

**PRIVATE ATTORNEYS GENERAL ACT  
SETTLEMENT AGREEMENT AND RELEASE**

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Jose Solano ("Employee"), on behalf of himself and on behalf of the State of California and all allegedly-aggrieved employees (referred to herein as the PAGA Affected Employees"), and Milgard Manufacturing, LLC, formerly known as, Milgard Manufacturing Inc, and Milgard Windows & Doors ("Defendant") (collectively the "Parties"), subject to the approval of the Court, that the settlement of the Action (as defined below) shall be effectuated upon and subject to the following terms and conditions. Capitalized terms as used herein shall have the meanings set forth in Section I or elsewhere in this Settlement Agreement and Release.

**I. RECITALS**

WHEREAS, on March 16, 2020, Plaintiff notified the Labor Workforce Development Agency ("LWDA") of his intent to file an action under California's Private Attorneys General Act, California Labor Code § 2698 *et seq.* ("PAGA");

WHEREAS, on May 28, 2020, Plaintiff submitted an amended notice to the LWDA of his intent to file an action under PAGA;

WHEREAS, Plaintiff allowed the LWDA an opportunity to investigate his claims as required by the Labor Code.

WHEREAS, the LWDA took no action in response to Plaintiff's notice;

WHEREAS, on June 12, 2020, Plaintiff commenced the Action by filing a Complaint, on behalf himself, the State of California, and other allegedly-aggrieved employees against Defendant, asserting PAGA representative claims for violation of Labor Code § 2698, alleging violations of Labor Code §§ 201, 202, 203, 204, 218, 226, 226.3, 226.7, 246, 247.5, 248.5, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, and 2698;

WHEREAS, on July 22, 2021, the Parties participated in a private mediation, with mediator Jeffrey Krivis;

WHEREAS, the Parties desire to settle, compromise, and avoid litigation relating to the Claims described in the pleadings in the Action, and have agreed to settle the Action upon the terms and conditions and for the consideration set forth in this Settlement Agreement;

WHEREAS, on January 27, 2021, the Santa Clara Superior Court granted final approval of the settlement in *In re Milgard Wage and Hour Cases*, Case number JCCP 5056, coordinating case nos. 18CV339693 and RIC181814387 (the "Stewart Settlement"). The Stewart Settlement encompasses PAGA claims from October 5, 2017 to September 4, 2019, including PAGA claims for alleged failure to pay wages for all hours worked, to correctly calculate bonuses into the regular rate, to provide meal and rest periods, to pay premium pay for missed meal and rest periods, to pay double time wages at the correct rate, to reimburse business expenses, to provide accurate wage statements, and to timely pay final wages following separation of employment. The Parties agree

that for purposes of this settlement that the Stewart Settlement therefore precludes Plaintiff from recovering penalties for any and all claims asserted before September 5, 2019;

WHEREAS, on November 17, 2020, the Sacramento Superior Court granted final approval of the settlement in *Joseph Story v. Milgard Manufacturing, Incorporated*, Case number 34-2020-00274315 (the "Story Settlement"). The Story Settlement encompasses wage and hour claims from September 5, 2019 to September 20, 2020, including alleged PAGA claims for alleged failure to include bonuses into overtime, alleged failure to pay all wages upon termination, and alleged failure to furnish accurate wage statements. The Parties agree that for purposes of this settlement that the Story Settlement therefore precludes Plaintiff from recovering PAGA penalties for any and all claims asserted before September 21, 2020;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed by and between the Parties hereto as follows:

## II. SETTLEMENT TERMS

### A. Definitions

1. "Action" means the case entitled *Jose Solano v. Milgard Manufacturing Incorporated, et al.*, pending in the Superior Court of the State of California for the County of Ventura ("Court"), Case No. 56-2020-00541919-CU-OE-VTA.

2. "Attorney's Fees" means such attorney's fees as the Court may award to Plaintiff's Counsel for the services they have rendered and will render to the PAGA Affected Employees in the Action, and which shall not exceed 33.33% of the Total Monetary Settlement Amount or One Hundred Twenty Eight Thousand Three Hundred Twenty Dollars and Fifty Cents (\$128,320.50).

3. "Attorney's Costs" means such litigation costs as the Court may award to Plaintiff's Counsel for the costs it has incurred and will incur in the investigation, litigation, and resolution of the Action, and in administration of the Settlement, and which shall not exceed Fifteen Thousand Dollars (\$15,000.00).

