved Employees, or by
26
27
28

1 Plaintiff or Aggrieved Employees, or any of them, in connection with or related in any manner to the
2 Action, the Settlement of the Action, the administration of such Settlement, and/or the released claims,
3 except to the extent otherwise specified in the Agreement..

4 **“Released Class Claims”**: All Participating Class Members, on behalf of themselves and
5 their respective former and present spouses, representatives, agents, attorneys, heirs,
6 administrators, successors, and assigns, release the Released Parties from any and all claims for
7 damages and/or penalties that accrued during the Class Period, based on the facts and claims alleged
8 in the Action, including but not limited to any and all claims arising under Cal. Labor Code §§ 201-
9 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1198, the applicable IWC Wage Orders, and Cal.
10 Bus. & Prof. Code §§ 17200, *et seq.* This release covers, without limitation, any and all claims for
11 attorneys’ fees, costs or disbursements incurred by Class Counsel or any other counsel representing
12 Plaintiff or Settlement Class Members, or by Plaintiff or Settlement Class Members, or any of them,
13 in connection with or related in any manner to the Action, the Settlement of the Action, the
14 administration of such Settlement, and/or the released claims, except to the extent otherwise specified
15 in the Agreement. Except as set forth in this Paragraph, Participating Class Members do not
16 release any other claims, including claims for vested benefits, wrongful termination, violation of
17 the Fair Employment and Housing Act, unemployment insurance, disability, social security, or
18 workers’ compensation.

19
20
21 2. The Court further finds and determines that the terms of the Settlement are fair,
22 reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
23 provisions of the Settlement, including the release of claims contained therein, should be and
24 hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement
25 according to its terms. As of the Effective Date of Settlement, and for the duration of the
26
27
28

1 Settlement Class Period, all Class Members are hereby deemed to have waived and released all
2 Released Claims and are forever barred and enjoined from prosecuting the Released Claims
3 against the Released Parties as fully set forth in the Settlement. No objections were received by
4 the Parties or the Court through the date of this Final Order and Judgment. The Court finds ____
5 Class Member(s) - ____ - submitted a request for exclusion from the Settlement as determined by
6 the Administrator and therefore is/are not in the Settlement Class, except to the extent that they
7 are also Aggrieved Employees.
8

9 3. The Court finds and determines that (a) the Settlement Shares to be paid to
10 Participating Class Members and (b) the LWDA payment as civil penalties under the California
11 Labor Code Private Attorneys General Act of 2004, as amended, California Labor Code sections
12 2698 *et seq.*, as provided for by the Settlement are fair and reasonable. The Court hereby grants
13 final approval to, and orders the payment of, those amounts be made to the Participating Class
14 Members and to the California Labor & Workforce Development Agency (“LWDA”), in
15 accordance with the terms of the Settlement.
16

17 4. The Court further grants final approval to and orders that the following payments
18 be made in accordance with the terms of the Settlement:

19 a. Subject to the Escalator Clause, Class Counsel fees & costs of \$366,666.66
20 in attorneys’ fees and \$50,000.00 in litigation costs to Class Counsel;

21 b. \$20,000.00 as a Class Representative Service Payment award payable to
22 Plaintiff Deja Nair for her service as a Class Representative;

23 c. \$30,000.00 in costs of the Administrator payable to ILYM Group, Inc. for
24 its services as the Administrator; and
25

26 d. Payment of \$15,000.00 (75% of the (\$20,000.00 PAGA penalty) to the
27
28

1 LWDA.

2 7. The settlement shall proceed as directed in the Settlement, and no payments
3 pursuant to the Settlement shall be distributed until after the Effective Date of Settlement. Without
4 affecting the finality of this Final Order and Judgment in any way, the Court retains jurisdiction
5 of all matters relating to the interpretation, administration, implementation, effectuation and
6 enforcement of this Final Order and Judgment and the Settlement.
7

8 8. Within 28 calendar days of the Effective Date of Settlement, Defendants shall
9 deposit the total Gross Settlement Amount plus the employer side taxes in an account designated
10 by the Administrator.

11 9. Other than their employer side payroll taxes, Defendants' payment of such sums
12 shall be the sole financial obligation of Defendants under the Settlement, and shall be in full
13 satisfaction of all claims released herein, including, without limitation, all claims for wages,
14 penalties, interest, attorneys' fees, costs and expenses.
15

16 10. Participating Class Members shall have one hundred and eighty (180) days from
17 the date of the check's issuance to cash their Settlement Share check. After the expiration of the
18 180-day period, on Defendants' behalf, the Administrator shall remit any amounts from voided
19 settlement checks and otherwise unclaimed, plus interest on the Residue at the legal rate of interest
20 from the date of entry of the initial judgement to the California Unclaimed Property Fund.
21

22 11. Nothing in this Final Order and Judgment shall preclude any action to enforce the
23 Parties' obligations under the Settlement or hereunder, including the requirement that Defendants
24 deposit funds for distribution by the Administrator to Participating Class Members in accordance
25 with the Settlement.

26 12. The Court hereby enters final judgment in this case in accordance with the terms
27
28

1 of the Settlement, Order Granting Preliminary Approval of Class Action Settlement, and this Final
2 Order and Judgment.

3 13. The Parties are hereby ordered to comply with the terms of the Settlement.

4 14. The Parties shall bear their own costs and attorneys' fees except as otherwise
5 provided by the Settlement and this Final Order and Judgment.

6
7 15. The Settlement is not an admission by Defendants nor is this Final Order and
8 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
9 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be used
10 as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final Order
11 and Judgment, the Settlement, any document referred to herein, any exhibit to any document
12 referred to herein, any action taken to carry out the Settlement, nor any negotiations or
13 proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
14 admission or concession with regard to, the denials or defenses of Defendants, and shall not be
15 offered in evidence in any proceeding against the Parties hereto in any Court, administrative
16 agency, or other tribunal for any purpose whatsoever other than to enforce the provisions of this
17 Final Order and Judgment. This Final Order and Judgment, the Settlement and exhibits thereto,
18 and any other papers and records on file in the Action may be filed in this Court or in any other
19 litigation as evidence of the settlement by Defendants to support a defense of res judicata,
20 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to
21 the Released Claims.
22

23
24 16. This document shall constitute a Judgment.

25 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

26
27 **DATE**

THE HONORABLE DALE A. DROZD

EXHIBIT E

List of Job Positions

Ops-Warehouse Operator	Maintenance Mechanic
Ops-Branch Trainer	Ops-Packager
Ops-Warehouse Ld	Maintenance Apprentice
Ops-Janitor	Maintenance Mechanic Jr
Ops-Inventory Coord	Maintenance Mechanic Ld
Ops-Maintenance Mechanic Ii	Operations Support Spec Sr
Ops-Warehouse Clerk	Ops- Warehouse Receiving
Ops-Maintenance Mechanic I	Ops- Warehouse Shipping
Ops-Inventory Coord Sr	Ops-Inventory Coord Ost
Ops-Warehouse Operator Ost	Warehouse Operator Operations
Ops-Inventory Control Ld	Warehouse Ld Operations
Maintenance Tech Ii	Trainer Branch
Maintenance Tech I	Janitor Operations
Warehouse Ld	Inventory Coord Operations
Ops-Maintenance Apprentice	Maintenance Tech Ii
Warehouse Clerk	Warehouse Clerk Operations
Ops-Maintenance Mechanic Sr	Inventory Coord Sr
Supply Chain Clerk Ld	Maintenance Tech I
Branch Office Clerk	Maintenance Ld
Ops-Branch Trainer Ost	Inventory Control Ld Operations
Ops-Warehouse Ld Ost	Branch Office Clerk
Admin Asst	Warehouse Operator Ost
Maintenance Ld.	Trainer Branch Ost Operations
Janitor	

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 29, 2021

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

Re: *Deja Nair / the Medline Employers*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Deja Nair (hereafter “Nair” or “Complainant”) provides notice that Medline Industries, Inc., an Illinois corporation, Medline Industries Holdings, L.P., a Delaware limited partnership, Medline Industries, LP, an Illinois limited partnership, and related entities (collectively “the Medline Employers” or “the Employers”) violated her rights and those of all other individuals the Medline Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including warehouse operators, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of herself and all other Aggrieved Employees, Nair hereby provides this notice to the Labor & Workforce Development Agency and the Medline Employers and their agents and representatives.

At all relevant times, the Medline Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Nair and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately July of 2021, the Medline Employers began to employ Nair in Tracy (San Joaquin County), CA in the position of hourly, non-exempt warehouse operator. The Medline Employers continuously employed her in that capacity until on or about August 18, 2021 when her employment ended.

At all relevant times, the Medline Employers issued wages to Nair and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Medline Employers classified Nair and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. The Medline Employers employed Nair and all of the Aggrieved Employees more than six, eight, and ten hours per day.

At all relevant times, the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and goals and would not allow them to begin their meal period until more than five hours from the start of their shifts had elapsed. In addition, occasionally, the Medline Employers’ supervisors interrupted Nair and all of the other Aggrieved Employees’ meal periods to ask them about work updates. The Medline Employers also failed to pay premium wages for days on which it failed to provide Nair and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. In order to meet deadlines and goals, the Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and would not allow them to begin a timely paid rest break if it conflicted with deadlines and goals. The Medline Employers also failed to pay premium wages for days on which it failed

to authorize and permit Nair and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Medline Employers failed to issue to Nair and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Medline Employers knowingly and intentionally failed to state on the wage statements they issued to Nair and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, and all rest break premium wages earned.

The Medline Employers also failed to timely pay Nair and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Medline Employers failed to maintain accurate employee records of Nair and all of the other Aggrieved Employees.

For the reasons stated herein, Nair alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Medline Employers failed to provide Nair and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees at one hour's pay for each day in which the Medline Employers failed to provide them with one or more meal periods as required by law;

- (d) The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees at one hour's pay for each day in which the Medline Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Medline Employers knowingly and intentionally failed to provide Nair and all of the other Aggrieved Employees with accurate and complete wage statements;
- (f) The Medline Employers willfully failed to timely pay Nair and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Medline Employers and when their employment ended; and
- (g) The Medline Employers failed to maintain accurate employment records pertaining to Nair and all of the other Aggrieved Employees.

Accordingly, Nair now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Medline Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Medline Employers "Employers, Nair, and all of the Aggrieved Employees were covered by the Wage Order because the Medline Employers operated, and Nair, and all of the Aggrieved

Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Nair and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with all timely meal periods. The Medline Employers denied Nair and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and goals and would not allow them to begin their meal period until more than five hours from the start of their shifts had elapsed. In addition, occasionally, the Medline Employers' supervisors interrupted Nair and all of the other Aggrieved Employees' meal periods to ask them about work updates. Furthermore, the Medline Employers failed to pay premium wages for days on which they failed to provide Nair and all of the other Aggrieved Employees with timely meal periods. Accordingly, Nair now seeks civil penalties for these Labor

Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

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

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Medline Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. In order to meet deadlines and goals, the Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and would not allow them to begin a timely paid rest break if it conflicted with deadlines and goals. Moreover, the Medline Employers failed to pay Nair and all of the other Aggrieved Employees premium wages on workdays the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Nair now seeks civil penalties for these Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Pre-employment medical and physical examination fees
(Lab. Code § 222.5)

Labor Code § 222.5 states

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for

employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

At all relevant times, the Medline Employers required Nair and all of the other Aggrieved Employees to obtain preemployment medical or physical examinations as a condition of employment. Accordingly, Nair seeks civil penalties for these Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt

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

At all relevant times during the applicable limitations period, the Medline Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Medline Employers failed to state in the wage statements they issued to Nair and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Medline Employers knowingly and intentionally failed to

state on the wage statements they issued to Nair and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, and all rest break premium wages earned, or related information. Accordingly, Nair seeks civil penalties for the Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Medline Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Nair now seeks civil penalties for the Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully

withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Medline Employers failed to pay Nair and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Nair, including unprovided meal period premium wages, unprovided rest break premium wages and related compensation. Additionally, the Medline Employers failed to issue to Nair and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Nair and all of the other Aggrieved Employees as set forth above at the end of employment, the Medline Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the

other Aggrieved Employees, Nair seeks civil penalties from the Medline Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be

recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned, and related information. As a result, the Medline Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Nair and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Nair seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
David@spivaklaw.com

cc: Deja Nair
Walter L. Haines Esq.

Medline Industries, Inc.
c/o Agent for service of process
CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE (C1592199)
251 Little Falls Drive
Wilmington, DE 19808

///
///
///
///
///

Medline Industries Holdings, L.P.

c/o Agent for service of process

CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE (C1592199)

251 Little Falls Drive

Wilmington, DE 19808

Medline Industries, LP

c/o Agent for service of process

CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE, (C1592199)

251 Little Falls Drive

Wilmington, DE 19808

EXHIBIT 3

Case Management Conference
06/22/2022 08:45 AM in 10D

STK-CV-UOE-2021-0011669

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
SARA BROWN (SBN 325763)
sara@spivaklaw.com
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff,
DEJA NAIR, and all others similarly situated
(Additional attorney for Plaintiff on the following page.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN
(UNLIMITED JURISDICTION)

DEJA NAIR, on behalf of herself and all others
similarly situated, and the general public,

Plaintiff,

vs.

MEDLINE INDUSTRIES, INC., an Illinois
corporation; MEDLINE INDUSTRIES
HOLDINGS, L.P., a Delaware limited
partnership; MEDLINE INDUSTRIES, LP, an
Illinois limited partnership; and DOES 1–50,
inclusive,

Defendants.

Case No.

CLASS ACTION

COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203); and
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.

JURY TRIAL DEMANDED



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave., Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006



SPIVAK LAW

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

1 Plaintiff, Deja Nair (hereafter “Plaintiff” or “Nair”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class action for alleged violations of the California Labor
5 Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage Order”), and the
6 California Business and Professions Code against Defendants Medline Industries, Inc., an Illinois
7 corporation, Medline Industries Holdings, L.P., a Delaware limited partnership, Medline
8 Industries, LP, an Illinois limited partnership, and Does 1 through 50, inclusive (collectively
9 “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
12 relief. These claims are based on Defendants’ failures to:

- 13 (A) Provide all meal periods;
- 14 (B) Authorize and permit all rest breaks;
- 15 (C) Pay premium wages for unprovided meal periods;
- 16 (D) Pay premium wages for unprovided rest breaks;
- 17 (E) Issue only accurate and complete itemized wage statements;
- 18 (F) Timely pay wages upon termination of employment;

19 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, restitution, statutory penalties,
20 attorneys’ fees, costs, and related relief through this class action.

21 **II. THE PARTIES**

22 3. Plaintiff Deja Nair is a resident of California.

23 4. Defendant Medline Industries, Inc. is a corporation organized and existing under
24 the laws of Illinois and also a citizen of California based on Plaintiff’s information and belief.

25 5. Defendant Medline Industries Holdings, L.P. is a limited partnership organized
26 and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s
27 information and belief.

28 6. Defendant Medline Industries, LP is a limited partnership organized and existing



SPIVAK LAW

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

1 under the laws of Illinois and also a citizen of California based on Plaintiff's information and
2 belief.

3 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
4 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
5 is informed and believes and thereon alleges that said Defendants are legally responsible for the
6 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
7 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
8 when ascertained.

9 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
10 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
11 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
12 within the course and scope of such agency, employment, direction and control, and with the
13 approval and ratification of each of the other Defendants.

14 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
15 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
16 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
17 Members or otherwise complying with their rights in accordance with applicable California labor
18 laws as alleged herein.

19 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
21 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
22 described class in accordance with applicable laws as alleged herein.

23 **III. CLASS ALLEGATIONS**

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



SPIVAK LAW

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

12. **Class Definition:** The Class is defined as follows: All persons Defendants employed in California as hourly, non-exempt workers, including warehouse operators, individuals performing work comparable to the aforementioned, compensated comparably to the aforementioned, and individuals in similar positions, at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

14. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

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

A. Whether Defendants failed to pay all wages earned to Class Members for all hours worked at the correct rates of pay, including meal period premium, and rest period premium wages;

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

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

E. Whether Defendants willfully failed to provide the class with timely final wages;

F. Whether Defendants engaged in unfair competition within the meaning of



1 Business and Professions Code sections 17200, et seq., with respect to the Class; and

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

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

8 17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
9 in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent
10 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
11 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
12 Members.

13 18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
14 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
15 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
16 Plaintiff and absent Class Members.

17 19. **Superiority:** A class action is vastly superior to other available means for fair and
18 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
19 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
20 and efficiently prosecute their common claims in a single forum without the unnecessary
21 duplication of effort and expense that numerous individual actions would entail. In addition, the
22 monetary amounts due to many individual Class Members are likely to be relatively small and
23 would thus make it difficult, if not impossible, for individual Class Members to both seek and
24 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
25 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
26 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

27 ///

28 ///



SPIVAK LAW

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

IV. STATEMENT OF FACTS

20. The Wage Order applies to “all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage Order defines “Transportation Industry” to mean “any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles.” Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff, and all of the Class Members worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Plaintiff and all of the other Class Members are entitled to the protections the Wage Order provides.

21. In or around July of 2021, the Defendants began to employ Plaintiff in Tracy, California in the position of hourly, non-exempt warehouse operator. The Defendants continuously employed her in that capacity until on or about August 18, 2021, when her employment ended.

22. At all relevant times, the Defendants issued wages to Plaintiff and all of the other Class Members on a bi-weekly basis and paid them by the hour. At all relevant times, the Defendants classified Plaintiff and all of the other Class Members as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

23. At all relevant times, the Defendants failed to provide Plaintiff and all of the other Class Members with all timely 30-minute, off-duty meal periods. The Defendants required Plaintiff and all of the other Class Members to clock out to create a record of a meal period before they had worked more than five hours in a workday. However, the Defendants required Plaintiff and all of the other Class Members to continue working to meet deadlines and goals and would not allow them to begin their meal period until more than five hours from the start of their shifts had elapsed. The Defendants also failed to pay premium wages for days on which it failed to



SPIVAK LAW

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

1 provide Plaintiff and all of the other Class Members with meal periods as required by law.

2 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
3 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
4 worked or major portion thereof. In order to meet deadlines and goals, the Defendants required
5 Plaintiff and all of the other Class Members to work to meet deadlines and would not allow them
6 to begin a timely paid rest break if it conflicted with deadlines and goals. The Defendants also
7 failed to pay premium wages for days on which it failed to authorize and permit Plaintiff and all
8 of the other Class Members to take rest breaks as required by law.

9 25. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
10 Class Members complete and accurate wage statements that state all hours worked at the correct
11 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
12 the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
13 discussed above. The wage statements fail to state all meal period premium wages earned, all rest
14 break premium wages earned, and related information.

15 26. At all relevant times, the Defendants also failed to timely pay Plaintiff and all of
16 the other Class Members all earned wages as described above during and at the conclusion of
17 employment.

18 27. At all relevant times, the Defendants failed to maintain accurate employee records
19 of Plaintiff and all of the other Class Members.

20 28. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
21 unlawful practices and policies, Plaintiff and the Class Members were:

- 22 A. Not provided with all off duty meal periods;
- 23 B. Not authorized and permitted to take all rest break periods;
- 24 C. Not paid one hour's pay for each workday in which Defendants failed to
25 authorize and permit them to take one or more timely rest periods;
- 26 D. Not paid one hour's pay for each workday in which Defendants failed to
27 provide them with one or more timely meal periods;
- 28 E. Not provided with accurate and complete wage statements; and



SPIVAK LAW

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

1 F. Not timely paid all earned and unpaid wages at the time their employment
2 ended.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AND**
5 **OTHER COMPENSABLE HOURS**

6 **Lab. Code §§ 1194, 1197, and 1198**

7 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

9 30. At all relevant times, Plaintiff and the Class Members have been non-exempt
10 employees entitled to the protections of both the Labor Code and the Wage Order.

11 31. Section 2 of the Wage Order defines “hours worked” as “the time during which an
12 employee is subject to the control of an employer, and includes all the time the employee is
13 suffered or permitted to work, whether or not required to do so.”

14 32. Section 3 of the Wage Order states:

15 The following overtime provisions are applicable to employees 18 years of age or
16 over and to employees 16 or 17 years of age who are not required by law to attend
17 school and are not otherwise prohibited by law from engaging in the subject work.
18 Such employees shall not be employed more than eight (8) hours in any workday
19 or more than 40 in a workweek unless the employee receives one and one half
20 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
21 in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
22 beyond eight (8) hours in any workday or more than six (6) days in any workweek
23 is permissible provided the employee is compensated for such overtime at not less
24 than:

- 25 (a) One and one-half (1½) times the employee’s regular rate of pay for all
26 hours worked in excess of eight (8) hours up to and including twelve (12)
27 hours in any workday, and for the first eight (8) hours worked on the
28 seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess
of 12 hours in any workday and for all hours worked in excess of eight (8)
hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt
full-time salaried employee shall be computed by using the employee’s
regular hourly salary as one fortieth (1/40) of the employee’s weekly
salary.



SPIVAK LAW

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

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

4 34. Labor Code section 510 states:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
6 in one workday and any work in excess of 40 hours in any one workweek and the
7 first eight hours worked on the seventh day of work in any one workweek shall be
8 compensated at the rate of no less than one and one-half times the regular rate of
9 pay for an employee. Any work in excess of 12 hours in one day shall be
10 compensated at the rate of no less than twice the regular rate of pay for an
11 employee. In addition, any work in excess of eight hours on any seventh day of a
12 workweek shall be compensated at the rate of no less than twice the regular rate of
13 pay of an employee. Nothing in this section requires an employer to combine more
14 than one rate of overtime compensation in order to calculate the amount to be paid
15 to an employee for any hour of overtime work.

16 35. Labor Code section 1194 invalidates any agreement between an employer and an
17 employee to work for less than the minimum wage required under the applicable Wage Order.

18 36. Labor Code section 1197 makes it unlawful for an employer to pay an employee
19 less than the minimum wage required under the applicable Wage Order for all hours worked
20 during a payroll period.

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

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

28 39. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
the time worked during Plaintiff's and the Class Members' on-duty meal periods.

40. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'



S PIVAK LAW

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

1 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
2 rates of pay as required by California law.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

5 **Lab. Code §§ 226.7 and 512**

6 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

7 41. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

11 43. In relevant part, California Labor Code § 1198 states:

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

15 44. In relevant part, California Labor Code § 512 states:

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

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

22
23 45. In relevant part, Section 11 of the Wage Order states:
24 Meal Periods:

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

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



SPIVAK LAW

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

with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

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

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

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

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

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

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

48. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants



SPIVAK LAW

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

1 required Plaintiff and all of the other Class Members to clock out to create a record of a meal
2 period before they had worked more than five hours in a workday. However, the Defendants
3 required Plaintiff and all of the other Class Members to continue working to meet deadlines and
4 goals and would not allow them to begin their meal period until more than five hours from the
5 start of their shifts had elapsed.

6 49. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
7 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
8 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
9 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
10 Members with timely meal periods.

11 50. Plaintiff is informed and believes and thereon alleges that, at all relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing the and the Class Members with all off-duty meal
14 periods required by California law.

15 51. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
16 suffered damages in amounts subject to proof to the extent they were not paid additional wages
17 owed for all meal periods not provided to them.

18 52. By reason of the above, Plaintiff and the Class Members are entitled to premium
19 wages for workdays in which one or more meal periods were not provided to them pursuant to
20 California Labor Code § 226.7.

21 **THIRD CAUSE OF ACTION**

22 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

23 **Lab. Code § 226.7**

24 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

25 53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

26 54. At all relevant times during the applicable limitations period, Plaintiff and the
27 Class Members have been employees of Defendants and entitled to the benefits and protections
28 of California Labor Code §§ 226.7 and 1198, and the Wage Order.



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

55. In relevant part, California Labor Code § 1198 states:
The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

56. In relevant part, Section 12 of the Wage Order states:
Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

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

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

58. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

59. Defendants intentionally failed to authorize and permit Plaintiff and the Class

1 Members to take all 10-minute rest periods free from any work duties in accordance with the
2 Wage Order.

3 60. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
4 Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium
5 wages to Plaintiff and the Class Members for days on which they failed to authorize and permit
6 Plaintiff and the other Class Members to take timely rest periods.

7 61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
8 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
9 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
10 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
11 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
12 to authorize and permit them to take 10-minute rest periods every four hours worked or major
13 fraction thereof.

14 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times
15 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
16 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
17 take all rest breaks required by California law.

18 63. Defendants failed to provide Plaintiff with all required rest breaks in accordance
19 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
20 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
21 which resulted in Defendants not providing the Class Members with all rest breaks required by
22 California law.

23 64. Defendants failed to pay Plaintiff the additional wages required by California
24 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
25 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
26 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
27 Class Members with additional wages for all rest breaks not provided to them as required by
28 California Labor Code § 226.7.



SPIVAK LAW

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

1 H. The name and address of the legal entity that is the employer; and
2 I. All applicable hourly rates in effect during the pay period and the
3 corresponding number of hours worked at each hourly rate by the employee.
4 69. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
5 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
6 the employer fails to provide accurate and complete information as required by California Labor
7 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
8 alone one or more of the following:
9 A. The amount of the gross wages or net wages paid to the employee during
10 the pay period or any of the other information required to be provided on the itemized wage
11 statement pursuant to California Labor Code § 226(a);
12 B. Which deductions the employer made from gross wages to determine the
13 net wages paid to the employee during the pay period;
14 C. The name and address of the employer and, if the employer is a farm labor
15 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
16 and address of the legal entity that secured the services of the employer during the pay period;
17 D. The name of the employee and only the last four digits of his or her social
18 security number or an employee identification number other than a social security number; and
19 E. The number of piece-rate units earned and the piece rate.
20 70. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
21 means a reasonable person would be able to readily ascertain the information without reference
22 to other documents or information.
23 71. As alleged herein, at all relevant times during the applicable limitations period,
24 Defendants violated California Labor Code section 226 because they did not properly and
25 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
26 the corresponding number of hours worked at each rate by the employee and other requirements
27 of California Labor Code section 226. Defendants failed to state in the wage statements they
28 issued to Plaintiff and the other Class Members all their hours worked and wages earned,



1 including, but not limited to, regular and overtime wages for work they performed off-the-clock
2 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
3 either as a detachable part of the check, draft, or voucher paying the employee's wages, or
4 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
5 Members that state all meal period premium wages earned and all rest break premium wages
6 earned.

7 72. Defendants' failure to provide Plaintiff and the other Class Members with accurate
8 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
9 the other Class Members with accurate wage statements but intentionally provided wage
10 statements that Defendants knew were not accurate.

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

21 **FIFTH CAUSE OF ACTION**

22 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

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

24 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

26 75. At all relevant times during the applicable limitations period, Plaintiffs and the
27 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
28 of California Labor Code §§ 201–203, and the Wage Order.



SPIVAK LAW

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

1 of the Business and Professions Code §§ 17200, *et seq.*

2 84. The unlawful conduct of Defendants alleged herein amount to and constitutes
3 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
4 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
5 gained a competitive advantage over other comparable companies doing business in California
6 that comply with their legal obligations to compensate employees for all earned wages.

7 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
8 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
9 Members were deprived of missed meal period premium wages, missed rest period premium
10 wages, and comparable money and property.

11 86. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
12 Class Members are entitled to restitution of all monies rightfully belonging to them that
13 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
14 practices.

15 87. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in
16 connection with their unfair competition claims pursuant to California Code of Civil Procedure §
17 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

18 **V. PRAYER FOR RELIEF**

19 88. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
20 relief and judgment against Defendants as follows:

21 A. An order that the action be certified as a class action with respect to
22 Plaintiff's claims for violations of California law;

23 B. An order that Plaintiff be appointed class representative;

24 C. An order that counsel for Plaintiff be appointed class counsel;

25 D. Unpaid wages, including missed meal period and missed rest period
26 premium wages;

27 E. Statutory penalties, including waiting time penalties;

28 F. Restitution;



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- G. Declaratory relief;
- H. Actual damages;
- I. Pre-judgment interest;
- J. Costs of suit;
- K. Reasonable attorneys' fees; and
- L. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: December 22, 2021

By: 

DAVID G. SPIVAK
MARALLE MESSRELIAN
SARA BROWN
Attorneys for Plaintiff, DEJA NAIR, and
all others similarly situated

EXHIBIT 4

DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
MARALLE MESSRELIAN (SBN 316974)
maralle@spivaklaw.com
SARA BROWN (SBN 325763)
sara@spivaklaw.com
THE SPIVAK LAW FIRM
16530 Ventura Blvd., Suite 203
Encino, CA 91436
Telephone: (213) 725-9094
Facsimile: (213) 634-2485

Attorneys for Plaintiff,
DEJA NAIR, and all others similarly situated
(Additional attorney for Plaintiff on the following page.)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN
(UNLIMITED JURISDICTION)

DEJA NAIR, on behalf of herself and all others
similarly situated, and as an “aggrieved
employee” on behalf of other “aggrieved
employees” under the Labor Code Private
Attorneys General Act of 2004,

Plaintiff,

vs.

