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JOSE SOLANO on behalf of
10 himself, all aggrieved employees, and the State
of California as a Private Attorneys General
11

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **COUNTY OF VENTURA**

14
15 JOSE SOLANO, an individual, on behalf of
16 himself, all aggrieved employees, and the State
of California as a Private Attorneys General,

17 Plaintiffs,

18 vs.
19

20 MILGARD MANUFACTURING INC., a
Washington corporation, MILGARD
21 MANUFACTURING, LLC, a Delaware
22 limited liability company, MILGARD
23 WINDOWS & DOORS, an entity type
unknown, and DOES 1-50, inclusive,

24 Defendants.
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VENTURA
SUPERIOR COURT
FILED

JUN 12 2020

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

VANESSA OROZCO

BY FAX

Case No.: 56-2020-00541919-CU-OE-VTA

**REPRESENTATIVE ACTION
COMPLAINT**

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 et seq.**

1 Plaintiff JOSE SOLANO brings this PAGA representative action complaint on behalf of
2 himself, all aggrieved employees, and the State of California as a Private Attorneys General, and
3 alleges as follows:

4 NATURE OF THE ACTION

5
6 1. Plaintiff JOSE SOLANO worked as a machine operator for defendant MILGARD
7 MANUFACTURING INC., a Washington corporation, MILGARD MANUFACTURING LLC,
8 a Delaware limited liability company, MILGARD WINDOWS & DOORS, an entity type
9 unknown, and DOES 1-50 (collectively "Defendants"). Plaintiff brings this action pursuant to the
10 Private Attorneys General Act of 2004 ("PAGA"), Cal. Labor Code §2698 *et seq.*, on a
11 representative basis. All current and former hourly, non-exempt employees of Defendants in
12 California within one year of serving notice on the LWDA to the present are aggrieved
13 employees.

14 2. Defendants failed to comply with California Labor Code requirements due to
15 erroneous, willful and intentional employment practices and policies. Plaintiff brings this
16 representative action on behalf of himself, all other similarly situated aggrieved employees, and
17 the State of California, based upon the claims articulated below. Plaintiff provided notice of his
18 claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency
19 ("LWDA") as illustrated by the attached Exhibit. The LWDA has not provided any notice to
20 Plaintiff following the exhaustion of the 65-day notice period required by §2699.3(a)(2)(B).
21 Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys
22 General Act ("PAGA"), Labor Code §2698 *et seq.*

23 3. Defendants have had a consistent policy and/or practice of: (1) failing to pay for all
24 hours worked, including overtime hours worked; (2) failing to timely pay all wages owed; (3)
25 failing to provide rest breaks; (4) failing to provide complaint off-duty meal breaks; (5) failing to
26 comply with California sick pay requirements; and (6) failing to provide accurate wage
27 statements and maintain accurate payroll records. Defendants are therefore liable for civil
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1 penalties under the Cal. Labor Code, including the Private Attorney General Act ("PAGA"),
2 Labor Code §2698 *et seq.*, as described more fully herein.

3 **THE PARTIES**

4 7. Plaintiff JOSE SOLANO is a resident of the State of California and was employed as
5 an hourly, nonexempt employee of Defendants in California until October 31, 2019.

6 8. Defendants MILGARD MANUFACTURING INC., a Washington corporation,
7 MILGARD MANUFACTURING, LLC, a Delaware limited liability company, MILGARD
8 WINDOWS & DOORS, an entity type unknown, are doing business in California with the
9 capacity to sue and to be sued in the county of Ventura, State of California.

10 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
11 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through 50, but is
12 informed and believes and thereon alleges that said Defendants are legally responsible for the
13 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names,
14 Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

15 10. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or
16 indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees
17 of the representative class, and exercised control over their wages, hours, and working
18 conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all
19 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
20 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
21 attributable to the other Defendants.

22 **JURISDICTION AND VENUE**

23 11. Venue is proper in this judicial district because Defendants conduct business in this
24 county and each defendant has legal obligations to Plaintiff and many of the aggrieved
25 employees in this case that arose in this county.

