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and Proposed Class Counsel
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**
11

12 GINGER GONZALEZ, on behalf of
herself and all "aggrieved employees"
13 pursuant to Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 MCS INDUSTRIES, INC., a Pennsylvania
corporation, and DOES 1 through 10,
17 inclusive,

18 Defendants.
19

CASE NO: CIVSB2116240

Assigned to the Hon. Lynn Poncin, Dept. S28

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND SEEKING
LEAVE TO FILE FIRST AMENDED
COMPLAINT**

DATE: July 28, 2022

TIME: 8:30 a.m.

DEPT.: S28

Action Filed: June 7, 2021

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Ginger Gonzalez (“Gonzalez” or
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Since becoming a member of the Bar, and until his recent retirement, I practiced law
14 with my father, Kenneth, at Gaines & Gaines, APLC. Our practice specializes in litigation, with
15 an emphasis in employment disputes like this one. Over 95% of my practice is devoted to complex
16 employment litigation similar to the instant action.

17 5. My firm has represented employees in complex employment matters such as this
18 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
19 class counsel in dozens of class action matters since my admission to the Bar. A list of the cases
20 in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

21 **Factual and Procedural Background:**

22 6. On March 8, 2021, Plaintiff exhausted the pre-filing requirements of the Labor Code
23 Private Attorneys General Act of 2004 (“PAGA”).

24 7. On or about June 7, 2021, Plaintiff initiated the Action by filing a Representative
25 Action Complaint for Penalties, pursuant to PAGA, on behalf of herself and all other aggrieved
26 employees (the “Complaint”). The First Amended Complaint, attached to the Settlement as
27 Exhibit B and which will be filed as part of this settlement approval process, asserts class and
28 PAGA representative action claims against Defendant for (1) Failure To Pay All Overtime Wages

1 (Labor Code §§ 510 and 1194); (2) Failure To Pay All Wages Due, Including Minimum Wages
2 (Labor Code §§ 510 and 1194); (3) Failure To Provide Compliant Meal Periods or Compensation
3 In Lieu Thereof (Labor Code §§ 226.7, 510, 512, and 1194; IWC Wage Order 9-2001); (4) Failure
4 To Provide Compliant Rest Periods Or Compensation In Lieu Thereof (Labor Code § 226.7; IWC
5 Wage Order 9-2001); (5) Failure To Comply With Itemized Employee Wage Statement Provisions
6 (Labor Code § 226(a), (h), (e)); (6) Failure To Indemnify For All Work-Related Expenses (Labor
7 Code § 2802); (7) Violation Of Fair Credit Reporting Act And Labor Code § 1024.5; (8) Failure
8 To Timely Pay Wages Due At Separation Of Employment (Labor Code §§ 201-203); (9) Violation
9 Of Business And Professions Code § 17200 et seq.; and (10) Civil Penalties Pursuant To Labor
10 Code § 2698 Et Seq. For Violations of Labor Code §§ 201, 202, 226, 226.7, 510, 512, 1194, and
11 2802 and Pursuant To Labor Code § 2699(a) For Violations Of Labor Code §§ 226.3, 558, and
12 1024.5 (the “First Amended Complaint”).

13 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
14 alleged in the Action, and further denies that the Action is appropriate for class treatment for any
15 purpose other than this settlement. Defendant contends that it has complied at all times with the
16 California Labor Code, Industrial Welfare Commission Wage Orders, and all other applicable
17 federal, state, and local laws and regulations. It is Defendant’s position that, if this case were to
18 be litigated, class certification would be inappropriate because Plaintiff is not an adequate class
19 representative, Plaintiff’s claims are not typical of putative class members, and individual issues
20 predominate over class issues. The Action, the negotiation and execution of the Settlement
21 Agreement, and all acts performed or documents executed pursuant to or in furtherance of the
22 Settlement Agreement (i) shall not be used as an admission or evidence of wrongdoing on behalf
23 of Defendant; (ii) shall not be an admission or evidence of fault on behalf of Defendant in any
24 action before a civil, criminal, or administrative agency; and (iii) shall not be deemed to be, and
25 may not be used as, an admission or evidence of the appropriateness of these or similar claims for
26 class certification in the Action or with respect to any other proceeding.

1 9. The Class Representative contends that Defendant violated the California Labor
2 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
3 certification.

4 **Investigation and Settlement Discussions**

5 10. My colleagues and I have conducted a thorough investigation into the facts and law
6 during the prosecution of this class action case, including the exchange of extensive formal and
7 informal discovery and the review and verification of statistical data and other facts and
8 information provided by Defendant. My colleagues and I have investigated the applicable law as
9 applied to the facts discovered regarding the alleged claims of Plaintiff and potential defenses
10 thereto, and the damages and other losses claimed by Plaintiff.

11 11. On April 25, 2022, following our exchange of information and documents regarding
12 the Settlement Class and the claims and defenses asserted by the Parties, the Parties commenced
13 arm's-length negotiations with the assistance of mediator Chris Barnes, an experienced mediator
14 who has mediated numerous wage-hour class actions. Through their assisted negotiations, the
15 Parties reached the resolution of the Action set forth in the Settlement Agreement.

16 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**

17 **Litigation:**

18 12. Based on our independent investigation and evaluation, My colleagues and I are of
19 the opinion that settlement for the consideration and on the terms set forth in this Settlement
20 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
21 light of all known facts and circumstances, including the risk of significant delay, the risk the
22 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.

23 13. The Parties agree that the Settlement Class described in the Settlement Agreement
24 may be certified for settlement purposes only and that this motion for approval seeking, *inter alia*,
25 certification of the Settlement Class is for purposes of the settlement only. If for any reason the
26 settlement is not approved, the certification will have no force or effect and will immediately be
27 revoked. The Parties further agree that certification for purposes of the settlement is in no way an
28 admission that class certification is proper under the more stringent standard applied for litigation

1 and that evidence of this limited stipulation for settlement purposes only will not be admissible for
2 any purpose in this or any other proceeding.

3 14. The parties jointly prepared the Joint Stipulation of Class Action Settlement
4 (“Settlement Agreement”, “Settlement”, or “Stip.”). A true and correct copy of the Settlement is
5 attached hereto as **Exhibit B**.

6 15. Plaintiff alleges that Defendant failed to pay all wages due by (1) failing to blend
7 bonus wages into the regular rate for purposes of computing overtime and double time rates, and
8 (2) rounding. Defendant allegedly failed to properly blend all bonus wages and other non-base
9 wages earned by Plaintiff and Class Members into their regular rate of pay for purposes of paying
10 overtime wages at the correct rates, and rounded down the time worked by Class Members as
11 recorded in Defendant’s timekeeping system. As such, Defendants purportedly deprived Plaintiff
12 and other Aggrieved Employees of all minimum, overtime and double time wages earned. This
13 would violate Labor Code §§ 510, 558 and 1194. Plaintiff asserts the maximum value of this
14 unpaid wage claim at approximately \$34,730, based on an expert analysis of a sampling of data
15 supplied by Defendant.

16 16. Plaintiff further contends that Defendant failed to permit or authorize Plaintiff and
17 Class Members to take timely 30-minute meal periods for shifts greater than 5 hours in length, in
18 violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 9-2001. Plaintiff and Class
19 Members allege that they were routinely unable to take a proper meal break when they worked
20 shifts in excess of 5 hours in duration and a second meal break when they worked shifts in excess
21 of 10 hours in duration. Based on Plaintiff’s expert’s analysis of a sampling of Defendant’s time
22 and payroll data for the Class Period, Defendant’s meal period violation rate totals 18.3% among
23 all shifts worked (3,968 unique meal break violations) and, more significantly, affects over 49%
24 of all 1,420 pay periods worked during the PAGA Period (i.e., 698 pay periods with at least one
25 unique meal break violation). Only a tiny fraction of these (23) have a meal period premium paid.
26 Defendant’s maximum exposure on this claim was approximately \$69,444.

27 17. Plaintiff also argues that Defendant failed to provide Plaintiff and Class Members
28 with legally compliant rest periods, or premium wages of one hour’s pay in lieu thereof, as required

1 by Labor Code § 226.7 and Wage Order 9-2001. Plaintiff reports that she and other Class
2 Members were routinely not authorized and unable to take an off-duty, 10-minute rest period for
3 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
4 hour's pay for each missed rest period. Plaintiff and Class Members were also allegedly required
5 to carry a two-way radio to which they had to be alert and respond to during their rest periods, if
6 any were provided. Plaintiff's damage model places the value of this claim at \$378,804, although
7 it required a significant discount to resolve at this juncture of the litigation, particularly in light of
8 Defendant's defenses to class certification on this claim (that it would be unmanageable) and its
9 defenses to the merits of the claim (that employees waived their rest periods, if any employee ever
10 missed a rest period in the first place).

11 18. Plaintiff and Class Members allege that they were required to use their personal
12 cellular phones to make calls for Defendant's benefit, but were not fully reimbursed by Defendant
13 for these cellular phone expenses, in violation of Labor Code § 2802. Defendant adamantly
14 opposed this claim on the basis that use of one's own cell phone was neither reasonable nor
15 necessary during the course of employment, that it reimbursed all expenses as required by law,
16 and argued that this claim could not be certified. The maximum value of this claim is
17 approximately \$28,200, but required a discount for settlement purposes.

18 19. Plaintiff further alleges that the wage statements provided by Defendant failed to
19 comply with Labor Code § 226(a). Specifically, the wage statements issued to Plaintiff and Class
20 Members failed to set forth all gross wages earned (Labor Code §§ 226(a)(1) and 226.3); total
21 hours worked (Labor Code §§ 226(a)(2) and 226.3); net wages earned (Labor Code §§ 226(a)(5)
22 and 226.3); and all applicable hourly rates in effect during the pay period and the corresponding
23 numbers of hours worked at each rate (Labor Code §§ 226(a)(9) and 226.3). Independent of the
24 above, the wage statements also allegedly fail to set forth all applicable hourly rates in effect and
25 the hours worked at each rate during the pay period, as they set forth various categories of wages
26 earned during the pay period, but omit the corresponding rates or hours worked. Certain bonuses
27 were earned on an hourly basis and there is no rate of pay or associated hours worked listed. This
28 would also be a violation of Labor Code § 226(a)(9). The maximum value of this claim is

1 \$114,700, although it, too, required a discount for settlement purposes based on risk as to both the
2 merits of the claim and as to class certification.

3 20. Defendant also allegedly required Plaintiff and Class Members to undergo
4 background checks, even though their job titles and classifications did not provide for or allow
5 any form of background check, in violation of the Fair Credit Reporting Act and California Labor
6 Code § 1024.5. If Plaintiff could prove groupwide liability, the value of this claim – for which
7 relief is sought under PAGA – would total approximately \$4,000 – at the rate of one PAGA
8 violation per employee during the applicable PAGA Period.

9 21. Finally, Plaintiff sought penalties for waiting time (Labor Code section 203) and
10 under PAGA, predicated on all the claims alleged in the Action. The value of these duplicative
11 penalties is approximately \$250,000 (without stacking oppressive PAGA penalties). These claims
12 also required a significant compromise at this juncture of the litigation, and the compromise
13 reached is fair given the risk of loss on the merits and as to class certification.

14 22. The discount negotiated for settlement here is a reasonable compromise, particularly
15 considering that the risk of obtaining class certification on all or any of Plaintiff's claims involves
16 a 50% or higher hurdle, especially with respect to the meal and rest period claims, to which
17 Defendant maintains strong arguments to defeat class certification (in addition to multiple defenses
18 on the merits of the claims). Class certification is a substantial risk in any class action case. Here,
19 while Plaintiff maintains that the requirements of class certification are met, Defendant proffers
20 various arguments why class treatment is not appropriate, including but not limited to that
21 individualized inquires among class members predominate over common ones. If Defendant was
22 to defeat Plaintiff's class certification motion, there would be no class wide relief whatsoever, and
23 most class members would likely not file individual claims.

24 23. Plaintiff also faced the risk of a loss on the merits on her claims. It is very possible
25 that the Court would agree with Defendant's position that its meal and rest period practices
26 complied with the requirements of California law or could not be certified. In such a case, the
27 value of the majority of Plaintiff's claims would be zero.

1 24. Finally, Plaintiff faced the risk that she would not obtain a maximum
2 damage/penalty award on all (or any of) her claims. For example, Plaintiff seeks discretionary
3 penalties pursuant to the PAGA. Even if Plaintiff did prevail on these claims, it is possible that
4 the Court would not impose all penalties pursuant to its discretionary power to reduce them.