MEDLINE INDUSTRIES, INC., an Illinois
corporation; MEDLINE INDUSTRIES
HOLDINGS, L.P., a Delaware limited
partnership; MEDLINE INDUSTRIES, LP, an
Illinois limited partnership; and DOES 1–50,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0011669

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201-203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
 walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave., Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff,
DEJA NAIR, and all others similarly situated



1 Plaintiff, Deja Nair (hereafter “Plaintiff” or “Nair”), on behalf of herself and all others
2 similarly situated, complains and alleges as follows:

3 **I. INTRODUCTION**

4 1. Plaintiff brings this class and representative action for alleged violations of the
5 California Labor Code, Industrial Welfare Commission Order No. 9-2001 (hereafter “the Wage
6 Order”), and the California Business and Professions Code against Defendants Medline
7 Industries, Inc., an Illinois corporation, Medline Industries Holdings, L.P., a Delaware limited
8 partnership, Medline Industries, LP, an Illinois limited partnership, and Does 1 through 50,
9 inclusive (collectively “Defendants”).

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her
11 and other similarly situated workers for unpaid wages, statutory penalties, interest, and related
12 relief. These claims are based on Defendants’ failures to:

- 13 (A) Provide all meal periods;
- 14 (B) Authorize and permit all rest breaks;
- 15 (C) Pay premium wages for unprovided meal periods;
- 16 (D) Pay premium wages for unprovided rest breaks;
- 17 (E) Issue only accurate and complete itemized wage statements;
- 18 (F) Timely pay wages upon termination of employment;

19 Accordingly, Plaintiff now seeks to recover unpaid wages, interest, restitution, statutory penalties,
20 attorneys’ fees, costs, and related relief through this class action.

21 **II. THE PARTIES**

22 3. Plaintiff Deja Nair is a resident of California. At all relevant times, Plaintiff was
23 an “employee” within the meaning of Title 8 California Code of Regulations Section 11160 and
24 an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

25 4. Defendant Medline Industries, Inc. is a corporation organized and existing under
26 the laws of Illinois and also a citizen of California based on Plaintiff’s information and belief.

27 5. Defendant Medline Industries Holdings, L.P. is a limited partnership organized
28 and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s
information and belief.

6. Defendant Medline Industries, LP is a limited partnership organized and existing
under the laws of Illinois and also a citizen of California based on Plaintiff’s information and



S PIVAK LAW

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

1 belief.

2 7. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
3 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
4 is informed and believes and thereon alleges that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
6 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
when ascertained.

7 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
8 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
9 remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act
10 within the course and scope of such agency, employment, direction and control, and with the
11 approval and ratification of each of the other Defendants.

12 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
13 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
14 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
15 Members or otherwise complying with their rights in accordance with applicable California labor
laws as alleged herein.

16 10. At all relevant times, in perpetrating the acts and omissions alleged herein,
17 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
18 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
19 described class in accordance with applicable laws as alleged herein.

20 **III. CLASS ALLEGATIONS**

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

25 12. **Class Definition:** The Class is defined as follows: All persons Defendants
26 employed in California as hourly, non-exempt workers, including warehouse operators,
27 individuals performing work comparable to the aforementioned, compensated comparably to the
28 aforementioned, and individuals in similar positions, at any time during the period beginning four



SPIVAK LAW

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

1 years prior to the filing of this action and ending on the date that final judgment is entered in this
2 action (“Class” or “Class Members”).

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

6 14. **Numerosity:** The Class Members are so numerous that the individual joinder of
7 each individual Class Member is impractical. While Plaintiff does not currently know the exact
8 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
9 minimum required for numerosity under California laws.

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

13 A. Whether Defendants failed to pay all wages earned to Class Members for
14 all hours worked at the correct rates of pay, including meal period premium, and rest period
15 premium wages;

16 B. Whether Defendants failed to provide the Class Members with all meal
17 periods in compliance with California law;

18 C. Whether Defendants failed to authorize and permit the Class Members to
19 take all rest periods in compliance with California law;

20 D. Whether Defendants knowingly and intentionally failed to provide the
21 class with accurate and complete itemized wage statements;

22 E. Whether Defendants willfully failed to provide the class with timely final
23 wages;

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

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

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



17. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

18. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

19. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. In addition, the monetary amounts due to many individual Class Members are likely to be relatively small and would thus make it difficult, if not impossible, for individual Class Members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting Class Members to effectively pursue the recovery of monies owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

IV. STATEMENT OF FACTS

20. The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Defendants, Plaintiff, and all of the Class Members were covered by the Wage Order because the Defendants operated, and Plaintiff, and all of the Class Members worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Plaintiff and all of the other Class Members are entitled to the protections



1 the Wage Order provides.

2 21. In or around July of 2021, the Defendants began to employ Plaintiff in Tracy,
3 California in the position of hourly, non-exempt warehouse operator. The Defendants
4 continuously employed her in that capacity until on or about August 18, 2021, when her
5 employment ended.

6 22. At all relevant times, the Defendants issued wages to Plaintiff and all of the other
7 Class Members on a bi-weekly basis and paid them by the hour. At all relevant times, the
8 Defendants classified Plaintiff and all of the other Class Members as non-exempt employees
9 entitled to the protections of the Labor Code and the Wage Order.

10 23. At all relevant times, the Defendants failed to provide Plaintiff and all of the other
11 Class Members with all timely 30-minute, off-duty meal periods. The Defendants required
12 Plaintiff and all of the other Class Members to clock out to create a record of a meal period before
13 they had worked more than five hours in a workday. However, the Defendants required Plaintiff
14 and all of the other Class Members to continue working to meet deadlines and goals and would
15 not allow them to begin their meal period until more than five hours from the start of their shifts
16 had elapsed. The Defendants also failed to pay premium wages for days on which it failed to
17 provide Plaintiff and all of the other Class Members with meal periods as required by law.

18 24. At all relevant times, the Defendants failed to authorize and permit Plaintiff and
19 all of the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours
20 worked or major portion thereof. In order to meet deadlines and goals, the Defendants required
21 Plaintiff and all of the other Class Members to work to meet deadlines and would not allow them
22 to begin a timely paid rest break if it conflicted with deadlines and goals. The Defendants also
23 failed to pay premium wages for days on which it failed to authorize and permit Plaintiff and all
24 of the other Class Members to take rest breaks as required by law.

25 25. At all relevant times, the Defendants failed to issue to Plaintiff and all of the other
26 Class Members complete and accurate wage statements that state all hours worked at the correct
27 rates of pay, and all wages earned. The Defendants knowingly and intentionally failed to state on
28 the wage statements they issued to Plaintiff and all of the other Class Members the unpaid wages
discussed above. The wage statements fail to state all meal period premium wages earned, all rest
break premium wages earned, and related information.

26. At all relevant times, the Defendants also failed to timely pay Plaintiff and all of



SPIVAK LAW

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

1 the other Class Members all earned wages as described above during and at the conclusion of
2 employment.

3 27. At all relevant times, the Defendants failed to maintain accurate employee records
4 of Plaintiff and all of the other Class Members.

5 28. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
6 unlawful practices and policies, Plaintiff and the Class Members were:

- 7 A. Not provided with all off duty meal periods;
- 8 B. Not authorized and permitted to take all rest break periods;
- 9 C. Not paid one hour's pay for each workday in which Defendants failed to
10 authorize and permit them to take one or more timely rest periods;
- 11 D. Not paid one hour's pay for each workday in which Defendants failed to
12 provide them with one or more timely meal periods;
- 13 E. Not provided with accurate and complete wage statements; and
- 14 F. Not timely paid all earned and unpaid wages at the time their employment
15 ended.

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AND 18 OTHER COMPENSABLE HOURS**

19 **Lab. Code §§ 510, 1194, 1197, and 1198**

20 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

22 30. At all relevant times, Plaintiff and the Class Members have been non-exempt
23 employees entitled to the protections of both the Labor Code and the Wage Order.

24 31. Section 2 of the Wage Order defines "hours worked" as "the time during which an
25 employee is subject to the control of an employer, and includes all the time the employee is
26 suffered or permitted to work, whether or not required to do so."

27 32. Section 3 of the Wage Order states:

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



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

- (a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.

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

34. Labor Code section 510 states:

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

35. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

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

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

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

7 39. At all relevant times during the applicable limitations period, Defendants failed to
8 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
9 the time worked during Plaintiff's and the Class Members' on-duty meal periods.

10 40. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
11 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
12 failure to compensate Plaintiff and the other Class Members for all hours worked at the correct
13 rates of pay as required by California law.

14 **SECOND CAUSE OF ACTION**

15 **FAILURE TO PROVIDE MEAL PERIODS**

16 **Lab. Code §§ 226.7 and 512**

17 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

18 41. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

21 43. In relevant part, California Labor Code § 1198 states:

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

25 44. In relevant part, California Labor Code § 512 states:

26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 a meal period of not less than 30 minutes, except that if the total



SPIVAK LAW

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

work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.



SPIVAK LAW

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

1
2 46. In relevant part, California Labor Code § 226.7 states:

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

8 (c) If an employer fails to provide an employee a meal period
9 or rest period in accordance with a state law, including, but
10 not limited to, an applicable statute or applicable
11 regulation, standard, or order of the Industrial Welfare
12 Commission, the Occupational Safety and Health
13 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

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

18 48. Defendants intentionally failed to provide Plaintiff and the Class Members with
19 all required 30-minute duty free meal periods in accordance with the Wage Order. The Defendants
20 required Plaintiff and all of the other Class Members to clock out to create a record of a meal
21 period before they had worked more than five hours in a workday. However, the Defendants
22 required Plaintiff and all of the other Class Members to continue working to meet deadlines and
23 goals and would not allow them to begin their meal period until more than five hours from the
start of their shifts had elapsed.

24 49. At all relevant times, Defendants failed to provide Plaintiff and the Class Members
25 with all timely rest and meal periods. Defendants denied Plaintiff and the other Class Members
26 their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants
27 failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class
28 Members with timely meal periods.



SPIVAK LAW

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

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

51. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

52. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to California Labor Code § 226.7.

THIRD CAUSE OF ACTION

FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

Lab. Code § 226.7

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

53. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

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

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

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

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

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily



work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

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

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

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

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

58. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

59. Defendants intentionally failed to authorize and permit Plaintiff and the Class Members to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

60. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize and permit Plaintiff and the other Class Members to take timely rest periods.

61. At all relevant times, Defendants failed to authorize and permit Plaintiff and the



SPIVAK LAW

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

1 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
2 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
3 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
4 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
5 to authorize and permit them to take 10-minute rest periods every four hours worked or major
6 fraction thereof.

6 62. Plaintiff is informed and believes and thereon alleges that, at all relevant times
7 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
8 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
9 take all rest breaks required by California law.

10 63. Defendants failed to provide Plaintiff with all required rest breaks in accordance
11 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
12 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
13 which resulted in Defendants not providing the Class Members with all rest breaks required by
14 California law.

15 64. Defendants failed to pay Plaintiff the additional wages required by California
16 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
17 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
18 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
19 Class Members with additional wages for all rest breaks not provided to them as required by
20 California Labor Code § 226.7.

21 65. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have
22 suffered damages in amounts subject to proof to the extent they were not paid additional wages
23 owed for all rest breaks not provided to them.

24 66. By reason of the above, Plaintiff and the Class Members are entitled to premium
25 wages for workdays in which one or more rest breaks were not provided to them pursuant to
26 California Labor Code § 226.7.

27 ///

28 ///

///

///



SPIVAK LAW

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

1 **FOURTH CAUSE OF ACTION**

2 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

3 **Lab. Code §§ 226**

4 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

6 68. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
7 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
8 statement showing:

9 A. Gross wages earned;

10 B. Total hours worked by the employee, except for any employee whose
11 compensation is solely based on a salary and who is exempt from payment of overtime under
12 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

13 C. The number of piece rate units earned and any applicable piece rate if the
14 employee is paid on a piece-rate basis;

15 D. All deductions, provided that all deductions made on written orders of the
16 Employee may be aggregated and shown as one item;

17 E. Net wages earned;

18 F. The inclusive dates of the period for which the employee is paid;

19 G. The name of the employee and his or her social security number, except
20 that by January 1, 2008, only the last four digits of his or her social security number or an
21 employee identification number other than a social security number may be shown on the itemized
22 statement;

23 H. The name and address of the legal entity that is the employer; and

24 I. All applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

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

A. The amount of the gross wages or net wages paid to the employee during



SPIVAK LAW

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

1 the pay period or any of the other information required to be provided on the itemized wage
2 statement pursuant to California Labor Code § 226(a);

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

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

8 D. The name of the employee and only the last four digits of his or her social
9 security number or an employee identification number other than a social security number; and

10 E. The number of piece-rate units earned and the piece rate.

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

14 71. As alleged herein, at all relevant times during the applicable limitations period,
15 Defendants violated California Labor Code section 226 because they did not properly and
16 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
17 the corresponding number of hours worked at each rate by the employee and other requirements
18 of California Labor Code section 226. Defendants failed to state in the wage statements they
19 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
20 including, but not limited to, regular and overtime wages for work they performed off-the-clock
21 after clocking-out (as described above). Defendants knowingly and intentionally did not issue
22 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
23 separately if wages are paid by personal check or cash, statements to Plaintiff and the Class
24 Members that state all meal period premium wages earned and all rest break premium wages
25 earned.

26 72. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
27 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
28 the other Class Members with accurate wage statements but intentionally provided wage
statements that Defendants knew were not accurate.

73. As a result of being provided with inaccurate wage statements by Defendants,
Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate



1 wage statements were violated and they were misled about the amount of wages they had actually
2 earned and were owed. In addition, the absence of accurate information on their wage statements
3 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
4 and mathematical computations to determine the amounts of wages owed, has caused difficulty
5 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
6 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
7 and the other Class Members were not able to ascertain from the wage statements whether
8 Defendants complied with their obligations under California Labor Code section 226(a).

9 **FIFTH CAUSE OF ACTION**

10 **WILLFUL FAILURE TO TIMELY PAY FINAL WAGES**

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

12 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

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

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

23 78. The Defendants failed to pay Plaintiff and all of the other Class Members whose
24 employment ended all of the earned but unpaid wages described above by the conclusion of their
25 employment with Plaintiff, including unprovided meal period premium wages and unprovided
26 rest break premium wages.

27 79. By failing to pay such earned wages to Plaintiff and the Class Members,
28 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
§ 201 or § 202.

80. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
and the Class Members all of their earned and unpaid wages (described above) have been willful



SPIVAK LAW

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

1 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
2 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
3 they have had the ability to comply with those legal requirements.

4 81. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
5 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
6 penalties for each Class Member.

7 **SIXTH CAUSE OF ACTION**

8 **UNFAIR COMPETITION**

9 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

10 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

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

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

15 84. The unlawful conduct of Defendants alleged herein amount to and constitutes
16 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
17 *seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly
18 gained a competitive advantage over other comparable companies doing business in California
19 that comply with their legal obligations to compensate employees for all earned wages.

20 85. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the
21 Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class
22 Members were deprived of compensation for all hours worked, missed meal period premium
23 wages, missed rest period premium wages, and comparable money and property.

24 86. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
25 Class Members are entitled to restitution of all monies rightfully belonging to them that
26 Defendants did not pay them or otherwise retained by means of their unlawful and unfair business
27 practices.

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

///



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIXTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

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

89. The “Aggrieved Employees” are all members of the Class defined above who Defendants employed during the period beginning June 14, 2020, and ending on the date that final judgment is entered in this action.

90. Labor Code § 204 states

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

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

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

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

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

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



SPIVAK LAW

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

1 92. During the applicable time period, Defendants violated California Labor Code §§
2 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198.

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

6 94. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
7 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
8 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 during the applicable
9 limitations period in the following amounts:

10 A. For violations of California Labor Code § 204, one hundred dollars
11 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
12 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount unlawfully
13 withheld from each aggrieved employee for each subsequent, willful or intentional violation
14 (penalty amounts established by California Labor Code § 210).

15 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
16 (\$250.00) for each aggrieved employee for initial violation and one thousand dollars (\$1,000.00)
17 for each aggrieved employee for each subsequent violation (penalty amounts established by
18 California Labor Code § 226.3).

19 C. For violations of California Labor Code § 1197, one hundred dollars
20 (\$100.00) for each aggrieved employee for each initial and intentional violation and two hundred
21 fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation, per pay period
22 (regardless of whether the initial violations were intentionally committed), in addition to an
23 amount sufficient to recover unpaid wages (penalty amounts established by California Labor
24 Code § 1197.1).

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

 E. For violations of California Labor Code §§ 510 and 512, fifty dollars
(\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts



SPIVAK LAW

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

1 established by California Labor Code § 558).

2 95. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code § 2699.3. By letter dated October 29, 2021, Plaintiff filed written notice online with
4 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
5 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
6 violated, including the facts and theories to support the alleged violations. A true and correct copy
7 of Plaintiff’s written notice to the LWDA dated October 29, 2021, is attached as **Exhibit A**.
8 Plaintiff accompanied her LWDA notice with a fee in the amount of \$75.00. The LWDA has
9 failed to take action in response within 65 calendar days of the date of Plaintiff’s notice, but
10 Plaintiff anticipates that the LWDA will provide written notice to Plaintiff informing her that it
11 does not intend to investigate these allegations.

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

15 **V. PRAYER FOR RELIEF**

16 97. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
17 relief and judgment against Defendants as follows:

- 18 A. An order that the action be certified as a class action with respect to
19 Plaintiff’s claims for violations of California law;
- 20 B. An order that Plaintiff be appointed class representative;
- 21 C. An order that counsel for Plaintiff be appointed class counsel;
- 22 D. Unpaid wages, including missed meal period and missed rest period
23 premium wages;
- 24 E. Statutory penalties, including waiting time penalties;
- 25 F. Civil Penalties;
- 26 G. Restitution;
- 27 H. Declaratory relief;
- 28 I. Actual damages;
- J. Pre-judgment interest;
- K. Costs of suit;
- L. Reasonable attorneys’ fees; and



SPIVAK LAW

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

M. Such other relief as the Court deems just and proper.

VI. DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and all other Class Members, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: January 10, 2022

By: 

DAVID G. SPIVAK
MARALLE MESSRELIAN
SARA BROWN
Attorneys for Plaintiff, DEJA NAIR, and
all others similarly situated



SPIVAK LAW

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

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

October 29, 2021

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

Re: *Deja Nair / the Medline Employers*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Deja Nair (hereafter “Nair” or “Complainant”) provides notice that Medline Industries, Inc., an Illinois corporation, Medline Industries Holdings, L.P., a Delaware limited partnership, Medline Industries, LP, an Illinois limited partnership, and related entities (collectively “the Medline Employers” or “the Employers”) violated her rights and those of all other individuals the Medline Employers have employed or otherwise contracted with in California as hourly, non-exempt workers, including warehouse operators, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1194, 1197, 1198, and related Labor Code provisions. On behalf of herself and all other Aggrieved Employees, Nair hereby provides this notice to the Labor & Workforce Development Agency and the Medline Employers and their agents and representatives.

At all relevant times, the Medline Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Nair and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 9-2001

(hereafter “the Wage Order”) section 2, subdivision (F) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately July of 2021, the Medline Employers began to employ Nair in Tracy (San Joaquin County), CA in the position of hourly, non-exempt warehouse operator. The Medline Employers continuously employed her in that capacity until on or about August 18, 2021 when her employment ended.

At all relevant times, the Medline Employers issued wages to Nair and all of the other Aggrieved Employees on a biweekly basis and paid them by the hour. At all relevant times, the Medline Employers classified Nair and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order. The Medline Employers employed Nair and all of the Aggrieved Employees more than six, eight, and ten hours per day.

At all relevant times, the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and goals and would not allow them to begin their meal period until more than five hours from the start of their shifts had elapsed. In addition, occasionally, the Medline Employers’ supervisors interrupted Nair and all of the other Aggrieved Employees’ meal periods to ask them about work updates. The Medline Employers also failed to pay premium wages for days on which it failed to provide Nair and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. In order to meet deadlines and goals, the Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and would not allow them to begin a timely paid rest break if it conflicted with deadlines and goals. The Medline Employers also failed to pay premium wages for days on which it failed

to authorize and permit Nair and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Medline Employers failed to issue to Nair and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Medline Employers knowingly and intentionally failed to state on the wage statements they issued to Nair and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, and all rest break premium wages earned.

The Medline Employers also failed to timely pay Nair and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Medline Employers failed to maintain accurate employee records of Nair and all of the other Aggrieved Employees.

For the reasons stated herein, Nair alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Medline Employers failed to provide Nair and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees at one hour's pay for each day in which the Medline Employers failed to provide them with one or more meal periods as required by law;

- (d) The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees at one hour's pay for each day in which the Medline Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Medline Employers knowingly and intentionally failed to provide Nair and all of the other Aggrieved Employees with accurate and complete wage statements;
- (f) The Medline Employers willfully failed to timely pay Nair and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Medline Employers and when their employment ended; and
- (g) The Medline Employers failed to maintain accurate employment records pertaining to Nair and all of the other Aggrieved Employees.

Accordingly, Nair now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Medline Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the transportation industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Transportation Industry" to mean, "any industry, business, or establishment operated for the purpose of conveying persons or property from one place to another whether by rail, highway, air, or water, and all operations and services in connection therewith; and also includes storing or warehousing of goods or property, and the repairing, parking, rental, maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the applicable limitations period, the Medline Employers "Employers, Nair, and all of the Aggrieved Employees were covered by the Wage Order because the Medline Employers operated, and Nair, and all of the Aggrieved

Employees worked for, one or more establishments operated as warehouses and distribution centers. Accordingly, Nair and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

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

At all relevant times, the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with all timely meal periods. The Medline Employers denied Nair and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and goals and would not allow them to begin their meal period until more than five hours from the start of their shifts had elapsed. In addition, occasionally, the Medline Employers' supervisors interrupted Nair and all of the other Aggrieved Employees' meal periods to ask them about work updates. Furthermore, the Medline Employers failed to pay premium wages for days on which they failed to provide Nair and all of the other Aggrieved Employees with timely meal periods. Accordingly, Nair now seeks civil penalties for these Labor

Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

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

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(H) of the Wage Order states,

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

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

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

employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Medline Employers failed to authorize and permit Nair and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Medline Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. In order to meet deadlines and goals, the Medline Employers required Nair and all of the other Aggrieved Employees to work to meet deadlines and would not allow them to begin a timely paid rest break if it conflicted with deadlines and goals. Moreover, the Medline Employers failed to pay Nair and all of the other Aggrieved Employees premium wages on workdays the Medline Employers failed to provide Nair and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Nair now seeks civil penalties for these Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Pre-employment medical and physical examination fees
(Lab. Code § 222.5)

Labor Code § 222.5 states

No person shall withhold or deduct from the compensation of any employee, or require any prospective employee or applicant for

employment to pay, any fee for, or cost of, any pre-employment medical or physical examination taken as a condition of employment, nor shall any person withhold or deduct from the compensation of any employee, or require any employee to pay any fee for, or costs of, medical or physical examinations required by any law or regulation of federal, state or local governments or agencies thereof.

At all relevant times, the Medline Employers required Nair and all of the other Aggrieved Employees to obtain preemployment medical or physical examinations as a condition of employment. Accordingly, Nair seeks civil penalties for these Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 222.5, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt

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

At all relevant times during the applicable limitations period, the Medline Employers violated Labor Code section 226 because they did not properly, completely, and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Medline Employers failed to state in the wage statements they issued to Nair and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Medline Employers knowingly and intentionally failed to

state on the wage statements they issued to Nair and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, and all rest break premium wages earned, or related information. Accordingly, Nair seeks civil penalties for the Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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

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

The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Medline Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Nair now seeks civil penalties for the Labor Code violations that the Medline Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully

withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

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

The Medline Employers failed to pay Nair and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Nair, including unprovided meal period premium wages, unprovided rest break premium wages and related compensation. Additionally, the Medline Employers failed to issue to Nair and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Nair and all of the other Aggrieved Employees as set forth above at the end of employment, the Medline Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the

other Aggrieved Employees, Nair seeks civil penalties from the Medline Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

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

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

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll

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

Labor Code section 1174.5 states:

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

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be

recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.

- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

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

The Medline Employers failed to compensate Nair and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, all rest break premium wages earned, and related information. As a result, the Medline Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Nair and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Nair seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.
David@spivaklaw.com

cc: Deja Nair
Walter L. Haines Esq.

Medline Industries, Inc.
c/o Agent for service of process
CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE (C1592199)
251 Little Falls Drive
Wilmington, DE 19808

///
///
///
///
///

Medline Industries Holdings, L.P.

c/o Agent for service of process

CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE (C1592199)

251 Little Falls Drive

Wilmington, DE 19808

Medline Industries, LP

c/o Agent for service of process

CORPORATION SERVICE COMPANY WHICH WILL DO
BUSINESS IN CALIFORNIA AS CSC - LAWYERS
INCORPORATING SERVICE, (C1592199)

251 Little Falls Drive

Wilmington, DE 19808

EXHIBIT 5

Steven A. Groode, Bar No. 210500
sgroode@littler.com
Jannine E. Kranz, Bar No. 272389
jkranz@littler.com
LITTLER MENDELSON, P.C.
2049 Century Park East
5th Floor
Los Angeles, California 90067.3107
Telephone: 310.553.0308
Fax No.: 310.553.5583

Attorneys for Defendants
MEDLINE INDUSTRIES, INC., MEDLINE
INDUSTRIES HOLDINGS, L.P., MEDLINE
INDUSTRIES, LP

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

DEJA NAIR, on behalf of herself and all others
similarly situated, and as an "aggrieved
employee" on behalf of other "aggrieved
employees" under the Labor Code Practice
Attorneys General Act of 2004,

Plaintiff,

v.

MEDLINE INDUSTRIES, INC., an Illinois
corporation; MEDLINE INDUSTRIES
HOLDINGS, L.P., a Delaware limited
partnership; MEDLINE INDUSTRIES, LP, an
Illinois limited partnership; and DOES 1-50,
inclusive,

Defendants.

Case No. STK-CV-UOE-2021-0011669

**DEFENDANTS MEDLINE
INDUSTRIES, INC., MEDLINE
INDUSTRY HOLDINGS, L.P. AND
MEDLINE INDUSTRIES, LP'S
ANSWER TO PLAINTIFF'S FIRST
AMENDED COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO
JUDGE BARBARA KRONLUND, DEPT.
10D

Complaint Filed: December 22, 2021

1 Defendants MEDLINE INDUSTRIES, INC., MEDLINE INDUSTRY HOLDINGS, L.P. and
2 MEDLINE INDUSTRIES, LP (“Defendants”) hereby answer the First Amended Complaint
3 (“Complaint”) filed by PLAINTIFF DEJA NAIR (“Plaintiff”) as follows:

4 **GENERAL DENIAL**

5 Defendants generally deny each and every material allegation contained in the Complaint
6 pursuant to Section 431.30 of the California Code of Civil Procedure, and deny that Plaintiff, the
7 putative class or any other allegedly aggrieved person that Plaintiff purports to represent was injured
8 or damaged as alleged or at all.

9 **AFFIRMATIVE DEFENSES**

10 Defendants assert the following affirmative defenses designated, collectively, as “Affirmative
11 Defenses.” Defendants have not yet completed a thorough investigation or completed discovery of all
12 facts and circumstances of the subject matter of the Complaint, and accordingly, reserve the right to
13 amend, modify, revise, or supplement their Answer, and to plead such further defenses and take such
14 further actions as it may deem proper and necessary in their defense upon completion of said
15 investigation and study. Defendants’ designation of defenses as “affirmative” is not intended in any
16 way to alter Plaintiff’s burden of proof with regard to any element of her causes of action. Defendants
17 also expressly deny the existence of any putative class and/or alleged aggrieved group of persons that
18 Plaintiff purports to represent in this lawsuit. Defendants incorporate (as if fully set forth herein) this
19 express denial with each and every reference to “Plaintiff.” Without waiving or excusing Plaintiff’s
20 burden of proof or admitting that Defendants have any burden of proof whatsoever, Defendants assert
21 the following separate and distinct defenses and Affirmative Defenses:

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Failure to State a Claim)**

24 1. As a separate and distinct defense, Defendants allege that the Complaint, and each and
25 every alleged cause of action therein, fails to state facts sufficient to constitute a cause of action upon
26 which relief can be granted.

