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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF VENTURA

LUIS ESCOBEDO, an individual, on behalf
of himself and other similarly aggrieved
employees and the State of California,¹

Plaintiff,

vs.

MILGARD MANUFACTURING, LLC.; a
Delaware limited liability company; and
DOES 1-50,

Defendants.

Unlimited Jurisdiction

Case No.: 2023CUOE016619

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

B. F. A.

¹ This First Amended Complaint adds Miguel Arias as a named plaintiff.

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1 Plaintiffs Luis Escobedo and Miguel Arias ("Plaintiffs"), on behalf of themselves and all
2 other similarly aggrieved employees and the State of California, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs, as a proxies for the State of California, bring a representative law
5 enforcement action under the Private Attorneys General Act of 2004 ("PAGA"), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendant Milgard Manufacturing LLC.
7 and DOES 1-50. Defendant Milgard Manufacturing LLC and the DOE Defendants are collectively
8 referred to herein as "Defendants." On behalf of themselves and other similarly aggrieved
9 employees, Plaintiffs seek to recover civil penalties (75% payable to the Labor Workforce
10 Development Agency and 25% payable to aggrieved employees) owed by Defendants under Labor
11 Code Section 2699 for failure to pay minimum and overtime wages, failure to provide legally
12 compliant meal and rest periods, failure to obtain Plaintiffs' and other similarly aggrieved
13 employees' consent or authorization for payment of final wages through a payroll card program;
14 failure to provide an alternative payment method other than through a payroll card; failure to
15 compensate Plaintiff and other aggrieved employees in a form that may be cashed, without delay,
16 and without a fee or discount; failure to failure to reimburse business expenses; failure to provide
17 legally compliant wage statements; failure to pay all wages twice per month; failure to maintain
18 accurate business records; failure to provide a day's rest in seven; failure provide safe working
19 conditions free of excessive heat; failure to properly accrue and pay sick pay; failure to maintain
20 accurate records; failure to pay reporting time pay; and failure to timely pay all wages upon
21 cessation of employment.

22 **JURISDICTION AND VENUE**

23 2. Venue is proper in the County of Ventura because work was performed by
24 aggrieved employees for Defendants in the County of Ventura, including in the city of Simi Valley,
25 California, and the legal obligations of Defendants to Plaintiff and other aggrieved employees were
26 breached throughout California, including in Ventura County.

27 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a

1 resident of California, Defendants are qualified to do business in California and Defendants
2 regularly conduct business in California. Further, there is no federal question at issue as the claims
3 herein are based solely on California law.

4 **THE PARTIES**

5 **A. Plaintiffs**

6 4. Plaintiff Escobedo and Plaintiff Arias are over the age of eighteen, and at times
7 mentioned in this complaint, were residents of California. During the one-year period preceding
8 the notification of their respective claims under the PAGA to Defendants and Labor Workforce
9 and Development Agency (the "LWDA"), Plaintiffs were employed by Defendants in California
10 as hourly paid non-exempt employee at Defendants' location in Simi Valley, California.

11 5. Plaintiffs seek to represent similarly situated persons who are aggrieved employees.
12 Aggrieved employees are persons who, at any time since the date one year before the date of
13 Plaintiffs' letters notifying Defendants and the LWDA of the alleged violations, were employed
14 as non-exempt hourly paid employees by Defendants in California and subjected to the violations
15 of the following California laws: Labor Code Sections 200, 201-203, 204, 206, 206.5, 210, 212,
16 213, 216, 218, 218.5, 218.6, 221, 223, 226, 226.7, 245-248.5, 500, 510, 511, 512, 551, 552, 558,
17 1174, 1194, 1194.2, 1197, 1197.1, 1197.2, 1198, 1199, 2800, and 2802, and the applicable
18 Industrial Welfare Commission ("IWC") Wage Orders, including, Wage Order 1-2001.

19 6. As such, Plaintiffs appear in this action on behalf of themselves and on behalf of
20 all other similarly aggrieved employees and the State of California.