5 25. Defendant strongly contends that its policies and practices do not violate any laws.
6 It contends that it properly provided for all meal and rest periods and fully compensated its
7 employees for all time worked. It further contends that the wage statements it provides to its
8 employees are fully compliant with California law.

9 26. When the costs and risks of non-certification and loss on the merits are considered,
10 my colleagues and I are of the opinion that the settlement reached is clearly a favorable one.

11 27. The settlement for each Class Member is fair, reasonable and adequate, given the
12 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
13 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
14 Action.

15 **Class Certification Requirements:**

16 28. To date, no class has been certified. The Stipulation of Settlement contains a
17 provision pursuant to which we stipulate to the Court's provisional certification of the
18 approximately 55-member Settlement Class, but do so for purposes of this settlement only.

19 29. In this case, the Class Members are identifiable from Defendant's employment and
20 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
21 According to Defendant's records, the Class comprises approximately 55 employees.

22 30. The Class Members' claims all stem from a common source: members of the
23 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
24 with their employment. All members of the Class seek the same relief under the same California
25 laws (related to unpaid wages, unpaid meal and rest period premiums, inaccurate or incomplete
26 wage statements, failure to timely pay wages due upon separation, failure to reimburse expenses,
27 and derivative claims). Under these circumstances, the commonality requirement is satisfied for
28 purposes of certifying the Settlement Class for settlement purposes.

1 31. In this case, named Plaintiff and proposed Class Representative Ginger Gonzalez is
2 a former non-exempt employee who worked for Defendant in the State of California during the
3 Class Period. She contends that Defendant failed to pay all wages due, failed to provide meal and
4 rest periods, failed to comply with itemized employee wage statement provisions, failed to
5 reimburse expenses, and failed to timely pay wages at the separation of employment, in violation
6 of Labor Code §§ 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1024.5, 1194, 2698, 2699, and
7 2802, among other Labor Code provisions. She has the same claims as those that the members of
8 the Settlement Class would reasonably be expected to bring based on the course of conduct alleged
9 herein.

10 32. Plaintiff has also demonstrated that she will aggressively and competently assert the
11 interests of the proposed Settlement Class; she has taken an active role in this litigation and has no
12 apparent conflicts with other class members.

13 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

14 33. Concurrently with the filing of this Motion, my office is transmitting the Settlement
15 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
16 2699(1)(2).

17 I declare, under penalty of perjury, under the laws of the State of California, that the
18 foregoing is true and correct. Executed this 1st day of July, 2022 at Calabasas, California.

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20 Daniel F. Gaines
21 DANIEL F. GAINES
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EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

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22 MCS INDUSTRIES, INC.

23 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

24 **COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT**

25 GINGER GONZALEZ, on behalf of herself
26 and all "aggrieved employees" pursuant to
27 Labor Code § 2698 *et seq.*,

28 Plaintiff,

vs.

29 MCS INDUSTRIES, INC., a Pennsylvania
30 corporation, and DOES 1 through 10,
31 inclusive,

32 Defendants.

Case No. CIVSB2116240

**JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT**

Assigned to: Hon. Lynn Poncin, Dept. S28

Action Filed: June 7, 2021
Trial Date: None Set

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement is entered into by and
3 between Plaintiff GINGER GONZALEZ ("Plaintiff"), individually and on behalf of the
4 Settlement Class and Defendant MCS INDUSTRIES, INC. ("Defendant").

5 **DEFINITIONS**

6 1. "Agreement" or "Settlement Agreement" means this Joint Stipulation of Class
7 Action and PAGA Settlement.

8 2. "Action" means the court action, entitled "*Ginger Gonzalez v. MCS Industries*
9 (*Case No. CIVSB2116240*), pending before the San Bernardino County Superior Court.

10 3. "Class Counsel" means Gaines & Gaines APLC.

11 4. "Class Counsel's Fees and Costs" means attorneys' fees for Class Counsel's
12 litigation and resolution of this Action and their expenses and costs incurred in connection with
13 the Action, which shall be paid from the Gross Settlement Amount. Class Counsel will request
14 attorneys' fees not to exceed Thirty-Five Percent (35%) of the Gross Settlement Amount
15 (projected to be Sixty-One Thousand Two Hundred and Fifty Dollars (\$61,250.00)), and the
16 reimbursement costs and expenses associated with the litigation and settlement of the Action, not
17 to exceed Twelve Thousand Dollars (\$12,000.00), subject to the Court's approval. Defendant has
18 agreed not to oppose Class Counsel's request for fees and reimbursement of costs and expenses
19 in the amount set forth above.

20 5. "Class List" means a complete list of all Class Members that Defendant will
21 diligently and in good faith compile from its records and provide to the Settlement Administrator
22 within fifteen (15) calendar days after Preliminary Approval of this Settlement. The Class List
23 will be formatted in a readable Microsoft Office Excel spreadsheet and will include Class
24 Member's: (1) full name; (2) last known home address; (3) last known telephone number (if
25 available); (4) social security number; and (5) total workweeks worked or information sufficient
26 to allow the Settlement Administrator to calculate individual Class Member workweeks. Because
27 Social Security numbers are included in the list, the Settlement Administrator will maintain the
28

list in confidence, and shall only access and use the list to administer the settlement in conformity with the Court's orders.

6. "Class" or "Class Members" means all current and former non-exempt employees of Defendant employed in the State of California at any time during the Class Period.

7. "Class Period" means the period from June 7, 2017 to June 24, 2022.

8. "Class Representative" or "Named Plaintiff" means Plaintiff Ginger Gonzalez in her capacity as the representative of the Participating Class Members.

9. "Class Representative Enhancement Payment" means the amount that the Court authorizes to be paid to Named Plaintiff, in addition to her Individual Settlement Payment, in exchange for her general release of all wage related claims pursuant to California Civil Code section 1542 and in recognition of the efforts and risks she has taken in assisting with the prosecution of the Action. Named Plaintiff will request, and Defendant will not oppose, an Enhancement Payment of up to Five Thousand Dollars (\$5,000.00). Named Plaintiff will be issued an IRS Form 1099 in connection with her Enhancement Payment.

10. "Court" means the Superior Court of the State of California for the County of San Bernardino.

11. "Defendant" means MCS Industries, Inc.

12. "Effective Date" means: the later of: (a) if no timely objections are filed or if all objections are withdrawn, the date upon which the Court enters the Final Approval Order and Final Judgment; (b) if an objection is filed and not withdrawn, the date for filing an appeal and no such appeal being filed; or (c) if any timely appeals are filed, the date of the resolution (or withdrawal) of any such appeal in a way that does not alter the terms of the settlement.

13. "Final Approval Order and Final Judgment" means the Court order granting final approval of the Settlement Agreement and judgment based thereon which includes the following provisions: (a) confirming certification of the Class for settlement purposes only; (b) finding that the dissemination of the Class Notice in the form and manner ordered by the Court was accomplished as directed and met the requirements of due process; (c) finally approving the Settlement Agreement and the Settlement as fair, reasonable and adequate, and directing

1 consummation of the Settlement in accordance with its terms and provisions; (d) directing the
2 Parties to implement the terms of the Settlement Agreement; (e) releasing and discharging the
3 Released Parties from any and all liability with respect to the Released Claims as provided herein;
4 (f) resolving and settling all the Released Claims by the Class Representative and all Participating
5 Class Members, as herein provided; (g) awarding reasonable attorneys' fees and litigation costs to
6 Class Counsel as determined by the Court; (h) awarding a Class Representative Enhancement
7 Payment to Class Representative as determined by the Court; (i) awarding Settlement
8 Administration costs to the Settlement Administrator as determined by the Court; (j) approving
9 the allocation of PAGA Penalties to the LWDA; (k) entering final judgment on the operative
10 Complaint; and (l) preserving continuing and exclusive jurisdiction over all matters related to the
11 administration and consummation of the terms of this Settlement and enforcement of the
12 Judgment.

13 14. "Gross Settlement Amount" means the sum of One Hundred Seventy-Five
14 Thousand Dollars and Zero Cents (\$175,000.00). The Gross Settlement Amount is non-
15 reversionary; no portion of the Gross Settlement Amount will return to Defendant. The Gross
16 Settlement Amount plus any applicable employer-side payroll taxes shall be the maximum
17 amount Defendant is required to pay under the Settlement.

18 15. "Individual Settlement Payment" means the amount payable from the Net
19 Settlement Amount to each Participating Class Member and any payment a PAGA Member is
20 eligible to receive from the employee portion of the PAGA Payment. Individual Settlement
21 Payments shall be paid by a Settlement Check made payable to Participating Class Members
22 and/or PAGA Members.

23 16. "Net Settlement Amount" means the funds available for payments to the Class,
24 which shall be amount remaining after the following amounts are deducted from the Gross
25 Settlement Amount: (1) Class Counsel's fees, (2) Class Counsel's costs, (3) Settlement
26 Administration Costs, (4) Class Representative Enhancement Payment to Plaintiff, and (5) the
27 PAGA Payment to the LWDA and PAGA Members.
28

1 17. “Notice” means the Notice of Class Action Settlement in a form substantially
2 similar to the form attached hereto as Exhibit A, that will be mailed to Class Members’ last known
3 addresses and which will provide Class Members with information regarding the Action and
4 information regarding the settlement of the Action.

5 18. “PAGA” means the California Labor Code Private Attorneys General Act of 2004
6 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”).

7 19. “PAGA Payment” means the amount that the Parties have agreed to allocate in
8 order to settle claims arising under the PAGA. The Parties have agreed that Ten Thousand Dollars
9 (\$10,000.00) of the Gross Settlement Amount will be allocated to the resolution of Plaintiff’s
10 PAGA Claim. Seventy Five Percent (75%) of this amount (\$7,500.00) will be paid to the
11 California Labor and Workforce Development Agency in accordance with Labor Code §§ 2698
12 *et seq.* Twenty Five Percent (25%) of this amount (\$2,500.00), will be distributed to PAGA
13 Members on a *pro rata* basis based on the total number of Workweeks (full or partial) worked by
14 each PAGA Member during the PAGA Period. PAGA Members will receive payment from the
15 employee portion of the PAGA Payment regardless of their decision to participate in the class
16 action if the PAGA Payment is approved by the Court.

17 20. “PAGA Period” means the period from March 8, 2020 to June 24, 2022.

18 21. “PAGA Members” means all current and former non-exempt employees of
19 Defendant employed in the State of California at any time during the PAGA Period.

20 22. “Parties” means Plaintiff and Defendant, collectively, and “Party” shall mean
21 either Plaintiff or Defendant, individually.

22 23. “Participating Class Members” or “Settlement Class Members” means all Class
23 Members who do not submit valid and timely Requests for Exclusion, and their present and future
24 representatives, attorneys, agents, heirs, executors, administrators, and assigns and all those
25 claiming by, through, or under them, and each of them.

26 24. “Plaintiff” means Ginger Gonzalez.

27 25. “Preliminary Approval” means the Court order granting preliminary approval of
28 the Settlement Agreement.

1 26. “Objection” means a Class Member’s valid and timely written objection to the
2 Settlement Agreement. For an Objection to be valid, it must include: (a) the objector’s full name,
3 address, telephone number, last four digits of the employees’ social security number or employee
4 ID number and (b) a written statement of all grounds for the objection accompanied by legal
5 support, if any, for such objection. To be effective, the Objection must be post-marked by the
6 Response Deadline and received by the Settlement Administrator.