1 **SECOND AFFIRMATIVE DEFENSE**

2 **(Arbitration Agreement)**

3 2. As a separate and distinct defense, Defendants allege that Plaintiff and/or the allegedly
4 aggrieved employees she seeks to represent are bound by an arbitration agreement under the Federal
5 Arbitration Act (“FAA”) with a class, collective and representative action waiver requiring that the
6 claims alleged in Plaintiff’s complaint be resolved through individual arbitration and not via a class or
7 representative action to the maximum extent permitted by law. Defendants recognize the California
8 Supreme Court’s ruling in *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 350
9 (2014) that waivers of Private Attorney General Act (“PAGA”) representative action claims are
10 unenforceable, but also recognize that the U.S. Supreme Court recently granted review of a case –
11 *Viking River Cruises, Inc. v. Moriana*, 2021 U.S. LEXIS 6280, *1 (December 15, 2021) – that may
12 overrule *Iskanian*’s holding, thereby requiring the resolution of Plaintiff’s underlying claims on an
13 individual basis in arbitration and not on a representative basis in this Court. To the extent the ruling
14 in *Viking River Cruises*, or any other action by another court or any legislative action, changes
15 *Iskanian*’s holding that PAGA actions cannot be compelled into individual arbitration, Defendants
16 expressly reserve the right to, and intend to, move to compel Plaintiff and/or other allegedly aggrieved
17 employees to resolve her/their claims only on an individual basis through binding arbitration in
18 accordance with Defendants’ arbitration agreement(s).

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Claims Subject to Arbitration)**

21 3. As a separate and distinct defense, Defendants allege that the claims of Plaintiff and/or
22 the putative class and/or the allegedly aggrieved employees she purports to represent are barred by the
23 terms of a valid and enforceable arbitration agreement and, therefore, the exclusive remedy for their
24 claims is through final and binding arbitration.

25 **FOURTH AFFIRMATIVE DEFENSE**

26 **(Statute of Limitations)**

27 4. As a separate and distinct defense, Defendants allege that the claims of Plaintiff and/or
28 the putative class and/or any allegedly aggrieved employees she purports to represent are barred, in

1 whole or in part, by the applicable statute(s) of limitations, including, but not limited to, California
2 Code of Civil Procedure sections 337, 338(a) and(d), 339, 340 and 343, California Business &
3 Professions Code section 17208, and/or California Government Code section 340. *See Thomas v.*
4 *Home Depot USA Inc.* (N.D. Cal. 2007) 527 F. Supp. 2d 1003, 1007-08 (finding “Plaintiff’s PAGA
5 claims...barred by CCP § 340(a) one-year statute of limitations.”).

6 **FIFTH AFFIRMATIVE DEFENSE**

7 **(Failure to Exhaust Administrative Remedies)**

8 5. As a separate and distinct defense, Defendants allege that Plaintiff failed to properly
9 exhaust all of the contractual, administrative and/or statutorily required remedies prior to filing suit,
10 and that such failure bars this suit in whole or in part. Such failure includes, but is not limited to
11 Plaintiff’s failure to specify and identify the alleged aggrieved employees in her pre-suit letter to the
12 LWDA or her Complaint, pursuant to the Private Attorneys’ General Act, California Labor Code
13 section 2698, et seq. (“PAGA”).

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Lack of Standing)**

16 6. As a separate and distinct defense, Defendants allege that Plaintiff lacks standing as a
17 representative of the proposed class and does not adequately represent the putative class and lacks
18 standing to bring claims for any civil penalties on behalf of others because Plaintiff is not an
19 “aggrieved employee,” pursuant to the Private Attorneys General Act [Labor Code sections 2698, et
20 seq.].

21 **SEVENTH AFFIRMATIVE DEFENSE**

22 **(Representative Claims Not Manageable)**

23 7. As a separate and distinct defense, Defendants allege that Plaintiff and/or the putative
24 class and/or any allegedly aggrieved employees’ purported claims are such that they cannot be tried
25 on a representative basis because (1) a determination requires complex factual issues, (2) penalties
26 could not be calculated on a representative basis, (3) any penalties that might be proved would not be
27 identical for all allegedly aggrieved employees, (4) trying such a representative action would be
28 unmanageable (*see Williams v. The Superior Court of Los Angeles County*, 3 Cal.5th 531, 559 (2017))

(recognizing the requirement of manageability in PAGA cases)), and (5) such trial would be contrary to the legislative intent of the PAGA.

EIGHTH AFFIRMATIVE DEFENSE

(Due Process)

8. As a separate and distinct defense, Defendants allege that the penalties authorized by the PAGA violate substantive and procedural due process rights guaranteed by Article I, section 7 of the California Constitution and the Fourteenth Amendment of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

(Claims Unconstitutionally Vague and Ambiguous)

9. As a separate and distinct defense, Defendants allege that the Complaint, and each cause of action set forth therein, or some of them, is barred because the applicable Wage Orders of the Industrial Welfare Commission and PAGA are unconstitutionally vague and ambiguous and violate Defendants' rights under the United States Constitution and the California Constitution as to, among other things, due process of law, equal protection and/or the excessive fines clauses.

TENTH AFFIRMATIVE DEFENSE

(Excessive Fines)

10. As a separate and distinct defense, Defendants allege that an award of civil penalties in this case would result in the imposition of excessive fines in violation of the Eighth Amendment to the United States Constitution and Article I, Section 7 of the California Constitution, and violate Defendant's Due Process rights under the Fourteenth Amendment of the United States Constitution. *See Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 433-434 (2001) (stating that the Due Process of the Fourteenth Amendment prohibits states from imposing grossly excessive punishments); *City of San Francisco v. Sainez*, 77 Cal. App. 4th 1302, 1321 (2000); *Angelucci v. Century Supper Club*, 41 Cal. 4th 160, 180 (2007) (recognizing the constitutional constraints on the accrual of multiple penalties); *People ex rel. Lockyer v. R.J. Reynolds Tobacco Co.*, 37 Cal. 4th 707, 728-31 (2005) (triable issues remained whether due process principles or the constitutional prohibition against excessive fines should reduce an accrued fine for ongoing violation of a statute); *Hale v.*

1 *Morgan*, 22 Cal. 3d 388, 398-99 (1978) (constitutional provisions limited accrual of a \$100 per day
2 statutory penalty).

3 **ELEVENTH AFFIRMATIVE DEFENSE**

4 **(PAGA Violates the Separation of Powers Doctrine)**

5 11. As a separate and distinct defense, Defendants allege that Plaintiff's claims for
6 penalties based upon the PAGA is unconstitutional on the basis that it violates the separation of powers
7 doctrine by empowering private attorneys to prosecute public claims, thereby impairing the judiciary's
8 inherent power to regulate attorney conduct.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 **(Arbitrary and Capricious Fines)**

11 12. As a separate and distinct defense, Defendants allege that the claims for civil penalties
12 of Plaintiff and/or the putative class and/or the allegedly aggrieved employees under PAGA would
13 result in an award that is unjust, arbitrary and oppressive, or confiscatory within the meaning of
14 California Labor Code section 2699(e)(2), and the Court should exercise its discretionary powers to
15 reduce the maximum civil penalties available, if any such penalties are awarded.

16 **THIRTEENTH AFFIRMATIVE DEFENSE**

17 **(Initial Violation)**

18 13. As a separate and distinct defense, Defendants allege that, insofar as Defendants have
19 never been cited by the Labor Commissioner, or received a judgment against them in a court of law,
20 with respect to any of Plaintiff's and/or any alleged aggrieved employees' underlying Labor Code
21 claims and/or legal theories, any civil penalties awarded to Plaintiff on behalf of herself or any other
22 alleged aggrieved employee under the PAGA must be limited to those penalties applicable to an initial
23 violation.

24 **FOURTEENTH AFFIRMATIVE DEFENSE**

25 **(De Minimis)**

26 14. As a separate and distinct defense, Defendants allege that Plaintiff and/or the putative
27 class and/or any allegedly aggrieved employees may not recover penalties or damages related to some
28 or all of the disputed unpaid time allegedly worked to the extent such time is/was *de minimis* in that it

1 only consisted of a few minutes of time, and/or was not predictable and/or easily measured, and thus
2 is not compensable as a matter of law.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Failure to Mitigate)**

5 15. As a separate and distinct defense, Plaintiff and/or the putative class and/or the
6 allegedly aggrieved employees are barred from obtaining recovery against Defendants by reason of
7 their failure to mitigate alleged damages, if any, or, alternatively, any damages or other relief awarded
8 to Plaintiff and/or the putative class and/or the allegedly aggrieved employees must be reduced or
9 limited to the extent of such failure to mitigate.

10 **SIXTEENTH AFFIRMATIVE DEFENSE**

11 **(Act or Omission)**

12 16. As a separate and distinct defense, Defendants allege that the Complaint is barred
13 because the alleged losses or harms sustained by Plaintiff and/or the putative class and/or the alleged
14 aggrieved employees, if any, resulted from the acts or omissions of Plaintiff and/or the putative class
15 and/or the alleged aggrieved employees, and/or was proximately caused by the actions or inactions of
16 Plaintiff and/or the putative class and/or the alleged aggrieved employees, including but not limited to
17 any circumstance in which Plaintiff and/or the putative class and/or the alleged aggrieved employees:
18 (1) failed to report all time worked; and/or (2) breached any duties owed to Defendants pursuant to
19 the California Labor Code, including but not limited to California Labor Code §§ 2853, 2854, 2856,
20 2857 and/or 2859 and/or the refusal or failure by Plaintiff and/or the putative class and/or the alleged
21 aggrieved employees to meet Defendants' reasonable expectations and job performance requirements.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **(No Knowledge of Work)**

24 17. As a separate and distinct defense, Defendants allege that the Complaint is barred, in
25 whole or in part, to the extent some work was performed by Plaintiff and/or the putative class and/or
26 the alleged aggrieved employees that was completely voluntary in nature and without Defendants'
27 knowledge or authorization, and was not required by Defendants as a term or condition of the
28

1 Plaintiff's, the putative class or alleged aggrieved employees' employment, such work does not
2 constitute compensable working time under California law.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **(Avoidable Consequences)**

5 18. As a separate and distinct defense, Defendants allege that Plaintiff, the putative class
6 and/or any allegedly aggrieved employees are barred from recovering any penalties as such penalties
7 must be offset or reduced, pursuant to the avoidable consequences doctrine to the extent Defendants
8 took reasonable steps to ensure Plaintiff, the putative class and/or any allegedly aggrieved employees
9 were properly compensated for all work including good faith compliance with California law and
10 furnished with accurate wage statements, and Plaintiff, the putative class and/or any allegedly
11 aggrieved employees unreasonably failed to use preventative and corrective opportunities provided to
12 them, and reasonable use of such procedures would have prevented at least some, if not all, of the
13 harm allegedly suffered.

14 **NINETEENTH AFFIRMATIVE DEFENSE**

15 **(Bona Fide Dispute)**

16 19. As a separate and distinct defense, Defendants allege that Plaintiff's and/or the putative
17 class and/or the allegedly aggrieved employees' claims for penalties, including, but not limited to
18 penalties predicated on Labor Code section 201 are barred because (1) there are *bona fide* disputes as
19 to whether Defendants failed to timely pay all wages due, (2) there are *bona fide* disputes as to whether
20 Defendants failed to present wage statements on a timely basis, and (3) Defendants have not willfully
21 failed to pay such compensation, if any is owed.

22 **TWENTIETH AFFIRMATIVE DEFENSE**

23 **(Secreted or Absented)**

24 20. As a separate and distinct defense, Defendants allege that any claim for penalties based
25 on Labor Code § 203 cannot be maintained against Defendants to the extent Plaintiff and/or the
26 putative class and/or and of the alleged aggrieved employees secreted or absented themselves to avoid
27 payment of wages, thereby relieving Defendants of liability for penalties predicated on Labor Code
28 sections 203 and/or 210.

1 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Actions Outside Scope of Authority)**

3 21. As a separate and distinct defense, Defendants allege that claims in the Complaint
4 cannot be maintained against Defendants because if Plaintiff and/or the putative class and/or alleged
5 aggrieved employees took the actions alleged, such actions were committed outside the course and
6 scope of such employees' employment, were not authorized, adopted or ratified by Defendants, and
7 Defendants did not know of nor should it have known of such conduct.

8 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

9 **(Good Faith)**

10 22. As a separate and distinct defense, Defendants allege that the Complaint and each cause
11 of action set forth therein cannot be maintained because, without admitting that any violation took
12 place, any violation of the Labor Code or Order of the Industrial Welfare Commission was not
13 knowingly, willfully or intentionally done and/or was an act or omission made in good faith, because
14 there exists a good faith dispute as to whether further compensation is due and/or Defendants had
15 reasonable grounds for believing that their wage payment practices complied with applicable laws and
16 that any act or omission was not a violation of the Labor Code or any Order of the Industrial Welfare
17 Commission, such that Plaintiff and/or the alleged aggrieved employees are not entitled to any
18 damages or penalties.

19 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

20 **(Meal and Rest Periods – Waiver)**

21 23. As a separate and distinct defense, Plaintiff's and/or the putative class and/or the
22 allegedly aggrieved employees' claims are barred, in whole or in part, because Defendants reasonably
23 and in good faith provided Plaintiff and/or the putative class and/or the allegedly aggrieved employees
24 with meal and rest periods and that any failure by Plaintiff and/or the putative class and/or the allegedly
25 aggrieved employees to take meal and/or rest breaks constituted a waiver by Plaintiff and/or the
26 putative class and/or the allegedly aggrieved employees to take such meal and/or rest periods,
27 including by an intentional decision not to take a meal or rest period and/or to the extent that the failure
28 to take meal and/or rest breaks was the result of a failure by Plaintiff and/or the putative class and/or

1 the allegedly aggrieved employees to follow Defendants' reasonable instructions and for any meal
2 break waivers for shifts six hours or less or for shifts of 12 hours or less where the first meal break
3 was taken.

4 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

5 **(Waiting Time Penalties)**

6 24. As a separate and distinct defense, Plaintiff and/or the putative class and/or the
7 allegedly aggrieved employees' claims pursuant to or related to California Labor Code section 203 are
8 barred, in whole or in part, because: (a) Defendants have not willfully failed to pay such additional
9 compensation, if any is owed; (b) a good faith dispute exists as to whether wages are owed; (c) the
10 compensation/premiums sought do not constitute wages; and (d) to impose penalties in this case would
11 be inequitable and unjust.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 **(Labor Code §226(e) - Willfulness)**

14 25. As a separate and distinct defense, Defendants allege that any alleged failure by
15 Defendants to comply with Labor Code section 226(a) was not a "knowing and intentional failure"
16 under Labor Code section 226(e).

17 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

18 **(Labor Code § 226(e) – Lack of Injury)**

19 26. As a separate and distinct defense, Defendants allege that Plaintiff, the putative class
20 and/or the allegedly aggrieved employees she purports to represent are not entitled to recover penalties
21 because Defendants' alleged failure to comply with Labor Code section 226(a) did not result in any
22 injury as defined under Labor Code section 226(e).

23 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

24 **(Substantial Compliance – Wage Statements/Records)**

25 27. As a separate and distinct defense, Defendants allege that any claim for civil penalties
26 pursuant to the PAGA predicated on Labor Code sections 226(a) and/or 1174(d), or any applicable
27 Wage Order, fail because Defendants substantially complied with the applicable statute or Wage
28 Order.

1 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

2 **(Bus. & Prof. Code Section 17200 – Compliance with Obligations)**

3 28. As a separate and distinct defense, Plaintiff's claims are barred in whole or in part
4 because of Defendant's compliance with all applicable laws, statutes and regulations, said compliance
5 affording Defendant a safe harbor to any claim under Business and Professions Code Section 17200,
6 *et seq.*

7 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

8 **(Waiver/Unclean Hands)**

9 29. As a separate and distinct defense, Defendants allege that some or all of the purported
10 cause of actions alleged in the Complaint are barred in whole or in part by the equitable doctrines of
11 waiver and/or unclean hands.

12 **THIRTIETH AFFIRMATIVE DEFENSE**

13 **(Accord and Satisfaction)**

14 30. As a separate and distinct defense, Defendants allege that Plaintiff's claims fail because
15 Plaintiff, the putative class and/or the allegedly aggrieved employees that Plaintiff purports to
16 represent have been fully paid all amounts legally owed by Defendants, and by accepting the payments
17 made to them, they have effectuated an accord and satisfaction of their claims.

18 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

19 **(Offset/Recoupment)**

20 31. As a separate and distinct defense, Defendants allege that any award to Plaintiff, the
21 putative class and/or allegedly aggrieved employees must be offset by the value of any monies and/or
22 benefits Defendants paid to Plaintiff, the putative class and/or allegedly aggrieved employees that were
23 not owed.

24 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

25 **(Estoppel/Laches)**

26 32. As a separate and distinct defense, Defendants allege that some or all of the purported
27 causes of action alleged in the Complaint are barred in whole or in part by the equitable doctrines of
28 estoppel and/or laches.

1 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

2 **(Res Judicata/Collateral Estoppel)**

3 33. As a separate and distinct defense, Defendants allege that Plaintiff's claims, and those
4 of the putative class members, are barred, in whole or in part, on the grounds of res judicata and/or
5 collateral estoppel to the extent that previous litigation has resulted in a determination on the merits
6 and/or claims have been released via a prior settlement..

7 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

8 **(Class Action Cannot be Maintained)**

9 34. As a separate and distinct defense, Defendants allege that this suit may not be properly
10 maintained as a class action because: (a) Plaintiff has failed to plead and cannot establish the necessary
11 procedural elements for class treatment; (b) a class action is not an appropriate method for the fair and
12 efficient adjudication of the claims described in the Complaint; (c) common issues of fact or law do
13 not predominate; to the contrary, individual issues predominate; (d) the named Plaintiff's claims are
14 not representative or typical of the claims of the putative class; (e) the named Plaintiff cannot fairly
15 and adequately represent the interests of the putative class; (f) the named Plaintiff and alleged putative
16 class counsel are not adequate representatives for the putative class; and/or (g) there is not a well-
17 defined community of interest in the questions of law or fact affecting Plaintiff and the putative class.

18 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

19 **(Class Action – Due Process)**

20 35. As a separate and distinct defense, Defendants allege that certification of a class, as
21 applied to the facts and circumstances of this case, would constitute a denial of Defendants' due
22 process rights, both substantive and procedural, in violation of the California Constitution and the
23 Fourteenth Amendment to the United States Constitution.

24 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

25 **(Not the Employer)**

26 36. As a separate and distinct defense, Defendants allege that Plaintiff's claims, and those
27 of the putative class and/or the allegedly aggrieved employees, are barred, in whole or in part, because
28 they are not employed by Defendant Medline Industries Holdings, L.P.

1 **RESERVATION OF ADDITIONAL DEFENSES**

2 Defendants reserve the right to amend this answer should they later discover facts
3 demonstrating the existence of new and/or additional affirmative defenses and/or should a change in
4 the law support the inclusion of new and/or additional distinct defenses.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Defendants pray:

- 7 1. That this Court dismiss Plaintiff's Complaint in its entirety, with prejudice;
8 2. That this Court enter judgment in favor of Defendants;
9 3. That this Court award Defendants their attorneys' fees and costs as permitted by law; and
10 4. That this Court award Defendants any such other relief it deems just and proper.

11 Dated: February 17, 2022

Respectfully submitted,

LITTLER MENDELSON, P.C.

13
14 

15 Steven A. Groode
16 Jannine E. Kranz
17 Attorneys for Defendants
18 MEDLINE INDUSTRIES, INC., MEDLINE
19 INDUSTRIES HOLDINGS, L.P., MEDLINE
20 INDUSTRIES, LP
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 2049 Century Park East, 5th Floor, Los Angeles, CA 90067.

On February 17, 2022, I served the within document(s):

DEFENDANTS MEDLINE INDUSTRIES, INC., MEDLINE INDUSTRY HOLDINGS, L.P.
AND MEDLINE INDUSTRIES, LP'S ANSWER TO PLAINTIFF'S FIRST AMENDED
COMPLAINT

☐ **By personal service.** I personally delivered the documents to the persons at the addresses listed below. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office, between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses below and (*specify one*):

☐ deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.

☒ placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at: **Los Angeles, California.**

☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

1 ☐ **By messenger service.** I served the documents by placing them in an envelope or
2 package addressed to the persons at the addresses listed below and providing them
3 to a professional messenger service for service. *(A confirmation document by the
professional messenger service will be retained in our office.)*

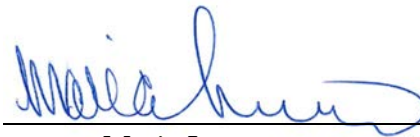
4 ☐ **By fax transmission.** Based on an agreement of the parties to accept service by
5 fax transmission, I faxed the documents to the persons at the fax numbers listed
6 below. No error was reported by the fax machine that I used. A copy of the record
of the fax transmission, which I printed out, is attached.

7 ☒ **By electronic service.** Based on a court order or an agreement of the parties to
8 accept electronic service, I caused the documents to be sent to the persons at the
electronic service addresses listed below.

9 ☐ **BY ELECTRONIC MAIL**—ONE LEGAL, L.L.C. by submitting an electronic
10 version of the document(s) to One Legal, LLC, through the user interface at
11 www.onelegal.com. Based on California Rules of Court Rule 2.251(Rev 1/2012).
The electronic notification address of the person(s) making the service is
mlozano@littler.com

13 DAVID G. SPIVAK
14 david@spivaklaw.com
MARALLE MESSRELIAN
15 maralle@spivaklaw.com
SARA BROWN
16 sara@spivaklaw.com
THE SPIVAK LAW FIRM
17 8605 Santa Monica Bl
PMB 42554
18 West Hollywood CA 90069
Telephone: (213) 725-9094
19 Facsimile: (213) 634-2485

20
21 I declare that I am employed in the office of a member of the bar of this court at whose
22 direction the service was made. Executed on February 17, 2022 at Los Angeles, California.

23
24 
25

26 Maria Lozano

27 4887-6901-0446.3 / 100115-1008

EXHIBIT 6



Sample size calculator

What margin of error can you accept?

5% is a common choice

5 %

The margin of error is the amount of error that you can tolerate. If 90% of respondents answer *yes*, while 10% answer *no*, you may be able to tolerate a larger amount of error than if the respondents are split 50-50 or 45-55.

Lower margin of error requires a larger sample size.

What confidence level do you need?

Typical choices are 90%, 95%, or 99%

95 %

The confidence level is the amount of uncertainty you can tolerate. Suppose that you have 20 yes-no questions in your survey. With a confidence level of 95%, you would expect that for one of the questions (1 in 20), the percentage of people who answer *yes* would be more than the margin of error away from the true answer. The true answer is the percentage you would get if you exhaustively interviewed everyone.

Higher confidence level requires a larger sample size.

What is the population size?

If you don't know, use 20000

5892

How many people are there to choose your random sample from? The sample size doesn't change much for populations larger than 20,000.

What is the response distribution?

Leave this as 50%

50 %

For each question, what do you expect the results will be? If the sample is skewed highly one way or the other, the population probably is, too. If you don't know, use 50%, which gives the largest sample size. See below under **More information** if this is confusing.

Your recommended sample size is

361

This is the minimum recommended size of your survey. If you create a sample of this many people and get responses from everyone, you're more likely to get a correct answer than you would from a large sample where only a small percentage of the sample responds to your survey.

Online surveys with [Vovici](#) have completion rates of 66%!

Alternate scenarios

With a sample size of	100	200	300	With a confidence level of	90	95	99
Your margin of error would be	9.72%	6.81%	5.51%	Your sample size would need to be	259	361	597

Save effort, save time. [Conduct your survey online with Vovici.](#)

More information

If 50% of all the people in a population of 20000 people drink coffee in the morning, and if you were repeat the survey of 377 people ("Did you drink coffee this morning?") many times, then 95% of the time, your survey would find that between 45% and 55% of the people in your sample answered "Yes".

The remaining 5% of the time, or for 1 in 20 survey questions, you would expect the survey response to more than the margin of error away from the true answer.

When you survey a sample of the population, you don't know that you've found the correct answer, but you do know that there's a 95% chance that you're within the margin of error of the correct answer.

Try changing your sample size and watch what happens to the *alternate scenarios*. That tells you what happens if you don't use the recommended sample size, and how M.O.E and confidence level (that 95%) are related.

To learn more if you're a beginner, read **Basic Statistics: A Modern Approach** and **The Cartoon Guide to Statistics**. Otherwise, look at the **more advanced books**.

In terms of the numbers you selected above, the sample size n and margin of error E are given by

$$x = Z(c/100)^2 r(100-r)$$

$$n = N x / ((N-1)E^2 + x)$$

$$E = \text{Sqrt}[(N - n)x / n(N-1)]$$

where N is the population size, r is the fraction of responses that you are interested in, and $Z(c/100)$ is the critical value for the confidence level c .

If you'd like to see how we perform the calculation, view the page source. This calculation is based on the [Normal distribution](#), and assumes you have more than about 30 samples.

About **Response distribution**: If you ask a random sample of 10 people if they like donuts, and 9 of them say, "Yes", then the prediction that you make about the general population is different than it would be if 5 had said, "Yes", and 5 had said, "No". Setting the response distribution to 50% is the most conservative assumption. So just leave it at 50% unless you know what you're doing. The sample size calculator computes the critical value for the normal distribution. Wikipedia has good articles on statistics.