21 **B. Defendants**

22 7. Plaintiffs are informed and believe, and thereon allege, that Defendant Milgard
23 Manufacturing LLC is a Delaware corporation with its principal place of business in Tacoma,
24 Washington. As part of its business, Defendant Milgard Manufacturing LLC manufactures and
25 sells residential and commercial windows and doors to clients throughout the United States,
26 including in California. Defendant Milgard Manufacturing LLC also has
27 manufacturing/production operations in several locations throughout California, including in the

1 city of Simi Valley, California.

2 8. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of
3 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but are
4 informed and believe and thereon allege that said Defendants are legally responsible for the
5 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
6 Plaintiffs will amend this complaint to allege the true names and capacities of the DOE Defendants
7 when ascertained.

8 9. Plaintiffs are informed and believe and thereon allege that each Defendant acted in
9 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
10 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
11 Defendant are legally attributable to one or more of the other Defendants.

12 **FACTS RELEVANT TO PLAINTIFF'S CLAIMS**

13 ***Unpaid Minimum and Overtime Wages***

14 10. Throughout Plaintiffs' employment, Defendants employed Plaintiffs and other
15 similarly aggrieved employees subject to Labor Code Sections 510, 1194 and 1197 and the
16 applicable Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order 1-2001.
17 Under Labor Code Section 1197 and subsection 4 of Wage Order 1, Plaintiffs and other similarly
18 aggrieved employees were entitled to receive minimum wages for all hours worked. Likewise,
19 subsection 3 of Wage Order 1 entitled Plaintiffs and other similarly aggrieved employees to
20 overtime wages for all hours worked over 8 hours per day or 40 hours per week. Section 3 of Wage
21 Order 1 further provides that overtime shall be compensated at one and one-half (1 ½) times the
22 employee's regular rate of pay for all hours worked in excess of eight (8) hours up in any workday
23 or more than forty (40) hours in any workweek and double the employee's regular rate of pay for
24 all hours worked over twelve (12) hours in any one workday. As alleged below, Defendants failed
25 to pay all wages for all hours worked in violation of Labor Code Sections 1194 and 1197 and Wage
26 Order 1.

27 11. Defendants' violations of the applicable IWC Wage Orders constitute a violation

1 of Labor Code Section 558, which imposes civil penalties upon an employer for a violation relating
2 to any provision regulating hours and days of work in any order of the IWC. Labor Code Section
3 558(a)(1) and (2). Defendants' violations of Wage Order 1-2001(3) and (4) also constitute a
4 violation of Labor Code Sections 1198 and 1199, which prohibits employment under conditions
5 of labor that violate the IWC Wage Orders and subject Defendants to additional civil penalties.
6 See Wage Order 1-2001(18).

7 12. Throughout Plaintiffs' employment, Plaintiffs and other similarly aggrieved
8 employees were required to don Personal Protection Equipment ("PPE") such as a helmet, gloves,
9 eyewear, and jacket, among other items, before clocking in to begin their shift. Some of the PPE
10 was dispensed using a machine similar to a vending machine. As a result, Plaintiffs and other
11 similarly aggrieved employees arrived at least 5-10 minutes before their scheduled shift to collect
12 the required PPE from the vending machine. Because there were only approximately 3 machines
13 available to Defendants' entire workforce at Plaintiffs' location, Plaintiffs and other similarly
14 aggrieved employees had to line up to use the machines. However, Defendants did not compensate
15 Plaintiffs and other similarly aggrieved employees for these 5-10+ minutes of pre-shift work and
16 only compensated them according to their scheduled start time.

17 13. In addition, from approximately May 2020 to sometime towards the end of 2022,
18 Plaintiffs and other similarly aggrieved employees were required to undergo a Covid-19 health
19 screening prior to entering Defendants' facilities. During the screening, Plaintiffs were required to
20 fill out a questionnaire form and submit to a temperature check. The entire process lasted between
21 2-5 minutes. However, Defendants did not compensate Plaintiffs and other similarly aggrieved
22 employees for this pre-shift time spent on Covid-19 health screening activity and only
23 compensated them according to their scheduled start time. On information and belief, Plaintiffs
24 allege that Defendants implemented the same Covid-19 protocols at all of its facilities in
25 California.