7 27. “Released Class Claims” means claims, rights, demands, liabilities and causes of
8 actions, whether known or unknown, contingent or vested, in law or in equity, arising during
9 employment by Defendant in a non-exempt position in California at any time during the Class
10 Period, for unpaid wages or other compensation, and/or related penalties, interest, costs,
11 attorneys’ fees, and/or injunctive or other equitable remedies, allegedly owed or available, against
12 the Released Parties, arising out of, or which could be alleged based on, the allegations and
13 operative facts asserted in the Action, including: (1) failure to pay overtime wages; (2) failure to
14 pay all wages due, including minimum wages; (3) failure to provide meal periods or provide
15 premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in
16 lieu thereof; (5) wage statement violations under Labor Code section 226, et. al; (6) failure to
17 indemnify for work related expenses under Labor Code section 2802; (7) Violation of Fair Credit
18 Reporting Act and Labor Code section 1024.5; (8) Failure to Timely Pay All Wages due at
19 Separation under Labor Code sections 201, 202 and 203; (9) Unfair Business Practices in
20 Violation of Business and Professions Code section 17200, et. seq. premised on the above claims;
21 (8) all claims for civil penalties under California Labor Code section 2698, et. seq. (Private
22 Attorneys General Act) premised on the above claims; and violation of or liability under
23 California Labor Code under sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1024.5,
24 1194, and 2802, the relevant Wage Orders issued by the Industrial Welfare Commission, and any
25 and all claims for attorneys’ fees and costs, which are premised on the factual allegations of the
26 operative complaint. Plaintiff will file a First Amended Complaint, in the form attached hereto as
27 Exhibit B, which reflects all claims referenced in the release which were not previously included,
28

1 including class action claims. The First Amended Complaint will be filed as part of the motion
2 for preliminary approval of the settlement.

3 28. "Released PAGA Claims" means the following release: Upon remittance of the
4 Gross Settlement Amount by Defendant to the Settlement Administrator and entry of judgment
5 by the Court, PAGA Members and each of them, for themselves and their past, present and future
6 representatives, attorneys, agents, heirs, executors, administrators, and assigns, and all those
7 claiming by, through or under them, will fully and finally release and discharge the Released
8 Parties from all claims, rights, demands, liabilities and causes of action for civil penalties that are
9 alleged, or reasonably could have been alleged based on the facts and claims asserted in the PAGA
10 letter, dated March 8, 2021, under the PAGA, Cal. Lab. Code §§ 2698, et seq., which accrued
11 during employment by Defendant in California during the PAGA Period, and which are premised
12 on alleged violations of the California Labor Code for: (1) failure to pay overtime wages; (2)
13 failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest
14 periods; (5) wage statement violations; (6) failure to indemnify; (7) Violation of Fair Credit
15 Reporting Act and Labor Code section 1024.5; (8) Failure to Pay All Wages due at Separation
16 under Labor Code sections 201, 202 and 203; and for PAGA civil penalties that could have been
17 alleged based on the facts and claims asserted in the PAGA letter, dated March 8, 2021, the
18 relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for
19 attorneys' fees and costs, which are premised a violation of the PAGA based on the allegations
20 of the operative complaint.

21 29. "Released Parties" means Defendant MCS Industries, Inc. and its past, present
22 and/or future, parent companies, subsidiaries, affiliates, shareholders, members, agents
23 (including, without limitation, any investment bankers, accountants, insurers, reinsurers,
24 attorneys and any past, present or future officers, directors and employees) predecessors,
25 successors, and assigns.

26 30. "Request for Exclusion" means a valid and timely written statement submitted by
27 a Class Member requesting to be excluded from the Action. To be effective, the Request for
28 Exclusion must contain (a) the Class Member's name, address, telephone number, and the last

four digits of the Class Member's Social Security number and/or the Employee ID number and (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: "I wish to exclude myself from the class settlement reached in the matter of *Gonzalez v. MCS*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims." To be effective, the Request for Exclusion must be post-marked by the Response Deadline and received by the Settlement Administrator. The Request for Exclusion shall not exclude any PAGA Member from the Released PAGA Claims.

31. "Response Deadline" means the date forty-five (45) days after the Settlement Administrator mails Notice to Class Members and the last date on which Class Members may submit Requests for Exclusion, written objections to the Settlement, or Workweek Disputes. In the event the 45th day falls on a Sunday or Federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline for Requests for Exclusion or objections will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice by the Settlement Administrator, unless the 15th day falls on a Sunday or Federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open. The Response Deadline may also be extended by express agreement between Class Counsel and Defendants' Counsel. Under no circumstances, however, will the Settlement Administrator have the authority to unilaterally extend the deadline for Class Members to submit a Request for Exclusion or objection to the settlement.

32. "Settlement" means the disposition of the Action pursuant to this Agreement.

33. "Settlement Administrator" means Phoenix Class Action Administration Solutions. 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.

34. "Settlement Administration Costs" mean the costs payable from the Gross Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, calculating/confirming the class member workweeks from the information contained in the Class

1 List, calculating each Participating Class Member's Individual Settlement Payment, translating
2 the notice into Spanish, tax reporting, distributing the Gross Settlement Amount, providing
3 necessary reports and declarations, and other duties and responsibilities set forth herein to process
4 this Settlement, and as requested by the Parties. Settlement Administration Costs shall not exceed
5 Four Thousand Dollars (\$4,000.00).

6 35. "Workweek" shall mean any week in which a Class Member or PAGA Member
7 worked for Defendant in the State of California in a non-exempt position.

8 **TERMS OF AGREEMENT**

9 36. Settlement Consideration. Defendant shall fund the Gross Settlement Amount and
10 all applicable employer-side payroll taxes following the Effective Date. The following will be
11 paid out of the Gross Settlement Amount: the sum of the Individual Settlement Payments, the
12 Class Representative Enhancement Payment, Class Counsel's Fees and Costs, the PAGA
13 Payment, and the Settlement Administration Costs, as specified in this Agreement. Except for any
14 employer-side taxes due on the Individual Settlement Payments, or as a result of an increase in
15 the number of Workweeks as set forth below in Paragraph 37, Defendant shall not be required to
16 pay more than the Gross Settlement Amount. The Gross Settlement Amount is non-reversionary;
17 no portion of the Gross Settlement Amount will revert to Defendant.

18 37. Potential Increase to the Gross Settlement Amount/Limitation of Class Period.
19 Defendant has represented there are approximately 4,900 Workweeks worked by approximately
20 55 Class Members during the Class Period. Should the actual number of Workweeks increase by
21 more than ten percent (10%) above 4,900 (i.e. by more than 490 Workweeks) for the Class Period,
22 Defendant shall increase the Gross Settlement Amount on a *pro-rata* basis equal to the percentage
23 increase in the number of Workweeks worked by the Class Members above 10% (e.g., if there
24 was an 11% increase in the number of Workweeks during the Class Period, Defendant would
25 agree to increase the Gross Settlement Amount by 1%).

26 38. Funding of the Gross Settlement Amount. Within fourteen (14) calendar days of
27 the Effective Date of the Settlement, presuming the Settlement Administrator provides all
28 necessary funding information, Defendant will cause to be deposited the Gross Settlement

1 Amount and all applicable employer-side payroll taxes into a Qualified Settlement Fund ("QSF")
2 to be established by the Settlement Administrator. The Settlement Administrator shall timely
3 provide Defendant with a list of information/documents needed in order to calculate employer-
4 side payroll taxes. Upon receipt of the list from the Settlement Administrator, Defendant shall
5 provide all information necessary for the Settlement Administrator to calculate necessary payroll
6 taxes including its official name, eight digit state unemployment insurance tax ID number, and
7 other information requested by the Settlement Administrator, no later than ten (10) calendar days
8 of the Effective Date.

9 39. Distribution of the Gross Settlement Amount. Within fourteen (14) calendar days
10 of the funding of the Settlement, the Settlement Administrator will issue payments for: (a)
11 Individual Settlement Payments; (b) the PAGA Payment to the Labor and Workforce
12 Development Agency; (c) the Class Representative Enhancement Payment; (d) Class Counsel's
13 Fees and Costs and (e) Settlement Administration Costs.

14 40. Attorneys' Fees and Costs. Defendant agrees not to oppose any application or
15 motion by Class Counsel for attorneys' fees of not more than Thirty-Five Percent (35%) of the
16 Gross Settlement Amount (i.e., Sixty-One Thousand Two Hundred and Fifty Dollars
17 (\$61,250.00), if the escalator provision in paragraph 37 is not invoked), plus the reimbursement
18 of actual costs and expenses associated with the litigation and settlement of the Action, in an
19 amount not to exceed Twelve Thousand Dollars (\$12,000.00), both of which will be paid from
20 the Gross Settlement Amount. Any portion of the requested fees or costs that is not awarded to
21 the Class Counsel shall be reallocated to the Net Settlement Amount and distributed to
22 Participating Class Members as provided in this Agreement.

23 41. Class Representative Enhancement Payment. Defendant agrees not to oppose or
24 object to any application or motion by Plaintiff for a Class Representative Enhancement Payment
25 of Five Thousand Dollars (\$5,000.00). The Class Representative Enhancement Payment is in
26 exchange for her release of all wage related claims pursuant to California Civil Code section 1542
27 and in recognition of her time, effort and risk in bringing and prosecuting the Action. Any portion
28 of the requested Class Representative Enhancement Payments that is not awarded to Plaintiff shall

be reallocated to the Net Settlement Amount and distributed to Participating Class Members as provided in this Agreement.

42. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments from the Gross Settlement Amount as further set forth in this Agreement. Settlement Administration Costs shall not exceed Four Thousand Dollars (\$4,000.00).

43. PAGA Payment. Ten Thousand Dollars (\$10,000.00) shall be allocated from the Gross Settlement Amount for settlement of claims for civil penalties under the PAGA. The Settlement Administrator shall pay seventy-five percent (75%) of the PAGA Payment, or Seven Thousand Five Hundred Dollars (\$7,500.00), to the LWDA. Two Thousand Five Hundred Dollars (\$2,500.00), will be distributed to PAGA Members on a *pro rata* basis based on the total number of Workweeks worked by each PAGA Member during the PAGA Period. PAGA Members shall receive their portion of the PAGA Payment and release the claims as set forth herein under the Released PAGA Claims regardless of their decision to opt-out of the class settlement.

44. Net Settlement Amount for Payment of Class Claims. The Net Settlement Amount will be used to satisfy the class portion of Participating Class Members Individual Settlement Payments in accordance with the terms of this Agreement. The estimated Net Settlement Amount is as follows:

Gross Settlement Amount	\$	175,000.00
Enhancement Payment:	\$	5,000.00
Class Counsel's Fees:	\$	61,250.00
Class Counsel's Costs:	\$	12,000.00
PAGA Payment	\$	10,000.00
Settlement Administration Costs:	\$	4,000.00
Estimated Net Settlement Amount	\$	82,750.00

1 45. Individual Settlement Payment Calculations. Individual Settlement Payments will
2 be paid from the Net Settlement Amount and the 25% portion of the PAGA Payment allocated
3 for PAGA Members and shall be paid pursuant to the formulas set forth herein:

4 a) Calculation of Class Portion of Individual Settlement Payments.

5 The Settlement Administrator will calculate the total Workweeks for all Participating Class
6 Members by adding the number of Workweeks worked by each Participating Class Member
7 during the Class Period. The respective Workweeks for each Participating Class Member will be
8 divided by the total Workweeks for all Participating Class Members, resulting in the Payment
9 Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio
10 will then be multiplied by the Net Settlement Amount to calculate each Settlement Class
11 Member's estimated share of the Net Settlement Amount.

12 b) Calculation of PAGA Portion of Individual Settlement Payments.

13 The Settlement Administrator will calculate the total Workweeks for all PAGA Members by
14 adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The
15 respective Workweeks for each PAGA Member will be divided by the total Workweeks for all
16 PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member's
17 Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate
18 each PAGA Member's estimated share of the PAGA Payment. PAGA Members shall receive this
19 portion of their Individual Settlement Payment regardless of whether they opt out of the
20 participation regarding the class claims.

21 c) Allocation of Individual Settlement Payments. All Individual

22 Settlement Payments from the Net Settlement Amount will be allocated as follows: twenty
23 percent (20%) of each Individual Settlement Payment will be allocated as wages, forty percent
24 (40%) shall be allocated as interest, and forty percent (40%) shall be allocated as penalties. All
25 Individual Settlement Payments from the PAGA Payment will be allocated one hundred percent
26 (100%) as penalties. The portion of the Individual Settlement Payment allocated to wages will
27 be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage
28 payments will be reported on an IRS Form-1099 by the Settlement Administrator.

1 46. No Credit Toward Benefit Plans. The Individual Settlement Payments made to
2 Participating Class Members under this Settlement, as well as any other payments made pursuant
3 to this Settlement, will not be utilized to calculate any additional benefits under any benefit plans
4 to which any Class Members may be eligible, including, but not limited to profit-sharing plans,
5 bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and
6 any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
7 affect any rights, contributions, or amounts to which any Class Members may be entitled under
8 any benefit plans. Payment of wages shall not extend or alter Participating Class Members' period
9 of employment for any purpose.