How do you like this web page? ☐ Good as-is ☐ Could be even better

© 2004 by [Raosoft, Inc.](#). Please download and reuse this web page!
[Questions? Please let us know.](#)

Print

Done

EXHIBIT 7

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Data**

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Saturday, December 23, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Sunday, December 23, 2018
Lab.Code § 2699 (civil penalties) period begins:	Thursday, October 29, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Tuesday, December 22, 2020
LWDA Notice:	Friday, October 29, 2021
Lawsuit:	Wednesday, December 22, 2021
Sample Begin:	Friday, December 22, 2017
Sample End:	Saturday, February 22, 2025
Sample Calendar Days:	2,619
Mediation:	Monday, July 14, 2025
Anticipated Settlement Period End date:	Wednesday, July 22, 2026
Settlement Period to Sample Period:	119.63%

Classes / Groups sizes

UCL Class Members:	5,892
UCL Workweeks:	333,122
UCL Wage Statements:	170,709
UCL Workdays:	1,458,183
UCL Calendar Days:	2,760
UCL Months:	76,668
 Waiting Time Penalties Class Members:	 4,048
 PAGA Aggrieved Employees:	 4,411
PAGA Wage Statements:	115,106
 Wage Statement Class Members:	 4,411
Wage Statement Class Wage Statements:	112,161

Averages

Average Hourly Rate:	\$	19.93
Average Overtime Rate:	\$	29.90
Average Doubletime Rate:	\$	39.86
 Average Work Hours Per Day:		 8.43
Average Work Hours Per Week:		36.90
Average Workdays Per Week:		4.30
Workdays to Calendar Days (%):		61.43%
Pay cycle:		bi-weekly
Paychecks Per Year:		26

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

% of UKG Meal Periods That Include ProTrack Activities Beginning or Ending:	43.28%
% of UKG Workdays With ProTrack Activities Beginning or Ending Before First UKG Punch for The Shift:	2.00%
Average Hours Spent on ProTrack Activities Before First UKG Punch For the Day:	0.54
% of UKG Workdays With ProTrack Activities Beginning or Ending After Last UKG Punch for The Shift:	7.60%
Average Hours Spent on ProTrack Activities After Final UKG Punch For the Day:	1.13
% of Employees with ProTrack Activities Outside of UKG Hours:	93.60%

***These numbers will be adjusted after our expert completes his analysis of the**

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Unpaid wages (OTC work including the 30-minute meal period per Wage Order 9, sec. 11(c))**
Authority: Lab.Code §§ 1194, 1194.2, and 1198

Minimum Wage Rate:		
Average Hourly Rate:	\$	16.50
Unpaid Interrupted Meal Period Time (ProTrack activities during UKG meal period punched out):		0.50
UCL Workdays:		1,458,183
% of Workdays with Off-The-Clock Work:		5.00%
% of workdays with Other Off-the-Clock Time (ProTrack work activity during period punched out of UKG):		8.60%
Interest:		10%
Unpaid Wages:	\$	661,650.54
Liquidated damages:	\$	661,650.54

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Unprovided Meal Periods**
Authority: Lab.Code §§ 226.7, 512, and 1198

% of 2018 exactly 30-Minute Meal Periods:	46.60%
% of 2019 exactly 30-Minute Meal Periods:	52.50%
% of 2020 exactly 30-Minute Meal Periods:	53.30%
% of 2021 exactly 30-Minute Meal Periods:	53.50%
% of 2022 exactly 30-Minute Meal Periods:	58.90%
% of 2023 exactly 30-Minute Meal Periods:	68.40%
% of 2024 exactly 30-Minute Meal Periods:	66.50%

% of 2018 Workdays with Meal Period Violations:	37.20%
% of 2019 Workdays with Meal Period Violations:	37.90%
% of 2020 Workdays with Meal Period Violations:	36.60%
% of 2021 Workdays with Meal Period Violations:	38.60%
% of 2022 Workdays with Meal Period Violations:	33.40%
% of 2023 Workdays with Meal Period Violations:	1.10%
% of 2024 Workdays with Meal Period Violations:	1.10%

Average Hourly Rate:	\$	19.93
Actionable Workdays:		1,458,183
>>Percentage Qualifying For Meal Periods:		95.64%
Violation Rate (%):		5.00%
# of Meal Period Premium Hours Paid:		10,131
Meal Period Premium Wages:	\$	1,251,168.53

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Unprovided Rest Periods**
Authority: Lab.Code §§ 226.7 and 1198

Average Hourly Rate:	\$	19.93
Actionable Workdays:		1,458,183
>>Percentage Qualifying For Rest Periods:		99.31%
	*Employees report missing at least one rest break per	
Violation Rate (%):	workday and rest breaks were restricted to premises.	5.00%
Rest Period Premium Wages:	\$	1,443,053.11

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Itemized Wage Statements**
Authority: Lab.Code § 226

Wage Statement Class Members:		4,411
Wage Statement Class Wage Statements:		112,161
Initial Penalty:	\$	50.00
Subsequent Penalty:	\$	100.00
Violation Rate:		5%
Statutory Wage Statement Penalties:	\$	549,777.50

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:		4,048
Days Waiting:		30
Average Hourly Rate:	\$	19.93
Average Overtime Rate:	\$	29.90
Average Doubletime Rate:	\$	39.86
Average Work Hours Per Day:		8.43
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.43
Doubletime Hours Per Day:		-
Violation Rate:		5%
Waiting time penalties:	\$	1,046,174.33

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil Penalty Statute	Initial penalty	Violation Rate	Pay periods	Total
Minimum Wages (Lab.Code § 1197):	Lab.Code § 1197	\$ 100.00	5%	115,106 \$	575,530.00
Meal Periods/Overtime Wages (Lab.Code § 512):	Lab.Code § 558	\$ 50.00	5%	115,106 \$	287,765.00
Rest Periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	5%	115,106 \$	575,530.00
Improper Pay Stubs (Lab.Code § 226):	Lab.Code § 2699	\$ 100.00	5%	115,106 \$	575,530.00
Untimely Wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	5%	115,106 \$	575,530.00
Total:				\$	2,589,885.00

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title: Deja Nair v. Medline Industries, Inc.
Case no.: 2:22-CV-00331-DAD-JDP
Court: USDC-Eastern District
Judge: The Honorable Dale A. Drozd
Page subject: **Totals**
Authority: Various

			Reduction for Risk		Settlement Value
Restitution					
Unpaid Wages:	\$	661,650.54	85%	\$	99,247.58
Liquidated Damages:	\$	661,650.54	85%	\$	99,247.58
Meal Period Premium Wages:	\$	1,251,168.53	85%	\$	187,675.28
Rest Period Premium Wages:	\$	1,443,053.11	85%	\$	216,457.97
Restitution subtotal:	\$	4,017,522.71		\$	602,628.41
Statutory Penalties					
Statutory Wage Statement Penalties:	\$	549,777.50	90%	\$	54,977.75
Waiting time penalties:	\$	1,046,174.33	90%	\$	104,617.43
Penalties subtotal:	\$	1,595,951.83		\$	159,595.18
Civil Penalties					
Minimum Wages (Lab.Code § 1197):civil penalties:	\$	575,530.00	90%	\$	57,553.00
Meal Periods/Overtime Wages (Lab.Code § 512):civil penalties:	\$	287,765.00	90%	\$	28,776.50
Rest Periods (Lab.Code § 1198):civil penalties:	\$	575,530.00	90%	\$	57,553.00
Improper Pay Stubs (Lab.Code § 226):civil penalties:	\$	575,530.00	90%	\$	57,553.00
Untimely Wages (Lab.Code §§ 201-204):civil penalties:	\$	575,530.00	90%	\$	57,553.00
Penalties subtotal:	\$	2,589,885.00		\$	258,988.50
Grand total:	\$	8,203,359.54		\$	1,021,212.09

EXHIBIT 8

2013 WL 766535
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.
Court of Appeal,
Second District, Division 2, California.

Pearline ZALEWA et al., Plaintiffs and Respondents,
v.
TEMPO RESEARCH CORPORATION et al., Defendants and Appellants.

B238142 | Filed March 1, 2013

APPEAL from a judgment of the Superior Court of Los Angeles County. [Charles F. Palmer](#), Judge. Reversed and remanded.
(Los Angeles County Super. Ct. No. BC319156)

Attorneys and Law Firms

Dickstein Shapiro, [Arthur Silbergeld](#), [Christine de Bretteville](#) for Defendants and Appellants.

Altshuler Berzon, [Michael Rubin](#), [Eileen B. Goldsmith](#); Law Offices of Joseph D. Tuchmayer, [Joseph D. Tuchmayer](#); Law Offices of Todd Arron, [Todd S. Arron](#) for Plaintiffs and Respondents.

Opinion

[BOREN](#), P.J.

***1** We remanded this employment case to the trial court to determine (1) if attorney fees are authorized by statute following our reversal of the judgment in favor of plaintiffs, and (2) if fees are authorized, are they warranted by the facts of the case. On remand, both sides submitted demands for attorney fees to the trial court. The court awarded fees to plaintiff former employees as the “**prevailing** party” under [Labor Code section 218.5](#).¹

We reverse. Plaintiffs were not the **prevailing** party: they lost the case because their demands for bonuses were unfounded. Given that plaintiffs had no right to bonuses after they were laid off, defendants’ payment of money to some former employees during the litigation was a gift that cannot be viewed—as a matter of law—as a “catalyst” warranting an award of attorney fees to plaintiffs.

FACTS²

Plaintiffs are former employees of defendant Rifocs, a fiber optics company. In 1999, Rifocs merged with codefendant Textron. The merged entity was subsequently acquired by codefendant Tempo Research Corporation. The 1999 merger agreement contained a bonus clause. The bonus was intended to reward key employees for past performance and give them an incentive to remain with the company after the merger. Plaintiff employees were not third party beneficiaries of the merger agreement, which expressly forbids them from suing to enforce its terms.

To qualify for a bonus, plaintiffs had to be employed by the corporation at the end of the calendar year from 2000 through 2003. Plaintiffs received bonuses pursuant to the merger agreement beginning in December 2000. Plaintiff Laws received a bonus of \$10,000 for 2000–2001 and Zalewa received a bonus of \$75,000 for 2000–2002.

In 2001, defendants began employee layoffs because the market for fiber optics cooled. Defendants’ employment roster declined from 125 employees in April 2001 to seven employees in 2003. After being laid off, plaintiffs received no further

bonuses; however, they were entitled to—and received—severance pay. They signed releases agreeing not to sue on any claim arising from their employment with defendants.

In 2004, plaintiffs filed suit alleging Labor Code violations, unfair business practices, breach of contract, conversion, promissory estoppel, bad faith, and private attorney general (PAGA) penalties. In July 2005, defendants offered payments to laid-off employees, though not to the plaintiffs. After defendants made the payments, plaintiffs amended their complaint to allege a class action and assert a new claim for a “residual bonus.” A class was certified in 2007.

A bench trial was conducted in 2008. The court found that plaintiffs are entitled to recover a direct bonus, but no residual bonus. Because the bonus was unpaid wages, plaintiffs were awarded prejudgment interest and attorney fees under § 218.5. The court denied penalties to plaintiffs, finding that it would be unjust because defendants voluntarily tendered almost all of the outstanding direct bonus amounts to class members. The court awarded 11 employees \$0 because they were paid *more* money by defendants than they were owed. The remaining eight former employees were awarded sums ranging from \$455 to \$35,719. The court awarded plaintiffs’ counsel attorney fees of \$881,715. The court rejected plaintiffs’ claim under PAGA for lack of standing, because plaintiffs left defendants’ employ before PAGA took effect in 2004.

*2 Plaintiffs appealed the judgment because they felt entitled to residual bonuses and waiting time penalties, among other things. Defendants cross-appealed, challenging the trial court’s award of a direct bonus, its invalidation of the releases signed by plaintiffs, and the court’s award of attorney fees.

This Court reversed the judgment in favor of plaintiffs.

First, the trial court improperly invalidated the releases signed by plaintiffs after finding that defendants reasonably and in good faith believed that they did not owe plaintiffs a bonus. In a bona fide dispute over wages, defendants can legitimately offer plaintiffs money in return for their release of all claims. There was no evidence that the releases were coerced or improperly obtained. We wrote that plaintiffs “could, and did, accept payments that exceeded their earned severance, in return for releasing all claims, when there was a bona fide dispute over the wages owing. This is proper, even if the payment made by defendants was less than the bonus amounts claimed by the employees.”

Second, the trial court erred by finding that plaintiffs are entitled to a direct bonus. Although plaintiffs benefit from the bonus clause, the merger agreement prohibits them from suing to enforce its terms. Further, plaintiffs did not rely on any written or oral promises from defendants that they would receive a bonus even if they were laid off from their jobs due to depressed economic conditions. Because plaintiffs are not entitled to a bonus after they were laid off, they are not entitled to waiting time penalties, other Labor Code penalties, or prejudgment interest.

Finally, we reversed the trial court’s award of \$881,715 in attorney fees. We remanded the case to the trial court to determine whether an award of attorney fees is authorized by statute and warranted by the facts. Notably, we did *not* specify that either plaintiffs or defendants might be entitled to fees.³

On remand, the parties filed cross-motions for attorney fees. Plaintiffs requested an award of \$307,146 as the **prevailing** party pursuant to § 218.5, reasoning that this litigation was the catalyst for defendants’ July 2005 payments. Plaintiffs did not request attorney fees for litigation occurring after the 2005 payments, because the claims that went to trial were found by this Court to lack merit.

Defendants countered with a request for \$2,210,360 in costs and attorney fees incurred at trial and on appeal. Defendants argued that they are the **prevailing** parties: the appeal showed that they had no obligation to pay anything to plaintiffs. Like plaintiffs, defendants relied upon § 218.5 as authority for their right to recover attorney fees. In opposition to plaintiffs’ request for fees, defendants observed that their 2005 payments were made to nonparties, not to plaintiffs, and plaintiffs are not the **prevailing** parties because they did not recover any relief against defendants at trial. In defendants’ view, the “catalyst” theory is inapposite because no public interest was vindicated by plaintiffs’ lawsuit.

THE TRIAL COURT’S RULING

*3 The trial court denied defendants' motion for attorney fees. Citing § 218.5, the court granted plaintiffs' motion for fees, finding that plaintiffs are the prevailing parties, even if they did not obtain a favorable judgment in the litigation. The court reasoned that plaintiffs' lawsuit was a catalyst, provoking defendants to make the 2005 payments to some former employees. Plaintiffs initially won their lawsuit in the trial court and other employees recovered their bonuses from defendants in administrative proceedings: these factors demonstrated that the lawsuit was not frivolous, groundless or unreasonable. Finally, plaintiffs made demands for their bonus before the action was filed but were rebuffed, demonstrating that the litigation was necessary. Plaintiffs' attorneys were awarded a total of \$346,947.

DISCUSSION

1. Appeal and Review

The appeal arises from a postjudgment order awarding attorney fees and costs. (Code Civ. Proc., § 904.1, subd. (a)(2); *Raff v. Raff* (1964) 61 Cal.2d 514, 519; *Breckler v. Thaler* (1978) 87 Cal.App.3d 189, 193.) An attorney fee award generally is reviewed for an abuse of discretion; however, when the parties dispute whether the trial court was legally authorized to make an award because "the criteria for making an award" were unmet, this calls for statutory construction and presents a question of law. (*Conservatorship of Whitley* (2010) 50 Cal.4th 1206, 1213–1214; *Connerly v. State Personnel Bd.* (2006) 37 Cal.4th 1169, 1175.) Specifically, we are asked whether § 218.5 permits, under a catalyst theory, an award of attorney fees to plaintiffs who did not prevail on any of the claims made in their lawsuit. Review is de novo, because the issue is whether there is a legal basis for awarding attorney fees. (*Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 1426; *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal.App.4th 140, 149.)

2. Overview of § 218.5

Section 218.5 reads, in relevant part, "In any action brought for the nonpayment of wages ... the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." The statute is a reciprocal fee recovery provision that works in favor of either employees or employers, whichever is the prevailing party in a lawsuit claiming unpaid wages. (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1427.) In employee class action suits, class representatives assume a fiduciary responsibility on behalf of absent parties and are potentially responsible for defense fees if their case fails. (*Id.* at pp. 1434–1436.) An unpaid bonus is treated as a claim for unpaid wages. (*Hunter v. Ryan* (1930) 109 Cal.App. 736, 738.)

3. The Catalyst Theory

The catalyst theory arises from the private attorney general doctrine codified in Code of Civil Procedure section 1021.5.⁴ It allows courts to award attorney fees to a "successful party" in an action that results in "the enforcement of an important right affecting the public interest" if there is (a) a significant benefit conferred on the general public or a large class of persons, (b) the financial burden of private enforcement makes the award appropriate, and (c) the fees should not be paid out of any recovery. (*Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553, 565 (*Graham*).)

*4 The doctrine " "rests upon the recognition that privately initiated lawsuits are often essential to the effectuation of the fundamental public policies embodied in constitutional or statutory provisions, and that, without some mechanism authorizing the award of attorney fees, private actions to enforce such important public policies will as a practical matter frequently be infeasible." " (*Graham, supra*, 34 Cal.4th at p. 565.) It does not apply when a lawsuit's "primary effect was the vindication of [plaintiff's] personal right and economic interest." (*Flannery v. California Highway Patrol* (1998) 61 Cal.App.4th 629, 637.)

"Under the catalyst theory, attorney fees may be awarded even when litigation does not result in a judicial resolution if the defendant changes its behavior substantially because of, and in the manner sought by, the litigation.... In order to be eligible for attorney fees[,] a plaintiff must not only be a catalyst to defendant's changed behavior, but the lawsuit must have some merit [] and the plaintiff must have engaged in a reasonable attempt to settle its dispute with the defendant prior to

litigation.” (*Graham, supra*, 34 Cal.4th at pp. 560–561.)

“ ‘A plaintiff will be considered a “successful party” where an important right is vindicated “by activating defendants to modify their behavior.” ’ ” (*Graham, supra*, 34 Cal.4th at p. 567.) Plaintiff need not secure a favorable final judgment to succeed: the case may be won on a preliminary issue; or by convincing a public agency to implement state law; or by reaching a settlement with a corporation in a shareholder derivative suit. (*Id.* at pp. 565–567, citing cases.) In *Graham*, the plaintiffs sued Chrysler for making false statements about the towing capacity of its trucks, inspiring the company to offer to repurchase or replace the trucks. The lawsuit caused Chrysler to change its behavior, “implicated an issue of public safety, and [] benefited thousands of consumers and potentially thousands more by acting as a deterrent to discourage lax responses to known safety hazards.” (*Id.* at pp. 577–578.)

4. Plaintiffs’ Right to Recover Attorney Fees

Plaintiffs originally brought suit in 2004 “on behalf of themselves and the general public.” They requested attorney fees pursuant to § 218.5. While the case was pending, but before plaintiffs amended their complaint to include class allegations, defendants paid money to some of the laid-off employees, but not to plaintiffs. Plaintiffs proceeded to trial, where they won their unpaid bonus money. The victory was short-lived, as defendants had a successful appeal.

To determine the prevailing party under § 218.5, we import the definition used in the Code of Civil Procedure (*On-Line Power, Inc. v. Mazur* (2007) 149 Cal.App.4th 1079, 1085–1087), which defines a prevailing party as “the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant.” (Code Civ. Proc., § 1032, subd. (a)(4).) Plaintiffs did not have a net monetary recovery against defendants. In fact, they recovered nothing. Under the plain language of § 218.5, plaintiffs were not the prevailing party because all of their claims against defendant were denied.

While no court has yet applied the catalyst theory to a case arising from § 218.5, plaintiffs argue that the theory should apply, based on defendants’ July 2005 payments to some former employees. It is unclear whether the permissive fee shifting described in the catalyst theory applies to a statute like § 218.5, which mandates an award of attorney fees to the “prevailing party.” Assuming the catalyst theory applies to Labor Code cases, its application does not assist plaintiffs in their quest for attorney fees.

*5 The opinion in the prior appeal shows that plaintiffs had no right to collect a bonus after they were laid off from their jobs with defendants. By extension, the laid-off, nonparty employees who received payments from defendants in July 2005 also had no right to collect a bonus. Had the employees not accepted the 2005 payments, they would have received nothing in the litigation. In the eyes of the law, defendants’ 2005 payments were a gift, not a contractual or statutory obligation to remit unpaid wages.

When deciding whether to award attorney fees, the court reviews the facts “not only to determine the lawsuit’s catalytic effect but also its merits. Attorney fees should not be awarded for a lawsuit that lacks merit.” (*Graham, supra*, 34 Cal.4th at p. 576.) Plaintiffs cannot be a “successful party” if a reviewing court flatly rejects their case on the merits. (*Marine Forests Society v. California Coastal Com.* (2008) 160 Cal.App.4th 867, 877.) Although plaintiffs’ lawsuit provoked the 2005 payments, the lawsuit itself lacked merit, because plaintiffs demanded bonuses and penalties that they were not entitled to collect.

A lawsuit that provokes a defendant to make a gift is not a ground for awarding attorney fees: no significant benefit is conferred on the public or a large class of persons by such a lawsuit (*Graham, supra*, 34 Cal.4th at p. 578), and defendants engaged in no detrimental behavior that needed to be changed. As discussed in our prior opinion, defendants had the right to behave the way they did, laying off employees they could not afford to keep and denying bonuses to employees who were not on the payroll at year’s end. (Compare *Tipton–Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 607–610 [city instituted remedial practices in its police department after plaintiff sued for race and sex discrimination, justifying application of the “catalyst” theory of fee recovery]; *Harbor v. Deukmejian* (1987) 43 Cal.3d 1078, 1103 [catalyst theory applied when plaintiffs successfully challenged the governor’s constitutional veto authority, which conferred a significant benefit on the general public]; *Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358,

1368 [plaintiffs successfully obtained an amendment to a tax sharing agreement and a \$1.35 million reimbursement to a city housing fund, giving rise to catalyst fees].)

In sum, this lawsuit was instigated by a handful of employees who felt entitled to collect a bonus for years after they stopped working. By no stretch of imagination did this lawsuit aim to vindicate an important right affecting the public interest; nor did it confer a significant benefit on the general public or a large class of persons; nor did it cure detrimental behavior by defendants, who did not engage in improper conduct. This was not a lawsuit “ ‘that genuinely provide[d] a public benefit.’ ” (*Vasquez v. State of California* (2008) 45 Cal.4th 243, 255.) The catalyst theory does not apply here.

5. Defendants’ Right to Recover Attorney Fees

Section 218.5 is a reciprocal attorney fees statute that requires an award of fees to the “prevailing party” so long as one of the parties demands those fees upon the initiation of the action. Here, plaintiffs demanded fees pursuant to § 218.5 when they filed suit. Defendants were the prevailing parties on appeal, which resolved the entire lawsuit in their favor. (Code Civ. Proc., § 1032, subd. (a)(4) [prevailing party is the defendant if neither plaintiff nor defendant obtains any relief, and the defendant when the plaintiff recovers no relief against that defendant].) Plaintiffs did not prevail on any claims.

*6 Plaintiffs contend that their claims for fees under § 218.5 were inextricably intertwined with their PAGA claim, making it impossible to award attorney fees to defendants as the prevailing party under § 218.5. As the trial court found, plaintiffs had no standing to bring a PAGA claim because PAGA did not exist when plaintiffs were terminated from their employment with defendants. In any event, § 218.5 lists only one remotely pertinent exception: “This section does not apply to any action for which attorney’s fees are recoverable under Section 1194.”⁵ Plaintiffs did not proceed under section 1194, a one-way fee shifting statute authorizing attorney fees to employees who prevail on their minimum wage or overtime compensation claims.

Section 218.5 contains no equitable exemption allowing the courts to give a pass to employees who invoke its provisions then lose their case, causing the employer to become the prevailing party in the litigation. Defendants are the prevailing party under § 218.5, and are entitled to recover reasonable attorney fees they incurred in this litigation, including the two appeals.⁶

DISPOSITION

The postjudgment order awarding attorney fees and costs to plaintiffs is reversed. The case is remanded to the trial court to determine a reasonable award of attorney fees and costs for defendants. Defendants are entitled to recover their costs on appeal, as the prevailing party.

We concur:

ASHMANN–GERST, J.

FERNS, J.*

Footnotes

¹ Labor Code section 218.5 will be referred to in this opinion as § 218.5.

² The facts are largely derived from our opinion in *Zalewa v. Tempo Research Corporation* (Sept. 27, 2010) B210429 (nonpub. opn., as modified Oct. 27, 2010).

³ Plaintiffs misinformed the trial court that the case was remanded to resolve “whether and in what amount plaintiffs are entitled to

reasonable fees for having achieved [a] substantial result for so many of the affected employees.” (Italics added.) The opinion does not give a nod to plaintiffs’ claim for fees.

- 4 The statute reads, in relevant part, “Upon motion, a court may award attorneys’ fees to a successful party against one or more opposing parties in any action which has resulted in the enforcement of an important right affecting the public interest if: (a) a significant benefit, whether pecuniary or nonpecuniary, has been conferred on the general public or a large class of persons, (b) the necessity and financial burden of private enforcement ... are such as to make the award appropriate, and (c) such fees should not in the interest of justice be paid out of the recovery, if any.”
- 5 [Section 218.5](#) contains several express exceptions: it does not apply to an action brought by the Labor Commissioner; it does not apply to a surety issuing a bond pursuant to the Business and Professions Code; and it does not apply to an action to enforce a mechanics lien under the Civil Code. The statute does not mention PAGA.
- 6 The issue of attorney fees following reversal of the judgment first arose in plaintiffs’ petition for rehearing, when it was procedurally inopportune to resolve a new issue, hence the remand. We never intended to confuse the trial court by remanding for further proceedings on the issue of attorney fees.
- * Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to [article VI, section 6 of the California Constitution](#).

EXHIBIT 9

2011 WL 5979937
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, First District, Division 5, California.

Maria Tun CUN, Plaintiff and Appellant,
v.
CAFE TIRAMISU LLC, Defendant and Respondent.

No. A131241. | (San Francisco County Super. Ct. No. CGC–09–484879). | Nov. 30, 2011.

Attorneys and Law Firms

[Michael Paul Guta](#), Law Offices of John E. Hill, Oakland, CA, for Plaintiff and Appellant.

[Wesley Jerome Fastiff](#), [Michael Gayland Pedhirney](#), Littler Mendelson, San Francisco, CA, for Defendant and Respondent.

Opinion

[NEEDHAM](#), J.

***1** Maria Tun Cun appeals from an order awarding attorney fees to respondent Café Tiramisu LLC, pursuant to [Labor Code section 218.5](#), after the court granted respondent’s motion for summary judgment. Appellant contends: (1) [Labor Code section 218.5](#) did not apply, because the action she brought for unpaid wages was really for unpaid overtime, for which an award of attorney fees is available only to successful plaintiffs under [Labor Code section 1194](#); (2) the court should have apportioned the attorney fees between appellant’s unpaid wages claim and her constructive termination claim, for which no attorney’s fee award is available; and (3) the court improperly awarded amounts for attorney services rendered in defense of claims other than those asserted by appellant. We will affirm the order.

I. FACTS AND PROCEDURAL HISTORY

In February 2009, appellant Maria Tun Cun, along with Vicente Tapia Gonzalez and Evangelina Tun Cun, filed a complaint against respondent Café Tiramisu LLC.¹

Maria asserted three causes of action. In a cause of action for recovery of unpaid wages, she alleged that she was employed by Café Tiramisu between February 9, 2005 until her termination on March 21, 2007, she was “owed wages” and was “owed for accrued paid time off,” and she was entitled to a statutory penalty for unpaid wages under [Labor Code section 203](#) and reasonable attorney fees and costs pursuant to [Labor Code section 218.5](#). In a cause of action for constructive termination in violation of public policy, Maria alleged that Café Tiramisu’s “conduct in refusing to pay plaintiffs wages owed created an intolerable working condition, necessitating plaintiffs to leave employment.” In her cause of action for unfair business practices, she alleged that Café Tiramisu violated [Business and Professions Code section 17200](#) by committing these same acts.

In her prayer for relief, Maria sought, among other things, damages and “reasonable attorney’s fees, pursuant to [Labor Code Section 218.5](#).” Nowhere in the complaint did Maria allege that Café Tiramisu owed her for unpaid overtime.

A first amended complaint, filed in April 2010, retained Maria's allegations and causes of action. Like the original complaint, it did not allege entitlement to unpaid overtime.

Café Tiramisu filed a motion for summary judgment or, in the alternative, summary adjudication. In September 2010, the court granted the motion, finding that Maria could not prevail on any of her causes of action as a matter of law because, before the lawsuit, the parties had entered into settlement agreements by which Maria released all of her employment-related claims.

Judgment was entered against Maria on September 21, 2010. The judgment noted that Café Tiramisu, as the prevailing party, was eligible to recover its reasonable attorney fees and costs.²

Café Tiramisu filed a motion for attorney fees on November 18, 2010, contending it was the prevailing party and entitled to recover its fees and costs under Labor Code section 218.5. Café Tiramisu requested \$36,612.50 in fees, supporting its request with a declaration from one of its attorneys and invoices for the fees incurred.

*2 Maria opposed the motion. She contended that Café Tiramisu was not entitled to recover attorney fees under Labor Code section 218.5, which authorizes recovery by the prevailing party, because her action was for overtime wages governed by Labor Code section 1194, which authorizes recovery only by successful plaintiffs. She further contended that Café Tiramisu could not recover for the portion of attorney fees incurred in connection with her claim for wrongful termination. Café Tiramisu's reply brief addressed these arguments.

By written order filed on or about January 5, 2011, the court granted the motion and awarded Café Tiramisu attorney fees in the full amount of \$36,612.50. This appeal followed.

II. DISCUSSION

As mentioned, Maria contends the court erred because: (1) Labor Code section 218.5 was inapplicable because her claim for unpaid wages was really a claim for unpaid overtime; (2) the court failed to apportion the attorney fees spent on the claim for unpaid wages as opposed to her claim for wrongful termination; and (3) Café Tiramisu should not recover for fees incurred in defending against claims by others. We address each contention in turn.

A. Recovery of Attorney Fees Under Labor Code Section 218.5

Café Tiramisu sought recovery for its attorney fees, and the trial court awarded them, pursuant to Labor Code section 218.5.³ Section 218.5 provides in pertinent part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action." (Italics added.)

Each requirement of section 218.5 was met. First, Maria brought an action for the nonpayment of wages. In her original and amended complaints, Maria claimed that she was "owed wages" and, in addition, had accrued and was owed "paid time off pursuant to Labor Code [sections] 226.7 and 227.3." Section 226.7 refers to pay for time worked during mandated meal periods, and section 227.3 refers to vested vacation pay; both are considered "wages." (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal.4th 1094, 1114 [time worked during mandatory meal periods]; *Suastez v. Plastic Dress-Up Co.* (1982) 31 Cal.3d 774, 784 [vested vacation pay].)

Second, Café Tiramisu was the prevailing party. Its summary judgment was granted, and judgment was entered in its favor, with Maria taking nothing by her amended complaint. (Code Civ. Proc. § 1032, subd. (a)(4).)

Third, Maria expressly requested attorney fees and costs pursuant to section 218.5 upon the initiation of her action, in both the original and amended complaints. Accordingly, Café Tiramisu was entitled to recover its reasonable attorney fees under

section 218.5.

Maria's sole argument to the contrary is that her cause of action for unpaid wages was really a claim for unpaid *overtime*, such that section 1194, rather than section 218.5, should govern. Section 1194, subdivision (a) provides for one-way fee shifting to a successful plaintiff only: "Notwithstanding any agreement to work for a lesser wage, any *employee* receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee *is entitled to recover* in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, *reasonable attorney's fees*, and costs of suit." (Italics added.)

*3 Because section 1194 authorizes an award of attorney fees only to a successful plaintiff, and not to the **prevailing** party, Maria contends that the trial court erred and Café Tiramisu was not entitled to an award of attorney fees. Indeed, section 218.5 provides: "This section does not apply to any action for which attorney's fees are recoverable under Section 1194." The question Maria presents, therefore, is whether her claim for unpaid wages was really a claim for overtime compensation.