26 14. Further, Plaintiffs and other similarly aggrieved employees were required to report
27 for work but were not provided with work and/or furnished less than half said employee's usual or
28

1 scheduled day's work. Individuals were also not paid for at least two hours' worth of work at their
2 regular rate of pay when owed same. Defendant violated Wage Orders 1-2001 and 4-2001, Cal.
3 Code Regs., tit. 8, § 11040, subds. 5(A) and (B).

4 ***Failure to Comply with California Law Concerning Payment for All Hours Worked***

5 15. The Wage Orders define "hours worked" as "the time during which an employee is
6 subject to the control of an employer, and including all the time which an employee is subject to
7 the control of an employer, and including all the time the employee is suffered or permitted to
8 work, whether or not required to do so." Defendant has been engaged in many unlawful
9 employment practices which resulted in underpayment for hours worked each pay period,
10 including overtime hours worked at the regular rate of pay, as more fully set forth below.

11 16. Defendant manned its vehicles with, at a minimum, a driver and an assistant.
12 Aggrieved Employees working as drivers and assistants were required to arrive at the Defendant's
13 warehouse and wait in line to clock in on one of Defendant's timeclocks with the many other
14 employees that came on shift at the same time. During their shift, Aggrieved Employees working
15 as drivers and assistants were required to work off the clock during the unpaid 45-minute first meal
16 periods due to the press of work. Additionally, when they reached the 10-hour mark of their shift,
17 if they had additional work they are required to complete, Aggrieved Employees working as
18 drivers and assistants would clock out and continue working because if they did not clock out,
19 Defendant would automatically deduct another 45 minute meal period from their wages.

20 17. Defendant's conduct described herein violates Labor Code §§ 200, 206, 206.5, 216,
21 221, 223, 226, 500, 511 1197 and 1198, and the Applicable Wage Orders. Therefore, pursuant to
22 Labor Code §§ 203, 218, 218.5, 218.6, 226, 558, 1194 and 1194.2, Plaintiff and other Aggrieved
23 Employees are entitled to recover damages for the nonpayment of wages of all their worked hours
24 in addition to penalties, attorneys' fees, expenses, and costs of suit. As a result of these ongoing
25 violations, Defendant is liable for, among other things, civil penalties pursuant to Labor Code §§
26 558 & 2698 et seq.

27 ***Violations of California Meal and Rest Period Requirements***

1 18. Under Labor Code Sections 226.7 and 512, and the applicable Wage Orders,
2 including Wage Order 1-2001(11), Plaintiffs and other similarly aggrieved employees were
3 entitled to an uninterrupted meal period of at least 30 minutes for each workday they worked more
4 than 5 hours in any workday. Defendants were required to allow Plaintiffs and other similarly
5 aggrieved employees to take their meal break before the 5th hour of work. Labor Code Section
6 226.7 and the applicable Wage Orders, including Wage Order 1, further entitle Plaintiffs and other
7 similarly aggrieved employees to rest periods of at least 10 minutes for each four-hour period of
8 work, or a major fraction thereof. Additionally, "If an employer fails to provide an employee a
9 meal... period in accordance with state law, ..., the employer shall the employee one additional
10 hour of pay at the employee's *regular rate of compensation* for each workday that the meal
11 period... is not provided." Wage Order 1-2001(11), (12) (same re rest periods) (emphasis added);
12 see also Labor Code section 226.7(c) ("If an employer fails to provide an employee a meal or rest
13 or recovery period in accordance with state law, ..., the employer shall pay the employee one
14 additional hour of pay at the employee's *regular rate of compensation* for each work day that the
15 meal or rest period is not provided." (Emphasis added)). Defendants' violations of the applicable
16 IWC Wage Orders, including Wage Order 1-2001, constitute a violation of Labor Code Section
17 558, which imposes civil penalties upon an employer for a violation to any provision regulating
18 hour and days of work in any order of the IWC. Labor Code Section 558(a)(1) and (2).

