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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



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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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



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



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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.



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

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

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

20 **IV. STATEMENT OF FACTS**

21 20. The Wage Order applies to "all persons employed in the transportation industry
22 whether paid on a time, piece rate, commission, or other basis..." Wage Order, § 1. The Wage
23 Order defines "Transportation Industry" to mean "any industry, business, or establishment
24 operated for the purpose of conveying persons or property from one place to another whether by
25 rail, highway, air, or water, and all operations and services in connection therewith; and also
26 includes storing or warehousing of goods or property, and the repairing, parking, rental,
27 maintenance, or cleaning of vehicles." Wage Order, § 2(P). At all relevant times during the
28 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



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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



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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



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(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
7 Cal.4th 575, 585.)

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

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

15 **SECOND CAUSE OF ACTION**

16 **FAILURE TO PROVIDE MEAL PERIODS**

17 **Lab. Code §§ 226.7 and 512**

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

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

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

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

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

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

An employer shall 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



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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.



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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
8 Occupational Safety and Health.

9 (c) If an employer fails to provide an employee a meal period
10 or rest period in accordance with a state law, including, but
11 not limited to, an applicable statute or applicable
12 regulation, standard, or order of the Industrial Welfare
13 Commission, the Occupational Safety and Health
14 Standards Board, or the Division of Occupational Safety
15 and Health, the employer shall pay the employee one
16 additional hour of pay at the employee's regular rate of
17 compensation for each work day that the meal or rest
18 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
24 start of their shifts had elapsed.

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



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

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

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

11 **THIRD CAUSE OF ACTION**

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

13 **Lab. Code § 226.7**

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

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

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

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

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

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

26 Rest Periods:

27 (A) Every employer shall authorize and permit all employees to take
28 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



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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



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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.

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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



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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



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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.

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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.



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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



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



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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



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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

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Medline Industries Holdings, L.P.

c/o Agent for service of process

CORPORATION SERVICE COMPANY WHICH WILL DO
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Medline Industries, LP

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