Maria's effort to recast her complaint as one seeking recovery for unpaid overtime is unpersuasive. Neither her original complaint nor the amended complaint mentions "overtime," "overtime wages," or section 1194. It refers instead to "wages," paid time off (also wages), and section 218.5.

Ignoring this, Maria argues that the claim she eventually tried to *prove* was that she was not paid wages at the overtime rate. In particular, in opposition to respondent's summary judgment motion, she contended that she repeatedly worked overtime hours, presented payroll records evincing overtime hours, and purportedly asserted that it was her exhaustion from overtime hours that led to her constructive termination.⁴

Maria's argument is unconvincing. The fact that she was eventually unable to support her broadly-alleged claim for unpaid wages except with evidence of unpaid overtime does not mean that her "action" was really for overtime compensation. (See §§ 218.5, 1194.) Nor does it convert the action she brought into a different action she had never specifically alleged. To hold otherwise would reward a plaintiff for not having any evidence to support her claims as pled, and penalize a defendant who incurs attorney fees in defending against the claims *as they were pled*. Thus, while Maria may have tried to prove her cause of action for unpaid wages with evidence of unpaid overtime, the court did not err in concluding that the "action" Maria actually "brought" was for nonpayment of wages within the meaning of section 218.5, not for nonpayment of overtime within the meaning of section 1194.

Maria further argues that this court, by its August 2011 decision in appeal number A129899 from the grant of summary judgment, characterized her claim as one for overtime wages. Her argument has no merit. In the first place, our August 2011 opinion in appeal number A129899 was not before the trial court when it granted the attorney fees motion in January 2011, and Maria does not explain how the trial court could have erred in January based on our characterization of her claim in August. Furthermore, any characterization of Maria's cause of action in appeal number A129899 would not be germane to this case, because it did not involve the issue we address now. At issue in appeal number A129899 was whether the settlement release was enforceable; we were not called upon in that case, as we are in this case, to decide whether her cause of action for unpaid wages was really a cause of action for unpaid overtime. Lastly, contrary to Maria's representations, we did *not* characterize Maria's claim as one for overtime wages. Rather, we stated: "On April 2, 2010, a First Amended Complaint (Complaint) was filed; appellant alleged causes of action for recovery of *unpaid wages*, constructive termination and unfair business practices." (Italics added.) While we acknowledged that Maria ended up claiming damages for unpaid overtime in her summary judgment motion, we also noted that her underlying complaint to the Department of Labor contended that she was "entitled to additional unpaid wages, *including* for unpaid overtime," but not exclusively for unpaid overtime. (Italics added.) In short, for all of these reasons, our opinion in appeal number A129899 does not establish that the trial court erred in deciding respondent's motion for attorney fees.

*4 Maria also refers us to *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420 (*Earley*). There, petitioners had brought a class action to recover unpaid overtime compensation. (*Id.* at p. 1423.) They objected to an order requiring petitioners to notify absent class members that they might be liable for attorney fees and costs if their claim was unsuccessful. (*Id.* at pp. 1423–1424.) To decide the appeal, the appellate court had to determine, among other things, if section 1194 alone governed whether attorney fees could be awarded in the defendant's favor, or if section 218.5 also applied, such that the two statutes could be read together to allow the **prevailing** party to recover attorney fees. (*Earley*, at p. 1426.) The court ruled that only

section 1194 applied to the petitioner's cause of action for unpaid overtime, in light of legislative history, the distinct legislative source of the right to overtime compensation, and the fact that the Legislature specifically provided that only plaintiffs should recover attorney fees in overtime cases. (*Earley*, at pp. 1429–1431.) The court concluded: “The only reasonable interpretation which would avoid nullification of section 1194 would be one which bars employers from relying on section 218.5 to recover fees in any action for *minimum* wages or *overtime* compensation. Section 218.5 would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained-for ‘wages, fringe benefits, or health and welfare or pension fund contributions.’ [Footnote omitted.]” (*Earley*, at p. 1430.)

Maria's reliance on *Earley* is unavailing. There, the plaintiffs expressly *alleged* a claim for unpaid overtime. (*Earley*, *supra*, 79 Cal.App.4th at p. 1424.) Here, Maria did not bring a claim specifically for unpaid overtime, but a broader claim for unpaid wages, which did not refer to overtime but instead to other types of wages. In other words, while *Earley* decided that only section 1194 applies to an action alleged explicitly and solely to recover unpaid overtime, Maria did not *allege* such an action to recover unpaid overtime.⁵

B. Apportionment Among Causes of Action

Maria argues that the trial court erred in failing to apportion the attorney fees between the first cause of action for unpaid wages and her cause of action for wrongful termination. We disagree.

In general, where attorney fees are recoverable for one cause of action but not another, a court need not apportion attorney fees between the causes of action if there is an issue common to the causes of action or the issues are so interrelated that it would be impossible to separate them. (See, e.g., *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Erickson v. R.E.M. Concepts, Inc.* (2005) 126 Cal.App.4th 1073, 1083–1086; *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1133.)

Here, Maria expressly based her wrongful termination claim on her allegation that her resignation from Café Tiramisu was due to its “refusal to pay [her] wages owed.” As such, the issue of whether Café Tiramisu owed Maria wages was common to both the unpaid wages claim and the constructive termination claim. Furthermore, Maria's unfair business practice claim was based on the acts underlying her other claims. Thus, from the outset, all of Maria's causes of action required resolution of one common issue: whether Café Tiramisu owed Maria “wages.”

*5 Moreover, the successful defense to *all* of Maria's causes of action was the same: Maria was not entitled to pursue any of the claims, or obtain any recovery by her lawsuit, because of the settlement agreement in which she released all of her employment-related claims. For this reason as well, the court did not err in deciding not to apportion fees among the causes of action.

C. Apportionment as to Other Plaintiffs

Maria further argues that the trial court awarded fees for work Café Tiramisu's attorneys performed in defending against the claims of the other plaintiffs. She asserts the trial court awarded attorney fees for the “deposition of Spinoso and Scopetta which necessarily involved all three plaintiff's cases.” She also states: “respondent's attorneys time records does not distinguish between deposition time for Mr. Scopetta and Spinosso [sic] spent on the claim of Tapia–Gonzalez which was settled and Evangelina Tun Cun [record citation] which respondent sought attorney fees by a separate Motion and which appeal is pending before this court.”

As Café Tiramisu points out, however, Maria did not raise this argument in the trial court. Although she argued that the court should apportion the time spent on the wrongful termination claim, she did not raise any issue concerning time purportedly spent on other cases or with respect to other plaintiffs. The issue is therefore waived. (See *North Coast Business Park v. Nielsen Construction Co.* (1993) 17 Cal.App.4th 22, 28–29.)

Maria fails to establish error.

III. DISPOSITION

The order is affirmed.

We concur: [SIMONS](#), Acting P.J., and [BRUINIERS](#), J.

Footnotes

- ¹ The appeal of Evangelina Tun Cun is pending in appeal number A131240. Because Evangelina Tun Cun and Maria Tun Cun have the same last names, we will refer to them by their first names for purposes of clarity, without disrespect.
- ² Maria appealed from the summary judgment (appeal number A129899), contending that the settlement agreements were void under [Labor Code section 206.5](#). In August 2011, we affirmed the judgment.
- ³ Except where otherwise indicated, all statutory references hereafter are to the Labor Code.
- ⁴ Maria's opposition to the motion for attorney fees quoted an excerpt from her opposition to the summary judgment motion as follows: " 'Maria Tun Cun's pay stubs for several periods immediately before she was constructively terminated show she worked as many as 140 hours in a bimonthly pay period.... It is mathematically impossible to work more than 96 hours in a bimonthly pay period without working overtime hours (i.e. more than 40 hours in any week).' "
- ⁵ It might be argued that Maria's first "cause of action" covered both a claim for unpaid overtime *and* a claim for other unpaid wages, and an attorney fees award cannot include amounts incurred in defense of the unpaid overtime claim. Maria does not make an apportionment argument on this ground, so we need not and do not decide this issue.

EXHIBIT 10

2003 WL 352422
Not Officially Published
(Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
Only the Westlaw citation is currently available.

California Rules of Court, rule 8.1115, restricts citation of unpublished opinions in California courts.

Court of Appeal, Fourth District, Division 1, California.

Cecilia CSASZI, Plaintiff and Appellant,
v.
SHARP HEALTHCARE, Defendant and Respondent.

No. D038558. | (Super.Ct.No. 740594). | Feb. 18, 2003.

Former employee brought action against former employer, claiming employer was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The Superior Court, San Diego County, No. 740594, [S. Charles Wickersham, J.](#), granted employer's motion for summary adjudication with respect to discrimination claims, and, following a bench trial, entered judgment for employer on wage claim. Employee appealed. The Court of Appeal, [Haller, J.](#), held that: (1) employee's motion to reconsider summary adjudication order based on new or different facts was untimely; (2) employee failed to set forth any new or different facts, and thus motion to reconsider summary adjudication order was properly denied; (3) employee did not qualify for mandatory relief from summary adjudication order allegedly entered as a result of attorney's neglect or mistake; (4) attorney who failed to file an opposition to employer's summary adjudication motion engaged in positive misconduct, justifying relief from summary adjudication order; (5) employer was not required to compensate employee for time spent on-call but not actually answering calls at same rate established for time she spent on-call and actually answering calls; and (6) statute authorizing award of attorney fees only to successful plaintiff in actions seeking to recover unpaid overtime did not prohibit award of attorney fees to employer.

Affirmed in part and reversed in part.

APPEAL from a judgment of the Superior Court of San Diego County, [S. Charles Wickersham](#), Judge. Affirmed in part and reversed in part.

Opinion

[HALLER, J.](#)

***1** Cecilia Csaszi sued her former employer, Sharp Healthcare¹ (Sharp), claiming Sharp was liable for unlawful discrimination and unpaid wages pertaining to on-call time. The court granted summary adjudication on all claims except for the unpaid wages cause of action. After a court trial on this claim, the court found Csaszi did not prove she was owed any wages, and entered final judgment in Sharp's favor on all of Csaszi's causes of action. The court denied Csaszi's motions seeking relief from the summary adjudication ruling. ([Code Civ. Proc.](#), §§ 473, 1008.) Csaszi appeals.

We affirm the portions of the judgment finding in Sharp's favor on Csaszi's claim for unpaid wages and awarding Sharp attorney fees for prevailing on this claim. ([Lab.Code](#), § 218.5.) We reverse the portion of the judgment entered on the summary adjudication of Csaszi's employment discrimination causes of action. The trial court shall vacate its order granting summary adjudication on these causes of action, permit the parties to file opposition and reply briefs, and then consider Sharp's summary adjudication motion on its merits.

FACTUAL AND PROCEDURAL SUMMARY

In March 1996, Sharp hired Csaszi as a utilization review/quality assurance nurse responsible for evaluating patients for discharge at Tri-City Medical Center. Two and one-half years later, Csaszi's supervisors readjusted the workloads of Csaszi and a co-worker. Csaszi was unhappy about the change in her assignment, and complained about what she believed was unfair treatment. In March 1999, Csaszi was given several written notices regarding perceived problems with her performance and the need to improve to avoid being terminated. Two months later, in May 1999, Sharp terminated Csaszi, stating she had failed to properly perform her job assignments and acted in an improper manner toward other health care employees.

In December 1999, Csaszi filed a complaint against Sharp, alleging (1) employment discrimination claims (wrongful termination in violation of public policy, unlawful discrimination and retaliation in violation of the Fair Employment and Housing Act (FEHA), and wrongful demotion in retaliation for complaining about racial discrimination); and (2) a claim for the failure to properly pay "on-call" wages in violation of [Labor Code section 201](#).

Sharp moved for summary adjudication on Csaszi's discrimination claims on the grounds that Csaszi could not establish she was performing her job in a satisfactory manner, Sharp had legitimate, nondiscriminatory reasons for terminating Csaszi, and Csaszi had no evidence that Sharp's stated reasons were a pretext for unlawful discrimination. Csaszi's attorney, Michael W. Loker, did not file an opposition to that motion, even though (as detailed below) Loker told Csaszi that he *had* filed an opposition.

On November 22, 2000, the court granted Sharp's summary adjudication motion, ruling that Sharp met its burden to establish a legitimate reason for Csaszi's termination and Csaszi failed to present any evidence that the proffered reason for the termination was untrue or pretextual.

*2 On the date scheduled for trial on her remaining claim, Csaszi appeared with attorney Loker, and informed the trial court that she wished to terminate Loker. The trial court granted the request and, over Sharp's objections, granted Csaszi's request for a 90-day trial continuance.

On December 14, 2000, Csaszi, represented by new counsel William Evans, filed a [Code of Civil Procedure section 1008](#) motion ([section 1008](#)), requesting the court to reconsider its summary adjudication ruling. The court denied the motion, finding the motion was not timely (it was filed more than 10 days after the summary adjudication order was entered) and Csaszi "fail[ed] to set forth any 'new or different facts, circumstances, or law' that would affect the outcome of" the summary adjudication motion.

On March 9, 2001, a court trial began on Csaszi's remaining claim for unpaid wages relating to her on-call time. After considering all the evidence (which will be detailed below), the court found Csaszi failed to meet her burden to show she was entitled to unpaid wages for her on-call time.

The next month, on April 6, 2001, Csaszi moved for relief from the summary adjudication order under [Code of Civil Procedure section 473](#) ([section 473](#)). In support, Csaszi submitted her declaration, the declaration of her former attorney (Loker), and proposed responsive papers to Sharp's summary adjudication motion. The court denied the [section 473](#) motion, stating Csaszi "made no showing that a judgment, dismissal, order, or other proceeding has been taken against her as a result of her or her attorney's mistake, inadvertence, surprise, or excusable neglect, as is required by the section."

Sharp then moved for its attorney fees as the prevailing party on the FEHA and unpaid wage claims. The court initially granted the motion on both grounds, but after oral argument, concluded that Csaszi's "discrimination case was not totally groundless" and therefore awarded only those fees pertaining to the unpaid wage claim (\$20,269) based on [Labor Code section 218.5](#).

On appeal, Csaszi challenges the denial of her motions to vacate the summary adjudication and the court's rulings pertaining to the unpaid wage claim.

DISCUSSION

I. Motion for Reconsideration

Csaszi first contends the court abused its discretion in denying her motion to reconsider the summary adjudication order under [section 1008](#), which permits a court to revoke a previous order based on new or different facts and an adequate justification for the failure to previously produce those facts. The contention is unavailing.

^[1] First, the motion was untimely. [Section 1008](#) requires that a reconsideration motion be brought “within 10 days after service upon the party of written notice of entry of the order....” (See *Advanced Building Maintenance v. State Comp. Ins. Fund* (1996) 49 Cal.App.4th 1388, 1392, 57 Cal.Rptr.2d 310.) Sharp served written notice of entry of the order on November 22, 2000, and Csaszi filed her reconsideration motion 22 days later, on December 14, 2000.

*3 ^[2] Additionally, the trial court properly denied the motion on the basis that Csaszi “fail[ed] to set forth any ‘new or different facts, circumstances, or law’ that would affect the outcome of” the summary adjudication motion. Csaszi did not proffer any new facts or law relevant to the summary adjudication ruling. Instead, she focused exclusively on explaining the circumstances of her prior attorney’s failure to adequately represent her. These circumstances do not constitute the type of “new or different facts” that permit a reconsideration of the trial court’s order under [section 1008](#).

II. Section 473 Ruling

Csaszi alternatively contends the trial court erred in denying her [section 473](#) motion seeking to vacate the summary adjudication order because of her attorney’s neglect.

A. Relevant Facts

In moving for relief under [section 473](#), Csaszi requested the trial court to vacate the summary adjudication order because the motion was granted without the benefit of her opposition papers and the failure to file an opposition was caused by her attorney’s misconduct. In support, she submitted her own declaration and copies of facsimiles (faxes) received from attorney Loker, which set forth the following facts:

Csaszi retained Loker in September 1999. Loker thereafter filed the complaint and, in April 2000, “began discovery requests.” In May 2000, Loker notified Csaszi he had attended a case management conference, and the trial date was scheduled for October 20, 2000. During the next two months, Csaszi made numerous attempts to contact Loker, but Loker did not return any of Csaszi’s telephone calls or respond to her written correspondence. In August 2000, Csaszi’s husband went to the superior court and discovered that Sharp had obtained a continuance of the trial to December 1, 2000.

On September 7, 2000, Loker called Csaszi and told her Sharp wanted to take her deposition. Csaszi expressed her concern about being unable to contact Loker, but Loker did not explain why he failed to respond to her calls and letters, and said only that he now intended to “move” on Csaszi’s case. Csaszi thereafter met with Loker on two separate days to prepare for her deposition. Sharp deposed Csaszi on three different dates, and each time Loker was present to represent her.

On October 12, Sharp filed its summary adjudication motion, but Loker did not tell Csaszi of this filing. Loker thereafter scheduled depositions of three Sharp employees, but these depositions were postponed for unspecified reasons and later rescheduled to October 30. On October 26, Csaszi met with Loker to review her deposition transcript, and she also gave Loker \$1,000 to pay for the three upcoming Sharp employee depositions. On that date, Loker also informed Csaszi about Sharp’s summary adjudication motion for the first time. Loker told her he would be filing an opposition to the summary judgment motion, but did not tell her the opposition was due on October 26.

*4 On October 30, Csaszi met with Loker to determine why the Sharp employees’ depositions were cancelled that morning. During that meeting Loker did not tell Csaszi that he had filed an ex parte application to continue the hearing on the summary judgment motion.

Ten days later, on November 9, Loker faxed Csaszi a note stating that he was in the library and that he would:

“[F]ile our response in opposition to the summary judgment today and argument is on [November] 17th, for which you will be present. Contrary to my message yesterday, I do not need your signature at this time, but I do need to see you Saturday, and I need you to drop off today the filing fee for the opposition to the Summary Judgment, payable to the Clerk of the Superior Court, in the amount of \$116. Also, the copies of your deposition are payable at this time, because I am using them in our opposition, in the amount of \$615.46, which should be by separate check, made payable to this office.... Therefore, though I need not, and cannot meet today (*because of the fact that I am in the law library today all day working on the opposition*), please drop off two drafts for the filing fee and deposition copy fee, in the amounts noted respectively. Also please leave a time in which we may meet Saturday, if you are not otherwise occupied. *I am optimistic.*” (Italics added.)

Csaszi thereafter wrote the requested checks, but Loker was not in his office when she delivered them. Csaszi telephoned Loker on a daily basis for the next eight days, but was unable to reach him and Loker did not respond to these calls. In the early morning of November 17 (the date scheduled for oral argument on the summary adjudication motion), Csaszi received a fax from Loker stating:

“The court announced yesterday that it will review the briefs submitted and rule telephonically on 22 Dec. (on the summary judgment). *I will fax you our opposition if you haven’t received.* Therefore there are no hearings today. P.S. *There was no charge for filing the opposition, a rule change.* You may ‘void’ that check, which I will destroy. Tx.” (Italics added.)

In fact, Loker never filed an opposition. Further, the applicable rules have never required a party opposing a summary judgment to pay a fee. (See Super. Ct. San Diego County, Fee Schedule & Forms List.)

In response to this fax, Csaszi repeatedly attempted to contact Loker, but was unable to reach him. Csaszi then directly contacted the superior court, and learned from the court that a trial call on her remaining claim was scheduled for December 1, 2000. The morning of December 1, Loker faxed Csaszi a note stating there was no hearing and that he intended to meet with her during the weekend to discuss the overtime pay claim. Csaszi nonetheless attended the trial call, and at the hearing, the court said that Loker was scheduled to call the court at 9:30 a.m. Csaszi confirmed that Loker was still her attorney.

*5 That weekend, Csaszi met with Loker and discussed the unpaid wage claim, but Loker refused to discuss the court’s summary adjudication ruling. The next day, Csaszi appeared at court with a written statement stating that she wanted to obtain new counsel, and the court granted the motion.

In support of her [section 473](#) motion, Csaszi also submitted Loker’s declaration which stated in relevant part: “I did not prepare an opposition to Defendant Sharp’s motion for summary adjudication on the discrimination claims. I did not feel that Csaszi would prevail on the discrimination claims and I felt that to oppose Sharp’s motion might impair her credibility on the remaining issues dealing with the overtime claim and that she would incur additional costs in opposing the discrimination part of the case. However, I was apparently unable to adequately convey my feelings regarding her chances of prevailing on these issues to her. I thought I had convinced her of my recommendations prior to the scheduled opposition to Sharp’s summary adjudication motion. She did inform me that she wanted to proceed with her discrimination claims at the December 4, 2000, hearing. [¶] There was no fault attributable to Plaintiff in any failure to make a timely filing of the opposition to Defendant’s Motion For Summary Adjudication.”

B. Legal Analysis

Under [section 473](#), a party may potentially seek two types of relief for orders entered as a result of an attorney’s neglect or mistake: one that is mandatory and one that is discretionary. (*Metropolitan Service Corp. v. Casa de Palms, Ltd.* (1995) 31 Cal.App.4th 1481, 1486, 37 Cal.Rptr.2d 575 (*Metropolitan Service*)).

First, under the mandatory provision, a court “shall” grant relief whenever an application for relief meets the six-month statutory time period *and* the motion is “accompanied by an attorney’s sworn affidavit attesting to his or her mistake,

inadvertence, surprise, or neglect” (§ 473; see *In re Marriage of Hock & Gordon-Hock* (2000) 80 Cal.App.4th 1438, 1442, 96 Cal.Rptr.2d 546.) “The purpose of this law is to relieve the innocent client of the burden of the attorney’s fault, to impose the burden on the erring attorney, and to avoid precipitating more litigation in the form of malpractice suits.” (*Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575.)

^[3] This mandatory relief provision is inapplicable here because Loker, Csaszi’s former attorney, did not “attest[] to [a] mistake, inadvertence, surprise, or neglect....” Instead, in his affidavit, attorney Loker said he did not file an opposition because he made the tactical decision not to oppose the motion. This assertion does not satisfy the statute’s requirement that the attorney admit a “mistake, inadvertence, surprise, or neglect.” (§ 473, see *Metropolitan Service, supra*, 31 Cal.App.4th at p. 1487, 37 Cal.Rptr.2d 575 [mandatory relief provisions apply “if the attorney *admits* neglect”], italics added.)²

^[4] But even if a party cannot satisfy section 473’s mandatory relief requirements, the party may obtain relief under the statute’s discretionary provisions. Specifically, a court “may” grant relief if the moving party shows an order was taken against him or her because of the attorney’s *excusable neglect*. (§ 473; see *Metropolitan Service, supra*, 31 Cal.App.4th at pp. 1486-1487, 37 Cal.Rptr.2d 575.) Generally, conduct falling below the professional standard of care is considered inexcusable and therefore discretionary relief cannot be granted based on such conduct. (See *Carroll v. Abbott Laboratories, Inc.* (1982) 32 Cal.3d 892, 895, 187 Cal.Rptr. 592, 654 P.2d 775 (*Carroll*); *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 682, 68 Cal.Rptr.2d 228.) Csaszi asserts Loker’s conduct in failing to oppose the summary judgment was the result of professional incompetence. Therefore Loker’s conduct was not “excusable” under section 473.

*6 However, an exception to the rule requiring a showing of excusable neglect applies if the party establishes the attorney’s neglect was of an extreme degree amounting to “‘positive misconduct.’” (*Carroll, supra*, 32 Cal.3d at pp. 898-899, 187 Cal.Rptr. 592, 654 P.2d 775; see *Fleming v. Gallegos* (1994) 23 Cal.App.4th 68, 72-73, 28 Cal.Rptr.2d 350.) “‘Positive misconduct is found where there is a total failure on the part of counsel to represent his client.’” (*People v. One Parcel of Land* (1991) 235 Cal.App.3d 579, 584, 286 Cal.Rptr. 739; *Aldrich v. San Fernando Valley Lumber Co.* (1985) 170 Cal.App.3d 725, 738-739, 216 Cal.Rptr. 300.) The attorney’s conduct is said to obliterate the existence of the attorney-client relationship and therefore cannot be imputed to the client. (*Carroll, supra*, 32 Cal.3d at p. 898, 187 Cal.Rptr. 592, 654 P.2d 775 [“‘[a]n attorney’s authority to bind his client does not permit him to impair or destroy the client’s cause of action or defense,’” quoting *Orange Empire Nat. Bank v. Kirk* (1968) 259 Cal.App.2d 347, 353].)

Carroll held an attorney who “grossly mishandled” a document production did not engage in “‘positive misconduct’” because he otherwise acted on behalf of his client in the litigation including attending his client’s deposition, propounding and timely responding to interrogatories, propounding requests for admissions, settling with one of the defendants, and timely filing a section 473 motion. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) *Carroll* contrasted these circumstances with the situations in *Daley v. County of Butte* (1964) 227 Cal.App.2d 380, 38 Cal.Rptr. 693 and *Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d 347, 66 Cal.Rptr. 240, where the courts found attorney misconduct had effectively deprived a party of representation. (*Carroll, supra*, 32 Cal.3d at pp. 899-900, 187 Cal.Rptr. 592, 654 P.2d 775.) In *Daley*, the plaintiff’s attorney abandoned his client by failing to communicate with the plaintiff, serve necessary parties, and appear at critical hearings. (*Daley v. County of Butte, supra*, 227 Cal.App.2d at pp. 391-392, 38 Cal.Rptr. 693.) In *Orange Empire*, the defendant’s attorney failed to assert a defense, appear at the trial, or file relief from a default judgment within the statutory period. (*Orange Empire Nat. Bank v. Kirk, supra*, 259 Cal.App.2d at p. 354, 66 Cal.Rptr. 240.)

We conclude the circumstances here fall within the *Daley-Orange Empire* line of cases. Although Loker filed the complaint and was initially involved in some limited discovery, Loker completely abandoned Csaszi at a critical time by failing to file an opposition to the summary adjudication motion. Further, by falsely telling Csaszi that he was filing, *and had filed*, an opposition to the summary adjudication motion, Loker did more than abandon his client—he affirmatively precluded Csaszi from protecting herself and seeking other counsel to file an opposition or seeking timely section 1008 relief. Loker additionally continued to affirmatively harm Csaszi’s interests when he asserted in his declaration in support of her section 473 motion that his decision not to file the summary judgment motion was a tactical decision, an assertion that is flatly contradicted by his own words reflected on the faxes sent to his client. This false assertion prevented Csaszi from obtaining mandatory relief under the statute.

*7 In light of Loker’s misrepresentations to Csaszi and his submission of a declaration that contradicts his written correspondence to his client, Loker’s activities amounted to positive misconduct justifying relief under section 473. In so

concluding, we are unpersuaded by Sharp's reliance on a list of the various contacts between Loker and Csaszi during the relevant times. If anything, Loker's sporadic contacts with Csaszi made the situation worse by misleading Csaszi into believing he was taking care of her interests. (See *Fleming v. Gallegos*, *supra*, 23 Cal.App.4th at p. 73, 28 Cal.Rptr.2d 350 [trial court erred by failing to find attorney abandonment where plaintiff's "attorneys displayed an unwillingness to either prosecute her lawsuit or to cease representing her"].) Further, these contacts do not show a lack of abandonment, instead they reveal merely that Loker remained Csaszi's attorney of record. *Carroll* does not require that an attorney-client relationship be formally severed before positive misconduct may be proven.

Although a [section 473](#) motion lies within the sound discretion of the trial court, " 'the trial court's discretion is not unlimited and must be exercised in conformity with the spirit of the law and in a manner to subserve and not to impede or defeat the ends of substantial justice.' [Citation.] The law strongly favors trial and disposition on the merits. Therefore any doubts in applying [section 473](#) must be resolved in favor of the party seeking relief. When the moving party promptly seeks relief and there is no prejudice to the opposing party, very slight evidence is required to justify relief. We will more carefully scrutinize an order denying relief than one which permits a trial on the merits." (*Mink v. Superior Court* (1992) 2 Cal.App.4th 1338, 1343, 4 Cal.Rptr.2d 195; see *Stafford v. Mach* (1998) 64 Cal.App.4th 1174, 1180-1181, 75 Cal.Rptr.2d 809.) Applying these principles here, we conclude the trial court abused its discretion in failing to vacate the summary adjudication based on Csaszi's showing that her counsel engaged in "positive misconduct."