10 47. Settlement Administration Process. The Parties agree to cooperate in the
11 administration of the Settlement and to make all reasonable efforts to control and minimize the
12 costs and expenses incurred in administration of the Settlement. The Settlement Administrator
13 will provide the following services:

- 14 a) Establish and maintain a Qualified Settlement Fund.
- 15 b) Calculate the Individual Settlement Payment each Participating
16 Class Member is eligible to receive and the portion of the PAGA Payment each PAGA Member
17 shall receive.
- 18 c) Translate the Notice to Spanish.
- 19 d) Print and mail the Notice.
- 20 e) Conduct additional address searches for mailed Notices that are
21 returned as undeliverable.
- 22 f) Process Requests for Exclusion, field inquiries from Class
23 Members.
- 24 g) Print and issue and issue Settlement Payment Checks, prepare IRS
25 W2 and 1099 Tax Forms and any other filings required by any governmental taxing authority.
- 26 h) Provide declarations and/or other information to this Court as
27 requested by the Parties and/or the Court.
- 28 i) Provide weekly status reports to counsel for the Parties.

1 48. Delivery of the Class List. Within fifteen (15) calendar days of Preliminary
2 Approval, Defendant will provide the Class List to the Settlement Administrator.

3 49. Notice by First-Class U.S. Mail. Within ten (10) calendar days after receiving the
4 Class List from Defendant, the Settlement Administrator will mail the Notice to all Class
5 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
6 identified in the Class List.

7 50. Confirmation of Contact Information in the Class List. Prior to mailing, the
8 Settlement Administrator will perform a search based on the National Change of Address
9 Database for information to update and correct for any known or identifiable address changes.
10 Any Notice returned to the Settlement Administrator as non-deliverable on or before the Response
11 Deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed
12 thereto and the Settlement Administrator will indicate the date of such re-mailing on the Notice.
13 If no forwarding address is provided, the Settlement Administrator will promptly attempt to
14 determine the correct address using a skip-trace, or other search using the name, address and/or
15 Social Security number of the Class Member involved and will then perform a single re-mailing.
16 If any notice sent to a Class Member by the Settlement Administrator is returned as undeliverable
17 to a current employee, then Defendant shall make all reasonable efforts to obtain the current
18 address from the Class Member and provide the same within seven (7) calendar days of notice
19 from the Settlement Administrator. Those Class Members who receive a re-mailed Notice,
20 whether by skip-trace or by request, will have between the later of (a) an additional fifteen (15)
21 calendar days or (b) the Response Deadline to postmark a Request for Exclusion, or an objection
22 to the Settlement.

23 51. Notice. All Class Members will be mailed a Notice in the form attached hereto as
24 Exhibit A. Each Notice will provide: (a) information regarding the nature of the Action; (b) a
25 summary of the Settlement's principal terms; (c) the Class definition; (d) the total number of
26 Workweeks each respective Class Member worked for Defendant during the Class Period and
27 PAGA Period; (e) each Class Member's estimated Individual Settlement Payment and the
28 formula for calculating Individual Settlement Payments; (f) the dates which comprise the Class

1 Period and PAGA Period; (g) the deadlines by which the Class Member must postmark Requests
2 for Exclusion, Objections to the Settlement, or Workweek Disputes; (h) the claims to be released,
3 as set forth herein; and (j) the date for the final approval hearing.

4 52. Disputed Information on Notice. Class Members will have an opportunity to
5 dispute the information provided in their Notice. To the extent Class Members dispute the number
6 of Workweeks with which they have been credited or the amount of their Individual Settlement
7 Payment, Class Members may produce evidence to the Settlement Administrator showing that
8 such information is inaccurate. Absent evidence rebutting Defendant's records, Defendant's
9 records will be presumed determinative. However, if a Class Member produces evidence to the
10 contrary by the Response Deadline, the Parties will evaluate the evidence submitted by the Class
11 Member and the Parties will make the final decision as to the number of eligible Workweeks that
12 should be applied and/or the Individual Settlement Payment to which the Class Member may be
13 entitled. If the Parties do not agree, the dispute will be submitted to the Court.

14 53. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the
15 Action must sign and postmark a written Request for Exclusion to the Settlement Administrator
16 by the Response Deadline. The Request for Exclusion must include (a) the Class Member's name,
17 address, telephone number, and the last four digits of the Class Member's Social Security number
18 and/or the Employee ID number and (b) a clear and unambiguous statement requesting to be
19 excluded from the settlement of the class claims similar to the following: "I wish to exclude
20 myself from the class settlement reached in the matter of *Gonzalez v. MCS*. I understand that by
21 excluding myself, I will not receive money from the settlement of my individual claims." The
22 date of the postmark on the return mailing envelope receipt confirmation will be the exclusive
23 means to determine whether a Request for Exclusion has been timely submitted. All Requests for
24 Exclusion will be submitted to the Settlement Administrator, who will certify jointly to Class
25 Counsel and Defendant's Counsel the Requests for Exclusion that were timely submitted. All
26 Class Members who do not request exclusion from the Action will be bound by all terms of the
27 Settlement Agreement if the Settlement is granted final approval by the Court. The Request for
28 Exclusion shall not exclude any PAGA Member from the Released PAGA Claims.

1 54. Defendant's Right to Rescind. If more than five of the Class Members elect not to
2 participate in the Settlement, Defendant may, at its election, rescind the Settlement Agreement
3 and all actions taken in furtherance of it will be thereby null and void. Defendant must meet and
4 confer with Class Counsel prior to exercising this right and must make clear its intent to rescind
5 the Agreement within fourteen (14) calendar days after the expiration of the Opt Out Deadline. If
6 Defendant exercises its right to rescind the Agreement, Defendant shall be responsible for all
7 Settlement Administration Costs incurred to the date of rescission.

8 55. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class
9 Member who does not affirmatively opt-out of the Settlement by submitting a timely and valid
10 Request for Exclusion will be bound by all of its terms, including those pertaining to the Released
11 Claims, as well as any Judgment that may be entered by the Court if it grants final approval to the
12 Settlement. Class Members who opt-out of the Settlement shall not be bound by such Judgment
13 or release, except for the Released PAGA Claims. The names of Class Members who have opted-
14 out of the settlement shall be disclosed to the Counsel for both Plaintiff and Defendant and noted
15 in the proposed Judgment submitted to the Court.

16 56. Objection Procedures. To object to the Settlement, a Participating Class Member
17 must postmark a valid Objection to the Settlement Administrator on or before the Response
18 Deadline. The Objection must be signed by the Participating Class Member and contain all
19 information required by this Settlement Agreement including the employees full name, address,
20 telephone number, the last four digits of their social security number and/or Employee ID number,
21 and the specific reason including any legal grounds for the Participating Class Member's
22 objection. The postmark date will be deemed the exclusive means for determining that the Notice
23 of Objection is timely. Participating Class Members who fail to object in the manner specified
24 above will be foreclosed from making a written objection, but shall still have a right to appear at
25 the Final Approval Hearing in order to have their objections heard by the Court. At no time will
26 any of the Parties or their counsel seek to solicit or otherwise encourage Participating Class
27 Members to submit written objections to the Settlement or appeal from the Order and Judgment.
28 Class Counsel will not represent any Class Members with respect to any objections to this

1 Settlement.

2 57. Certification Reports Regarding Individual Settlement Payment Calculations. The
3 Settlement Administrator will provide Defendant's Counsel and Class Counsel a weekly report
4 which certifies: (a) the number of Class Members who have submitted valid Requests for
5 Exclusion; (b) the number of Class Members who have submitted valid Objections; (c) the
6 number of Notices returned and re-mailed; and (d) whether any Class Member has submitted a
7 challenge to any information contained in the Notice. Additionally, the Settlement Administrator
8 will provide to counsel for both Parties any updated reports regarding the administration of the
9 Settlement Agreement as needed or requested.

10 58. Uncashed Settlement Checks. Any checks issued by the Settlement Administrator
11 to Participating Class Members and PAGA Members will be negotiable for at least one hundred
12 eighty (180) calendar days. If a Participating Class Member or PAGA Member does not cash his
13 or her Settlement Check or PAGA payment check within 180 days, the uncashed funds, subject
14 to Court approval, shall be distributed to the Controller of the State of California to be held
15 pursuant to the Unclaimed Property Law, California Civil Code §1500, *et. seq.* for the benefit of
16 those Participating Class Members and PAGA Members who did not cash their checks until such
17 time that they claim their property. The Parties agree that this disposition results in no "unpaid
18 residue" under California Civil Procedure Code § 384, as the entire Net Settlement Amount will
19 be paid out to Participating Class Members and PAGA Members, whether or not they all cash
20 their Settlement Checks or PAGA payment checks. Therefore, Defendant will not be required to
21 pay any interest on such amounts. The Individual Settlement Payments provided to Participating
22 Class Members and to PAGA Members shall prominently state the expiration date or a statement
23 that the Settlement Check will expire in one hundred eighty (180) days, or alternatively, such a
24 statement may be made in a letter accompanying the Individual Settlement Payment. Expired
25 Individual Settlement Payments will not be reissued, except for good cause and as mutually
26 agreed by the Parties in writing. The parties agree no unclaimed funds will result from the
27 settlement.

28 59. Administration of Taxes by the Settlement Administrator. The Settlement

1 Administrator will be responsible for issuing to Plaintiff, Participating Class Members, and Class
2 Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid
3 pursuant to this Settlement. The Settlement Administrator will also be responsible for forwarding
4 all payroll taxes and penalties to the appropriate government authorities.

5 60. Tax Liability. Defendant makes no representation as to the tax treatment or legal
6 effect of the payments called for hereunder, and Plaintiff and Participating Class Members are
7 not relying on any statement, representation, or calculation by Defendant or by the Settlement
8 Administrator in this regard. Plaintiff and Participating Class Members understand and agree that
9 they will be solely responsible for the payment of any taxes and penalties assessed on the
10 payments described herein. Defendant's share of any employer payroll taxes, including
11 Defendant's FICA and FUTA contributions, shall be paid separate and apart from the Gross
12 Settlement Amount.

13 61. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this
14 section, the "acknowledging party" and each Party to this Agreement other than the
15 acknowledging party, an "other party") acknowledges and agrees that: (1) no provision of this
16 Agreement, and no written communication or disclosure between or among the Parties or their
17 attorneys and other advisers, is or was intended to be, nor shall any such communication or
18 disclosure constitute or be construed or be relied upon as, tax advice within the meaning of United
19 States Treasury Department circular 230 (31 CFR part 10, as amended); (2) the acknowledging
20 party (a) has relied exclusively upon his, her or its own, independent legal and tax counsel for
21 advice (including tax advice) in connection with this Agreement, (b) has not entered into this
22 Agreement based upon the recommendation of any other Party or any attorney or advisor to any
23 other Party, and (c) is not entitled to rely upon any communication or disclosure by any attorney
24 or adviser to any other party to avoid any tax penalty that may be imposed on the acknowledging
25 party, and (3) no attorney or adviser to any other Party has imposed any limitation that protects
26 the confidentiality of any such attorney's or adviser's tax strategies (regardless of whether such
27 limitation is legally binding) upon disclosure by the acknowledging party of the tax treatment or
28 tax structure of any transaction, including any transaction contemplated by this Agreement.

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

5 63. Release by Participating Class Members, PAGA Members, the LWDA and the
6 State of California. Upon the complete funding of the Gross Settlement Amount and all applicable
7 employer-side payroll taxes by Defendant and entry of the Final Approval Order and Final
8 Judgment by the Court and the occurrence of the Effective Date, Participating Class Members
9 shall fully release and discharge the Released Parties from any and all Released Class Claims.
10 This release shall be binding on all Participating Class Members and their present and future
11 representatives, attorneys, agents, heirs, executors, administrators, and assigns and all those
12 claiming by, through, or under them, and each of them. All PAGA Members, the LWDA, and
13 State of California shall release the Released PAGA Claims . The Released PAGA Claims shall
14 be effective for PAGA Members regardless of their decision to participate in the class settlement.