4. "Complete and General Release" means Plaintiff's agreement, in consideration of Defendant's promises and agreements as set forth herein, to fully release and discharge the Released Parties from any and all Released Claims and also generally release and discharge the Released Parties from any and all claims, demands, obligations, causes of action, rights, or liabilities of any kind which have been or could have been asserted against the Released Parties arising out of any occurrence or failure to act, including but not limited to claims for wages, restitution, penalties, retaliation, defamation, discrimination, harassment or wrongful termination of employment. Plaintiff's Complete and General Release specifically includes any and all claims, demands, obligations, and/or causes of action for damages, restitution, penalties, interest, and attorneys' fees and costs relating to or in any way connected with Plaintiff's employment with Defendant, whether or not known or suspected to exist, and whether or not specifically or particularly described herein. Plaintiff's Complete and General Release includes all federal and state statutory claims, and federal and state common law claims (including but not limited to, those for contract, tort, and equity), including, without limitation, the Americans with Disabilities Act,

the Age Discrimination in Employment Act, Title VII of the Civil Rights Act of 1964 (as amended), 42 U.S.C. § 1981, 42 U.S.C. § 1983, the Fair Labor Standards Act, the Employee Retirement Security Income Act of 1974, the California Constitution, the California Fair Employment and Housing Act, the California Unfair Competition Act (California Business and Professions Code § 17200 *et seq.*), and the California Labor Code. Plaintiff's Complete and General Release includes a waiver of all rights and benefits afforded by California Civil Code § 1542, which provides:

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

5. "Defense Counsel" means Stephen C. Tedesco, Esq. and Daniel L. Gonzalez, Esq. of Littler Mendelson, P.C.

6. "Effective Date" means the date this Settlement is approved as provided herein and the Court's order granting Settlement Approval and entry of Final Judgment becomes final and is no longer appealable. For purposes of this Settlement, "becomes final and is no longer appealable" shall mean the later of: (a) the day after the last date by which a notice of appeal to the applicable Court of Appeal of the order and judgment approving this Settlement may be timely filed and none is filed (*i.e.*, 61 days from notice of entry of judgment); (b) if an appeal is filed, and the appeal is finally disposed of by ruling, dismissal, denial, or in any other manner that confirms the validity of the order and judgment, the day after the last date for filing a request for further review of the order and judgment approving this Settlement passes, and no further review is requested; or (c) if an appeal is filed and the order approving this Settlement is affirmed and further review of the order is requested, the day after the review is finally resolved and the order and judgment approving this Settlement is affirmed. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Effective Date does not occur for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their respective positions. The Effective Date cannot occur, and Defendant will not be obligated to fund this Settlement, until and unless there is no possibility of an appeal or further appeal that could potentially prevent this Settlement from becoming final and binding.

7. "Individual Settlement Payment" means the portion of the PAGA Settlement Fund allocated to each PAGA Affected Employee, as calculated pursuant to Section C(11) below. One hundred percent (100%) of the Individual Settlement Payments made to PAGA Affected Employees shall be deemed miscellaneous income for which a Form 1099 will be issued.

8. "Notice" means the form of notice that will be sent to each PAGA Affected Employee accompanying their Individual Settlement Payments, which shall be substantially in the form attached hereto as **Exhibit A**.

9. "PAGA Affected Employee" means Plaintiff and all non-exempt employees of Defendant who are employed or have been employed by Defendant in the State of California who

worked one or more pay periods between September 21, 2020 and the date of the approval of the Settlement.

10. "PAGA Affected Employee List" means the list of full names, most recent mailing addresses, Social Security numbers, dates of birth, and number of pay periods worked as a non-exempt employee in California during the Settlement Period, which Defendant will diligently and in good faith compile from its records.

11. "PAGA Settlement Fund" means the amount from the Total Monetary Settlement Amount that is allocated to resolve the claims in the Action. Seventy-five percent (75%) of the PAGA Settlement Fund will be distributed to the LWDA and twenty-five percent (25%) will be distributed to PAGA Affected Employees.

12. "Plaintiff's Counsel" means Nazo Koulloukian, Esq. of Koul Law Firm, and Sahag Majarian, Esq. of Law Offices of Sahag Majarian II.

13. Plaintiff's Individual Claims Release means the amount plaintiff shall receive in return for the release of any of his individual claims, providing a Complete and General Release of all claims against the Released Parties, and dismissal of any individual claims in court or in arbitration.