¹⁵¹ We note that Sharp does not argue, nor does the law permit, this court to sustain the trial court's denial of the [section 473](#) motion on the alternate ground that Csaszi's proposed opposition to the summary adjudication motion does not raise a triable issue of fact. In considering the propriety of a court's ruling on a [section 473](#) motion, an appellate court is limited to the question whether the court abused its discretion in granting or denying the motion, and may not reach the substantive issue as to whether the position proffered by the party seeking relief has merit. (*Uriarte v. United States Pipe & Foundry Co.* (1996) 51 Cal.App.4th 780, 786-787, 59 Cal.Rptr.2d 332; see 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 184 at p. 692, 59 Cal.Rptr.2d 332.)³

Finally, we reject Sharp's argument that the trial court properly denied the [section 473](#) motion because the motion constituted an "end-run" around [section 1008](#) governing reconsideration motions. Because Csaszi satisfied the requirements of a [section 473](#) motion, the fact that the motion was not timely under [section 1008](#) does not defeat the grounds for granting the motion under [section 473](#).

III. Unpaid Wage Claim

*8 Csaszi next contends the court erred in failing to find in her favor on the unpaid wage claim, which was tried before the court sitting without a jury.

The evidence at trial showed that Csaszi was assigned to on-call shifts during which she was given a pager and was responsible for answering telephone calls pertaining to patients discharged outside of regular business hours. Sharp paid its on-call employees \$2.50 per hour for time spent on-call but not actually working, i.e., being available for a call. For time spent actually answering a call (known as "call-back time"), Sharp paid its employees one and one-half times the employee's regular hourly rate of pay, regardless whether this time reflected overtime work. Csaszi was paid \$2.50 for each hour that she reported she was on-call, and would have been paid her overtime rate if she had reported any time answering calls.

The essential basis of Csaszi's unpaid wages claim at trial was that Sharp was required to pay her time and one-half for her on-call time (when she was not actually answering calls) instead of \$2.50 because this time was devoted primarily to her employer's interests. In support, Csaszi relied on federal law providing that an employee should be fully compensated for on-call time if the time is spent " 'primarily for the benefit of the employer and his business.' " (*Armour & Co. v. Wantock* (1944) 323 U.S. 126, 132, 65 S.Ct. 165, 89 L.Ed. 118.)

To show that her on-call time was spent primarily for Sharp's benefit, Csaszi testified that when she was on-call she was unable to attend to her personal activities and she was paged "very frequently." She said that during her entire on-call period, she would sit in a room with a telephone, facsimile machine and documents needed to perform her job duties. Csaszi claimed she could not shop, cook, sleep, travel, interact with her family or otherwise engage in any personal activities. Csaszi sought \$40,380, calculated as the total number of on-call hours multiplied by the time and one-half rate subtracted by the amount she

was paid per hour (\$2.50). Csaszi had no record of the time she actually responded to calls, explaining that she never identified this time on her timesheets because she did not understand how to do so.⁴

In contrast to this evidence, Sharp presented the testimony of its human resource director who said that employees were instructed on the manner in which they should report call-back time and that the employees did not need to limit their activities while waiting for a call. Sharp employees corroborated this testimony. These employees testified that while on-call, they wore pagers and attended to various personal activities, including cooking, shopping, attending church services, and entertaining. The pagers given to the employees had a range of at least 250 miles, and therefore the employees were free to travel throughout Southern California. Csaszi's co-workers testified they received varying numbers of calls while on-call, which averaged two to four per week, and that they knew how to claim this call-back time on their timesheets. The employees were required to respond to a pager within a 15- or 20-minute period. The employees were always paid time and one-half for the time they were actually answering a call.

***9** After considering the evidence, the court stated: "The issue to be decided is whether the requirements of being on-call as a discharge planner precluded [Csaszi] from using the time effectively for her own purposes, thus entitling her to back wages. [Citations.] [¶] The Court finds that although [Csaszi] may have subjectively believed that she needed to avoid engaging in personal activities while on-call, the evidence shows that the job duties of being on-call did not require her to do so. The fact that Ms. Csaszi elected not to engage in personal activities while on-call may be laudable, but it does not transform the on-call time to working time compensable under statute. Both the written policies of the employer as well as the actions of the employees indicate that the express and implied agreement was that employees would be paid \$2.50 for time spent on-call but not actually working and one and one-half times their regular hours rate for time spent actually working while on-call. [¶] Based on the above-stated findings and the fact that [Csaszi] did not offer any evidence specifying the dates or hours she actually worked while on-call, the Court finds that [Csaszi] has failed to meet her burden to show that she is entitled to back wages...."

^[6] We find no error. Although there is no California law directly on point, federal law sets forth appropriate standards for determining Csaszi's claim to additional wages for on-call time. Under this law, an employee must be fully compensated for on-call time spent primarily for the employer's benefit, and the question whether the time is spent primarily for the employer depends on numerous factors and a consideration of these factors in the context of the particular circumstances of the case. (See *Armour & Co. v. Wantock*, *supra*, 323 U.S. at p. 133; *Berry v. County of Sonoma* (9th Cir.1994) 30 F.3d 1174, 1183.) Although no single factor is dispositive, the predominant considerations are the agreement of the parties and the degree to which the employee is free to engage in personal activities. (*Owens v. Local No. 169, Assn. of Western Pulp & Paper Workers* (9th Cir.1992) 971 F.2d 347, 350-354.) The court must balance the factors permitting personal pursuits against the factors restricting personal pursuits to determine whether the employee is "so restricted that he is effectively engaged to wait." (*Berry v. County of Sonoma*, *supra*, 30 F.3d at p. 1183.)

Applying these principles, the trial court found Sharp's evidence credible, and concluded that the time Csaszi spent on-call was not time that was required to be spent predominately for the employer's benefit. Substantial evidence supports the court's factual conclusion. The court, as the finder of fact, was entitled to reject Csaszi's contrary evidence.

In nonetheless challenging the court's factual conclusions, Csaszi contends that Sharp's agreement to pay \$2.50 during on-call hours "amounted to an admission that [Sharp] maintained control over the employees" and therefore the trial court was required to find as a matter of law that Sharp was under a mandatory obligation to pay the same pay rate that it applied for call-back work.

***10** This argument is unsupported factually and legally.

First, the fact that Sharp paid employees \$2.50 per hour to be available to respond to phone calls was not an admission that the time spent was primarily for Sharp's benefit. Instead, Sharp's human resources director specifically testified that employees were paid for being on-call as "an incentive for carrying the pager and being available on call." She explained the pay was "additional compensation that was paid to carry the pager, to be available during a specific time should additional work be needed by that individual." She emphasized that during this waiting time, the "time is not controlled [by Sharp]" and that employee "is free to move around, engage in personal activities."

Csaszi's position is also legally unsupported. Csaszi relies solely on *Paniagua v. City of Galveston, Texas* (5th Cir.1993) 995 F.2d 1310 and *Berry v. County of Sonoma, supra*, 30 F.3d at p. 1178. In *Paniagua*, the court specifically rejected the identical argument asserted here-that an employer's agreement to compensate employees for the inconvenience of being on call "automatically render[s] the time spent on standby 'working time'...." (995 F.2d at p. 1317.) In *Berry*, the court noted that an employer's agreement to provide "at least some type of compensation for on-call waiting time may suggest the parties characterize waiting time as work," but the court made clear that this was merely one of many factors in the overall analysis. (*Berry v. County of Sonoma, supra*, 30 F.3d at p. 1181 .)

The trial court here expressly noted the evidence showing that Sharp paid \$2.50 for on-call waiting time, but stated that based on the totality of the circumstances, this payment was merely compensation for the inconvenience of carrying a pager and did not reflect that the time spent by on-call employees was for the employer's benefit. Substantial evidence supported the trial court's conclusion.

Csaszi failed to establish that the trial court erred in reaching its factual conclusions with respect to the unpaid wage claim or that the court erred in applying these factual findings to the applicable legal principles.

IV. Attorney Fees

^[7] The trial court awarded \$20,269 in attorney fees to Sharp under [Labor Code section 218.5](#), which provides in relevant part: "In any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party if any party to the action requests attorney's fees and costs upon the initiation of the action."⁵

Csaszi contends the court erred in awarding fees under this section because the applicable statute is [section 1194](#), which contains a "one-way" fee provision, permitting attorney fees only for a prevailing employee and not for a prevailing employer. [Section 1194](#), subdivision (a) states: "[n]otwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance ..., including interest thereon, reasonable attorney's fees, and costs of suit."

*11 Both [sections 218.5](#) and [1194](#) potentially apply to an action seeking overtime wages, but establish different attorney fees rules. In *Earley v. Superior Court* (2000) 79 Cal.App.4th 1420, 95 Cal.Rptr.2d 57, the court noted the potential conflict between the code sections, and concluded the Legislature intended that [section 1194](#) alone applies to recovery of attorney fees for overtime compensation claims, even though such claims could be construed as seeking payment of wages under [section 218.5](#). In a well-reasoned decision, the court explained that the only reasonable interpretation of the Legislature's one-way fee shifting rule in [section 1194](#) "would be one which bars employers from relying on [section 218.5](#) to recover fees in any action for *minimum* wages or *overtime* compensation. [Section 218.5](#) would still be available for an action brought to recover nonpayment of contractually agreed-upon or bargained for 'wages....' [¶] Such a harmonization of these two sections is fully justified. An employee's right to wages and overtime compensation clearly have different sources. Straight-time wages ... are a matter of private contract between the employer and employee. Entitlement to overtime compensation, on the other hand, is mandated by statute and is based on an important public policy.... 'California courts have long recognized [that] wage and hour laws "concern not only health and welfare of the workers themselves, but also the public health and general welfare." ... [¶] There can be no doubt that the one-way fee-shifting rule in [section 1194](#) was meant to 'encourage injured parties to seek redress-and thus simultaneously enforce [the minimum wage and overtime laws]-in situations where they otherwise would not find it economical to sue.' [Citation.] To allow employers to invoke [section 218.5](#) in an overtime case would defeat that legislative intent and create a chilling effect on workers who have had their *statutory* rights violated. Such a result would undermine statutorily-established public policy. That policy can only be properly enforced by a recognition that [section 1194](#) alone applies to overtime compensation claims." (*Earley v. Superior Court, supra*, 79 Cal.App.4th at p. 1430, 95 Cal.Rptr.2d 57.)

We agree with the *Earley* court that when an employee seeks overtime wages, the attorney fees rules are exclusively set forth in [section 1194](#). However, that principle is inapplicable here because Csaszi never alleged, or sought to prove at trial, that Sharp failed to pay her for overtime work. Instead, Csaszi brought her claim to enforce Sharp's alleged agreement that it would pay time and one-half for time spent working outside of the hospital's physical environment and that on-call time constituted "working" under established legal principles. The claim at issue concerned solely a matter of private contract

between the employer and employee, i.e., that Sharp had agreed to pay a certain wage for time answering calls, and that because her time spent waiting for those calls primarily benefited Sharp, Sharp was required to compensate her at this same established wage rate. Because Csaszi never claimed or presented evidence that she was working overtime without overtime pay, the case does not come within the ambit of [section 1194](#). Thus, the court properly concluded that attorney fees were mandatory to the prevailing employer under [section 218.5](#).

*12 Csaszi alternatively argues that even if [section 218.5](#) is the correct statute to apply, the code section does not permit a defendant to recover attorney fees because the fees must be requested at “the initiation of the action.” (§ 218.5.) Csaszi, however, ignores the beginning part of this sentence which provides for reasonable attorney fees “if *any* party to the action requests attorney’s fees and costs upon the initiation of the action .” (§ 218.5, italics added.) Read in context, this statutory language does not limit an attorney fees award to a plaintiff, and instead merely requires that the prevailing party show it had sought attorney fees at the beginning of the litigation. Here, Sharp stated in its answer that it was seeking to be “awarded its costs of suit and attorney fees incurred therein....” That statement is sufficient to satisfy [section 218.5](#)’s requirement that attorney fees be requested at the “initiation of the action.”

DISPOSITION

We affirm the portions of the judgment finding in Sharp’s favor on Csaszi’s claim for unpaid wages and awarding attorney fees to Sharp for prevailing on this claim. We reverse the portion of the judgment dismissing Csaszi’s first, second, third and fifth causes of action based on the summary adjudication. The court is ordered to vacate its order granting summary adjudication on these causes of action, permit Csaszi to file an opposition, and consider Sharp’s motion on the merits.

The parties to bear their own costs on appeal.

WE CONCUR: [KREMER](#), P.J., and [BENKE](#), J.

Footnotes

¹ Although it appears that the correct name of Csaszi’s former employer is Sharp Mission Park, the defendant is named in the caption of Csaszi’s complaint as Sharp Healthcare. Our review of the record on appeal does not reveal an amendment to the complaint correcting the defendant’s name.

² Because Csaszi did not submit an attorney fault declaration satisfying the mandatory relief provision requirements, we do not reach the issue raised by the parties in their supplemental briefs whether [section 473](#)’s mandatory provision applies to provide relief for summary adjudication orders, an issue that has been the subject of different conclusions by the appellate courts. (Compare *English v. Ikon Business Solutions, Inc.* (2001) 94 Cal.App.4th 130, 114 Cal.Rptr.2d 93 with *Avila v. Chua* (1997) 57 Cal.App.4th 860, 67 Cal.Rptr.2d 373.)

³ We recognize that this rule may lead to an empty victory for Csaszi if she is unable to come forward with any real evidence that she was discriminated against based on her race. However, the standard of review on a [section 473](#) motion does not permit this court to reach the merits of the underlying claim. Moreover, the policy of providing a party with a hearing on the merits of his or her claim in the trial court outweighs any possible judicial economy objectives that would be served if we were to consider the merits of the discrimination claim based solely on Csaszi’s proposed opposition filings contained in the appellate record.

⁴ Although it appears that Csaszi was not paid the time and one-half for all of her call-back time, at trial she never claimed any unpaid wages for such time, presumably because she never recorded this *call-back* time on her timesheets except for one occasion. Thus, this appeal concerns only the question whether Csaszi was owed any wages for her *on-call* time.

⁵ All further statutory references are to the Labor Code.

End of Document

© 2014 Thomson Reuters. No claim to original U.S. Government Works.

EXHIBIT 11

2009 WL 4718721

Only the Westlaw citation is currently available.
United States District Court,
E.D. California.

Boanerges VILLALOBOS, et al., Plaintiffs,
v.
James GUERTIN, et al., Defendants.

No. CIV. S-07-2778 LKK/GGH. | Dec. 3, 2009.

Attorneys and Law Firms

[Adam Wang](#), Law Office of Adam Wang, San Jose, CA, for Plaintiffs.

Kimberley Ann Worley, [Stephen R. Holden](#), Holden Law Group, Auburn, CA, for Defendant.

Opinion

ORDER

[LAWRENCE K. KARLTON](#), Senior District Judge.

*1 On August 19, 2009, the court granted defendants' motion for judgment on the pleadings, dismissing four of plaintiffs' causes of action for failure to state a claim, and dismissing the fifth and sole remaining cause of action for lack of subject matter jurisdictions. Defendants have submitted a bill of costs and separately moved for attorneys' fees, both of which have been opposed by plaintiffs. The court resolves the matter on the papers and after oral argument. For the reasons stated below, defendants' motion for fees and costs is granted in part.

I. BACKGROUND

Defendants Heidi and James Guertin allegedly operate a business under the name Norcal Plastering. Plaintiffs, four individuals formerly employed by Norcal, filed suit purporting to represent themselves and others similarly situated. The complaint stated five causes of action, for violations of (1) [California Labor Code section 1194](#), (2) the Fair Labor Standards Act, (3) [California Labor Code section 226.7](#), (4) [California Labor Code section 203](#), and (5) [California Business and Professions Code section 17203](#).

On August 19, 2009, the court held that plaintiffs' allegations were insufficient to support the second through fifth claims. The Fair Labor Standards Act claim failed because plaintiffs had not alleged facts sufficient to support the inference that Norcal Plastering or plaintiffs themselves engaged in interstate commerce, a predicate for liability under the act. Order at 8-11. The Third, Fourth, and Fifth claims failed because the allegations therein pertained to entities not party to this suit. *Id.* at 11-12. The court denied plaintiff's request for leave to amend to correct these deficiencies, explaining that plaintiffs had notice of these deficiencies before the scheduling order was entered, but that plaintiffs had taken no action to correct them until discovery in the case had closed. The court dismissed these claims, and declined to retain supplemental jurisdiction over plaintiffs' sole remaining claim. Judgment on the pleadings under [Fed.R.Civ.P. 12\(c\)](#) was entered for defendants on August 19, 2009.

Defendants filed a bill of costs and motion for attorneys fees. Plaintiffs oppose both, arguing that defendants were not

“prevailing parties” because, as plaintiffs understood this court’s August 19, 2009 order, the state law claims had been dismissed without prejudice, and plaintiffs were free to refile the federal claim in federal court. Plaintiffs alternatively argue that even if defendants prevailed, they are not entitled to a fee award under the court’s inherent power or under any statute.

II. DISCUSSION

A. Defendants Are A Prevailing Party

Under all of the fee shifting authorizations at issue in this case, fees and costs are only available to prevailing parties. Under California law, “a defendant in whose favor a dismissal is entered” is a prevailing party. [Cal.Code Civ. P. § 1032\(a\)\(4\)](#). Under federal law, a party has not prevailed unless it “experienced an alteration in the legal relationship” with the other parties. [Avery v. First Resolution Management Corp.](#), 568 F.3d 1018, 1024 (9th Cir.2009). Plaintiffs argue that the court’s order permits plaintiffs to refile each of their claims, and that as a result, no such change has occurred. *Id.*, [Oscar v. Alaska Dep’t of Educ. & Early Dev.](#), 541 F.3d 978, 982 (9th Cir.2008).

*2 Plaintiffs misunderstand the nature of the prior order and its effect under California and federal law. [Fed.R.Civ.P. 41\(b\)](#) provides that “[u]nless the dismissal order states otherwise ... any dismissal not under [Rule 41]—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Thus, although the dismissal order did not specifically state that it was “on the merits” or “with prejudice,” dismissal of the second through fifth claims was precisely such an adjudication. [Stewart v. United States Bancorp](#), 297 F.3d 953, 956 (9th Cir.2002). Plaintiffs’ contention that a dismissal for failure to allege the elements of a cause of action is not a substantive dismissal is without merit. *Id.*

Plaintiffs’ first claim, which was dismissed for lack of subject matter jurisdiction, was not adjudicated on the merits. [Avery](#), 568 F.3d at 1024. The fact that plaintiff may refile this one claim does not defeat defendants’ claim to prevailing party status as to the others.

B. Particular Fee Shifting Provisions

Defendants argue that they are entitled to fees under [28 U.S.C. section 1927](#), under [Cal. Lab.Code section 218.5](#), and under the court’s inherent authority. The court discusses each in turn.

1. [28 U.S.C. § 1927](#)

“Any attorney ... who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys’ fees reasonably incurred because of such conduct.” [28 U.S.C. § 1927](#). Here, defendants have not identified any act by which plaintiffs multiplied the proceedings. Filing of the initial complaint cannot itself violate this section. “Because the section authorizes sanctions only for the ‘multipl[ication of] proceedings,’ it applies only to unnecessary filings and tactics once a lawsuit has begun.” [Moore v. Keegan Mgmt. Co. \(In re Keegan Mgmt. Co., Sec. Litig.\)](#), 78 F.3d 431, 435 (9th Cir.1996). Nor did plaintiffs’ counsel’s response to depositions noticed by defendants “multipl[y] the proceedings.”

Rather than identify affirmative acts, defendants argue that plaintiffs’ counsel multiplied proceedings by failing to withdraw and dismiss the case after the close of discovery. The only authority provided for this interpretation of [section 1927](#) is a case from the Southern District of Florida. See [Murray v. Playmaker Servs., LLC](#), 548 F.Supp.2d 1378, 1383 (S.D.Fla.2008). The court respectfully disagrees, and thereby declines to conclude that an attorney multiplies proceedings simply by failing to voluntarily dismiss an existing lawsuit.

2. The Court's Inherent Powers

The court has an inherent authority to order payment of fees as a sanction “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons, delaying or disrupting litigation, or has taken actions in the litigation for an improper purpose.” *Fink v. Gomez*, 239 F.3d 989, 992 (9th Cir.2001) (citing *Chambers v. NASCO, Inc.*, 501 U.S. 32, 45–46 and n. 10, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991)); see also *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 767, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In this case, defendants argue that plaintiffs have done a poor job of litigating this case, and that this demonstrates that they filed their a purported class action for the allegedly improper purpose of pressuring defendants to settle, rather than for any belief as to the action's merits. This argument is unsupported. Although, as noted in the order granting defendants' motion for judgment on the pleadings, plaintiffs did little in the litigation of this case, this does not demonstrate bad faith or other grounds for sanction under the court's inherent authority.

*3 Defendants also argue that plaintiffs have demonstrated bad faith by filing a complaint in state court that re-alleges the four the state-law claims previously filed in this court. Whether that filing is in bad faith is an issue for the state court.

3. Cal. Lab.Code § 218.5

Lastly, defendants argue that the court should award fees under [California Labor Code section 218.5](#). This statute provides that “in any action brought for the nonpayment of wages, fringe benefits, or health and welfare or pension fund contributions, the court shall award reasonable attorney's fees and costs to the prevailing party.” [Cal. Lab.Code § 218.5](#). The Ninth Circuit has held that this provision may be applied in suits filed in federal court. *Winterrowd v. Am. Gen. Annuity Ins. Co.*, 556 F.3d 815 (9th Cir.2009) (affirming award of fees to a prevailing plaintiff); see also *Diamond v. John Martin Co.*, 753 F.2d 1465, 1467 (9th Cir.1985) (“federal courts in diversity actions apply state law with regard to the allowance (or disallowance) of attorneys' fees.”). The court concludes that this section applies to one of plaintiffs' claims, that an award of fees is mandatory and not limited to cases in which plaintiffs acted wrongfully, and that defendants prevailed for purposes of this statute.

First, [section 218.5](#) does not apply to all wage claims. The statute contains an exemption, specifying that “[t]his section does not apply to any action for which attorney's fees are recoverable under [\[California Labor Code\] Section 1194](#).”¹ [Section 1194](#) governs actions alleging failure to pay minimum wages or overtime. Of the claims brought in this suit, plaintiffs concede that their claim for failure to pay for missed meal periods is a claim “for nonpayment of wages” under [section 218.5](#).² See *Murphy v. Kenneth Cole Production, Inc.*, 40 Cal.4th 1094, 1115, 56 Cal.Rptr.3d 880, 155 P.3d 284 (2007) (characterizing money owed for missed meal periods as wages rather than a penalty). Plaintiffs argue that their claims for waiting time penalties and for restitution of unpaid overtime do not fall within [section 218.5](#), and defendants do not dispute this argument.

Second, plaintiffs request that the court apply federal cases interpreting fee shifting under Title VII of the Civil Rights Act to the California Labor Code. Under Title VII, a court awards fees to a prevailing defendant only when the plaintiff's claim was frivolous, unreasonable, groundless, or brought in bad faith. *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 422, 98 S.Ct. 694, 54 L.Ed.2d 648 (1978). *Christiansburg*'s holding was predicated on the fact that Title VII grants courts discretion to award fees. *Christiansburg*, 434 U.S. at 416; see also 42 U.S.C. § 2000e–5(k) (“the court, in its discretion, may allow the prevailing party, ... a reasonable attorney's fee.”).³ The Court's holding directed the lower courts in their exercise of this discretion. [Section 218.5](#), in contrast, provides that the court “shall” award fees. “As used in the Labor Code, ‘shall’ is mandatory.” *Smith v. Rae–Venter Law Group*, 29 Cal.4th 345, 357, 127 Cal.Rptr.2d 516, 58 P.3d 367 (2002), *superceded on other grounds as stated in Eicher v. Advanced Business Integrators, Inc.*, 151 Cal.App.4th 1363, 1384, 61 Cal.Rptr.3d 114 (2007) (citing Cal. Stats.2003, ch. 93, § 1). Under California law, when a statute provides for a mandatory fee award, a court has only discretion to deny the award when it is unclear whether the party prevailed, a circumstance not present here. [Cal.Code. Civ. P. § 1032\(a\)\(4\)](#), *On–Line Power, Inc. v. Mazur*, 149 Cal.App.4th 1079, 1087, 57 Cal.Rptr.3d 698 (2007). It appears that no published California case, nor any federal case, has held that when a claim is of a type encompassed by [section 218.5](#), a party must show anything more than that it prevailed to be entitled to a mandatory award of fees.⁴

*4 Finally, plaintiffs argue that defendants did not prevail on this claim because it was not brought as to them. As noted above, the court dismissed plaintiffs' meal period claim in part because the allegations supporting the claim referred to persons other than defendants. Plaintiffs now argue that in so doing, the court concluded that this claim was not brought as to defendants in this suit, such that defendants were not party to, and therefore did not prevail on, this claim. This argument fails. Although plaintiffs' allegations of particular conduct referred to other persons, plaintiffs' prayer for relief sought from defendants an award of meal time premium payments. Defendants therefore prevailed on this claim.

C. Reasonableness and Scope of The Fees

Although defendants are entitled to an award of fees only in connection with one of plaintiffs' claims, defendants may recover all fees incurred on issues pertinent to this claim regardless of whether those issues were also pertinent to other claims. *Diamond*, 753 F.2d at 1467 (quoting *Reynolds Metals Co. v. Alperson*, 25 Cal.3d 124, 129, 158 Cal.Rptr. 1, 599 P.2d 83 (1979)).

Defendants request \$29,964.00 in fees, for 85.6 hours of work in the case not including the time spent on the motion for a fee award, billed at \$315 per hour.⁵ The court has previously held that \$300 per hour is a reasonable local rate for attorneys with defense counsel's experience, and reduces the hourly rate accordingly.

Defendants have not specified how this time was spent. At least some of this time must have been spent on issues not pertinent to plaintiffs' meal period claim. Notably, a significant fraction of the memorandum submitted in support of defendants' motion for judgment on the pleadings was specific to plaintiffs' Fair Labor Standards Act claim. (Doc. No. 23–1 pages 4–6; Doc. No. 26 pages 4–5). Defendants are not entitled to recover fees expended in connection with this issue. *Diamond*, 753 F.2d at 1467. Defendants' contention that disclosure of the amount of time spent on this issue would breach attorney-client or work-product privileges is meritless. "Where the documentation of hours is inadequate, the district court may reduce the award accordingly." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (concerning fee awards under 42 U.S.C. § 1988). Here, the court reduces the number of hours by the maximum amount that the court estimates were likely to have been spent on issues not pertinent to the meal period claim (which in this case means on issues solely pertinent to the FLSA claim). The record indicates that defendant's stated 85.6 hours were spent on preparation and filing of an answer, status report, motion for judgment on the pleadings, and on preparation for and attendance of a status conference, at least two depositions, and the hearing on the motion for judgment on the pleadings. *See* Declaration of Kimberly A. Worley Setting Forth Memorandum of Costs (Doc. No. 32–2). The court concludes that at most 15 hours of this time were spent on the FLSA issue, and reduces the fee award accordingly.

*5 Thus, defendants are entitled to a fees for 70.6 hours of work at \$300 per hour, or \$21,180. Plaintiff has not objected to defendants' statement of costs (other than to argue that defendants are not a prevailing party). Defendants are therefore further entitled to an award of \$1,525.80 in costs.

D. Who Pays The Fees

Cal. Labor Code section 218.5 provides that fees shall be awarded to the prevailing party, but does not specify where the award shall come from. Nothing in the parties' briefing indicates whether fees awarded under section 218.5 should be paid by plaintiffs' counsel or by plaintiffs themselves. Moreover, had plaintiffs' counsel offered argument on this issue, it would have been against his clients' interests. None of the cases citing section 218.5 have addressed this issue, and the court is not aware of any California law regarding fee awards generally.

It may be that as a general rule, fee awards, rather than sanctions, are to be paid by the party rather than counsel. In this particular case, however, where there is no controlling authority, equity demands that the award be paid by plaintiffs' counsel. As explained more fully in the prior order, dismissal resulted from counsel's failure to properly plead, and counsel's subsequent failure to identify his mistakes or to prosecute this litigation. It may be that defendants would have prevailed absent these failings, but the court has no way to evaluate that possibility. Although plaintiff's counsel's conduct is not sanctionable under federal law, when California law compels an award of fees, the exceptional circumstances of this case compel the court to conclude that this award should lie against plaintiff's counsel.

IV. CONCLUSION

For the reasons stated above, defendants' motion for attorney fees, Doc. No. 35 is GRANTED IN PART.

1. Plaintiff's counsel is ordered to pay \$21,180 in fees and \$1,525.80 in costs to defense counsel.
2. Counsel shall file an affidavit accompanying the payment which states that it is paid personally by counsel, out of personal funds, and is not and will not be billed, directly or indirectly, to the client or in any way made the responsibility of the client as attorneys' fees or costs.

IT IS SO ORDERED.