26 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional limits of
27 the Superior Court and will be established according to proof at trial. Based on information,
28 investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for

1 monetary damages, penalties and attorney's fees is more than twenty-five thousand dollars (\$25,
2 000).

3 13. The California Superior Court has jurisdiction in this matter because Plaintiff is a
4 resident of California and Defendants are qualified to do business in California and regularly
5 conduct business in California. Further, there is no federal question at issue as the claims herein
6 are based solely on California law.

7 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

8 14. During the relevant time-period, Defendants committed various violations of the
9 California Labor Code as alleged below in more detail. Defendants enforce multiple policies that
10 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

11 15. Defendants MILGARD MANUFACTURING INC., a Washington corporation,
12 MILGARD MANUFACTURING, LLC, a Delaware limited liability company, MILGARD
13 WINDOWS & DOORS, an entity type unknown, manufacture windows and door products. This
14 representative action represents hundreds of current and former aggrieved employees.

15 16. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
16 to the present, Defendants engaged in unlawful employment practices that resulted in violations of
17 numerous Labor Code sections, as set forth more fully below.

18 17. Plaintiff and all current and former employees within one year of filing this action to
19 the present are aggrieved employees within the meaning of Labor Code 2699, *et seq.* (See Labor
20 code §2699(c).)

21 18. Defendants, and each of them, have committed the following violations of the
22 California Labor Code:

23 **Failure to Pay for All Hours Worked, Including Overtime Hours Worked**

24 (Cal. Labor Code §§218, 510, 1194, 1197, 1198, 2698 *et seq.*)

25 19. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 20. Section 2(G) of Wage Order 1 defines "hours worked" as "the time during which an
28 employee is subject to the control of an employer, and includes all the time the employee is

1 suffered or permitted to work, whether or not required to do so.” When employees like Plaintiff
2 and aggrieved employees earning wages at or near minimum wage do not receive payment for all
3 hours worked, including time shaved from their timecards due to employer rounding and auto-
4 deducting meal break practices, the result is that they are earning less than the statutory
5 minimum wages for all hours worked. Defendants have been engaged in many unlawful
6 employment practices which resulted in underpayment for hours worked each pay period,
7 including overtime hours worked, as more fully set forth below:

8 21. Pre-and Post-Shift Work. Plaintiff and aggrieved employees frequently worked off
9 the clock and were routinely subjected to periods of time wherein they were under the
10 Defendants’ control but not compensated for their time. Defendants engaged in timecard
11 rounding which results in uncompensated hours worked, as more fully explained below. For
12 example, during the 9/19/19 – 9/28/19 pay period, Plaintiff had 14 minutes shaved from his
13 timecard because of rounding. Further, Defendants required Plaintiff and aggrieved employees to
14 don and doff extensive protective apparel, including safety goggles, gloves, ear plugs, boots, and
15 specialized equipment work around the shoulders and chest to keep them safe. Employees are
16 required to put on this protective equipment off the clock. After donning their protective apparel,
17 employees walk approximately seven minutes into the factory where the time clock is located to
18 finally clock in. Defendants have violated Labor Code §§510, 1194, and 1198, and Wage Order
19 1. Defendants are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

20 22. Work Performed During Unpaid Meal Periods. As more fully set forth below,
21 Defendants failed to permit Plaintiff and others to take timely, off-duty, first and second meal
22 breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of
23 Labor Code §§226.7 and 512. Plaintiff and aggrieved employees were provided a first meal
24 period of 45 minutes, and missed their second meal period numerous times each week.
25 Employees clock in and out for their meal periods. Because Defendants round timecard entries,
26 time has been shaved from employee timecards where employees have been subject to their
27 employer’s control but unpaid. Plaintiff and aggrieved employees have been employed under
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conditions prohibited by the wage order, and thus Defendants have violated §1198. Defendants are liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