19 19. Throughout Plaintiffs' employment, Defendants did not provide Plaintiffs and other
20 similarly aggrieved employees with a timely meal period. That is, due to the press of work,
21 Defendants regularly required Plaintiffs to clock out for his meal period prior to the fifth hour of
22 work but required him to continue working. Plaintiffs and other similarly aggrieved employees
23 were eventually able to take their meal break at a later time (after the fifth hour of work).
24 Defendants did not pay Plaintiffs and other similarly aggrieved employees one hour of pay at the
25 employee's regular rate of pay for the alleged meal break violations.

26 20. Furthermore, Plaintiffs and Aggrieved Employees, including those who worked as
27 drivers and assistants, did not receive first or second meal periods due to the press of work.

1 Employees were often required to clock out for work but then continue working during their unpaid
2 45-minute meal period. Additionally, on occasions when Aggrieved Employees who worked as
3 drivers and assistants worked shifts over 10 hours, they were required to clock or Defendant would
4 automatically deduct a 45 minute second meal period from their timecard, regardless of whether
5 and when a second meal break was taken. This auto-deduct policy is unlawful.

6 21. During the relevant time, Plaintiffs and other similarly aggrieved employees
7 regularly worked between 10 to 11-hour shifts, entitling them to a third 10-minute rest period.
8 However, Defendants failed to provide the third rest period to Plaintiffs and other similarly
9 aggrieved employees to avoid interruption in the flow of work and maintain continuous operations.
10 When this occurred, Defendants did not provide time later in the shift for the employees to make
11 up the missed rest period and did not compensate them for the missed 10 minutes. Nor did
12 Defendants pay Plaintiffs and other similarly aggrieved employees the additional hour of pay when
13 these violations occurred.

14 22. Additionally, Aggrieved Employees, including those working as drivers and
15 assistants, were unable to take compliant rest periods as they were overworked, overtasked, unable
16 to fulfill the demands of the job and take any sort of break. Second, there were no restroom or
17 break facilities provided to drivers and assistants, and restroom facilities were not available.

18 23. As a result of Defendant's failure to pay premium wages, Defendant is liable for
19 civil penalties in the amount of one hundred dollars (\$100) per aggrieved employee per pay period
20 for each first meal and rest break violation and two hundred dollars (\$200) per aggrieved employee
21 per pay period for each subsequent violation. As a derivative claim, Plaintiffs allege that pay
22 statements were inaccurate, failing to include required meal period penalties, thus failing the
23 requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil
24 penalties pursuant to Cal. Labor Code §558 and §2698 et. seq.

25 ***Failure to Provide Legally Compliant Wage Statements***

26 24. Labor Code § 226(a) requires employers to furnish accurate itemized wage
27 statements in writing that show, inter alia, "(1) gross wages earned, (2) total hours worked by the

1 employee... (9) all applicable hourly rates...” Plaintiffs and other similarly aggrieved California
2 employees of Defendants received wage statements that did not list all wages earned, including
3 overtime and minimum wages and meal and rest period premiums, as alleged above.

4 ***Violation of Labor Code Sections 212-213***

5 25. California Labor Code §§ 212 requires employers to compensate employees in a
6 form that may be cashed, without delay, and without a fee or discount. Labor Code § 213 requires
7 that an employer first obtain an employee’s voluntary authorization before paying his or her wages
8 through automatic deposit. Moreover, California’s Department of Labor Standards Enforcement
9 (“DLSE”) issued an opinion letter on July 7, 2008 where it analyzed the compliance of a payroll
10 card program under Labor Code §§ 212 and 213. With respect to Section 213, the DLSE stated:

11 Since an employee’s participation in the payroll card program is optional and
12 provided that the employee has voluntarily and specifically authorized the deposit,
13 the payroll card programs simply provide another alternative for employees to
14 receive their wages by direct deposit. Thus, the two programs sufficiently satisfy
15 the voluntary requirement in Labor Code § 213(d).