Footnotes

- ¹ The statute contains several other exceptions not pertinent here. In addition, for [section 218.5](#) to apply, at least one party must have requested fees at the initiation of the action. In this case, both the complaint and the answer request fees.
- ² Plaintiffs refer to this claim as their fourth. However, plaintiffs' meal break claim was enumerated as their third claim. Complaint ¶¶ 28–32.
- ³ *Christiansburg* explicitly juxtaposed Title VII's fee shifting provision, which provided discretion to award fees to any prevailing party, against statutes providing a mandatory award of fees to prevailing plaintiffs, e.g. the Fair Labor Standards Act, [29 U.S.C. § 216\(b\)](#), and against statutes providing discretion to award fees but only as to certain parties, e.g., the Privacy Act, [5 U.S.C. § 552a\(g\)\(2\)\(B\)](#). *Christiansburg*, 434 U.S. 415–16, n. 5, n. 6.
- ⁴ Although not citable as precedent by California courts, an unpublished decision of the California Court of Appeal held that [section 218.5](#) provided for mandatory fee awards to plaintiffs and defendants, despite possible policy concerns akin to those identified in *Christiansburg*. *Torres v. Auto Chlor Sys. of N. Cal.*, 2007 Cal.App. Unpub. LEXIS 7706, 2007 WL 2774706 (Cal.App. 6th Dist. Sept. 25, 2007).
- ⁵ Defense counsel declares that this is her standard rate, as an attorney with fifteen years of experience.

EXHIBIT 12

05-30-2013 | 05:13 PM | Author: [Robin Shea](#)

Employees: Better Think Twice Before Suing Your Employer (Four Reasons Why)



Earlier, I busted on "my own side" by giving [four reasons why employers shouldn't be so quick to fire their employees](#). To be fair, this week I'll talk about the other side -- four reasons why employees shouldn't be too quick to sue their employers.

DISCLAIMER: I am a defense lawyer. That means that, in any kind of workplace legal dispute, I am on the employer's side, not the employee's side. Always. Even though many of my best friends are employees and plaintiffs' lawyers. The following is not legal advice.

So, you don't have to believe what I'm about to say. But I make this post in good faith, based on my experience and observations in many years of employment litigation.

Are you still here? Cool! Here we go.

1. Even if you got the shaft at work, it is unlikely that you were treated illegally. The law does not require employers to treat their employees like "family," or to be nice, or even to be particularly fair. In fact, employers can usually be downright jerks as long as they are equally jerky to everybody. They can be arbitrary and play favorites as long as they're not making distinctions based on "protected" categories, like race or sex.

If you read this blog very often, you know that I am a strong advocate of treating employees respectfully, fairly, and with dignity. So is everybody in Human Resources who's worth a darn. But we feel that way because it's the right thing to do, not because it's the law.

The American legal system would collapse in a heap if people could sue every time their feelings were hurt. Our system is designed to prevent only the worst kinds of behavior -- you know, like murder, armed robbery, and driving 70 in a 55. It's supposed to keep us from being at each others' throats. That's it. Anything more is left to our respective senses of common decency. (Scary, I know!)

If you sue your employer, it won't be enough for you to prove that your employer made the wrong decision, or even that your employer was a no-goodnik. If you don't have a valid legal claim against your employer, then you will ultimately lose your case. One big reason to think twice before you sue.

2. Litigation is long, drawn-out, stressful, and painful. The only people who really enjoy litigation are lawyers. No one else could possibly be that sick. And, here's a secret: not even lawyers are that crazy about litigation. Judges (who are usually lawyers) are always after the parties to try to settle, which would end the case before the judge has to hear it. Lawyers are usually the same way -- they are rarely averse to settlement, although they'll fight to the death if that's what the client wants. Why do you think most courts nowadays have mandatory mediation? If even lawyers don't necessarily like litigation, just think about how much you will hate it.

"Well," you retort, "if lawsuits are that bad, then my employer will pay any amount to get rid of it, right? So it's still worth it to sue."

Well, no. Or, at least, not necessarily. You see, your employer gets sued a lot. This is what they call a "cost of doing business" in the United States. It is true that your lawsuit will be stressful and disruptive for your company. But it will be a lot more stressful and disruptive for you, who are not used to the court system or dealing with lawyers, and you don't even know whether it's a trap when the employer's lawyer says hello to you and offers to shake hands.

The distraction and stress of a lawsuit may also make it more difficult for you to do well in your new job. And having to continually dwell on an unpleasant experience (as you'll have to do while your lawsuit lasts) is difficult and stressful.

3. You may find out that your co-workers are not on your side. You feel very strongly that your employer did you wrong. You find a lawyer willing to take your case. You sue, and start taking depositions of all of your co-workers, who were your BFFs when you worked there. Well. It turns out that your BFFs weren't such BFFs after all. They say, "I liked Maudie, but I felt that she was out of line, and in my opinion she was treated fairly." And then you have the co-worker who saw you when you were not at your best, and she testifies about all the things you said to her in confidence when you were having a rotten day. Which are embarrassing. And which do not help your case. On the record. In a verbatim transcript, for cryin' out loud.

What happened to these people?

Most plaintiffs' lawyers will tell you that the co-workers are afraid of retaliation by the company if they don't side with the company and diss you. I am sure that happens sometimes, but I don't think it explains the majority of these situations. What I see most of the time are two phenomena:

*Most people consider a lawsuit an "act of war." They probably were on your side when you all worked together and went out for mai tais and kvetched about what was going on at the office. But that was just gossip, harmless venting. Nobody thought you were really going to sue! And now, thanks to you, they're being dragged in front of lawyers and court reporters and judges and juries, and they're ticked off. And maybe what they said to you in confidence about the boss is coming out -- while the boss is sitting across the table with a stern-looking lawyer in a pinstripe suit. AWKWARD! No wonder they've turned on you.

*Some employees really, sincerely do believe the company was in the right. Is the boss perfect? Of course not. But he's an overall decent guy who tries to be fair and treat employees right. And maybe you shouldn't have been so stubborn/absent from work/insubordinate/lazy yourself.

Recall No. 2, above. Finding out that your co-workers don't support you is one of the "painful" parts.

4. You may be opening up your own life to scrutiny. This is another "painful" part. In order to get more money, and because you really were very upset when you were fired, your lawyer includes a claim for emotional distress in your lawsuit. Next thing you know, the company has asked for your medical and psychiatric records dating back 10 years. And maybe you saw a shrink a few times and have been diagnosed as bipolar. Along with a few physical conditions that are not appropriate to mention in a family blog. Surely you don't have to share that information with the company's lawyers! Do you?

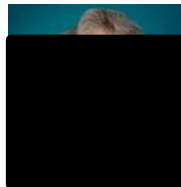
YOU ALMOST CERTAINLY DO. If you claim emotional distress (you don't have to, but you may not get as much money if you don't), most courts say you have put your own emotional condition at issue and the employer is entitled to find out how much of your (just as an example) bipolar disorder was caused by your termination and how much you had all along (in which case the company isn't responsible for it).

Your employer may also be able to dig into your past employment record, including that time you got fired from a previous job after you tested positive for angel dust, your criminal background, your five previous marriages, and your history of filing lawsuits. Perhaps you have nothing to hide. But a lot of people (most?) have a few skeletons that they'd just as soon not have the rest of the world know about.

What you probably don't have to worry about

Now, note what I have not mentioned: (1) That your employer will fire you for filing the lawsuit (assuming you did it while still employed); or (2) that your employer will blacklist you, and you'll never work again if you sue. The reason that I did not mention these is that they very rarely happen. Retaliation -- either during employment or afterward -- for filing a lawsuit in good faith against an employer is usually illegal, and almost all employers know that. If it happens and you can prove it, you might have a pretty good case. But don't bet on being able to do that.

Of course, I'm not saying you should never file a lawsuit against an employer, but it should almost always be a last resort. It's better to try resolving your dispute through the company's grievance procedure or open-door policy, or by going to Human Resources. If you're terminated, you may be better off negotiating a nice separation package and shaking the dust from your feet. If all of those fail, and if you've taken a good, critical look at your own performance and behavior, and still feel strongly that you were mistreated, then by all means consult with a lawyer who represents employees in workplace disputes. But keep in mind these hidden costs of litigation that you'll face, no matter how strong your case may be.



Visit the [Employment and Labor Law Insider](#) for additional insights from [Robin Shea](#), a partner with the national labor and employment law firm Constangy, Brooks & Smith, LLP.

For more information about LexisNexis products and solutions connect with us through our [corporate site](#).

Tags: [employee lawsuits](#)

EXHIBIT 13

April 29, 2014

HUFF
POST BUSINESS

What to Expect If You Sue Your Employer

Posted: 01/10/12 02:03 PM ET

In the last half century or so, workers in the U.S. have seen improved working conditions through policies and laws addressing discrimination, harassment, whistleblower protection and safety violations. But when these protective measures are disregarded, enforcing them falls on individual workers who must pursue their claims through arbitration, investigations by external agencies (such as the EEOC) or litigation. Whatever the reason a worker might consider taking such actions, before filing any internal or external complaint or lawsuit -- or even threatening to do so -- there are some things to keep in mind. And the first thing to keep in mind is that there are a lot of myths about what it means to sue an employer.

The first myth is that the employer is afraid of a lawsuit. Employers do not like lawsuits, but they do not fear them. If they did, the worker never would have had a legal claim in the first place. Why? Because if the employer sincerely feared a lawsuit, they would have respected the law in the first place. And not only are managers who violate workplace laws unlikely to be held accountable for their actions, there are many ways they can benefit from a lawsuit, even one their own conduct brought on.

They can benefit by finding a lawful reason to fire the complaining worker, or by providing witnesses against the complainant who are either "similarly situated" (such as members of the same protected group), or who work closely with them and are persuaded to testify against the worker. By courting these people, sympathizing with their conflicting emotions regarding the worker and providing opportunities and benefits previously withheld, the manager conditions the workforce to consider ways in which distancing from the worker, and aligning with the interests of management, are in their own interests.

Once this step is taken, greater acts of distancing -- through gossip, rumors, and shunning - make it easier for former allies and others to turn against the worker. When this happens, the manager who may have instigated the lawsuit in the first place is able to score points with higher management by demonstrating that it is "the difficult employee" -- not the manager, who is the problem, and the manager who has provided a solution -- witnesses to discredit the worker's claims.

The second myth is that once a lawsuit is filed, further adverse action will not be taken against the worker because that would be viewed as retaliation. Your employer can and will retaliate against you in a multitude of ways, many of them legal.

Federal laws protect against retaliation for certain protected acts, such as reporting sexual harassment, discrimination, and some types of "whistle blowing." But federal law also permits employers to fire such employees for legitimate reasons -- such as theft, making threats, or acts of violence.

No matter how law-abiding a worker might be, once involved in litigation against an employer, accusations of wrongdoing are likely to commence, and escalate. For that reason, by encouraging the workforce to view the litigating worker as a threat to their own livelihoods, chronically unhappy and complaining, and mentally unstable, it takes little time before gossip escalates to accusation, and the worker is accused of an escalating series of "inappropriate" behaviors and often, crimes.

Should the worker express any anger or outrage at the mistreatment they receive, that anger will be viewed as a threat. Increasingly, employers are using the slightest pretext of "threats" or accusations of theft to bring in the police and have employees publicly escorted off the premises -- a humiliating tactic that is sure to instill fear in the workforce and further erode the worker's support and reputation, regardless of whether or not there was any basis to the accusation. (And while it remains unlawful to terminate an employee for false pretext, proving pretext is difficult and the damage will have already been done.)

The third myth is that once an employer realizes they could be sued for their actions, they will obey the law. If a worker threatens to sue, or an employer receives a letter from a worker's attorney, they may well clean up their act. But chances are, every level of higher management will be alerted and go on the defense, which to their legal team will mean an offense.

They will immediately notify all coworkers that a lawsuit is pending and not to destroy any emails or other correspondence about, to or from the worker, and not to discuss the case with the worker. And when they get those memos informing them that their (potentially embarrassing) emails will end up in the hands of their bosses, those coworkers are not going to resent their bosses, they are going to resent the worker whose legal action brought it on.

At this stage, the workforce, not management, will fuel the aggression aimed at the worker. Management will encourage the workforce to keep a close eye on the worker, and document any detail, no matter how seemingly benign, that shows the worker is unstable, unproductive, or ineffective. As the workforce takes note of the severe toll on the worker who filed the complaint, they will

not only alter their perceptions of the worker to justify avoiding and testifying against them, but they will also be far less likely to ever voice a similar complaint of their own in the future -- in other words, the more severe the punishment, the less likely management will have to fear future workers coming forward with similar complaints.

The fourth myth is that if a worker does sue, they can win big money, and be vindicated. If a worker does sue, and does win, they will be very, very happy. Why? Because by the time an employment case gets to the point of "winning," the worker will have spent years fighting. They will be emotionally and financially exhausted. They will have gone into great debt to pay legal costs; even if their case was litigated on a contingency fee basis, they will have had to pay a costly retainer, costs of mediations, investigations, depositions and travel expenses. And the worker will have had one heck of a time finding work, because not only will s/he be exhausted by legal battles, they will have had little time or strength to be productive in the process.

They will also be stained by no references, a record of suing an employer -- which no potential employer wants to see -- and a reputation that has been severely damaged through rumors.

And as for that big money verdict? There are caps on what a worker can get and juries are often very conservative -- many a career has been valued at less than a whiplash, because jurors like to think they would never find themselves in such a mess, and that no one should receive big money for not being able to work, when the juror may well work a lifetime for less. And anything over \$150,000 is currently taxed at one-third; a whiplash settlement, however, is currently not taxed.

The fifth myth is that the case will never get to trial and will settle out of court. Most cases do settle out of court, and when they do, they either settle fairly early in the game, or right before trial. In the meantime, the employer's legal team will bank on delays to wear the worker out. Until that time, efforts to resolve the matter will be in vein -- the only early resolution once a suit is filed will likely be at terms favorable to the employer. In the meantime, the worker's work and even home computers will be subpoenaed, along with their medical records. Investigators may have monitored the worker, and contacted past employers -- who will have been told all kinds of unsavory things about their former employee -- even family members, friends and neighbors may be questioned, scrutinized and had their own reputations slandered.

Suing an employer is the last thing a worker should ever do if the aim is a successful career. But sometimes an employer goes so far, breaches so many laws and causes so much damage that a worker cannot possibly recover without a legal remedy. And if that happens, the worker must be prepared. They must safeguard against the assured betrayals from close friends and colleagues, the adversarial scrutiny of their lives and communications, and an avalanche of accusations and smears upon their professional and personal lives.

And for the employer facing potential litigation, it is far easier to resolve a conflict with a worker than it is to close ranks and destroy them. Rare is the lawsuit that an effective manager can't prevent by acting with integrity in the first place, and rare is the lawsuit that an effective employee can't prevent, by knowing when the management is just no good and it's best to walk away.

Follow Janice Harper on Twitter: www.twitter.com/Janice_Harper

6 people are discussing this article with 11 comments

Comments are closed on this entry.

Highlighted Most Recent Oldest Most Faved My Conversations

Pippen

287 Fans

2

My question to myself lately has been :

Are we teaching our college age young adults - Profits over People ? Money Talks and BS walks ? Your nothing unless you financially rape your environment and destroy your economic enemies ?

Is this what we're teaching them? Because they are snugly fitting in nicely to the Money Rules All mode of capitalism.

Why can't we start a business without any intent to reflect a profit beyond paying employees a living wage building a community and moving the business into the next year with strength. Profits would not be a priority and people would be valued. The prosperity alone would jolt this countries GNP.

What shocks me are the massive amount of business leaders and upper level managers I know personally who go to church and pretend to be a respected member of the faithful community followers of faith after having offshored 20,000 employees so they can garner a bonus and a shot at CEO even though they have a salary of upper

6 figures for years.

At church they hug people, neighbors, other leaders talk about their childrens future.
How they found God.

I almost want to vomit typing this.

11 JAN 2012 5:02 AM

FAVE SHARE MORE

DHC

SUPER USER · 56 Fans

1

Another precise and informative article. Well done.

10 JAN 2012 7:11 PM

FAVE SHARE MORE

kjk326

2 Fans

Excellent article, right on topic. I went through this nightmare & found just how chilling & hostile a formerly friendly environment can become overnight. People who were your close friends hesitate to talk to you and avoid being seen with you. Your every move is put under the microscope and twisted into some type of bad behavior while the person who committed the illegal act is lauded and promoted and you are made to feel like a social outcast at best and I say this even though in the end I prevailed. You are left so emotionally drained, sadly it seems to be the American way; forget ethics, it's the dollar that prevails. Most of all I don't know how HR people sleep at night when they defend someone they know clearly committed an illegal act,

10 JAN 2012 8:34 PM

FAVE SHARE MORE

ARTICLE AUTHOR

Janice Harper

HUFFPOST BLOGGER · 218 Fans

Thank you for sharing your experience. I think it's significant that you say in the end you prevailed -- sadly, that is the sixth myth -- that it will all be worth it. It rarely is. The toll on the worker who pursues an employment claim is enormous, and few attorneys, no matter how skilled, adequately prepare plaintiffs for what's up ahead. I'm so sorry you had to go through it.

Yet we have made great advances in working conditions in the U.S. in part due to lawsuits, and there are cases where workers are left with no recourse but to turn to the courts. In those cases, the more a person knows what to expect and how to be prepared, the better the emotional outcome. Thank you again for sharing your story.

10 JAN 2012 8:55 PM

FAVE SHARE MORE

3 PEOPLE IN THE CONVERSATION

Read Conversation →

noahmarder

512 Fans · Exposing the regressive lies, one by one

There is no justice in this country. What else is new? Risk/reward probably favors stealing from your employer rather than suing them. At least with theft, your career is ruined only if you get caught. You also have a better chance of stealing significant money than of winning anything but an airtight case. I don't see a moral problem either, so long as what is stolen doesn't exceed the damage done by the employer, plus the effort required for the theft, plus the chance of being caught multiplied by the penalty

for being caught. It is the employer, after all, who has taken away any legal remedies through the retaliation mechanisms described in the article.

10 JAN 2012 9:09 PM

FAVE SHARE MORE

Pippen

287 Fans

If you think all of that is bad apply it to Texas where employment is an "at will" state. Another way of putting this would be outright slavery and the slave master can fabricate reality on how they feel that morning and your life is forever changed.

America sets itself apart from 3rd world countries with the argument that we have a

- 1 Superior Justice System
- 2 Freedom of religion
- 3 Separation of Church and State
- 4 Opportunity to pursue your capitalist dreams of career and family
- 5 That taxes pay for your well being (roads, FDA, national safety etc..)
- 6 National security (threat of invasion and subjugation by an enemy rule...)
- 7 Democratically elected officials (fair voting)

I want you to look hard at those 7 American beliefs. See any of them that are actually working as intended ? Or are they working as intended ?

Did we just wake up or is this something that has emerged from the closet when GW Bush took office?

11 JAN 2012 4:52 AM

FAVE SHARE MORE

EXHIBIT 14

ILYM | GROUP, Inc.

C L A S S A C T I O N A D M I N I S T R A T I O N

Case Name: Medline v. Nair

Thursday, December 4, 2025

Requesting Attorney:

Laura Solorzano
The Spivak Law Firm
laura@spivaklaw.com
818.205.9033

ILYM Group Contact:

Lisa Mullins
ILYM Group, Inc.
Lisa@ilymgroup.com
714.878.8836

Estimate For Administrative Solutions: Class & PAGA

KEY ASSUMPTIONS	
Total Number of Class Members	5,892
Estimated Percentage of Remails	15%
Certified Spanish Translation	Yes
ILYM Group Static Website	Yes
Case Duration (Years)	1

Summary of ILYM Group, Inc.'s Fees & Expenses

Case Startup:	\$650.00
Project Management:	\$6,390.00
Notification & Mailing:	\$9,709.70
Distribution (Includes EIN, Bank Acct * /QSF Setup):	\$12,185.30
Case Conclusion:	\$1,015.00

Estimated ILYM Fees & Expenses: \$29,950.00

Estimated ILYM Fees & Expenses: \$27,950.00

ILYM | GROUP, Inc.

CLASS ACTION ADMINISTRATION

Case Name: Medline v. Nair

Thursday, December 4, 2025

Requesting Attorney's Name: Laura Solorzano

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	6	\$720.00
Staff Hours for Processing Returned Mail	Hourly	\$70.00	2	\$140.00
Staff Hours for Processing Opt-Outs, Disputes & Objection(s)	Hourly	\$70.00	2	\$140.00
Report Processing	Hourly	\$70.00	2	\$140.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
ILYM Group Static Website	Flat Fee	\$750.00	1	\$750.00
NCOA	Flat Rate	\$1,500.00	1	\$1,500.00
Toll Free Customer Service Representative	Flat Fee	\$1,750.00	1	\$1,750.00
Weekly Reports	Flat Rate	\$750.00	1	Waived

Subtotal \$6,390.00

NOTIFICATION & MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$0.70	5,892	\$4,124.40
USPS First Class Postage	Per Piece	\$0.80	5,892	\$4,713.60
Re-Mails (Forward/Skip trace Undeliverables)	Per Piece	\$1.00	589	\$589.20
Storage, Photocopies, Deliveries	Flat Fee	\$282.50	1	\$282.50

Subtotal \$9,709.70

ILYM | GROUP, Inc.

C L A S S A C T I O N A D M I N I S T R A T I O N

Case Name: Medline v. Nair

Thursday, December 4, 2025

Requesting Attorney's Name: Laura Solorzano

Activity	Rate Type	Unit Cost	Volume	Amount
DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	4	\$600.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	4	\$500.00
Check, Stub & Release - Print & Mail (W2/1099)	Per Check	\$0.50	5,892	\$2,946.00
USPS First Class Postage	Per Piece	\$0.74	5,892	\$4,360.08
Re-Mails (Forward/Skip trace Undeliverables up to 10%)	Per Piece	\$1.00	354	\$353.52
Reminder Postcard for Uncashed Checks	Per Piece	\$0.90	1,473	\$1,325.70
Preparation of Taxes	Hourly	\$120.00	5	\$600.00
Annual Filing of Tax Return	Per Year	\$1,500.00	1	\$1,500.00

*Additional Bank fees may apply

Subtotal \$12,185.30

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	1	\$100.00
Project Manager Final Reporting	Hourly	\$120.00	2	\$240.00
Process Unclaimed Funds	Flat Fee	\$550.00	1	\$550.00
Declaration	Hourly	\$125.00	1	\$125.00

Subtotal \$1,015.00

Estimated ILYM Fees & Expenses: \$29,950.00
Discounted ILYM Fees & Expenses: \$27,950.00

ILYM Group's Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the permissible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 15



CASE ASSUMPTIONS

Class Members	5,892
Opt Out Rate	1%
Opt Outs Received	100
Total Class Claimants	5,792
Subtotal Admin Only	\$35,609.96

Flat Fee Total \$30,000.00

For 5,892 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Language Translation, Printing & Mailing Included

December 4, 2025

Case: Nair v. Medline, Opt-Out & PAGA Administration

Phoenix Contact: Michael E. Moore
Contact Number: 949.331.0131
Email: mike@phoenixclassaction.com

Requesting Attorney: Laura Solorzano
Firm: The Spivak Law Firm
Contact Number: (818) 582-3180
Email: laura@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on **5,892** Class Members. Class data **Must** be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	4	\$400.00
Programming Database & Setup	\$100.00	4	\$400.00
Toll Free Setup*	\$100.00	1	\$100.00
Call Center & Long Distance	\$2.00	602	\$1,204.00
NCOA (USPS)	\$1,000.00	1	\$1,000.00
Total			\$3,104.00

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Language Translation / Website

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	2	\$200.00
Language Translation	\$900.00	1	\$900.00
Data Merge & Duplication Scrub	\$0.08	5,892	\$471.36
Notice Packet & Opt-Out Form	\$1.00	5,892	\$5,892.00
Estimated Postage (up to 2 oz.)*	\$0.80	5,892	\$4,713.60
Static Website	\$200.00	1	\$200.00
Total			\$12,376.96

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	9	\$495.00
Skip Tracing Undeliverables	\$1.00	641	\$641.00
Remail Notice Packets	\$1.00	638	\$638.00
Estimated Postage	\$0.90	638	\$574.20
Programming Undeliverables	\$50.00	2	\$100.00
Total			\$2,448.20

Database Programming / Processing Opt-Outs, Deficiencies or Disputes			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Database	\$150.00	1	\$150.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	10	\$550.00
Deficiency & Dispute Letters	\$10.00	10	\$100.00
Case Manager	\$85.00	8	\$680.00
Total			\$1,680.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$135.00	1	\$135.00
Disbursement Review	\$135.00	2	\$270.00
Programming Manager	\$95.00	3	\$285.00
QSF Bank Account & EIN	\$135.00	1	\$135.00
Check Run Setup & Printing	\$135.00	14	\$1,890.00
Mail Class Checks *	\$0.70	5,792	\$4,054.40
Estimated Postage	\$0.70	5,792	\$4,054.40
Total			\$10,823.80

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing & Instructions for downloading tax forms from PHX secure portal



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	5	\$575.00
Remail Checks (Postage Included)	\$2.00	941	\$1,882.00
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	5	\$425.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	3	\$255.00
Final Reporting & Declarations	\$115.00	3	\$345.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting & Escheating to the State of CA Included)	\$1,300.00	1	\$1,300.00
Total			\$5,177.00

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$35,609.96



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 16



Quotation Request:

Laura Solorzano
Spivak Law
laura@spivaklaw.com

Case Name:

Nair/Medline

Date:

Friday, December 5, 2025

RFP Number:

2058340001

Prepared By:

Michael Sutherland
Apex Class Action LLC
mike@apexclassaction.com
321.223.5067

Settlement Specifications	
Estimated Class Size:	5,892
Certified Language Translation:	Yes
Static Settlement Website:	Yes
Percentage of Undeliverable Mail:	10%

Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Data Analytics and Standardization				
Import and Standardize Data*	Per Hour	\$125.00	5	\$625.00
Data Analyst	Per Hour	\$150.00	5	\$750.00
*Data provided must be in a workable format. Apex can standardize provided data at an additional cost of \$150/hr.				
			Sub Total:	\$1,375.00

Mailing of Class Notice				
Form Set Up	Per Hour	\$120.00	1	WAIVED
Print & Mail Class Notice	Per Piece	\$1.25	5,892	\$7,365.00
USPS First Class Postage	Per Piece	\$0.68	5,892	\$4,006.56
Remail Undeliverable Mail (Skip-Trace)	Per Piece	\$1.50	589	\$883.80
Receive and Process Undeliverable Mail	Per Hour	\$75.00	3	\$225.00
Process Class Member Correspondence via mail, e-mail & fax	Per Piece	\$75.00	5	\$375.00
NCOA Address Update (USPS)	Static Rate	\$500.00	1	\$500.00
Certified Language Translation: Spanish	Static Rate	\$1,200.00	1	\$1,200.00
			Sub Total:	\$14,555.36

Project Management				
Project Management	Per Hour	\$150.00	6	\$900.00
Project Coordinator	Per Hour	\$90.00	5	\$450.00
Data Analyst and Reporting	Per Hour	\$140.00	4	\$560.00
			Sub Total:	\$1,910.00



Professional Services	Fee Calculation	Rate(s)	Quantity	Estimated Cost
-----------------------	-----------------	---------	----------	----------------

Toll-Free Contact Center, Website & Reporting				
Bilingual Toll-Free Contact Center	Static Rate	\$1,200.00	1	\$1,200.00
Settlement Status Reports	Static Rate	\$750.00	1	WAIVED
Static Apex Website	Static Rate	\$500.00	1	\$500.00
Sub Total:				\$1,700.00

Distribution & Settlement Fund Management				
Settlement Calculations (Preliminary and Final)	Per Hour	\$120.00	5	\$600.00
Account Management and Reconciliation	Per Hour	\$140.00	5	\$700.00
Print & Mail Distribution Settlement Check (W-2/1099)	Per Piece	\$1.00	5,892	\$5,892.00
USPS First Class Postage	Per Piece	\$0.68	5,892	\$4,006.56
Remail Distribution to Updated Address (Skip Trace)	Per Piece	\$1.50	295	\$441.90
Individual Income Tax Preparation & Reporting	Per Hour	\$100.00	8	\$800.00
QSF Income Tax Reporting (per calendar year)	Per Year	\$1,500.00	1	\$1,500.00
Unclaimed Funds: State Controller's Unclaimed Property Fund-CCP 384	Static Rate	\$500.00	1	\$500.00
Sub Total:				\$14,440.46

Post Distribution Reconciliation				
Bank Account Reconciliation	Per Hour	\$135.00	3	\$405.00
Project Management Reconciliation	Per Hour	\$100.00	3	\$300.00
Declarations	Per Hour	\$120.00	3	\$360.00
Sub Total:				\$1,065.00

TOTAL CAPPED ADMINISTRATION COST:	\$35,990.00
-----------------------------------	-------------

Thank you for your business!