15 64. Wage Related Release by Plaintiff Gonzalez Only: In addition to the Released Class
16 Claims and the Released PAGA Claims against Released Parties made by the Participating Class
17 Members as set forth in Paragraphs 27, 28, and 29 *supra*, Named Plaintiff, and her present and future
18 representatives, attorneys, agents, heirs, executors, administrators, and assigns and all those claiming by,
19 through, or under them, and each of them, in exchange for the Class Representative Enhancement Payment
20 as requested or as otherwise authorized by the Court, will, as of the Effective Date and subject to
21 Defendant's full payment of the Gross Settlement Amount, make the additional following Release of all
22 Wage Claims pursuant to the California Labor Code under Section 1542 of the California Civil Code,
23 known or unknown, in exchange and consideration of the sum set forth in Paragraph 9, *supra*. Named
24 Plaintiff, and her present and future representatives, attorneys, agents, heirs, executors, administrators, and
25 assigns and all those claiming by, through, or under them, and each of them, agrees to release the Released
26 Parties from all wage and hour Claims, including, but not limited to, minimum and overtime wages, meal
27 and rest period premiums, reimbursement of business related expenses, Violation of Fair Credit Reporting
28 Act and Labor Code section 1024.5, penalties under the Labor Code and Private Attorneys General Act

1 and all other Released Class Claims and Released PAGA Claims. The Wage Release as to Named
2 Plaintiff, and her present and future representatives, attorneys, agents, heirs, executors, administrators, and
3 assigns and all those claiming by, through, or under them, and each of them, includes any unknown wage
4 and hour claims that Named Plaintiff does not know or suspect to exist in her favor at the time of the Wage
5 Release, which, if known by her, might have affected her settlement with, and release of, the Released
6 Parties or might have affected her decision not to object to this Settlement or the Wage Release.

7 With respect to the Wage Release, Named Plaintiff stipulates and agrees that, upon the
8 Effective Date and subject to Defendant's full payment of the Gross Settlement Amount, Named
9 Plaintiff shall be deemed to have, and by operation of the Final Judgment shall have, expressly
10 waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits
11 of Section 1542 of the California Civil Code, or any other similar provision under federal or state
12 law with regard to any wage and hour claims, which provides:

13
14 **A general release does not extend to claims that the creditor or releasing party**
15 **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.

16 Named Plaintiff may hereafter discover facts in addition to or different from those she
17 now knows or believes to be true with respect to the subject matter of the Wage Release, but
18 Named Plaintiff upon the Effective Date, shall be deemed to have, and by operation of the Final
19 Judgment shall have, fully, finally, and forever settled and released any and all of the wage and
20 hour claims under the Labor Code released pursuant to the Wage Release, whether known or
21 unknown, suspected or unsuspected, contingent or non-contingent, which now exist, or heretofore
22 have existed upon any theory of law or equity now existing or coming into existence in the future,
23 including, but not limited to, conduct that is negligent, intentional, with or without malice, or a
24 breach of any duty, law or rule, without regard to the subsequent discovery or existence of such
25 different or additional facts.

26 65. Nullification of Settlement Agreement. In the event that: (a) the Court does not
27 finally approve the Settlement as provided herein; (b) the Court strikes or does not approve any
28

1 material term of this Settlement Agreement; or (c) the Settlement does not become final as written
2 and agreed to by the Parties for any other reason, then this Settlement Agreement, and any
3 documents generated to bring it into effect, will be null and void, all amounts deposited into the
4 QSF will be returned to Defendant, and the Parties shall be returned to their original respective
5 positions as of April 25, 2022. Any order or judgment entered by the Court in furtherance of this
6 Settlement Agreement will likewise be treated as void from the beginning. Should the Court fail
7 to approve this settlement for any reason, the Parties agree that they will return to and attend
8 mediation with a mutually agreed Mediator in an effort to reach a settlement that may be approved
9 by the Court.

10 66. Preliminary Approval Hearing. Plaintiff will obtain a hearing before the Court to
11 request Preliminary Approval of the Settlement Agreement, and the entry of a Preliminary
12 Approval Order for: (a) conditional certification of the Settlement Class for settlement purposes
13 only, (b) Preliminary Approval of the proposed Settlement Agreement, (c) setting a date for a
14 Final Approval/Settlement Fairness Hearing, and (d) granting leave for Plaintiff to file the First
15 Amended Complaint attached hereto as Exhibit B. The Preliminary Approval Order will provide
16 for the Notice to be sent to all Class Members as specified herein. In conjunction with the
17 Preliminary Approval hearing, Plaintiff will submit this Agreement, which sets forth the terms of
18 the Settlement, and will include the proposed Notice attached as Exhibit A. Defendant agrees that
19 it will not oppose a Motion for Preliminary Approval based upon the terms of this agreement.
20 Counsel for Defendant will be given an opportunity to review and comment on the motion for Preliminary
21 Approval of the Settlement prior to its being filed with the Court and such comments will be implemented
22 to the extent reasonable. Any failure by the Court to fully and completely approve the Agreement
23 as to the Action will result in this Settlement Agreement and the Memorandum of Understanding
24 entered into by the Parties, and all obligations under this Settlement Agreement and the
25 Memorandum of Understanding being nullified and voided pursuant to paragraph 66 of this
26 Agreement.

27 67. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
28 deadlines to postmark Requests for Exclusion or objections to the Settlement Agreement, and

1 with the Court's permission, a Final Approval/Settlement Fairness Hearing will be conducted to
2 determine the Final Approval of the Settlement Agreement along with the amounts properly
3 payable for: (a) Individual Settlement Payments; (b) the Attorneys' Fees and Costs; (c) the Class
4 Representative Enhancement Payment; and (d) the Settlement Administration Costs. Class
5 Counsel will be responsible for drafting all documents necessary to obtain Final Approval.
6 Counsel for Defendant will be given an opportunity to comment on the motion for final approval of the
7 Settlement and Proposed Order and Judgment prior to its being filed with the Court and such comments
8 will be implemented to the extent reasonable. Any failure by the Court to fully and completely
9 approve the Settlement Agreement as to all of the Action, or the entry of any Order by another
10 Court with regard to any of the Action which has the effect of modifying material terms of this
11 Agreement or preventing the full and complete approval of the Settlement Agreement as written
12 and agreed to by the Parties, will result in this Agreement and all obligations under this Agreement
13 being null and void pursuant to paragraph 65 of this Agreement. Defendant agrees it shall not
14 oppose the granting of the Motion for Final Approval based upon the terms of this agreement,
15 provided Defendant has not exercised its right to rescind pursuant to the terms of this Agreement.

16 68. Final Approval Order and Final Judgment and Continued Jurisdiction. Upon Final
17 Approval of the Settlement by the Court or after the Final Approval/Settlement Fairness Hearing,
18 the Parties will present the Final Judgment to the Court for its approval. After entry of the
19 Judgment, the Court will have continuing jurisdiction solely for purposes of addressing: (a) the
20 interpretation and enforcement of the terms of the Settlement, (b) Settlement administration
21 matters, and (c) such post-Judgment matters as may be appropriate under court rules or as set
22 forth in this Settlement.

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

26 70. Entire Agreement. This Settlement Agreement and any attached Exhibits
27 constitute the entirety of the Parties' settlement terms. No other prior or contemporaneous written
28 or oral agreements may be deemed binding on the Parties.

1 71. Amendment or Modification. This Settlement Agreement may be amended or
2 modified only by a written instrument signed by counsel for all Parties or their successors-in-
3 interest.

4 72. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
5 and represent they are expressly authorized by the Parties whom they represent to negotiate this
6 Settlement Agreement and to take all appropriate action required or permitted to be taken by such
7 Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
8 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
9 counsel will cooperate with each other and use their best efforts to affect the implementation of
10 the Settlement. If the Parties are unable to reach agreement on the form or content of any
11 document needed to implement the Settlement, or on any supplemental provisions that may
12 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance
13 of the Court to resolve such disagreement. The Parties agree that, to the extent further
14 modifications to the Settlement Agreement are required, Class Counsel and Defendant's counsel
15 may execute any amendments and/or modifications to the Settlement Agreement on behalf of
16 their respective clients.

17 73. Binding on Successors and Assigns. This Settlement Agreement will be binding
18 upon, and inure to the benefit of, and be enforceable by the Parties' respective heirs, executors,
19 administrators, representatives, successors and assigns.

20 74. California Law Governs. All terms of this Settlement Agreement and Exhibits
21 hereto will be governed by and interpreted according to the laws of the State of California.

22 75. Execution and Counterparts. This Settlement Agreement is subject only to the
23 execution of all Parties. However, the Settlement Agreement may be executed in one or more
24 counterparts. All executed counterparts and each of them, including facsimile, electronic
25 signature, and scanned copies of the signature page, will be deemed to be one and the same
26 instrument provided that counsel for the Parties will exchange among themselves original signed
27 counterparts.

28 76. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe

1 this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have
2 arrived at this Settlement after arm's-length negotiations and in the context of adversarial
3 litigation, taking into account all relevant factors, present and potential. The Parties further
4 acknowledge that they are each represented by competent counsel and that they have had an
5 opportunity to consult with their counsel regarding the fairness and reasonableness of this
6 Settlement.

7 77. Invalidity of Any Provision. Before declaring any provision of this Agreement
8 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
9 consistent with applicable precedents so as to define all provisions of this Agreement valid and
10 enforceable.

11 78. Waiver of Certain Appeals. The Parties agree to waive appeals and to stipulate to
12 class certification for purposes of this Settlement only; except, however, that either party may
13 appeal any court order that materially alters the Settlement Agreement's terms.

14 79. Class Action Certification for Settlement Purposes Only. The Parties agree to
15 stipulate to class action certification only for purposes of the Settlement. If, for any reason, the
16 Settlement is not approved, the stipulation to certification will be void. The Parties further agree
17 that certification for purposes of the Settlement is not an admission that class action certification
18 is proper under the standards applied to contested certification motions and that this Agreement
19 will not be admissible in this or any other proceeding as evidence that either: (a) a class action
20 should be certified or (b) Defendants are liable to Plaintiff or any Class Member, other than
21 according to the Settlement's terms.

22 80. Non-Admission of Liability. The Parties enter into this Agreement to resolve the
23 dispute that has arisen between them and to avoid the burden, expense and risk of continued
24 litigation. In entering into this Agreement, Defendant does not admit, and specifically deny, they
25 have violated any federal, state, or local law; violated any regulations or guidelines promulgated
26 pursuant to any statute or any other applicable laws, regulations or legal requirements; breached
27 any contract; violated or breached any duty; engaged in any misrepresentation or deception; or
28 engaged in any other unlawful conduct with respect to their employees. Neither this Agreement,

1 nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed
2 as an admission or concession by Defendant of any such violations or failures to comply with any
3 applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this
4 Agreement and its terms and provisions shall not be offered or received as evidence in any action
5 or proceeding to establish any liability or admission on the part of Defendant or to establish the
6 existence of any condition constituting a violation of, or a non-compliance with, federal, state,
7 local or other applicable law. Payment of wages does not extend or alter the class member-
8 claimants' period of employment for any purpose.

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

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

16 83. Enforcement Action. In the event that one or more of the Parties institutes any
17 legal action or other proceeding against any other Party or Parties to enforce the provisions of this
18 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
19 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
20 fees and costs, including expert witness fees incurred in connection with any enforcement actions.

21 84. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms
22 and conditions of this Agreement. Accordingly, this Agreement will not be construed more
23 strictly against one Party than another merely by virtue of the fact that it may have been prepared
24 by counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
25 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

26 85. Representation By Counsel. The Parties acknowledge that they have been
27 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
28 and that this Agreement has been executed with the consent and advice of counsel and reviewed

1 in full. Further, Plaintiff and Class Counsel warrant and represent that there are no liens on the
2 Agreement.

3 86. All Terms Subject to Final Court Approval. All amounts and procedures described
4 in this Settlement Agreement herein will be subject to final Court approval.

5 87. Cooperation and Execution of Necessary Documents. The Parties agree to
6 cooperate to promote participation in the Settlement, and in seeking court approval of the
7 Settlement. The Parties and their counsel agree not to take any action to encourage any Class
8 Members to opt out of and/or object to the Settlement. The Parties will work in good faith to
9 reach an agreement approved by the Court.

10 88. Confidentiality. The Parties and their counsel agree to keep the terms of the
11 Settlement confidential until the filing of Plaintiff's Motion for Preliminary Approval. Plaintiff
12 and Class Counsel agree that they will not issue any press releases, initiate any contact with the
13 press, respond to any press inquiry or have any communication with the press about the fact,
14 amount or terms of the Settlement Agreement. Nothing in this Settlement Agreement shall limit
15 Class Counsel's communications with the Class Members in furtherance of approval of this
16 Settlement.