23. Time Shaving and Rounding. Defendants round employee timecard entries to the nearest ¼ hour, although Defendants use a high-tech timekeeping system that could easily capture the exact minute employees present for work. Below is a screenshot from Plaintiff's time punch data from his employee file, illustrating that all time hours worked are rounded to the nearest 15 minutes. The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face' and 'it is used in such a manner that will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.'" (*Troester v. Starbucks Corp.*, (2018) 5 Cal. 5th 829, 846 citing *See's Candy*, 210 Cal. App. 4th at p. 907.) The policy utilized by Defendants is neither fair nor neutral, as it consistently shaved time from Plaintiff and aggrieved employees' hours worked,

Solano, Jose H 0314954
10/02/2019 - 11/03/2019, Selected Employee(s) Selected
range of dates

Date	Schedule	In	Transfer	Out	In	Transfer	Out	Time Code	Amount	Shift	Daily	Range
Tue 10/01/2019	4:00PM-12:30AM											
Wed 10/02/2019	4:00PM-12:30AM	3:58PM		8:30PM	9:15PM		3:24AM			10.75	10.75	10.75
Thu 10/03/2019	4:00PM-12:30AM	3:58PM		8:30PM	9:15PM		3:38AM			11.0	11.0	21.75
Fri 10/04/2019								MGD-ABSEN	8.0		8.0	29.75
Fri 10/04/2019	4:00PM-12:30AM											
Sat 10/05/2019												29.75
Sun 10/06/2019												29.75
Mon 10/07/2019	4:00PM-12:30AM	4:55 PM		9:36PM	10:20PM		3:41AM			10.0	10.0	39.75
Tue 10/08/2019	4:00PM-12:30AM	3:58PM		8:30PM	9:15PM		12:41AM			8.0	8.0	47.75
Wed 10/09/2019	4:00PM-12:30AM	3:58PM		8:30 PM						4.5	4.5	52.25
Thu 10/10/2019	4:00PM-12:30AM	3:56PM		8:30PM	9:15PM		11:09PM			6.5	6.5	58.75

1 resulting in a failure to compensate Plaintiff and aggrieved employees for all hours and overtime
2 hours worked.

3
4 24. Failure to Pay Wages – Required Minimum Wage. Defendants failed to pay Plaintiff
5 and aggrieved employees for all hours worked as a result of Defendants’ practice of rounding
6 timecard entries when employees clocked in and out for meal periods. Based on Defendants’
7 unlawful conduct described above, and because Plaintiff and the aggrieved employees were paid
8 at or near minimum wage, Defendants’ failure to pay for all hours worked, including overtime,
9 resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor
10 Code §§1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Defendants are liable for civil
11 penalties pursuant to Labor Code §2698 *et seq.*

12 25. Failure to Pay Overtime Wages. Defendants have required Plaintiff and others to
13 work hours in excess of eight (8) hours in a day and 40 in a week, but has not paid these
14 employees overtime compensation at one and one-half times the regular rate of pay in violation
15 of Labor Code §510. Further, Plaintiffs and employees have been required to work in excess of
16 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510.
17 Here, Defendants provide employees were nondiscretionary bonuses, but fail to include these
18 bonuses in the regular rate of pay for purposes of calculating overtime. Moreover, because
19 Defendants shave time from employee timecards due to rounding, Plaintiff and aggrieved
20 employees have been denied overtime pay. Plaintiff and others have been denied “the unpaid
21 balance of the full amount of this . . . overtime compensation” as required by Cal. Labor Code
22 §1194. Defendants are liable for civil penalties pursuant to Labor Code §2698 *et seq.*

23 **Failure to Timely Pay Final Wages**

24 (Cal. Labor Code §§201, 202, 203, 256, and 2698 *et seq.*)

25 26. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporate said paragraphs herein by reference.

27 27. Labor Code section 201 states, in pertinent part, “If an employer discharges an
28 employee, the wages earned and unpaid at the time of discharge are due and payable

1 immediately." Labor Code section 202 states, in pertinent part, "If an employee not having a
2 written contract for a definite period quits his or her employment, his or her wages shall become
3 due and payable not later than 72 hours thereafter, unless the employee has given 72 hours
4 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
5 wages at the time of quitting." Labor Code section 203 provides that an employee's wages shall
6 continue as a penalty from when they first become due at the same rate until paid for up to 30
7 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance
8 with Labor Code section 201 or 202. Labor Code section 256, in pertinent part, provides that a
9 civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the
10 terms of section 203.