Terms & Conditions

The following Terms and Conditions govern the provision of all services to be provided by Apex Class Action and its affiliates ("Apex") to the Client. These terms and conditions are binding and shall apply to all services provided by Apex in relation to any related services or products.

1. **Services:** Apex commits to providing the Client with the administrative services detailed in the attached Proposal (the "Services").

2. **Payment Terms:** As compensation for the legal services to be provided, the Client agrees to pay Apex all fees detailed in the Proposal. The fees quoted in the Proposal (and any subsequent proposals for additional services) are estimates based on the information provided to Apex by the Client. Apex makes no representation that the estimated fees in the Proposal or any subsequent proposals for additional services shall equal the actual fees charged by Apex to the Client, which fees (including individual line items) may be greater or less than estimated. If additional services are requested on an hourly basis and are not specifically detailed in the Proposal, Apex will prepare estimates for such services subject to approval by the Client. In the performance of such additional services, Apex will charge standard hourly fees which shall apply.

3. **Incurred Expenses:** In relation to the provision of services outlined in this agreement, the Client agrees to reimburse Apex for all reasonable out-of-pocket expenses incurred. Such expenses may include, but are not limited to, costs associated with postage, media production or publication, banking fees, brokerage fees, messenger and delivery service expenses, travel expenses, filing fees, office supplies, meals, staff overtime expenses, and other related costs and expenses. If not otherwise specified in writing, fees for print notice and certain expenses, such as media publication and postage, must be paid immediately upon invoicing and, in certain cases, at least ten (10) days prior to the date on which such expenses will be incurred.

4. **Invoicing:** Apex shall present invoices for its fees and expenses on a monthly basis, except as provided in Section 3. The Client agrees to pay each invoice within 30 days of receipt. In case of non-payment within 90 days of the billing date, an additional service charge of 1.5% per month may apply. Apex reserves the right to increase its prices, charges, and rates annually, subject to reasonable adjustments. If any price increases exceed 10%, Apex shall give thirty (30) days' notice to the Client. In the event of any unpaid invoices beyond 120 days of the due date, Apex reserves the right to withhold services and reports until payment is received, subject to notice to the Client. It is important to note that Apex's failure to provide services and reports in such instances shall not constitute a default under this agreement.

5. **Case Duration:** The duration of these Terms and Conditions, except for the data storage obligations stated in Section 13, shall be in effect until 30 days following the completion of the Services as described in the Proposal. The parties may extend these Terms and Conditions in writing for a mutually agreed-upon period beyond this initial 30-day period.

6. **Termination of Services:** Either party may terminate the Services by providing thirty (30) days written notice to the other party. Alternatively, termination may occur immediately upon written notice for Cause, as defined below. Cause means (i) Apex's gross negligence or willful misconduct that causes serious and material harm to the Client; (ii) the Client's failure to pay Apex invoices for more than one hundred twenty (120) days from the date of the invoice; or (iii) the accrual of invoices or unpaid services where Apex reasonably believes it will not be paid. Termination of the Services shall not relieve the Client of its obligation to pay Apex for services rendered prior to the termination.

7. **Independent Contractor:** As an independent contractor, Apex will provide services under the terms of this agreement. It is agreed that neither Apex nor any of its employees will be considered an employee of the Client. Consequently, Apex and its employees will not be eligible for any benefits provided by the Client to its employees. The Client will not make any tax deductions from the payments due to Apex for state or federal tax purposes. Apex will be solely responsible for paying all taxes and other payments due on payments received from the Client under this agreement.

8. **Apex warrants that the Services outlined in the Proposal will be performed in accordance with the standards generally adhered to by professionals providing similar services. It is acknowledged that the Services may entail the likelihood of some human and machine errors, omissions, delays, and losses that may result in damage. However, Apex shall not be held liable for such errors, omissions, delays, or losses unless they are caused by its gross negligence or willful misconduct. In the event of any breach of this warranty by Apex, the Client's sole remedy will be limited to Apex's rerunning, at its expense, any inaccurate output provided that such inaccuracies occurred solely as a result of Apex's gross negligence or willful misconduct under this agreement.**

9. **Limitation of Liability:** The Client acknowledges that Apex shall not be held liable for any consequential, special, or incidental damages incurred by the Client in relation to the performance of Services, whether the claim is based on breach of warranty, contract, tort (including negligence), strict liability, or any other grounds. Under no circumstances shall Apex's liability to the Client, for any Losses (including court costs and reasonable attorney's fees), arising out of or in connection with these Terms and Conditions, exceed the total amount charged or chargeable to the Client for the specific service(s) that caused the Losses.

10. **Indemnification:** The Client agrees to indemnify and hold harmless Apex from any losses, suits, actions, judgments, fines, costs, liabilities, or claims arising from any action or proceeding relating to the Services provided by Apex, regardless of whether or not it results in liability (collectively referred to as "Indemnified Claims"). However, this indemnification provision shall not apply to the extent that such Indemnified Claims are caused by Apex's willful misconduct, gross negligence, or breach of these Terms and Conditions. This provision shall survive termination of the Services.

11. **Confidentiality:** Apex will uphold strict confidentiality between Apex and the Client and applies to all non-public records, documents, systems, procedures, processes, software, and other information received by either party in connection with the performance of services under these terms. Both Apex and the Client agree to keep confidential all such non-public information, including any material marked or identified as confidential or proprietary. Any such confidential information shall not be disclosed, provided, disseminated, or otherwise made available to any third party, except as required to fulfill the parties' obligations under these terms. The parties acknowledge that in the event of any request to disclose any confidential information in connection with a legal or administrative proceeding, or otherwise to comply with a legal requirement, prompt notice of such request must be given to the other party to enable that party to seek an appropriate protective order or other remedy or to waive compliance with the relevant provisions of these terms. If the Client seeks a protective order or another remedy, Apex, at the Client's expense, will cooperate with and assist the Client in such efforts. If the Client fails to obtain a protective order or waives compliance with the relevant provisions of these terms, Apex will disclose only that portion of the confidential information that it determines it is required to disclose. This confidentiality provision shall survive termination of the services provided. Both parties acknowledge and agree that any breach of these terms may cause irreparable harm to the non-breaching party and that injunctive relief may be necessary to prevent any actual or threatened breach. The terms set forth between the parties supersede all prior negotiations, understandings, and agreements between the parties concerning confidentiality. These terms may only be amended in writing and signed by both parties.

12. **Ownership of the programs, system data, and materials provided by Apex to the Client during the course of providing services herein shall solely belong to Apex. It is acknowledged that fees and expenses paid by the Client do not confer any rights in such property. It is also understood that the said property is made available to the Client solely for the purpose of using it during and in connection with the services provided by Apex.**

13. **Upon the completion of the administration and unless retention instructions are ordered by the court, Apex will notify the client that it will destroy and/or return all confidential information and property within 90 days upon the client's written request. Alternatively, the material may be stored for one year at a monthly fee of \$1.50 per storage box for paper documents and \$0.01 per image for electronic copies over a period of three years, which compensates Apex for its electronic and hard-copy storage costs. Apex will not be liable for any damages, liability, or expenses incurred in connection with any delay in delivery of, or damage to disks, magnetic tapes, or any input data provided by the client or its representatives unless Apex has agreed in writing to assume such responsibility.**

14. **COMPLETE AGREEMENT.** These Terms and Conditions, along with the attached Proposal, represent the complete agreement and understanding between the parties and override any prior agreements (whether written or oral) between Apex and the Client regarding the subject matter. Any modification to these Terms and Conditions may only be made in writing and must be signed by both Apex and the Client. The headings in this document are included for convenience only and do not alter or restrict any provisions in these Terms and Conditions. They may not be used in the interpretation of these Terms and Conditions.

15. **This provision outlines the requirements for providing notice or other communication under this agreement. All such communications must be in writing and can be delivered either by personal delivery or through U.S. Mail with prepaid postage or overnight courier. Once delivered personally or sent through the mail, the notice will be considered given after five (5) days from the deposit date in the U.S. Mail. Alternatively, if sent through an overnight courier, the notice will be considered given one business day after delivery to the such courier. It's important to note that the notice must be provided to a responsible officer or principal of the Client or Apex, depending on the case.**

16. **Force Majeure:** In the event of any failure or delay in performance due to circumstances beyond Apex's control, including but not limited to strikes, lockouts, fires, floods, acts of God or public enemy, riots, civil disorders, insurrections, war or war conditions, or interference by civil or military authorities, Apex shall not be held liable for any resulting loss or damage. The time for performance under this agreement shall be extended for a period equal to the duration of the disabling cause and a reasonable time thereafter. This provision shall constitute a force majeure clause and shall be construed accordingly.

17. **The applicable state and federal laws shall govern the interpretation and enforcement of these Terms and Conditions. No choice of law or conflict of laws provisions shall affect this governing law provision.**

18. **Severability:** This applies to all clauses and covenants contained within these Terms and Conditions. In the event that any clause or covenant is deemed invalid, illegal, or unenforceable, the remaining provisions shall remain valid and enforceable to the fullest extent permissible by law. The validity, legality, and enforceability of the remaining provisions shall in no way be affected or impaired by the invalidity, illegality, or unenforceability of any provision deemed so.

19. **Nonwaiver:** This applies to these Terms and Conditions. This means that any failure by one party to enforce a provision of these terms on one or more occasions shall not be construed as a waiver of that provision. In other words, any failure to enforce a provision does not give up the right to enforce it in the future. All provisions of these Terms and Conditions remain in full force and effect, regardless of any prior failure to enforce them.

EXHIBIT 17



Reference No. 20251205-PJI-01

December 5, 2025

Laura Solorzano
The Spivak Law Firm
1875 Century Park East Fl 7
Los Angeles CA 90067

RE: *Nair v. Medline*

Dear Laura,

Thank you for this opportunity to provide a quote for your above-captioned settlement. Using the parameters you described, Simpluris' total estimated cost is \$55,837. As a courtesy, we are offering a \$7,000 discount, for a discounted total of \$48,837.

Please let me know if you have questions. I look forward to this opportunity to work together.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "P. Ivie".

PATRICK J. IVIE
Chief Revenue Officer

m: 310-995-6455
o: 714-975-5260
e: pivie@simpluris.com



3194-C Airport Loop Drive, Costa Mesa, CA 92626
www.simpluris.com | 1 (800) 779 - 2104



3194-C Airport Loop Drive
Costa Mesa, CA 92626
800-779-2104
www.simpluris.com

Estimate Number:	20251205-PJI-01	Prepared By:	Patrick J. Ivie
Estimate Date:	12/5/2025	Telephone Number (mobile):	310.995.6455
Estimate Expiration Date:	3/5/2026	Email:	pivie@simpluris.com

Primary Contact
Attorney: **Laura Solorzano**
Firm: The Spivak Law Firm
Email: laura@spivaklaw.com

Opposing Counsel Contact
Attorney:
Firm:
Email:

**Case Name: Nair v. Medline
Class and PAGA Settlement**

Assumptions

In addition to the assumptions enumerated below, this estimate assumes that

- (1) Simpluris will receive data in a single, complete file; (2) there will be no substantial change to class size or in response rate;
- (3) administration costs will be paid from the QSF, and (4) Simpluris will submit revisions to this estimate to account for any material changes to scope.

Anticipated Class Size:	5,892	Undeliverable Rate:	10%
Claims Rate:	N/A	Mail Skip Trace Success Rate:	85%
Opt-out Rate:	1%	Call Rate:	4%
Language(s) for Communication	EN/SP	Average Call Length:	4 Minutes
Reminder Mailing:	Postcard	Fund Distribution:	Simpluris
Unclaimed Funds:	Escheat	Number of Distributions:	1
State(s):	CA	Tax Year(s):	1
Length of Administration:	9 Months		

Case Setup

- Undertake postings on Simpluris website of key documents as ordered by the Court (e.g. orders and the Settlement Agreement)
- Data compilation: develop case-specific response tracking

Category	Unit Value	# of Units	Total
Project Manager - Case Setup	\$110.00	4	\$440.00
Case Document Web Postings	\$225.00	1	\$225.00
Database Manager - Initial Data Analysis	\$125.00	4	\$500.00
Total:			\$1,165.00

Notice and Communications

- Spanish Translation of the Notice
- 14-page Notice Packet: Opt-Out Form, Dispute Form & Objection Form, sent by First Class US Mail, in English and Spanish
- Single Postcard Reminder Mailing

Category	Unit Value	# of Units	Total
Spanish Translations - assuming 7,000 words	\$0.25	7,000	\$1,750.00
Bilingual Notice Packet - assuming 28 images	\$4.00	5,892	\$23,568.00
Postage	\$0.69	5,892	\$4,065.48
NCOA/CASS/LACS	\$0.14	5,892	\$824.88
Undeliverable Processing and Skip Trace	\$0.32	590	\$188.80
Remail Notice (assuming 85% skip trace success)	\$5.00	502	\$2,507.50
Remail Postage	\$0.72	502	\$361.08
Single Postcard Reminder Mailing	\$0.10	5,892	\$589.20
Postage	\$0.54	5,892	\$3,181.68
Mailing Supervisor	\$55.00	4	\$220.00
Total:			\$37,256.62

Contact Center

- Establish case-specific toll-free number and 24/7 IVR
- Assuming 4-minute calls

Category	Unit Value	# of Units	Total
Call Center Set Up	\$350.00	1	\$350.00
Toll Free Monthly Maintenance	\$95.00	9 Months	\$855.00
IVR (includes toll-free number charges)	\$15.00	16	\$240.00
Subtotal			\$1,445.00

Administration

- Process incoming class and counsel communications, opt-outs, disputes, and objections

Category	Unit Value	# of Units	Total
Database Manager	\$125.00	3	\$375.00
Project Manager	\$110.00	5	\$550.00
Dispute Processing	\$1.75	295	\$515.55
Opt-out Processing	\$1.75	59	\$103.25
Reporting to Counsel (hours)	\$100.00	8	\$800.00
Total:			\$2,343.80

Award Disbursement

- Establish 26 CFR § 1.468B-1 compliant Qualified Settlement Fund ("QSF")
- Disburse award payments and tax documents
- Uncashed funds will be sent to the California Controller's Unclaimed Property Fund
- Conduct regular and annual IRS-mandated QSF reporting and reconciliation (one per calendar year)
- Complete all required filings with state and federal tax authorities

Category	Unit Value	# of Units	Total
Disbursement Data Preparation	\$125.00	4	\$500.00
Disbursement Manager - Data Validation	\$90.00	4	\$360.00
Setup Banking Account/QSF	\$675.00	1	\$675.00
QSF Monthly Reconciliation and Maintenance	\$125.00	9	\$1,125.00
Print & Mail Distribution Check and Tax Docs	\$0.60	5,892	\$3,535.20
Postage	\$0.69	5,892	\$4,065.48
Process Returned Checks (assuming 5%)	\$0.20	295	\$59.00
Skip Trace Search Undeliverable Checks	\$0.12	295	\$35.40
Remail Checks (includes postage)	\$1.70	295	\$501.50
Escheat Uncashed Checks	\$500.00	1	\$500.00
QSF Reporting and Final Declaration	\$500.00	1	\$500.00
QSF Annual Tax Reporting and Reconciliation	\$850.00	1	\$850.00
Distribution Manager	\$90.00	3	\$270.00
Total:			\$12,976.58

Case Completion

- Final audit and review
- Send final declaration and reporting to counsel

Category	Unit Value	# of Units	Total
Data Manager-Final Reporting	\$125.00	2	\$250.00
Clerical-Clean Up Any Misc.	\$45.00	4	\$180.00
Project Manager-Wrap-up Final Issues	\$110.00	2	\$220.00
Total:			\$650.00

Total Estimated Cost of Administration:	\$55,837
Less Client Courtesy Discount:	-\$7,000
Discounted Total:	\$48,837

Terms and Conditions

All administration services to be provided by Simpluris to Client, are provided subject to the following terms and conditions ("Agreement"):

1. Services: Simpluris agrees to provide Client those services set forth in the Proposal (the "Services") to which these terms and conditions are attached and which has been provided to Client. As compensation for such Services, Client agrees to pay the fees for Services outlined in the Proposal. Simpluris will often take direction from Client's representatives, employees, agents and or professionals (collectively, the "Client Parties") with respect to the Services. The parties agree that Simpluris may rely upon, and Client agrees to be bound by, any direction, advice or information provided by the Client Parties to the same extent as if provided by Client. Client agrees and understands that Simpluris shall not provide Client or any other party with any legal advice.

2. Fee Estimates Not Binding: Simpluris and Client acknowledge that it is difficult to determine all necessary work required for the Services or the total amount of fees that may be incurred in performing the Services. Client agrees that fees for Services described in the Proposal are estimated based on the requirements provided by Client. Actual fees charged by Simpluris may be greater or less than such estimate. Client specifically agrees that it will be responsible for the payment of all such fees. Simpluris will provide estimates and budgets, but they are not intended to be binding; are subject to unforeseen circumstances, and by their nature are inexact.

3. Billing and Payment: Simpluris will invoice Client on a regular basis unless a specific timeframe is otherwise set forth in the Proposal. Client shall pay all invoices within 30 days of receipt. Amounts unpaid after thirty (30) days are subject to a service charge at the rate of 1.5% per month or, if less, the highest rate permitted by law. Services are not provided on a contingency basis and Client shall remain liable to Simpluris for all fees incurred by Simpluris in performing the Services, regardless of any circumstance that impacts the outcome of Client's matter, including but not limited to, court decisions, actions by the parties, or a failure to consummate a settlement.

4. Further Assurances: Client agrees that it will use its best efforts to include provisions reasonably acceptable to Simpluris in any relevant court order, settlement agreement or similar document that provide for the payment of Simpluris' fees and expenses hereunder. No agreement to which Simpluris is not a party shall reduce or limit the full and prompt payment of Simpluris' fees and expenses as set forth herein and in the Proposal.

5. Rights of Ownership: The parties understand that the software programs and other materials furnished Simpluris to Client and/or developed during the course of the performance of Services are the sole property of Simpluris. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Client agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished to Client. Fees and expenses paid by Client do not vest in Client any rights in such property, it being understood that such property is only being made available for Client's use during and in connection with the Services provided by Simpluris.

6. Bank Accounts: Simpluris will establish a demand deposit checking account for funds received related to a distribution, unless directed otherwise in writing by the parties or unless the settlement agreement stipulates otherwise. Simpluris may derive financial benefits from financial institutions in connection with the deposit of such settlement funds with such institutions. Such amounts may be retained by Simpluris as a financial benefit and to offset administration costs including FDIC deposit insurance recordkeeping. In addition, Simpluris may also be required to establish a Qualified Settlement Fund ("QSF") to hold the settlement funds. Simpluris may derive financial benefits from the QSF in the form of interest payments derived therefrom. The amounts held pursuant to these Terms and Conditions are at the sole risk of Client and, without limiting the generality of the foregoing, Simpluris shall have no responsibility or liability for any diminution of the fund that may result from any deposit made with a financial institution including any losses resulting from a default by such institution or other credit losses. It is acknowledged and agreed that Simpluris will have acted prudently in depositing the fund at such institution.

7. Retention of Documents & Data: Unless otherwise required in writing by the Client or court orders, all returned/undeliverable physical documents will be securely shredded after the data has been confirmed uploaded to our systems. Simpluris will retain bank and tax documents for such period of time as it determines is required to maintain compliance with various federal and state law requirements. Unless otherwise required in writing by the Client or court orders, Simpluris will adhere to the Company's data deletion policies and will destroy all remaining project-related information from our systems three (3) years after the conclusion of the project. Storage beyond three (3) years is available upon request and will be billed as incurred.

8. Limitation of Liability; Disclaimer of Warranties: Simpluris warrants that it will perform the Services diligently, with competence and reasonable care. In no event will Simpluris be liable to Client or any third party for any claims, losses, costs, penalties, fines, judgments, tax activities, lost profits or business opportunities, business interruptions or delay, special, exemplary, punitive, consequential, indirect or incidental damages relating to the performance of the Services, regardless of whether Client's claim is for breach of contract, tort (including negligence and strict liability) or otherwise, regardless of whether such damage was foreseeable and whether such party has been advised of the possibility of such damages. Simpluris' cumulative liability for damages to Client hereunder will be limited to the total fees charged or chargeable to Client for the particular portion of the Services affected by Simpluris' omission or error. THE WARRANTIES SET FORTH IN THIS SECTION ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

9. Force Majeure: To the extent performance by Simpluris of any of its obligations hereunder is substantially prevented or delayed by reason of any act of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, embargoes or blockades in effect on or after the date

that Simpluris began performing Services, epidemic, pandemic, quarantine, civil commotion, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing an export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation or because of any other matter beyond Simpluris' reasonable control, then Simpluris' performance shall be excused and this Agreement, at Simpluris' option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

10. Rights in Data: Client agrees that it will not obtain, nor does Simpluris convey, any rights of ownership in the programs, system data, or materials provided or used by Simpluris in the performance of the Services.

11. Electronic Communications: During the provision of the Services, the parties may wish to communicate electronically with each other at a business e-mail address. However, the electronic transmission of information cannot be guaranteed to be secure or error free and such information could be intercepted, corrupted, lost, destroyed, arrive late or incomplete or otherwise be adversely affected or unsafe to use. Accordingly, each party agrees to use commercially reasonable procedures to check for the then most commonly known viruses and to check the integrity of data before sending information to the other electronically, but each party recognizes that such procedures cannot be a guarantee that transmissions will be virus free. It remains the responsibility of the party receiving an electronic communication from the other to carry out a virus check on any attachments before launching any documents whether received on disk or otherwise.

12. Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, by, or sent by registered mail, postage prepaid, or overnight courier to the address identified by each Party in the Proposal. Notice shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service. Notice should be addressed to an officer or principal of Client and Simpluris, as the case may be.

13. Waiver: Failure or delay on the part of a party to exercise any right, power or privilege hereunder shall not operate as a waiver thereof or any of other subject, right, power or privilege.

14. Termination: Client may terminate the Services at any time upon 30 days prior written notice to Simpluris. Termination of Services shall in no event relieve Client of its obligation make any payments due and payable to Simpluris for Services rendered up to the effective date of Termination. Simpluris may terminate this Agreement (i) for any reason upon no less than 60 days prior written notice to the Client; or (ii) upon 15 calendar days' prior written notice if the Client is not current in payment of fees.

15. Jurisdiction: These Terms and Conditions will be governed by and construed in accordance with the laws of the state of California, without giving effect to any choice of law principles.

16. Survival: Any remedies for breach of this Agreement, this Section and the following Sections will survive any expiration or termination of this Agreement: Section 8 - Limitation of Liability; Disclaimer of Warranties, Section 10 – Rights in Data, and Section 15- Jurisdiction, 17 -Confidentiality, and Section 18 – Indemnification.

17. Confidentiality: Simpluris maintains reasonable and appropriate safeguards to protect the confidentiality and security of data provided by Client to Simpluris in connection with the Services. If, pursuant to a court order or other proceeding, a third-party requests that Simpluris to disclose any confidential data provided by or for Client, Simpluris will promptly notify the Client unless prohibited by applicable law. Client will then have the option to provide Simpluris with qualified legal representation at Client's expense to defend against such request. If, pursuant to a court order, Simpluris is required to disclose data, produce documents, or otherwise act in contravention of the obligation to maintain confidentiality set forth in these terms and conditions, Simpluris will not be liable for breach of said obligation.

18. Indemnification: Client will indemnify and hold Simpluris (and the officers, employees, affiliates and agents) harmless against any losses whatsoever incurred by Simpluris, arising out of any action by a third party, including governmental agencies, in connection with , or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by Simpluris in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by Simpluris pursuant to Client's instructions.

19. Severability: If any term or condition or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

20. Database Administration: Simpluris' database administration for Client assumes that Client will provide complete data that includes all information required to send notifications and calculate and mail settlement payments. Data must be provided in a complete, consistent, standardized electronic format. Simpluris' standardized format is Microsoft Excel, however, Simpluris may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by Simpluris on a time and materials basis according to Simpluris' Standard Rates.

21. Entire Agreement: These Terms and Conditions and the Proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 18

EXHIBIT 19

1 DAVID G. SPIVAK, State Bar # 179684
2 THE SPIVAK LAW FIRM
3 9454 Wilshire Blvd.
4 Suite 303
5 Beverly Hills, CA 90212
6 Telephone (310) 499-4730
7 Facsimile (310) 499-4739
8 Email david@spivaklaw.com

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Juvenile Officer/Clerk
BY MARY GARCIA, Deputy

6 Attorney for Plaintiffs,
7 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**
10 **(UNLIMITED JURISDICTION)**

11 ALINA GHRDILYAN; EVGENIA
12 SULTANIAN; and all others similarly situated,

Case No.: BC430633

CLASS ACTION

13 *Plaintiffs,*

14 vs.

15
16 RJ FINANCIAL, INC., a California
17 corporation; RAMIL ABALKHAD, an
18 individual; and DOES 1 through 50, inclusive,

19 *Defendants.*

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

20
21
22
23
24
25
26 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
27 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

THE
SPIVAK
LAW FIRM

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

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

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
period beginning four (4) years prior to the filing of this action and ending
on the date that final judgment is entered in this action.

Meal Periods Class: All persons employed by Defendants in California
who were not provided with uninterrupted thirty (30) minute meal periods
during each work period of five (5) or more hours during the period
beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class**, and/or **Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class**, **Overtime Class**,
6 **Rest Periods Class**, **Meal Periods Class**, **Inaccurate Wage Statement**
7 **Class**, **Unauthorized Deduction Class**, **Former Employee Class**, and/or
8 **Indemnification Class**.

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

2 19. A class action is vastly superior to other available means for fair and efficient
3 adjudication of the class members' claims and would be beneficial to the parties and the Court.
4 Class action treatment will allow a number of similarly situated persons to simultaneously and
5 efficiently prosecute their common claims in a single forum without the unnecessary duplication
6 of effort and expense that numerous individual actions would entail. In addition, the monetary
7 amounts due to many individual class members are likely to be relatively small and would thus
8 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
9 Moreover, a class action will serve an important public interest by permitting class members to
10 effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the
11 potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

23. California Labor Code § 510(a) also requires employers to compensate employees at two times their regular rates of pay for:

A. All hours worked in excess of twelve hours in one day; and,

B. All hours worked in excess of eight hours on a seventh consecutive workday during a workweek.

24. During the applicable limitations period, Plaintiffs have worked more than eight hours in one workday, more than forty hours in one workweek, and eight or more hours on a seventh consecutive workday without being paid for all of those hours at the rates required under California Labor Code § 510(a).

25. Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating him and the other members of the **Wages Class** for all hours worked. Additionally, Plaintiffs are informed and believe and thereon allege that Defendants have maintained a policy or practice of not compensating the other members of the **Wages Class** and the **Overtime Class** at the rates required under California Labor Code § 510(a) for all hours worked in excess of eight hours in one day, all hours worked in excess of forty hours in one week, the first eight hours on a seventh consecutive workday, and all worked hours in excess of eight hours on a seventh consecutive workday.

26. As a result of Defendants' conduct, Plaintiffs, on behalf of themselves and the other members of the **Wages Class** and the **Overtime Class**, seeks declaratory and injunctive relief, damages for unpaid overtime wages, interest thereon, costs of suit, and reasonable attorney's fees pursuant to California Labor Code § 1194(a).

SECOND CLAIM FOR RELIEF

FAILURE TO PROVIDE REST AND MEAL PERIODS

(By Plaintiffs, the Rest Period Class, and the Meal Period Class)

27. Plaintiffs incorporate paragraphs 1 through 26 of the Complaint as if fully alleged herein.

28. At all relevant times, Plaintiffs and other members of the **Rest Period Class** and **Meal Period Class** have been employees of Defendants covered by California Labor Code §§

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 “Management Recognition Days,” without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney’s fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs’ wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

24
25 ///

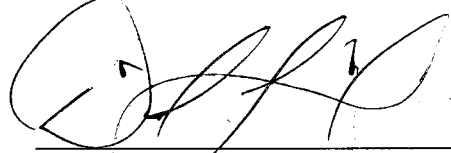
26
27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM



By:

Date: February 23, 2010

DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 20

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

1 (THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)
2 THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
3 AGAINST RJ CASE.

4 OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
5 ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
6 ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

7 I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
8 BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
9 NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
10 A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
11 969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
12 EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
13 OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
14 VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
15 365 AT 375.

16 THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
17 CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
18 THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
19 THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
20 LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
21 INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
22 AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
23 THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
24 WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
25 CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
26 UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
27 1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
28 CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTLING THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON
5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