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

22 [SIGNATURES ON FOLLOWING PAGE]
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27
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1 Dated: 06 / 13 / 2022

PLAINTIFF

2
3
4 By: 
5 Ginger Gonzalez

6 Dated: _____

DEFENDANT MCS INDUSTRIES, INC.

7
8
9 By: _____
10 Greg Yocco
11 Title: CFO

12 **APPROVED AS TO FORM AND**
13 **ATTORNEY OBLIGATIONS ONLY**

14 Dated: June 13, 2022

GAINES & GAINES, ALPC

15
16 By *Daniel F. Gaines*
17 Daniel F. Gaines, Esq.
18 Alex P. Katofsky, Esq.
19 Attorneys for Plaintiff

20 Dated: _____

LEWIS BRISBOIS BISGAARD & SMITH
LLP

21
22 By _____
23 Rachel J. Lee, Esq.
24 Attorneys for Defendant
25
26
27
28

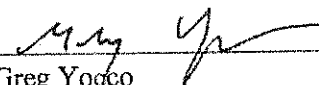
1 Dated: _____
2
3

PLAINTIFF

4 By: _____
5 Ginger Gonzalez

6 Dated: 6/10/22
7

DEFENDANT MCS INDUSTRIES, INC.

8 By: 
9 Greg Yocco
10 Title: CFO

11
12 APPROVED AS TO FORM AND
13 ATTORNEY OBLIGATIONS ONLY

14 Dated: _____

GAINES & GAINES, ALPC

15 By _____
16 Daniel F. Gaines, Esq.
17 Alex P. Katofsky, Esq.
18 Attorneys for Plaintiff

19
20 Dated: 6/10/22

LEWIS BRISBOIS BISGAARD & SMITH
LLP

21 By 
22 Rachel J. Lee, Esq.
23 Attorneys for Defendant
24
25
26
27
28

TITLE	Joint Stipulation of Class Action Settlement
FILE NAME	GONZALEZ -Joint S...tlement FINAL.pdf
DOCUMENT ID	edf04d685495b15706d64dcf6c7b71540856b419
AUDIT TRAIL DATE FORMAT	MM / DD / YYYY
STATUS	✱ Signed

Document History



SENT

06 / 13 / 2022
19:15:37 UTC

Sent for signature to Ginger Gonzalez
[REDACTED] from office@gaineslawfirm.com
[REDACTED]



VIEWED

06 / 13 / 2022
19:41:15 UTC

Viewed by Ginger Gonzalez [REDACTED]
[REDACTED]



SIGNED

06 / 13 / 2022
20:37:34 UTC

Signed by Ginger Gonzalez [REDACTED]
[REDACTED]



COMPLETED

06 / 13 / 2022
20:37:34 UTC

The document has been completed.

EXHIBIT A

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

GINGER GONZALEZ, on behalf of herself and
all “aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

vs.

MCS INDUSTRIES, INC., a Pennsylvania
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CIVSB2116240

Assigned to the Hon. Lynn Poncin, Dept. S28

**NOTICE OF PENDENCY OF PROPOSED
CLASS ACTION SETTLEMENT AND
FINAL HEARING**

**YOU MAY BE ENTITLED TO RECEIVE MONEY FROM A SETTLEMENT
PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED.**

A California court authorized this notice. This is not a solicitation from a lawyer.

- A settlement will provide \$175,000 to pay claims to all individuals who worked for Defendant MCS Industries, Inc. (“Defendant”) as a non-exempt employee in California at any time between June 7, 2017 and June 24, 2022.
- The settlement resolves a lawsuit alleging that Defendant failed to pay all overtime and minimum wages due; provide compliant meal and rest periods or premium compensation in lieu thereof; reimburse employee business expenses; timely issue final wages upon separation of employment; issue accurate and complete itemized wage statements; and violated background check laws, including Labor Code § 1024.5. The Settlement avoids costs and risks of continuing the lawsuit; pays money to employees; and releases Defendant from liability from the claims asserted in this lawsuit.
- Lawyers for the employees will ask the Court to award them up to \$61,250 as attorneys’ fees and \$12,000 as expenses for investigating the facts, litigating the case, and negotiating the settlement. This will be paid from the settlement amount.
- Defendant denies liability and the Parties disagree on how much money could have been awarded if employees won at trial.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
Do Nothing	You do not need to take any action if you wish to receive your settlement payment. If the settlement is approved by the Court, you will automatically be mailed a settlement check at the address on file with the Settlement Administrator. If your address has changed, you must notify the Settlement Administrator of your new address. In exchange for the settlement payment, you will release claims against the Defendant, as detailed below.
Exclude Yourself	To exclude yourself, you must send a written Request for Exclusion to the Settlement Administrator by the applicable deadline, as detailed below. If you request exclusion, you may receive no money from the Settlement . This is the only option that allows you to ever be part of any other lawsuit against Defendant about the legal claims that were brought in this case except that PAGA Members may not exclude themselves from the Release of PAGA Claims.
Object	Write to the Settlement Administrator about why you don't like the settlement by the applicable deadline, as detailed below, and/or appear at the Final Approval Hearing to make an oral objection.
Go to a Hearing	Ask to speak in Court about the fairness of the settlement, as detailed below.

WHY DID YOU RECEIVE THIS NOTICE?

This notice explains a proposed settlement of a class action lawsuit, and informs you of your legal rights under that proposed settlement. You are receiving this notice because you may be a member of the Class on whose behalf this class action lawsuit has been brought.

WHAT IS THIS LAWSUIT ABOUT?

On June 7, 2021, Plaintiff Ginger Gonzalez ("Plaintiff"), a former employee of Defendant, filed this lawsuit in the San Bernardino County Superior Court. The lawsuit alleges violations of the California Labor Code, California Business and Professions Code, and the Fair Credit Reporting Act. The lawsuit seeks to certify a class of all current and former non-exempt employees of Defendant employed from June 7, 2017 through June 24, 2022 ("Class Period") in California. Specifically, the lawsuit alleges that members of the Class were not paid all overtime and minimum wages due; were not provided all compliant meal and rest periods or premium compensation in lieu thereof; were not timely issued final wages upon separation of employment; were not issued accurate and complete itemized wage statements; were not reimbursed for all business expenses incurred; and were improperly required to undergo background checks. The Settlement seeks recovery of wages, expense reimbursement, damages, interest, statutory and civil penalties, restitution, attorneys' fees, and costs. Defendant denies all of the material allegations in the lawsuit and denies that it owes Class Members any remedies. The Court has not made a ruling on the merits of the case.

The lawyers for the parties are:

Plaintiff's Attorneys

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
Gaines & Gaines, APLC
4550 E. Thousand Oaks Blvd., Suite 100
Westlake Village, CA 91362
Phone: (866) 550-0855

Defendant's Attorneys

Rachel J. Lee, Esq.
Cecilia J. Hong, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street, Suite 4000
Los Angeles, California 90071

SUMMARY OF THE SETTLEMENT

A. Why is there a Settlement?

The Court did not decide in favor of Plaintiff or Defendant. Plaintiff believes she would have prevailed on their claims at a trial. Defendant does not believe that Plaintiff would have won anything from a trial. There has been no trial. Instead, both sides agreed to a settlement, which is memorialized in the Joint Stipulation of Class Action and PAGA Settlement ("Settlement Agreement" or "Stipulation of Settlement"), in order to avoid the further costs, risks, and uncertainty of a trial. Plaintiff and Plaintiff's Attorneys believe the settlement is fair, reasonable, adequate, and in the best interests of all Class Members.

B. Who is in the Settlement Class?

The Settlement encompasses a class composed of all current and former non-exempt employees who worked for Defendant MCS Industries, Inc. in California at any time between June 7, 2017 and June 24, 2022.

C. What does the Settlement provide?

1. Gross Settlement Amount.

The Settlement provides that Defendant will pay \$175,000 (the "Gross Settlement Amount") to settle the lawsuit.

2. Net Settlement Amount.

The "Net Settlement Amount" is the portion of the Gross Settlement Amount that will be available for distribution to Class Members who do not submit timely and valid requests for exclusion in exchange for the release of their class claims. The Net Settlement Amount is the Gross Settlement Amount less the following amounts that will be requested at the Final Approval Hearing and are subject to comment or objection by Participating Class Members. The Court will determine these amounts at the Final Approval Hearing.

(a) **Class Counsel's Attorneys' Fees** in an amount set by the Court, not to exceed \$61,250;

(b) **Class Counsel's Documented Litigation Costs/Expenses** in an amount set by the Court, not to exceed \$12,000;

(c) **Enhancement Payment to the Class Representative** in an amount set by the Court, not to exceed \$5,000, for her service in the lawsuit;

(d) **Settlement Administration Costs** which are currently estimated to not exceed \$4,000, for administering the settlement; and

(e) **PAGA Payment** in the total amount of \$10,000 for the settlement of claims arising under the California Private Attorneys General Act ("PAGA"). Seventy-Five percent (75%), or \$7,500, shall be paid to the California Labor and Workforce Development Agency ("LWDA"). The remaining Twenty-Five percent (25%), or \$2,500, shall be paid to non-exempt employees who worked for Defendant in California from March 8, 2020 through June 24, 2022 ("PAGA Members"), for the release of their claims arising under PAGA.

3. Individual Settlement Payments.

Your share of the Net Settlement Proceeds will be determined by the formula detailed in section E below. Your Individual Settlement Payment includes both your estimated share of the Net Settlement Amount and, if eligible, your share of the PAGA Payment ("Individual Settlement Payment")

D. What Are You Giving Up To Get A Payment Or Stay In The Class?

Upon remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator and entry of judgment by the Court, Class Members and each of them, for themselves and their past, present and future representatives, attorneys, agents, heirs, executors, administrators, and assigns, and all those claiming by, through or under them, will fully and finally release and discharge Defendant MCS Industries, Inc. and its past, present and/or future, parent companies, subsidiaries, affiliates, shareholders, members, agents (including, without limitation, any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns ("Released Parties") from any and all claims, rights, demands, liabilities and causes of actions, whether known or unknown, contingent or vested, in law or in equity, arising during employment by Defendant in a non-exempt position in California at any time during the Class Period, for unpaid wages or other compensation, and/or related penalties, interest, costs, attorneys' fees, and/or injunctive or other equitable remedies, allegedly owed or available, against the Released Parties, arising out of, or which could be alleged based on, the allegations and operative facts asserted in the Action, including: (1) failure to pay overtime wages; (2) failure to pay all wages due, including minimum wages; (3) failure to provide meal periods or provide premium wages in lieu thereof; (4) failure to provide rest periods or provide premium wages in lieu thereof; (5) wage statement violations under Labor Code section 226, et. al; (6) failure to indemnify for work related expenses under Labor Code section 2802; (7) Violation of Fair Credit Reporting Act and Labor Code section 1024.5; (8) Failure to Timely Pay All Wages due at Separation under Labor Code sections 201, 202 and 203; (9) Unfair Business Practices in Violation of Business and Professions Code section 17200, et. seq. premised on the above claims; (8) all claims for civil penalties under California Labor Code section 2698, et. seq. (Private Attorneys General Act) premised on the above claims; and violation of or liability under California Labor Code under sections 201, 202, 203, 226, 226.3, 226.7, 510, 512, 558, 1024.5, 1194, and 2802, the relevant Wage Orders issued by the Industrial Welfare Commission, and any and all claims for attorneys' fees and costs, which are premised on the factual allegations of the operative complaint ("Released Class Claims").

Upon remittance of the Gross Settlement Amount by Defendant to the Settlement Administrator and entry of judgment by the Court, PAGA Members and each of them, for themselves and their past, present and future representatives, attorneys, agents, heirs, executors, administrators, and assigns, and all those claiming by, through or under them, will fully and finally release and discharge the Released Parties

from all claims, rights, demands, liabilities and causes of action for civil penalties that are alleged, or reasonably could have been alleged based on the facts and claims asserted in the PAGA letter, dated March 8, 2021, under the PAGA, Cal. Lab. Code §§ 2698, et seq., which accrued during employment by Defendant in California during the PAGA Period, and which are premised on alleged violations of the California Labor Code for: (1) failure to pay overtime wages; (2) failure to pay minimum wages; (3) failure to provide meal periods; (4) failure to provide rest periods; (5) wage statement violations; (6) failure to indemnify; (7) Violation of Fair Credit Reporting Act and Labor Code section 1024.5; (8) Failure to Pay All Wages due at Separation under Labor Code sections 201, 202 and 203; and for PAGA civil penalties that could have been alleged based on the facts and claims asserted in the PAGA letter, dated March 8, 2021, the relevant Wage Orders issued by the Industrial Welfare Commission, any and all claims for attorneys' fees and costs, which are premised a violation of the PAGA based on the allegations of the operative complaint ("Released PAGA Claims").