14. "PAGA Released Claims" means any and all claims for civil penalties under PAGA that were asserted or could have been asserted in the Action by Plaintiff, on behalf of the State of California, himself, and the PAGA Affected Employees, based on or arising out of the allegations in the LWDA notices and/or the Complaint, broadly construed, for the entirety of the Settlement Period, including: (a) penalties pursuant to PAGA for violation of Labor Code §§ 201, 202, 203, 204, 218, 226, 226.3, 226.7, 246, 247.5, 248.5, 256, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, and 2698; (b) that Defendant is liable for the attorney's fees and costs incurred in the prosecution of this Action on behalf of the PAGA Affected Employees; and (c) all claims that Plaintiff and/or the PAGA Affected Employees may have against the Released Parties relating to: (i) the payment, taxation, and allocation of attorney's fees and costs to Plaintiff's Counsel pursuant to this Settlement Agreement; and (ii) the payment, taxation, and allocation of Plaintiff's Service Award pursuant to this Settlement Agreement. The release of the Released Claims shall be effective up to the end date of the Settlement Period.

15. "Released Parties" means Defendant and its predecessors, merged entities, subsidiaries, affiliates, parents, and attorneys, and their respective successors and predecessors in interest, all of their respective officers, directors, employees, administrators, fiduciaries, trustees, beneficiaries, and agents, and each of their past, present, and future, officers, directors, shareholders, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, insurers, and reinsurers.

16. "Service Award" means the amount from the Total Monetary Settlement Amount that the Court awards to Plaintiff in recognition of his efforts in obtaining the benefits of the Settlement and as consideration for executing this Settlement Agreement. The Service Award shall not exceed Five Thousand Dollars (\$5,000.00).

17. “Settlement Administrator” means CPT Group, Inc., a third-party settlement claims administrator that the Parties will ask the Court to appoint for the purposes of administering this Settlement. The Parties each represent that they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest.

18. “Settlement Administration Costs” means the amount from the Total Monetary Settlement Amount which shall be allocated, subject to the Court’s approval, to the Settlement Administrator for services rendered in administering the Settlement, and which shall not exceed Fifteen Thousand Dollars (\$15,000.00).

19. “Settlement Approval Order and Judgment” means the settlement approval order and judgment that will be entered by the Court, which shall be substantially in the form attached hereto as **Exhibit B**.

20. “Settlement Fund Account” means the bank account established by the Settlement Administrator pursuant to the terms of this Settlement Agreement, from which all monies payable under the terms of this Settlement shall be paid, as set forth herein.

21. “Settlement Period” means the period from September 21, 2020 through and including the date of the approval of the Settlement.

22. “Total Monetary Settlement Amount” means the amount of Three Hundred Eighty-Five Thousand Dollars (\$385,000) that Defendant will pay if the Court approves this Settlement and the Effective Date occurs. The Total Monetary Settlement Amount will be used to pay: (a) the PAGA Settlement Fund to the LWDA and PAGA Affected Employees; (b) the award of Attorney’s Fees to Plaintiff’s Counsel; (c) the award of Attorney’s Costs to Plaintiff’s Counsel; (d) the release of Plaintiff’s individual claims and the Service Award to Plaintiff; and (e) Settlement Administration Costs. Under no circumstances will Defendant be required to pay more than Three Hundred Eighty-Five Thousand Dollars (\$385,000.00). In no event will any money revert to Defendant.

23. “Void Date” means the 121st day after issuance of Individual Settlement Payment checks to PAGA Affected Employees, upon which the Individual Settlement Payment checks will no longer be valid and negotiable.

## **B. Consideration**

1. No Admission of Liability. Defendant has contended and continues to contend that the allegations in the Action have no merit and do not give rise to liability. Defendant specifically denies all of the allegations in the PAGA Notice and Supplemental Notice to the LWDA, Complaint and First Amended Complaint. This Settlement Agreement is a compromise of such disputed claims. Nothing contained in this Settlement Agreement and no documents referred to herein and no action taken to carry out this Settlement Agreement may be construed or used as an

admission by or against Defendant or any of the Released Parties of any fault, wrongdoing, or liability whatsoever.

2. Monetary Settlement Components. Provided that the Court approves the Settlement and the Effective Date occurs, Defendant will pay the Total Monetary Settlement Amount of Three Hundred Eighty-Five Thousand Dollars (\$385,000.00). All amounts to be paid by Defendant shall be deposited into the Settlement Fund Account, which shall be administered by the Settlement Administrator. All amounts to be paid to anyone pursuant to this Settlement Agreement shall be paid out of the Settlement Fund Account.