11 28. Defendants willfully failed to pay Plaintiff and aggrieved employees all wages due
12 and owing upon separation of employment including, but not limited to, all earned regular and
13 overtime wages. By furnishing Plaintiff and other separated aggrieved employees with a final
14 check that failed to include all earned and owed wages, Defendants violated Labor Code
15 Sections 201 and/or 202.

16 29. Pursuant to §203, Plaintiff and similarly situated individuals are now also entitled to
17 recover up to thirty (30) days of wages due to Defendants' "willful" failure to comply with the
18 statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Defendants
19 violated §§201, 202 and 203, Defendants are liable for civil penalties pursuant to Cal. Lab. Code
20 § 2698 *et. seq.*

21 30. Failure to Pay All Wages Owed Twice Per Month. Defendants were required to pay
22 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant
23 to Labor Code §204(a). Defendants failed to pay all wages earned to employees as a result of the
24 unlawful employment policies and practices discussed herein. In addition, employees received
25 nondiscretionary bonuses that were not properly calculated and included into the pay period in
26 which the bonus was earned. As a result of these practices, Plaintiff and aggrieved employees
27 were underpaid for hours worked, including overtime and penalty wages, and this underpayment
28 resulted in a failure to pay all wages owed twice per month.

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31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

33. Although employees frequently worked shifts up to 12 hours long, Plaintiff and aggrieved employees never received a required third rest break. Defendants failed to pay Plaintiff and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7(b) for these missed rest periods. As a derivative claim, Plaintiffs also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §§558 and 2698 *et seq.*

§558 Civil Penalty for Violation of §512 Meal Break Requirements

35. Plaintiff reasserts and alleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

36. Defendants failed to maintain a complaint meal period policy and practice.

Defendants failed to provide all of its hourly employees with their right to take an off-duty

1 unpaid 30-minute second meal period. Labor Code §512 and Wage Order 1-2001 11(B) provide
2 that an employer may not employ an employee for a work period of more than ten (10) hours per
3 day without providing the employee with a second meal period of not less than 30 minutes.
4 Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any
5 meal . . . period mandated by an applicable order of the Industrial Welfare Commission.”
6 Paragraph 11(C) of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved
7 of all duty during a 30 minute meal period, the meal period shall be considered an ‘on duty’ meal
8 period and counted as time worked.” Labor Code §1198 makes it unlawful for an employer to
9 employ an employee for longer hours than those fixed by the wage order or under conditions of
10 labor prohibited by the order.

11 37. Plaintiff and aggrieved employees frequently worked shifts of more than 10 hours
12 without receiving their required second meal period. Plaintiff estimates that he was denied his
13 second meal period two to three times per week.

14 38. Defendants failed to permit Plaintiff and others to time timely, off-duty meal breaks
15 of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
16 §§226.7 and 512. Moreover, because Defendants failure to provide meal periods violates a Wage
17 Order, Defendants are liable under Labor Code §1198. As a derivative claim, Plaintiff and
18 aggrieved employees allege that pay statements were inaccurate, failing to include required meal
19 period penalties, thus failing the requirements of Labor Code §226(a). As a result of these
20 violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §2698 *et seq.*

21 **Civil Penalties for Failure to Comply with California Sick Pay Requirements**

22 (Cal. Labor Code §§246, 247.5, 248.5 and 2698 *et seq.*)

23 39. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporate said paragraphs herein by reference.

25 40. California Labor Code §246 provides that “[a]n employee who, or after July 1, 2015,
26 works in California for the same employer for 30 or more days within a year from the
27 commencement of employment is entitlement to paid sick days.” §246(a)(1). Further, “[a]n
28 employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours

1 worked, beginning at the commencement of employment or the operative date of this article,
2 whichever is later, subject to the use and accrual limitations set forth in this section.” §246(b)(1).