E. How Is My Share Of The Settlement Calculated?

Each participating Class Member (those who do not opt out of the Settlement) shall receive an "Individual Settlement Payment," which is distributable to each Class Member who participates in the Settlement (i.e., who does not submit a valid request for exclusion form) and is a portion of the PAGA Payment distributable to each PAGA Member, regardless of if they request exclusion from the class settlement or not).

Individual Settlement Payments will be calculated and distributed to Participating Class Members from the Net Settlement Amount on a *pro rata* basis, based on the Participating Class Members' respective number of Workweeks during the Class Period and PAGA Members' respective number of Workweeks during the PAGA Period. Specific calculations of the Individual Settlement Payments will be made as follows:

A. The Settlement Administrator will calculate the total Workweeks for all Participating Class Members by adding the number of Workweeks worked by each Participating Class Member during the Class Period. The respective Workweeks for each Participating Class Member will be divided by the total Workweeks for all Participating Class Members, resulting in the Payment Ratio for each Participating Class Member. Each Participating Class Member's Payment Ratio will then be multiplied by the Net Settlement Amount to calculate each Settlement Class Member's estimated share of the Net Settlement Amount.

B. The Settlement Administrator will calculate the total Workweeks for all PAGA Members by adding the number of Workweeks worked by each PAGA Member during the PAGA Period. The respective Workweeks for each PAGA Member will be divided by the total Workweeks for all PAGA Members, resulting in the Payment Ratio for each PAGA Member. Each PAGA Member's Payment Ratio will then be multiplied by the employee portion of the PAGA Payment to calculate each PAGA Member's estimated share of the PAGA Payment. PAGA Members shall receive this portion of their Individual Settlement Payment regardless of whether they opt out of the participation regarding the class claims.

For tax purposes, all Individual Settlement Payments from the Net Settlement Amount will be allocated as follows: twenty percent (20%) of each Individual Settlement Payment will be allocated as wages, forty percent (40%) shall be allocated as interest, and forty percent (40%) shall be allocated as penalties. All Individual Settlement Payments from the PAGA Payment will be allocated one hundred percent (100%) as penalties. The portion of the Individual Settlement Payment allocated to wages will be reported by the Settlement Administrator on an IRS Form W-2. The remaining non-wage payments will be reported on an IRS Form-1099 by the Settlement Administrator.

According to the records of Defendant, you worked [] Workweeks in California from June 7, 2017 through June 24, 2022 and you worked [] Workweeks in California from March 8, 2020 to June 24, 2022. Based on these Workweeks worked, you are entitled to an Individual Settlement Payment of approximately \$[]. This amount is subject to change based on the final ruling of the Court.

Please be advised that the individual data above is presumed to be correct unless you submit documentation proving otherwise. If you disagree with the data, please submit an explanation and evidence in support of your position to the Settlement Administrator no later than _____, 2022. In the event of a dispute, the Settlement Administrator will resolve the challenge with input from the Defendant and will make a final and binding determination without a hearing or right of appeal by you.

THE SETTLEMENT HEARING

The Court will conduct a final fairness hearing regarding the proposed settlement (the "Final Settlement Hearing") on _____, at _____ a.m., in the Courtroom of Judge Lynn Poncin of the San Bernardino County Superior Court, Department S28, located at 247 West Third Street, San Bernardino, CA 92415. The Court will determine: (i) whether the settlement should be given the Court's final approval as fair, reasonable, adequate and in the best interests of the Settlement Class Members; (ii) whether the Settlement Class Members should be bound by the terms of the settlement; (iii) the amount of the attorneys' fees and costs to be awarded to Plaintiff's Attorneys; and (iv) the amount that should be awarded to Plaintiff as an Enhancement Payment. At the Final Settlement Hearing, the Court will hear all properly filed objections, as well as arguments for and against the proposed settlement. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or to enter an appearance and represent yourself.

WHAT ARE YOUR OPTIONS?

- **OPTION 1 – DO NOTHING AND PARTICIPATE IN THE SETTLEMENT**

IF YOU TAKE NO ACTION IN RESPONSE TO THIS NOTICE, YOU WILL AUTOMATICALLY RECEIVE YOUR SHARE OF THE SETTLEMENT IF IT IS APPROVED BY THE COURT. YOU ARE NEVER REQUIRED TO GO TO COURT OR PAY ANYTHING TO THE LAWYERS IN THIS CASE. If you move, you must update your address with the Settlement Administrator. If you disagree with pre-printed data indicated in section E above, you must submit an explanation and/or documentation to the Settlement Administrator to justify your position, postmarked no later than _____. The Settlement Administrator's address is [Settlement Administrator address].

- **OPTION 2 – OBJECT TO THE SETTLEMENT**

If you wish to remain a Settlement Class Member, but you object to the proposed settlement (or any of its terms) and wish the Court to consider your objection at the Final Settlement Hearing, you may object to the proposed settlement in writing. You may also appear at the Final Approval Hearing, either in person or through an attorney at your own expense. All written objections, supporting papers, and/or notices of intent to appear at the Final Approval Hearing must clearly identify the case name and number and be mailed to the Settlement Administrator at [Settlement Administrator address]. Written objections must be postmarked no later than _____.

• **OPTION 3 – EXCLUDE YOURSELF FROM THE SETTLEMENT**

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, you will not receive any benefits from the proposed settlement. You can opt out of the Class by completely mailing a written Request for Exclusion statement to the Settlement Administrator at the above-stated address, such that it is postmarked no later than _____.

To be effective, the written Request for Exclusion statement must contain:

- (a) your name, address, telephone number, and the last four digits of the your Social Security number and/or Employee ID number; and
- (b) a clear statement requesting to be excluded from the settlement of the class claims similar to the following: “I wish to exclude myself from the class settlement reached in the matter of *Gonzalez v. MCS*. I understand that by excluding myself, I will not receive money from the settlement of my individual claims.”

The written Request for Exclusion statement shall not exclude any PAGA Member from the Released PAGA Claims.

ARE THERE MORE DETAILS ABOUT THE SETTLEMENT?

The above is a summary of the basic terms of the settlement. For the precise terms and conditions of the settlement, you should review the detailed “Joint Stipulation of Class Action and PAGA Settlement” which is on file with the Clerk of the Court. The pleadings and other records in the Lawsuit may be examined at any time during regular business hours at the Office of the Clerk of the San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at [address], [telephone number] or Gaines & Gaines, APLC, Counsel for the Class, at (866) 550-0855.

PLEASE DO NOT TELEPHONE THE COURT FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

**BY ORDER OF THE SUPERIOR COURT OF
THE STATE OF CALIFORNIA**

EXHIBIT B

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
4 **GAINES & GAINES, APLC**
4550 East Thousand Oaks Boulevard, Suite 100
5 Westlake Village, CA 91362
Telephone: (818) 703-8985
6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Ginger Gonzalez, on behalf of herself and on behalf of all similarly situated
8 individuals and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN BERNARDINO**

11 GINGER GONZALEZ, on behalf of herself
and all "aggrieved employees" pursuant to
12 Labor Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 MCS INDUSTRIES, INC., a Pennsylvania
corporation, and DOES 1 through 10,
16 inclusive,

17 Defendants.

CASE NO: CIVSB2116240

Assigned to the Hon. Lynn Poncin, Dept. S28

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 510 AND 1194)
2. FAILURE TO PAY ALL WAGES DUE,
INCLUDING MINIMUM WAGES (LABOR
CODE §§ 510 AND 1194)
3. FAILURE TO PROVIDE COMPLIANT
MEAL PERIODS OR COMPENSATION IN
LIEU THEREOF (LABOR CODE §§ 226.7,
510, 512, AND 1194; IWC WAGE ORDER 9-
2001)
4. FAILURE TO PROVIDE COMPLIANT
REST PERIODS OR COMPENSATION IN
LIEU THEREOF (LABOR CODE § 226.7;
IWC WAGE ORDER 9-2001)
5. FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (h), (e))
6. FAILURE TO INDEMNIFY FOR ALL
WORK-RELATED EXPENSES (LABOR
CODE § 2802)

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7. VIOLATION OF FAIR CREDIT
REPORTING ACT AND LABOR CODE §
1024.5

8. FAILURE TO TIMELY PAY WAGES
DUE AT SEPARATION OF
EMPLOYMENT (LABOR CODE §§ 201-
203)

9. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200 ET SEQ.

10. CIVIL PENALTIES PURSUANT TO
LABOR CODE § 2698 ET SEQ. FOR
VIOLATIONS OF LABOR CODE §§ 201,
202, 226, 226.7, 510, 512, 1194, AND 2802
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3, 558, AND 1024.5

DEMAND FOR JURY TRIAL

Complaint Filed: June 7, 2021

Plaintiff GINGER GONZALEZ (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004 (“PAGA”), complains of MCS INDUSTRIES, INC., a Pennsylvania corporation, and any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”), and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other hourly employees who work or formerly worked for Defendants within the State of California.

2. From June 7, 2017 through the present, Defendants have had a consistent policy of failing to pay Class Members (as defined below) all minimum and overtime wages due; failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Class Members; performing illegal background checks of Class Members; failing to reimburse all business-related

1 expenses to Class Members; failing to provide accurately itemized wage statements to Class
2 Members; and failing to timely pay wages upon separation of employment to Class Members.

3 3. Plaintiff, on behalf of herself and the members of the Class, brings this action pursuant
4 to Labor Code §§ 201, 202, 203, 226(a), 226.3, 226.7, 510, 512, 558, 1024.5, 1194, 1198, and 2802,
5 seeking compensation for unpaid minimum and overtime wages, premium meal and rest period
6 wages, and business-related expenses, statutory penalties, civil penalties, injunctive and other
7 equitable relief, and reasonable attorneys' fees and costs.

8 4. Plaintiff, on behalf of herself and Class Members and pursuant to Business &
9 Professions Code §§ 17200-17208, seeks injunctive relief, restitution, and disgorgement of all
10 benefits Defendants enjoyed from their failure to pay all wages and expense reimbursement due to
11 Class Members.

12 5. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
13 because Defendants employed Plaintiff and Class Members in San Bernardino County, California.

14 6. Plaintiff, on behalf of herself and all aggrieved employees pursuant to Labor Code §§
15 2698 *et seq.*, seeks penalties for Defendants' various violations of the California Labor Code.

16 II.

17 PARTIES

18 A. Plaintiff

19 7. Plaintiff GINGER GONZALEZ was employed by Defendants from August 2017
20 through August 2020 as a non-exempt employee in San Bernardino County, California.

21 8. During her work with Defendants, Plaintiff was:

- 22 a. Willfully denied the payment of all minimum and overtime wages due;
- 23 b. Willfully denied compliant rest periods or compensation in lieu thereof;
- 24 c. Willfully denied compliant meal periods or compensation in lieu thereof;
- 25 d. Forced to undergo illegal background checks;
- 26 e. Willfully denied the reimbursement of all business-related expenses;
- 27 f. Willfully denied accurately itemized wage statements; and

1 g. Willfully denied the timely payment of wages upon separation of her
2 employment.

3 **B. Defendants**

4 9. Defendant MCS INDUSTRIES, INC., is a Pennsylvania corporation. Defendant MCS
5 INDUSTRIES, INC. employed Plaintiff and Class Members in San Bernardino County, California.

6 10. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
8 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
9 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
10 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
11 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
12 designated hereinafter as DOES when such identities become known.

13 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
14 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
15 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
16 attributable to the other Defendants.

17 12. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
18 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
19 provisions of the California Labor Code as alleged herein.

20 **III.**

21 **CLASS ACTION ALLEGATIONS**

22 13. Plaintiff brings this action on behalf of herself, and all others similarly situated as a
23 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
24 following class composed of and defined as follows:

25 **THE CLASS**

26 All current and former non-exempt employees who worked for MCS
27 Industries, Inc. in California at any time between June 7, 2017 and June
28 24, 2022.

1 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
2 modify this class description with greater specificity or further division into subclasses or limitation
3 to particular issues.

4 15. This action has been brought and may properly be maintained as a class action under
5 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
6 interest in the litigation and the proposed Class is easily ascertainable.