- a. Attorney's Fees. In full satisfaction of all claims Plaintiff may have for attorney's fees arising out of the Action, the Parties agree that Defendant will pay Plaintiff's Counsel up to a total of 33.33% of the Total Monetary Settlement Amount in Attorney's Fees. Defendant agrees not to oppose Plaintiff's application for Attorney's Fees not to exceed this sum. The Attorney's Fees to be awarded to Plaintiff are subject to the approval of the Court and will be paid only from the Total Monetary Settlement Amount. Any portion of the Attorney's Fees not awarded to Plaintiff's Counsel will be added to the PAGA Settlement Fund. Plaintiff understands and agrees that this Agreement and Release shall remain in full force and effect even if the full amount of Attorney's Fees identified herein is not awarded by the Court.
- b. Attorney's Costs. In full satisfaction of all claims Plaintiff may have for litigation costs and expenses arising out of the Action, the Parties agree that Defendant will pay Plaintiff's Counsel up to a total of Fifteen Thousand Dollars (\$15,000.00) in actual Attorney's Costs. Defendant agrees not to oppose Plaintiff's application for Attorney's Costs not to exceed this sum. The Attorney's Costs to be awarded to Plaintiff are subject to the approval of the Court and will be paid only from the Total Monetary Settlement Amount. Any portion of the Attorney's Costs not awarded to Plaintiff's Counsel will be added to the PAGA Settlement Fund. Plaintiff understands and agrees that this Agreement and Release shall remain in full force and effect even if the full amount of Attorney's Costs identified herein is not awarded by the Court.
- c. Plaintiff's Individual Claims Release. Plaintiff shall receive the amount Five Thousand Dollars (\$5,000.00), in return for the release of his individual claims, fees and costs for providing a Complete and General Release of all claims against the Released Parties, and dismissal of any individual claims in court or in arbitration.
- d. Plaintiff's Service Award. In recognition of Plaintiff's effort and work in prosecuting the Action for the benefit of the State of California and PAGA Affected Employees, Defendant agrees to pay Plaintiff a Service Award in the amount of Five Thousand Dollars (\$5,000.00). Defendant agrees not to oppose Plaintiff's application for a Service Award not to exceed this sum. The Service Award is subject to approval of the Court and will be paid only from the Total Monetary

Settlement Amount. Any portion of the Service Award not awarded to Plaintiff will be added to the PAGA Settlement Fund. Plaintiff understands and agrees that this Agreement and Release shall remain in full force and effect even if the full amount of Plaintiff's Service Award identified herein is not awarded by the Court. The Service Award is in addition to the \$5,000 payable in connection with Plaintiff's Individual Claims Release.

- e. Settlement Administration Costs. Defendant shall pay for third-party administration fees that are necessary to administer the Settlement up to a maximum payment of Fifteen Thousand Dollars (\$15,000.00). The Settlement Administration Costs to be paid to the Settlement Administrator are subject to the Court's approval and will be paid only from the Total Monetary Settlement Amount. Any portion of the Settlement Administration Costs not awarded by the Court will be added to the PAGA Settlement Fund.
- f. PAGA Settlement Fund. The Parties agree that the remaining total of the Settlement Fund of Two Hundred Sixteen Thousand Six Hundred Seventy-Nine Dollars and 50 cents (\$216,679.50) – plus any un-awarded Attorney's Fees, Attorney's Costs, Service Award, and Settlement Administration Costs – shall be paid to PAGA Affected Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Complaint and/or First Amended Complaint in the Action with respect to PAGA Affected Employees. Pursuant to PAGA, seventy-five percent (75%) of the PAGA Settlement Fund (\$162,509.63) – plus seventy-five percent (75%) of any un-awarded Attorney's Fees, Attorney's Costs, Service Award, and Settlement Administration Costs – will be paid to the LWDA. The remaining twenty-five percent (25%) of the PAGA Settlement Fund (\$54,169.87) – plus twenty-five percent (25%) of any un-awarded Attorney's Fees, Attorney's Costs, Service Award, and Settlement Administration Costs – will be paid to all PAGA Affected Employees pursuant to the calculation method set forth in section C(13) below.

3. Plaintiff's Complete and General Release. Plaintiff, for himself only, hereby provides the Released Parties with a Complete and General Release, as defined above, which shall become effective as of the Effective Date, in consideration of Defendant's promises and agreements as set forth herein.