16 26. As to Section 212, the DLSE stated (*italics added*):

17 The payroll cards appear to provide a prompt and convenient method of wage
18 payments to employees who have full access to wages on scheduled pay days. The
19 effectiveness of the described wage payment programs, in practice, will of course
20 require that employees are fully informed of the service and procedures and that it
21 is represented as an alternative method for wage payment for which their
22 participation is optional.

23 27. Additionally, Regulation E states, “No financial institution or other person may
24 require a consumer to establish an account for receipt of electronic fund transfers with a particular
25 institution as a condition of employment...”. See 12 Code of Federal Regulations § 205.10I. See
26 also, *Johnson v. Sunrise Senior Living Mgmt., Inc.*, No. CV1600443BRORAOX, 2016 WL
27 8929249, at *9 (C.D. Cal. May 5, 2016) (noting that the Board of Governors of the Federal Reserve
28 System has acknowledged that Regulation E “precludes an employer from requiring an employee
to receive a payroll card and suggests that employees always be given some other option, such as
direct deposit to a financial institution of their choice.”); Sarah Jane Hughes, Stephen T.
Middlebrook & Broox W. Peterson, *Developments in the Law Concerning Stored Value and Other*

1 *Prepaid Payment Products*, 62 BUS. LAW. 229, 238 (2006) (citing *Electronic Fund Transfers*, 71
2 Fed. Reg. 1473-01, 1479 (Jan. 10, 2006)).

3 28. While Plaintiffs consented and authorized the payment of his wages through
4 automatic deposit, neither Plaintiffs nor any aggrieved employee ever authorized or consented to
5 the payment of their final paycheck through a paycard program ("Debit Card"). Thus, the transfer
6 of Plaintiffs' and aggrieved employee's wages to a third-party financial institution constitutes a
7 method of direct deposit for which Defendants failed to obtain the required voluntary
8 authorization. Accordingly, Plaintiffs allege that the use of the Debit Card violates Section 212
9 and Section 213(d) because Defendants failed to obtain Plaintiffs' consent or authorization for
10 payment in this manner and also failed to provide Plaintiffs any alternative (i.e., the option of
11 simply receiving a regular check instead).

12 ***Failure to Maintain Accurate Records***

13 29. Labor Code § 1174 provides that "[e]very employer employing labor in this state
14 shall ... (c) [k]eep a record showing the names and addresses of all employees employed and the
15 ages of all minors [and] (d) [k]eep at a central location in the state or at the plants or establishments
16 at which employees are employed, payroll records showing the hours worked daily by and the
17 wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to,
18 employees employed at the respective plants or establishments. These records shall be kept in
19 accordance with rules established for this purpose by the commission, but in any case, shall be
20 kept on file for not less than two years."

21 30. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
22 wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code §§ 226 and
23 1174.

24 31. Labor Code Section 1174.5 imposes a civil penalty of \$500 for an employer's
25 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
26 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
27 Code Section 2699 for a violation of Labor Code Section 1174(d). Defendants' failure to maintain

1 accurate and complete records constitutes an injury as defined under Labor Code Section 1174.
2 Therefore, Plaintiff and other aggrieved employees have suffered an injury for purposes of Labor
3 Code Sections 1174.5 and 2699 and are entitled to recover the greater of all actual damages or the
4 amount specified in Sections 1174.5 and 2699 per violation.

5 ***Failure to Timely Pay all Wages Owed Twice Per Month***

6 32. Defendant was required to pay Plaintiffs and Aggrieved Employees all wages
7 earned twice during each calendar month pursuant to Labor Code §204(a). Defendant failed to pay
8 all wages earned to employees as a result of the unlawful employment policies and practices
9 discussed herein. As a result of these practices, employees were underpaid for hours worked,
10 including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages
11 owed twice per month resulting in liability under Labor Code §210 for violation of §204.
12 Accordingly, Defendant is liable for civil penalties under Labor Code §2698 et seq.

13 ***Failure to Provide One Day's Rest in Seven***

14 33. Plaintiffs and other similarly aggrieved employees were not provided with one
15 day's rest in a 7 day workweek and/or required to work more than six days in a workweek in
16 violation of California Labor Code sections 551 and 552.