3 41. Labor Code § 247.5(a) states: “An employer shall keep for at least three years records
4 documenting the hours worked and paid sick days accrued and used by the employee, and shall
5 allow the Labor Commissioner to access these records pursuant to the requirements set forth in
6 Section 1174. An employer shall make these records available to an employee in the same
7 manner as described in Section 226. If an employer does not maintain adequate records pursuant
8 to this section, it shall be presumed that the employee is entitled to the maximum number of
9 hours accruable under this article, unless the employer can show otherwise by clear and
10 convincing evidence.”

11 42. Defendants have failed to provide required California paid sick days and further
12 failed to distribute and maintain required documentation concerning how many sick dates were
13 available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. Defendants failed to
14 provide Plaintiff and other aggrieved employees with this information on paystubs, and no other
15 documents concerning California Sick Pay accompanied the employees’ pay. Defendants are
16 liable for damages pursuant to §§248.5 and 2698 *et seq.*

17 **Civil Penalties for Failure to Furnish and Maintain Accurate Payroll Records**

18 (Cal. Labor Code §§ 226, 226.3, 1174, 2698 *et seq.*)

19 43. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
20 incorporate said paragraphs herein by reference.

21 44. California Labor Code § 226(a) provides that “[e]very employer shall, semimonthly
22 or at the time of each payment of wages, furnish each of his or her employees...an accurate
23 itemized statement in writing showing (1) gross wages earned, (2) total hours worked..., (3) the
24 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
25 piece-rate basis, (4) all deductions ... , (5) net wages earned, (6) the inclusive dates of period for
26 which the employee is paid, (7) the name of the employee and his or her social security
27 number..., (8) the name and address of the legal entity that is the employer, and (9) all applicable
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hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

45. Labor Code § 1174 provides that “[e]very employer employing labor in this state shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the ages of all minors [and] (d) [k]eep 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 two years.”

46. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees and maintain accurate records, in accordance with Labor Code §§226 and 1174. As depicted in the sample wage statement below, Defendants failed to accurately reflect actual gross wages earned, including overtime and meal/rest premiums, total hours worked, and California sick pay requirements. Further, there are many confusing time entries. For example, there is an entry for “Shift Premium Overtime” paying for 9.75 hours at a rate of \$1 per hour. Somehow that adds up to \$14.63 on the timecard.

Company Information						
Name				Address		
Migard Manufacturing Incorporated				9010 54th Avenue East Tacoma, WA 98424 United States of America		
Payroll Information						
Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number	
Jose Salas	6314354	06/23/2019	07/06/2019	07/12/2019		
Current and YTD Totals						
Balance Period	Hours Worked	Gross Pay	Pre-Tax Deductions	Taxes	Post Tax Deductions	Net Pay
Current	74.55	1,258.95	0.00	262.17	0.00	996.78
YTD	273.52	3,500.23	0.00	717.00	0.00	2,783.23
Earnings						
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
Holiday	06/23/2019 - 07/06/2019	8.00	13.50	108.00	8.00	108.00
Overtime (& FLSA Premium)	06/23/2019 - 07/06/2019	9.75	8.75	85.82	18.00	121.51
Overtime	06/23/2019 - 07/06/2019	9.75	13.50	131.63	18.00	243.01
Regular	06/23/2019 - 07/06/2019	64.75	13.50	874.13	297.50	2,801.25
Shift Premium	06/23/2019 - 07/06/2019	64.75	1.00	64.75	199.50	199.50
Shift Premium Overtime	06/23/2019 - 07/06/2019	9.75	1.00	14.63	18.00	27.01
Total:				1,258.95		3,500.23

1 47. Such failures caused injury to Plaintiff and others, by, among other things, impeding
2 them from knowing the total hours worked and the amount of wages to which they are and were
3 entitled. Defendants knowingly and intentionally failed to itemize the gross wages earned, net
4 wages earned, and total hours worked. Defendants are liable for civil penalties pursuant to Labor
5 Code §2698 *et seq.*

6 48. Labor Code § 226.3 provides, “[a]ny employer who violates subdivision (a) of
7 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
8 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
9 for each violation in a subsequent citation, for which the employer fails to provide the employee
10 a wage deduction statement or fails to keep the records required in subdivision (a) of Section
11 226. The civil penalties provided for in this section are in addition to any other penalty provided
12 by law.”