4. PAGA Affected Employees' Release. Upon the Effective Date, Plaintiff, on behalf of himself, the State of California, and all PAGA Affected Employees, releases the Released Parties from the PAGA Released Claims. Recognizing for purposes of this settlement that the Stewart and Story Settlements release PAGA claims prior to September 20, 2020, and the Parties stipulate that Stewart and Story releases bar PAGA claims prior to September 20, 2020, this release shall be effective for the period from September 21, 2020 through and including the date of the approval of the settlement and shall provide for payments during the Settlement Period. PAGA Affected Employees may discover facts in addition to those they now know or believe to be true with respect to the subject matter of the Released Claims, but upon the Effective Date, PAGA

Affected Employees shall be deemed to have, and by operation of the Settlement Approval order shall have, fully, finally, and forever settled and released any and all of the Released Claims, without regard to the subsequent discovery or existence of such different or additional facts. PAGA Affected Employees agree not to sue or otherwise make a claim against any of the Released Parties that seeks recovery for any of the Released Claims. It is the intent of the Parties that the Settlement Approval order entered by the Court shall have full *res judicata* effect and be final and binding upon PAGA Affected Employees regarding the Released Claims.

### **C. Settlement Administration Procedures**

1. Settlement Approval Motion. Following full execution of this Settlement Agreement, Plaintiff will promptly request a hearing before the Court to seek approval of the Settlement on a mutually available date. In conjunction with such hearing, Plaintiff's Counsel will present this Settlement Agreement to the Court and will request that the Court issue a Settlement Approval Order and Judgment (substantially in the form of the proposed Settlement Approval Order and Judgment attached hereto as **Exhibit B**) approving and incorporating by reference the terms and conditions of the Settlement Agreement. Plaintiff's Counsel will be primarily responsible for drafting all documents necessary to obtain approval of the Settlement, though the Parties will meet and confer on such materials. Defendant agrees not to oppose Plaintiff's motion for Settlement Approval unless the motion is inconsistent with the terms set forth in this Settlement Agreement.

2. No Right of PAGA Affected Employees to Object or Opt-Out. The Parties agree there is no statutory right for any PAGA Affected Employee to object, opt out or otherwise exclude himself or herself from the Settlement. Except as otherwise stated, Plaintiff will vigorously defend against any attempt by any PAGA Affected Employee or by any entity or agency to intervene in this matter or object to/opt-out of this settlement. The Parties further agree there is no right or opportunity for any PAGA Affected Employee to appeal the approval of the Settlement by the Court. The Parties will jointly defend against any appeal filed with respect to the Final Order.

3. LWDA Notice. Pursuant to California Labor Code § 2699(I), Plaintiff will provide a copy of this Settlement to the LWDA concurrently with the filing of the motion for Settlement Approval. Plaintiff will also file a declaration in support of his motion for Settlement Approval confirming that he has submitted the Settlement to the LWDA in compliance with Labor Code § 2699(I).

4. Judgment and Continued Jurisdiction. After entry of the Final Approval order and judgment, the Court will have continuing and exclusive jurisdiction solely for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement; (b) matters relating to the administration of the Settlement; and (c) such post-Judgment matters as may be appropriate under Court rules or as set forth in this Settlement Agreement.

5. Settlement Administrator. Upon approval of the Court, Plaintiff's Counsel will retain CPT Group, Inc. as the third-party Settlement Administrator to administer this Settlement. The Settlement Administrator will be responsible for: establishing the Settlement Fund Account; calculating Individual Settlement Payments; preparing, printing, and mailing the Individual

Settlement Checks and accompanying Notice to PAGA Affected Employee; disbursing payment of Attorney's Fees and Attorney's Costs to Plaintiff's Counsel; disbursing payment of the Service Award and Plaintiff's Individual Claims Release amount to Plaintiff; disbursing payment to the LWDA consisting of seventy-five percent (75%) of the PAGA Settlement Fund; printing and providing PAGA Affected Employees, Plaintiff, and Plaintiff's Counsel with IRS Forms 1099 as required under this Settlement Agreement and applicable law; providing a due diligence declaration for submission to the Court upon completion of the terms of the Settlement; and for such other tasks as the Parties mutually agree or the Court orders. The Settlement Administrator shall keep the Parties timely apprised of the performance of all Settlement Administrator responsibilities, and shall not mail any payments to Plaintiff, the LWDA, Plaintiff's counsel or any PAGA Affected Employee until the amounts are approved by the Parties. Any legally mandated tax reports, tax filings, or other tax documents required by the administration of this Settlement shall be prepared by the Settlement Administrator. Any expenses incurred in connection with such preparation shall be part of the Settlement Administration Costs.