17 ***Unpaid Final Wages***

18 34. Plaintiffs and others similarly aggrieved have ceased their employment with
19 Defendants. Upon the cessation of the employment relationship, they did not receive all wages
20 owed. Namely, said former employees did not receive all their minimum and overtime wages as a
21 result of the unpaid off-the-clock work and due to Defendants' failure to pay premium wages for
22 non-compliant meal and rest periods. Therefore, Defendants have violated and continue to violate
23 Labor Code Sections 201 and 202, because even if they pay employees timely, they have not paid
24 the aforementioned wages and wage penalties.

25 35. Pursuant to Labor Code Section 203, Plaintiffs and others similarly aggrieved are
26 entitled to continuation of their wages, from the day of each discharge they experienced until the
27 wages were paid, up to a maximum of thirty (30) days per discharge.

1 36. As a result of these violations, Plaintiffs seek on behalf of themselves and all other
2 similarly aggrieved employees, penalties under PAGA.

3 ***Failure to Reimburse Business Expenses***

4 37. Labor Code Sections 2800 and 2802 requires employers to indemnify employees
5 for necessary expenditures or losses incurred by employees in direct consequence of discharge of
6 duties.

7 38. Plaintiffs and Aggrieved Employees, including those working as drivers and
8 assistants, were required to charge company electronic devices at their homes without
9 reimbursement for electricity charges. They were also told to download Paylocity and a subsequent
10 HR and payroll application on their personal cell phones and use their personal phones for work
11 purposes. They were not reimbursed for the use of their phones or electricity.

12 ***Failure to Provide Safe Working Conditions- Excessive Heat***

13 39. This claim is brought on behalf of all Aggrieved Employees who work in
14 Defendant's warehouses. Defendant's warehouses would get unsafely hot and employees were
15 forced to work in incredibly hot and unventilated workspaces reaching temperatures of over 85
16 degrees when inside.

17 40. Wage Orders require:

18 (B) The temperature maintained in each work area shall provide reasonable
19 comfort consistent with industry wide standards for the nature of the process
20 and the work performed

21 (B) If excessive heat or humidity is created by the work process, the employer shall
22 take all feasible means to reduce such excessive heat or humidity to a degree
23 providing reasonable comfort.

24 41. By violating the wage order, Defendant is liable for civil penalties pursuant to
25 Labor Code § 2698 et. seq.

26 ***Failure to Properly Accrue and Pay Sick Pay***

27 42. Defendant failed to provide proper sick leave to Plaintiffs and Aggrieved
28

1 Employees by failing to properly calculate sick leave accrual by failing to base the accrued sick
2 leave hours on the correct number of hours worked as a result of the unlawful practice described
3 above (Cal. Labor Code §§ 245-248.5) Employees were requires to work off the clock, and meal
4 periods were auto deducted from wages. Overtime wages were also excluded from the required
5 calculation.

6 **FIRST CAUSE OF ACTION**

7 **CIVIL PENALTIES UNDER PAGA**

8 **(By Plaintiffs, Aggrieved Employees and the State of California against Defendants)**

9 43. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though
10 set forth herein.

11 44. At all times relevant to this action, Plaintiffs and other aggrieved employees were
12 “aggrieved employees” within the meaning of Labor Code Section 2699.

13 45. Defendants’ conduct as described herein, arising from Defendants’ failure to pay
14 minimum and overtime wages, failure to comply with California law concerning payment for all
15 hours worked, failure to provide legally compliant meal and rest periods, failure to obtain
16 Plaintiff’s and other similarly aggrieved employees’ consent or authorization for payment of final
17 wages through a payroll card program; failure to provide an alternative payment method other than
18 through a payroll card; failure to compensate Plaintiff and other aggrieved employees in a form
19 that may be cashed, without delay, and without a fee or discount; failure to provide legally
20 compliant wage statements, failure to maintain accurate records, failure to timely pay all wages
21 owed twice per month, failure to provide one day’s rest in seven, failure to timely pay all wages
22 upon cessation of employment, failure to reimburse business expenses, failure to provide safe
23 working conditions, and failure to properly accrue and pay sick pay constitute violations of Labor
24 Code Sections 200, 201-203, 204, 206, 206.5, 212, 213, 216, 221, 223, 226, 226.7, 245, 248.5,
25 500, 510, 511, 512, 551, 552, 558, 1174, 1194, 1197, 1198, 1199, 2800, and 2802 and the
26 applicable IWC Wage Orders, including Wage Order 1-2001.