13 49. Defendants are liable for civil penalties under §226.3 for violation of §226(a).

14 50. Plaintiff alleges on information and belief that Defendants knowingly and
15 intentionally failed to furnish aggrieved employees with accurate itemized statements for each
16 pay period that they worked and failed to maintain accurate payroll records of the aggrieved
17 employees as mandated by Labor Code §226.

18 51. Defendants failed to timely furnish final wages upon separation as required under
19 Labor Code §§201-202 and failed to pay resulting waiting time penalties when final wages were
20 ultimately paid. As a result, Defendants issued inaccurate final wage statements to aggrieved
21 employees.

22 52. Inaccuracies in the wage statements and payroll records were also caused, among
23 other reasons, by Defendants’ unlawful timekeeping practices that resulted in underreporting
24 hours worked, including overtime hours worked, resulting from missed and interrupted meal
25 periods. Plaintiff alleges on information and belief that as a result of Defendants’ conduct,
26 aggrieved employees sustained damages. As such, aggrieved employees are entitled to civil
27 penalties pursuant to §§226.3 and 2698 *et seq.*
28

1 53. Through this representative action, Plaintiff will advance the interests of hundreds of
2 current and former employees, such that joinder is impracticable. These current and former
3 employees can be readily be identified through a review of Defendants' payroll records and the
4 records of the company that handles payroll for Defendants.

5 54. Plaintiff seeks to recover the PAGA civil penalties through a representative action
6 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
7 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

8 **FIRST CAUSE OF ACTION**

9 **Against All Defendants for Violation of the Private Attorneys General Act ("PAGA")**
10 **(California Labor Code §2698 *et seq.*)**

11 55. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
12 incorporate said paragraphs herein by reference.

13 56. Plaintiff is an "aggrieved employee" under PAGA, as he was employed by
14 Defendants during the applicable statutory period and suffered one or more of the Labor Code
15 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all
16 other current and former aggrieved employees of Defendants, the civil penalties provided by
17 PAGA, plus reasonable attorneys' fees and costs.

18 57. Plaintiff seeks to recover the PAGA civil penalties through a representative action
19 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
20 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

21 58. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
22 Code provisions:

- 23 a. Failure to Pay for All Hours Worked, Including Overtime Hours Worked (Cal.
24 Lab. Code §§218, 510, 1194, 1197, 1198, 2699 *et seq.*);
- 25 b. Failure to Timely Pay All Wages Owed (Cal. Lab. Code §§201, 202, 203, 256,
26 558, 2698 *et seq.*);
- 27 c. Failure to Provide Rest Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 1198,
28 2698 *et seq.*);

- d. Failure to Provide Uninterrupted Meal Breaks (Cal. Lab. Code §§226, 226.7, 512, 558, 2698 *et seq.*);
- e. Failure to Comply with California Sick Pay Requirements (Cal. Lab. Code §§246, 247.5, 248.5, 2698 *et seq.*); and
- f. Failure to Provide Accurate Itemized Wage Statements and Maintain Accurate Records (Cal. Lab. Code §§ 226, 226.3, 1174, 1174.5, 2698 *et seq.*).

59. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

60. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

61. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

62. Plaintiff and the other current and former employees of Defendants are aggrieved employees. They were or are employed by Defendants, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

63. At the time of each violation, Defendants employed one or more employees.

64. As a result of the aforesaid wrongful and illegal conduct of Defendants, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

1 65. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
2 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
3 Workforce Development Agency ("LWDA") and served by certified mail upon Defendants,
4 Plaintiff through counsel notified the LWDA and Defendants of the specific Labor Code
5 provisions that Defendants have violated. The LWDA did not respond to Plaintiff's Notice
6 within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies.
7 Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims in this action on
8 behalf of aggrieved employees and the State of California.