6. PAGA Affected Employee List. On or before the Effective Date, Defendant will provide the Settlement Administrator with the PAGA Affected Employee List, which shall be used solely for the administration of this Settlement and for no other purpose, and which shall not be shared with any persons or entity not employed by the Settlement Administrator and working on the administration of this Settlement. Because PAGA Affected Employees' sensitive personal information is included in the PAGA Affected Employee List, the Settlement Administrator shall maintain the PAGA Affected Employee List securely and in confidence, maintaining the strictest standards of data privacy. Access to the PAGA Affected Employee List shall be limited to employees of the Settlement Administrator with a need to use the PAGA Affected Employee List for administration of this Settlement and the PAGA Affected Employee List shall be returned to Defendant once settlement administration is concluded.

7. Funding of the Settlement. Within fifteen (15) calendar days following the Effective Date, Defendant shall fund the Settlement by delivering the funds to the Settlement Administrator.

8. Payment of Attorney's Fees and Attorney's Costs. Within twenty (20) calendar days following the Effective Date, the Settlement Administrator shall pay from the Settlement Fund Account the Court-approved Attorney's Fees and Attorney's Costs to Plaintiff's Counsel. Plaintiff's Counsel agrees to provide the Settlement Administrator with an executed IRS Form W-9 before payments for Attorney's Fees and Attorney's Costs are issued. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff's Counsel for the payments made pursuant to this paragraph.

Neither Plaintiff's Counsel nor any other current or past counsel for Plaintiff shall be permitted to petition the Court for, or to accept, any additional payments for attorney's fees, costs, interest, or any other amount from Defendant except as specified above. Defendant's payment of the Attorney's Fees and Attorney's Costs shall constitute full satisfaction of the obligation to pay any amounts to any person, attorney, or law firm, including but not limited to Plaintiff's Counsel, or attorney's fees, expenses, and/or costs in the Action incurred by any other attorney or law firm for attorney's fees, expenses, and/or costs to which any of them may claim to be entitled on behalf

of Plaintiff and/or PAGA Affected Employees. The Parties further agree that Plaintiff's Counsel's Attorney's Fees and Attorney's Costs shall be for all attorney's fees, expenses, and/or costs, present and future, incurred in the Action by all attorneys working on behalf of Plaintiff and/or PAGA Affected Employees.

9. Payment of Service Award and Plaintiff's Individual Claims Release Amount. Within twenty (20) calendar days following the Effective Date, the Settlement Administrator shall pay from the Settlement Fund Account the Court-approved Service Award and Plaintiff's Individual Claims Release amount to Plaintiff. Plaintiff agrees to provide the Settlement Administrator with an executed IRS Form W-9 before the Service Award and Plaintiff's Individual Claims Release amount are issued. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for said payments. Plaintiff shall be solely and legally responsible for paying any and all applicable taxes on his Service Award and Plaintiff's Individual Claims Release amount and shall hold Defendant harmless from any claim or liability for taxes, penalties, or interest arising as a result of such payments. The Service Award and Plaintiff's Individual Claims Release amount shall be in addition to Plaintiff's Individual Settlement Payment, which he shall receive as a PAGA Affected Employee. Plaintiff shall not have the right to revoke his agreement to the Settlement on the grounds the Court does not approve any or all of the requested Service Award.

10. Settlement Administration Costs. Within twenty (20) calendar days following the Effective Date, the Settlement Administrator shall pay from the Settlement Fund Account the Court-approved Settlement Administration Costs.

11. Payment to LWDA. Within twenty (20) calendar days following the Effective Date, the Settlement Administrator shall issue from the Settlement Fund Account a check payable to the LWDA for seventy-five percent (75%) of the PAGA Settlement Fund.

12. Individual Settlement Payments. Within twenty (20) calendar days following the Effective Date, the Settlement Administrator shall issue from the Settlement Fund Account Individual Settlement Payments based on the twenty-five percent (25%) of the PAGA Settlement Fund to PAGA Affected Employee's last known mailing address. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the Void Date will be sent promptly via regular First Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip trace, or other search using the name, address or Social Security number of the PAGA Affected Employee involved, and will then perform a single re-mailing. Any check re-mailings will not extend the 120-day period to cash a check. Any checks issued to PAGA Affected Employees shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance and then shall become void on the 121st day after issuance, *i.e.*, the Void Date. The Parties agree that, within fourteen (14) calendar days after the Void Date, any unclaimed funds in the Settlement Fund Account as a result of the failure to cash Individual Settlement Payment checks prior to the Void Date shall be paid by the Settlement Administrator to the LWDA.