27 46. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf

1 of himself and other current or former employees, to bring a civil action to recover civil penalties
2 pursuant to the procedures specified in Labor Code Section 2699.3.

3 47. Plaintiffs have complied with the procedures for bringing suit specified in Labor
4 Code Section 2699.3. By letter dated May 30, 2023, Plaintiff Escobedo gave written notice to the
5 LWDA via its online filing system and by certified mail to Defendants of the specific provisions
6 of the Labor Code alleged to have been violated, including the facts and theories to support the
7 alleged violations. To date, more than 65 days after the postmark date of May 30, 2023, the
8 LWDA has not advised Plaintiff that it intends to investigate Escobedo's allegations. By letter
9 dated June 25, 2024, Plaintiff Arias also gave written notice to the LWDA via its online filing
10 system and by certified mail to Defendants of the specific provisions of the Labor Code alleged to
11 have been violated. To date, more than 65 days after the postmark date of June 25, 2024, the
12 LWDA has not advised Arias that it intends to investigate his allegations.

13 48. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiffs and other aggrieved
14 employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
15 applicable IWC Wage Orders, including Wage Order 1, in the amount of one hundred dollars
16 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
17 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant
18 to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the
19 LWDA, and 25% shall be distributed to the aggrieved employees.

20 49. Labor Code Section 226.3 imposes a civil penalty of \$250 per employee per
21 violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation,
22 for which the employer fails to provide the employee a wage deduction statement or fails to keep
23 the records required in subdivision (a) of Section 226. This civil penalty is in addition to the civil
24 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
25 Code section 2699 for a violation of Labor Code Section 226(a).

26 50. Likewise, Labor Code Section 558 imposes a civil penalty of \$50 for each
27 aggrieved employee per pay period for the initial violation, and \$100 per pay period for each

1 subsequent violation, for violating provisions of IWC Wage Orders which regulate hours and days
2 of work. This civil penalty is in addition to the civil penalty of \$100 per pay period, per aggrieved
3 employee that would be imposed pursuant to Labor Code Section 2699 for a violation of Labor
4 Code Section 558.

5 51. Pursuant to Labor Code Section 2699(g), Plaintiffs are entitled to an award of
6 reasonable attorney's fees and costs in connection with his claims for civil penalties.

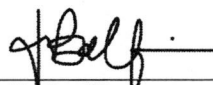
7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs on behalf of themselves and all other similarly aggrieved
9 employees, pray for relief and judgment against Defendants as follows:

- 10 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
11 25% payable to aggrieved employees);
12 2. Civil penalties under Labor Code Sections 226.3 and 558;
13 3. Costs;
14 4. Reasonable attorney's fees; and
15 5. Such other and further relief as this Court may deem just and proper.

16 Dated: August 29, 2024

MOSS BOLLINGER, LLP
KOUL LAW FIRM, APC
MAJARIAN LAW GROUP, APC

19 By: 

20 Jeremy F. Bollinger
21 Nazo Koulloukian
22 Sahag Majarian, II
23 Attorneys for Plaintiffs
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF VENTURA

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403.

On September 13, 2024, I served the document(s) described as

FIRST AMENDED COMPLAINT

on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Dustin Bodaghi
DBodaghi@littler.com
Jackson Zimmerman
JZimmerman@littler.com
LITTLER
18565 Jamboree Road, Suite 800
Irvine, CA 92612

Attorneys for Defendant Milgard Manufacturing, LLC

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed September 13, 2024, at Sherman Oaks, California.

Lea Garbe
Type or Print Name


Signature