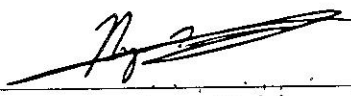
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays
11 for judgement against Defendants as follows:

- 12 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
13 determined at trial, but at least the jurisdictional amount of this Court;
14 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
15 §2699(g) and/or other applicable law;
16 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
17 law;
18 4. Pre-judgement and post-judgement interest as provided by law; and
19 5. Such other and further relief that the Court may deem just and proper.

20 DATED: May 28, 2020

KOUL LAW FIRM

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24 BY: Nazo Koulloukian, Esq.
25 Attorneys for Plaintiff JOSE SOLANO, and all
26 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

March 16, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Milgard Manufacturing Incorporated
1010 54th Avenue East
Tacoma, WA 98424

Milgard Windows & Doors
355 E. Easy Street
Simi Valley, CA 93065

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Jose Solano
Employer: Milgard Manufacturing Incorporated dba Milgard Windows &
Doors

Dear Sir or Madam:

Jose Solano has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM, and Sahag Majarian of Law Offices of Sahag Majarian II, to represent them, and all other aggrieved employees, for wage and hour claims against their former employer, Milgard Manufacturing Incorporated dba Milgard Windows & Doors (hereafter “Employer.”)

Employer requires employees to work under conditions that violate California wage and hour laws, including underpaying low-wage earners. This PAGA representative action would represent hundreds of current and former employees. Claimant worked for Employer until October 31, 2019.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the

State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 1194, 1197, 1198, 2699 *et seq.*)

Section 2(G) of Wage Order 1 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and their coworkers earning wages at or near minimum wage do not receive payment for all hours worked, including time shaved from their timecards due to employer rounding and auto-deducting meal break practices, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Pre- and Post-Shift Work

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. Employer engaged in timecard rounding which results in uncompensated hours worked, as more fully explained below. For example, during the 9/15/19 – 9/28/19 pay period, Claimant had 14 minutes shaved from his timecard because of rounding. Further, Employer requires Claimant and aggrieved employees to don and doff extensive protective apparel, including safety goggles, gloves, ear plugs, boots, and specialized equipment work around the shoulders and chest to keep them safe.

Employees are required to put on this protective equipment off the clock. After donning their protective apparel, employees walk approximately 7 minutes into the factory where the time clock is located to finally clock in. Employer has violated Labor Code §§510, 1194, and 1198, and Wage Order 1. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, first and second meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees were provided a first meal period of 45 minutes, and missed their second meal period numerous times each week. Employees clock in and out for their meal periods. Because Employer rounds time card entries, time has been shaved from employee timecards that Employees have been subject to their employer’s control but

unpaid. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Time Shaving and Rounding

Employer rounds employee timecard entries to the nearest ¼ hour, although Employer uses a high-tech timekeeping system that could easily capture the exact minute employees present for work. Below is a screenshot from Claimant's time punch data from his employee file, illustrating that all time hours worked are rounded to the nearest 15 minutes.

Employee and Hours ID# Date Comment

Solano, Jose H 0314954

10/02/2019 - 11/03/2019, Selected range of dates 1 Employee(s) Selected

Date	Schedule	In	Transfer	Out	In	Transfer	Out	Pay Code	Amount	Shift	Daily	Period
Tue 10/01/2019	4:00PM-12:30AM											
Wed 10/02/2019	4:00PM-12:30AM	3:56PM		8:30PM	9:16PM		3:24AM			10.75	10.75	10.75
Thu 10/03/2019	4:00PM-12:30AM	3:56PM		8:30PM	9:15PM		3:39AM			11.0	11.0	21.75
Fri 10/04/2019								MGD Absent	8.0		8.0	29.75
Fri 10/04/2019	4:00PM-12:30AM											
Sat 10/05/2019												29.75
Sun 10/06/2019												29.75
Mon 10/07/2019	4:00PM-12:30AM	4:55 PM		9:35PM	10:20PM		3:41AM			10.0	10.0	39.75
Tue 10/08/2019	4:00PM-12:30AM	3:58PM		8:30PM	9:16PM		12:41AM			8.0	8.0	47.75
Wed 10/09/2019	4:00PM-12:30AM	3:58PM		8:30 PM						4.5	4.5	52.25
Thu 10/10/2019	4:00PM-12:30AM	3:56PM		8:30PM	9:15PM		11:00PM			6.5	6.5	58.75