13. Calculation of Individual Settlement Payments. All PAGA Affected Employees will receive an Individual Settlement Payment. The amount of each PAGA Affected Employee's Individual Settlement Payment will be calculated based on the total number of pay periods each PAGA Affected Employee worked as an employee of Defendant in California during the Settlement Period. The precise amount of the pay period value will be calculable once the amount of the PAGA Settlement Fund is set based on the amounts approved by the Court with respect to the Attorney's Fees, Attorney's Costs, Service Award, and Settlement Administration Costs. To establish the pay period value, the Settlement Administrator will first determine the total number of pay periods worked by PAGA Affected Employees as a non-exempt employee of Defendant in California during the Settlement Period. Twenty-five percent (25%) of the PAGA Settlement Fund will then be divided by the total number of pay periods worked by PAGA Affected Employees in California during the Settlement Period to determine the pay period value. The pay period value will be rounded to the nearest cent. If there are any settlement funds remaining in the Settlement Fund Account due to rounding the pay period value to the nearest cent, those funds will be paid to the LWDA in addition to the LWDA's seventy-five percent (75%) share of the PAGA Settlement Fund. The Individual Settlement Payment to each PAGA Affected Employee will be determined by multiplying the pay period value and the total number of pay periods each PAGA Affected Employee worked in California during the Settlement Period.

14. Tax Treatment of Individual Settlement Payments and Service Award and Plaintiff's Individual Claims Release Amount. One hundred percent (100%) of each Individual Settlement Payment, and Service Award and Plaintiff's Individual Claims Release Amount shall be allocated to miscellaneous income for which an IRS Form 1099 will issue, if required by law.

15. Administration of Taxes. The Settlement Administrator will be responsible for issuing to Plaintiff, PAGA Affected Employee, and Plaintiff's Counsel Form 1099s or other tax forms as may be required by law for all amounts paid pursuant to this Settlement, and for forwarding all penalties to the appropriate government authorities.

16. Certification of Completion. Upon completion of administration of the Settlement, and if required by the Court, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties. If required by the Court, Plaintiff's Counsel shall file this declaration with the Court within seven (7) calendar days of receipt.

#### **D. Miscellaneous Provisions**

1. No Effect on Employee Benefits. Amounts paid to Plaintiff and other PAGA Affected Employees pursuant to this Settlement Agreement do not count as earnings or compensation for purposes of any benefits (e.g., 401(k) plans or retirement plans) sponsored by Defendant.

2. Tax Liability. The Parties make no representation as to the tax treatment or legal effect of the payments called for hereunder, and the Parties are not relying on any statement, representation, or calculation by any of the Parties or by the Settlement Administrator in this regard. Plaintiff understands and agrees that he will be solely responsible for the payment of any

taxes and penalties assessed on the payments described herein and will hold Plaintiff's Counsel, Defendant, the Released Parties, Defense Counsel, and the Settlement Administrator free and harmless from and against any claims resulting from treatment of such payments as non-taxable damages. Each Party to this Settlement (for purposes of this section, the "Acknowledging Party" and each Party to this Settlement Agreement other than the Acknowledging Party, an "other Party") acknowledges and agrees that: (a) no provision of this Settlement, and no written communication or disclosure between or among the Parties or their attorneys and other advisers, is or was intended to be, nor will any such communication or disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended); (b) the Acknowledging Party (i) has relied exclusively upon his, her or its own, independent legal and tax counsel for advice (including tax advice) in connection with this Settlement, (ii) has not entered into this Settlement based upon the recommendation of any other Party or any attorney or advisor to any other Party, and (iii) is not entitled to rely upon any communication or disclosure by any attorney or advisor to any other Party to avoid any tax penalty that may be imposed on the Acknowledging Party; and (c) no attorney or advisor to any other Party has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such limitation is legally binding) upon disclosure by the Acknowledging Party of the tax treatment or tax structure of any transaction, including any transaction contemplated by this Settlement Agreement.

3. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or right herein released and discharged.

4. No Pending Lawsuits By Plaintiff. Other than this Action, Plaintiff represents that he does not have any pending lawsuits, administrative complaints, or charges against Defendant or the Released Parties in any local, state, or federal court or administrative agency. Plaintiff further acknowledges that all claims raised therein, if any, shall be fully and finally extinguished by virtue of this Settlement Agreement and the Court's Settlement Approval order.

5. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the terms set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

6. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the entirety of the Parties' settlement terms, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its Exhibits other than the representations, warranties and covenants contained and memorialized in the Settlement Agreement and its Exhibits.

7. Amendment or Modification. This Agreement may be amended or modified only by a formal written instrument signed by counsel for all Parties or their successors-in-interest.

8. Authorization to Enter Into Settlement Agreement. The Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms. The person or persons signing this Settlement Agreement on behalf of Defendant represent and warrant that he/she/they are authorized to sign this Settlement Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Settlement Agreement and that he has not assigned any claim covered by this Settlement to a third party.

9. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

10. Binding on Successors and Assigns. This Settlement Agreement will be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

11. California Law Governs. All terms of this and Exhibits hereto will be governed by and interpreted according to the laws of the State of California.

12. Execution and Counterparts. This Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile, Docu-sign, PDF, and/or scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

13. Acknowledgement that the Settlement is Fair, Adequate and Reasonable. The Parties believe this Agreement is a fair, adequate and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations facilitated by an experienced wage and hour class action mediator, and in the context of adversarial litigation, taking into account all relevant factors, present and potential. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness, adequacy and reasonableness of this Settlement.

14. Captions. The captions and paragraph numbers in this Agreement are inserted for the reader's convenience, and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

15. Waiver. No waiver of any condition or covenant contained in this Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

16. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Agreement, and that this Agreement has been executed with the consent and advice of counsel, and reviewed in full. Further, Plaintiff and Plaintiff's Counsel warrant and represent that there are no liens on the Agreement.

17. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Agreement. If the Parties are unable to reach agreement on the form or content of any document needed to implement the Settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve such disagreement.

18. Publicity. The Parties agree that Plaintiff and Plaintiff's Counsel will not communicate the fact of, or the terms of, this Settlement to members of the press, including to Verdicts and Settlements. The Parties and their respective counsel also agree not to publish the fact of, or terms of, this Settlement or any related information on their website, for advertising purposes and/or in publication materials generally available to the public.

19. Notices. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Agreement shall be: (a) in writing; (b) deemed given on the third business day after mailing; and (c) sent via United States registered or certified mail, return receipt requested, addressed as follows:

| To Plaintiff:                                                                                                                                                                                           | To Defendant:                                                                                                                                                                                                                                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Nazo Koulloukian<br>Koul Law Firm<br>3435 Wilshire Blvd., Suite 1710<br>Los Angeles, CA 90010<br><br>Sahag Majarian, II<br>Law Offices of Sahag Majarian II<br>18250 Ventura Blvd.<br>Tarzana, CA 91356 | Stephen C. Tedesco<br>Littler Mendelson, P.C.<br>333 Bush Street, 34 <sup>th</sup> Floor<br>San Francisco, CA 94104<br><br>Daniel L. Gonzalez<br>Littler Mendelson, P.C.<br>2049 Century Park East, 5 <sup>th</sup> Floor<br>Los Angeles, CA 90067 |

It is hereby agreed.

Dated: 11/22/2021

**PLAINTIFF**

DocuSigned by:  
*Jose Solano*  
C03C85870E944DF...

**Jose Solano**

Dated: 11/22/21

**DEFENDANT MILGARD  
MANUFACTURING, LLC.**

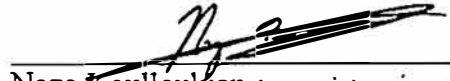
By: *Vince Prunty*

Its: Sr. Director of Human Resources

*Approved as to form:*

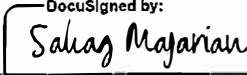
Dated: \_\_\_\_\_

**KOUL LAW FIRM**

  
\_\_\_\_\_  
Nazo Koulloukian  
Attorney for Plaintiff Jose Solano

Dated: 11/22/2021  
\_\_\_\_\_

**LAW OFFICES OF SAHAG  
MAJARIAN, II**

DocuSigned by:  
  
\_\_\_\_\_  
Sahag Majarian, II  
Attorney for Plaintiff Jose Solano

*Approved as to form:*

Dated: November 22, 2021  
\_\_\_\_\_

**LITTLER MENDELSON, P.C.**

  
\_\_\_\_\_  
Stephen C. Tedesco  
Daniel L. Gonzalez  
Attorney for Defendant Milgard  
Manufacturing, LLC.