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a "rounding policy only 'if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time

they have actually worked.”” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimants and aggrieved employees for all hours worked as a result of Employer’s practice of rounding timecard entries when employees clocked in and out for meal periods. Based on Employer’s unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer’s failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 1-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Pay Overtime Wages

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Claimants and employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. Here, Employer provides employees with nondiscretionary bonuses, but fails to include these bonuses in the regular rate of pay for purposes of calculating overtime. Moreover, because Employer shaves time from employee timecards due to rounding, Claimant and aggrieved employees have been denied overtime pay. Claimant and others have been denied “the unpaid balance of the full amount of this... overtime compensation” as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201-203, 256, and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code section 202 states, in pertinent part, “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.”

Labor Code section 203 provides that an employee’s wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. In addition, employees received nondiscretionary bonuses that were not properly calculated and included into the pay period in which the bonus was earned. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 2698 et seq.

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer is required to authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 1-2001 12(A).

Although employees frequently worked shifts up to 12 hours long, Claimant and aggrieved employees never received a required third rest break. Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimants

also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Uninterrupted Meal Breaks & Second Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute second meal period. Labor Code §512 and Wage Order 1-2001 11(B) provide that 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. Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(C) of the Wage Orders provides, in pertinent part, "[u]nless an 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."

Claimant and aggrieved employees frequently worked shifts of more than 10 hours without receiving their required second meal period. Claimant estimates that he was denied his second meal period 2-3 times per week.

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, claimants allege that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Required California Paid Sick Days

(Cal Labor Code §§246, 247.5, 248.5, 2699 *et seq.*)

Claimant and employees allege that Employer failed to provide required California paid sick days and further failed to distribute and maintain required documentation concerning how many sick days were available, in violation of Labor Code §§246, 246(a), 246(b)(1), and 247.5. Claimant now seeks damages pursuant to §§248.5 and 2699 *et seq.*

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimants and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. As depicted in the sample wage statement, below,Employer fails to state..... have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, total hour worked, and California sick pay requirements.

As illustrated by Claimant's paystub below, there are many confusing time entries. For example, there is an entry for "Shift Premium Overtime" paying for 9.75 hours at a rate of \$1 per hour. Somehow, that adds up to \$14.63 on the timecard.

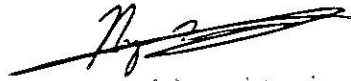
Company Information						
Name			Address			
Milgard Manufacturing Incorporated			1310 54th Avenue East Tacoma, WA 98424 United States of America			
Payroll Information						
Name	Employee ID	Pay Period Begin	Pay Period End	Check Date	Check Number	
José Salazar	0014254	06/23/2019	07/06/2019	07/12/2019		
Current and YTD Totals						
Balance Period	Hours Worked	Gross Pay	Pre-Tax Deductions	Taxes	Post Tax Deductions	Net Pay
Current	74.50	1,258.96	0.00	262.17	0.00	\$996.79
YTD	725.50	3,500.29	0.00	717.50	0.00	2,782.79
Earnings						
Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
Holiday	06/23/2019 - 07/06/2019	8.00	13.50		108.00	108.00
Overtime (1/2 FLSA Premium)	06/23/2019 - 07/06/2019	9.75	8.75		88.62	121.51
Overtime	06/23/2019 - 07/06/2019	9.75	13.50		131.63	243.01
Regular	06/23/2019 - 07/06/2019	64.75	13.50		874.13	2,601.26
Shift Premium	06/23/2019 - 07/06/2019	64.75	1.00		64.75	199.50
Shift Premium Overtime	06/23/2019 - 07/06/2019	9.75	1.00		14.63	27.01
Total:				1,258.96		3,500.29

Such failures caused injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq*.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.
Sahag Majarian, II, Esq.,
Attorney for Claimant

Cc:

Sahag Majarian, Esq.
Law Offices of Sahag Majarian II
18250 Ventura Blvd.
Tarzana, CA 91356