7 **A. Numerosity**

8 16. The potential members of the Class as defined are so numerous that joinder of all Class
9 Members is impracticable. While the precise number of members of the Class has not been
10 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 currently employ, and during the relevant time periods employed, approximately 50 persons in the
12 State of California who fall within the Class definition.

13 17. Accounting for employee turnover during the relevant period necessarily increases this
14 number. Plaintiff alleges Defendants' employment records would provide information as to the
15 number and location of members of the Class. Joinder of members of the Class is not practicable.

16 **B. Commonality**

17 18. There are questions of law and fact common to the Class that predominate over any
18 questions affecting only individual Class Members. These common questions of law and fact include,
19 without limitation:

- 20 a. Whether Defendants failed to properly pay Plaintiff and Class Members all
21 minimum and overtime wages due, in violation of Labor Code §§ 510 and
22 1194;
- 23 b. Whether Defendants failed to properly provide compliant rest periods or
24 compensation in lieu thereof to Plaintiff and Class Members, in violation of
25 Labor Code § 226.7 and IWC Wage Order 9-2001;
- 26 c. Whether Defendants failed to properly provide compliant meal periods or
27 compensation in lieu thereof to Plaintiff and Class Members, in violation of
28 Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 9-2001;

- 1 d. Whether Defendants failed to reimburse Plaintiff and Class Members for all
2 business-related expenses, in violation of Labor Code § 2802;
- 3 e. Whether Defendants failed to provide Plaintiff and Class Members with
4 accurately itemized wage statements, in accordance with Labor Code § 226(a);
- 5 f. Whether Defendants required Plaintiff and Class Members to undergo illegal
6 background checks, in violation of Labor Code § 1024.5;
- 7 g. Whether Defendants failed to timely pay Plaintiff and Class Members all
8 wages due and owing at the separation of their employment, in violation of
9 Labor Code §§ 201-203; and
- 10 h. Whether Plaintiff and Class Members are entitled to equitable relief pursuant
11 to Business & Professions Code § 17200 *et seq.*

12 **C. Typicality**

13 19. The claims of the named Plaintiff are typical of the claims of members of the Class.
14 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
15 Defendants' common course of conduct in violation of laws, regulations that have the force and effect
16 of law, and statutes as alleged herein.

17 **D. Adequacy of Representation**

18 20. Plaintiff will fairly and adequately represent and protect the interests of members of
19 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
20 employment class actions.

21 **E. Superiority of Class Action**

22 21. A class action is superior to other available means for the fair and efficient adjudication
23 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
24 questions of law and fact common to the proposed Class predominate over any questions affecting
25 only individual members of the proposed Class. Each member of the proposed Class has been
26 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

27 22. Class action treatment will allow those similarly situated persons to litigate their
28 claims in the manner that is most efficient and economical for the parties and the judicial system.

1 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
2 action that would preclude its maintenance as a class action.

3 **IV.**

4 **CAUSES OF ACTION**

5 **FIRST CAUSE OF ACTION**

6 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(LABOR CODE §§ 510 AND 1194)**

9 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
10 forth herein.

11 24. During the liability period, Defendants failed to properly compute bonus wages and
12 other non-base hourly wages earned by Plaintiff and Class Members into their regular rate of pay for
13 purposes of paying them overtime at the correct rates, in violation of Labor Code §§ 510 and 1194.
14 Defendants failed to properly blend bonus wages and other non-base hourly wages and instead paid
15 Plaintiff and Class Members overtime based *only* on the base hourly rate of pay, thus depriving
16 Plaintiff and Class Members of all overtime wages earned, in violation of Labor Code §§ 510 and
17 1194.

18 25. As a result of the unlawful acts of Defendants in willfully failing to pay all overtime
19 wages due, Plaintiff and Class Members have been deprived of wages in amounts to be determined
20 at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys'
21 fees, and costs pursuant to Labor Code § 1194.

22 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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1 V.

2 SECOND CAUSE OF ACTION

3 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

4 FAILURE TO PAY ALL WAGES DUE, INCLUDING MINIMUM WAGES

5 (LABOR CODE §§ 510 AND 1194)

6 26. Plaintiff incorporates paragraphs 1 through 25 of this Complaint as though fully set
7 forth herein.

8 27. Defendants failed to pay all minimum wages earned during the course of employment,
9 in violation of Labor Code §§ 510 and 1194, when it rounded down the hours reflected on Plaintiff's
10 and Class Members' time records to pay fewer hours than were actually worked. On a weekly basis,
11 this rounding deprived Plaintiff and Class Members of significant hours worked. These failures to
12 pay all minimum due constitute violations of Labor Code §§ 510 and 1194.

13 28. As a result of the unlawful acts of Defendants in willfully failing to pay for all
14 minimum wages due, Plaintiff and Class Members have been deprived of wages in amounts to be
15 determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon,
16 attorneys' fees, and costs pursuant to Labor Code § 1194.

17 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

18 VI.

19 THIRD CAUSE OF ACTION

20 PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

21 FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

22 OR COMPENSATION IN LIEU THEREOF

23 (LABOR CODE §§ 226.7, 510, 512, AND 1194; IWC WAGE ORDER 9-2001)

24 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set
25 forth herein.

26 30. Plaintiff and Class Members are entitled to one hour of pay for each day that
27 Defendants failed to properly provide one or more compliant meal periods as set forth in Labor Code
28 §§ 226.7 and 512 and IWC Wage Order 9-2001.

31. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. When they did receive a meal period, it was routinely provided after the fifth hour of work or they would be required to clock out for their meal period and continue working without compensation. Plaintiff and Class Members were also required to carry a two-way radio during their meal periods to which they had to be alert and respond to, resulting in on-duty meal periods. This violates Labor Code §§ 226.7, 510, 512, and 1194 and IWC Wage Order 9-2001.

32. Pursuant to Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001, Plaintiff seeks the payment of all unpaid meal period compensation which she and Class Members are owed, according to proof.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

VII.

FOURTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE COMPLIANT REST PERIODS

OR COMPENSATION IN LIEU THEREOF

(LABOR CODE § 226.7 AND IWC WAGE ORDER 9-2001)

33. Plaintiff incorporates paragraphs 1 through 32 of this Complaint as though fully set forth herein.

34. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more rest periods as set forth in Labor Code § 226.7 and IWC Wage Order 9-2001.

35. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order 9-2001. Plaintiff and

1 Class Members were routinely not authorized and unable to take an off-duty, 10-minute rest period
2 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
3 hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes
4 late, cut short, interrupted, or on-duty. Further, when rest periods were provided, Plaintiff and Class
5 Members were required to carry a two-way radio to which they had to be alert and respond to,
6 resulting in impermissible on-duty rest periods. This violates Labor Code § 226.7 and IWC Wage
7 Order No. 9-2001.

8 36. Pursuant to Labor Code § 226.7 and IWC Wage Order 9-2001, Plaintiff seeks the
9 payment of all rest period compensation which she and Class Members are owed, according to proof.

10 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

11 **VIII.**

12 **FIFTH CAUSE OF ACTION**

13 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

14 **FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE**

15 **WAGE STATEMENT PROVISIONS**

16 **(LABOR CODE § 226(a), (e), and (h))**

17 37. Plaintiff incorporates paragraphs 1 through 36 of this Complaint as though fully set
18 forth herein.

19 38. Section 226(a) of the California Labor Code requires Defendants to provide wage
20 statements to employees. In those wage statements, Defendants must provide an accurate itemized
21 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee . . . ,
22 (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
23 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of
25 the period for which the employee is paid, (7) the name of the employee and only the last four digits
26 of his or her social security number or an employee identification number other than a 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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1 hourly rates in effect during the pay period and the corresponding number of hours worked at each
2 hourly rate by the employee. Defendants have failed to comply with Labor Code § 226(a).

3 39. Defendants failed to issue Plaintiff and Class Members wage statements that fully and
4 accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Class Members
5 were not paid all wages due, including minimum and overtime wages and premium wages for
6 unauthorized meal and rest periods, as stated above. As such, the wage statements provided by
7 Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
8 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
9 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
10 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Furthermore,
11 and independent of the above allegations, the wage statements issued to Plaintiff and Class Members
12 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding
13 number of hours worked, in violation of Labor Code § 226(a)(9) as the wage statements set forth
14 various categories of wages earned during the pay period, but omit the corresponding rates or hours
15 worked).

16 40. As a consequence of Defendants' willful conduct in failing to provide Class Members
17 with accurate itemized wage statements, Plaintiff and Class Members have been injured because they
18 have not been paid all wages due and were issued wage statements which do not reflect, and fail to
19 accurately state, all information required by Labor Code § 226(a). The missing information cannot
20 be discerned at all from the face of the wage statements themselves. As a result, Plaintiff and Class
21 Members are entitled to penalties pursuant to Labor Code § 226(e) to recover the greater of all actual
22 damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each
23 violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000 per employee, and
24 are entitled to an award of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

25 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

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IX.

SIXTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO INDEMNIFY FOR ALL WORK-RELATED EXPENSES

(LABOR CODE § 2802)

41. Plaintiff incorporates paragraphs 1 through 40 of this Complaint as though fully set forth herein.

42. Pursuant to California Labor Code § 2802, Defendants are required to fully reimburse Plaintiff and Class Members for all out-of-pocket expenses incurred by them in the performance of their job duties.

43. Plaintiff and Class Members were required to incur work-related expenses, including use of their personal cellular phones as part of their work tasks for Defendants, but were not fully reimbursed by Defendants for these expenses.

44. As a proximate result of the aforementioned violations, Plaintiff and Class Members have been damaged in an amount according to proof at the time of trial.

45. Pursuant to Labor Code § 2802, Plaintiff and Class Members are entitled to recover from Defendants the full amount of the expenses they incurred in the performance of their job duties that have not been reimbursed, plus interest, reasonable attorney's fees, and costs of suit.

Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

X.

SEVENTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

VIOLATION OF FAIR CREDIT REPORTING ACT AND LABOR CODE § 1024.5

46. Plaintiff incorporates paragraphs 1 through 45 of this Complaint as though fully set forth herein.

47. Defendants improperly required Plaintiff and Class Members to undergo background checks even though their job title and classification did not provide for or allow any form of background check, in violation of the Fair Credit Reporting Act and Labor Code § 1024.5. Plaintiff

1 was employed as a non-exempt employee with the job title of “picking lead” where she assisted
2 various departments with their shipping needs. She was not employed as a manager in any capacity,
3 nor did she fit into the enumerated positions allowing for a background check pursuant to Labor Code
4 § 1024.5. As such, she was not required or permitted to undergo a background check in coordination
5 with her employment. Plaintiff alleges this claim on behalf of herself and Class Members.

6 48. Pursuant to Labor Code § 1024.5, Plaintiff and Class Members are entitled to recover
7 from Defendants civil penalties pursuant to PAGA.

8 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

9 **XI.**

10 **EIGHTH CAUSE OF ACTION**

11 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

12 **FAILURE TO TIMELY PAY WAGES DUE AT**

13 **SEPARATION OF EMPLOYMENT**

14 **(LABOR CODE §§ 201-203)**

15 49. Plaintiff incorporates paragraphs 1 through 48 of this Complaint as though fully set
16 forth herein.

17 50. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
18 due within 72 hours after resignation of employment or the day of termination of employment. Labor
19 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
20 as a penalty, continue to pay the subject employee’s daily wages until the back wages are paid in full
21 or an action is commenced. The penalty cannot exceed 30 days of wages.

22 51. Defendants paid Plaintiff and Class Members their final wages beyond the time frames
23 set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. Plaintiff and Class
24 Members were not paid all wages due and owing throughout the course of their employment,
25 including minimum and overtime wages and premium wages for unauthorized meal and rest periods,
26 as stated above. Consequently, at the time of their separation from employment with Defendants,
27 they were not paid all final wages due and owing for the entirety of their employment. This violates
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1 Labor Code §§ 201-203 and is alleged on behalf of Plaintiff and certain Class Members who have left
2 their employment with Defendants.

3 52. More than 30 days have passed since Plaintiff and Class Members have left
4 Defendants' employ.

5 53. As a consequence of Defendants' willful conduct in not paying wages owed timely
6 upon separation of employment, Plaintiff and Class Members are entitled to up to 30 days' wages as
7 a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of
8 employment.

9 Wherefore, Plaintiff and the Class she seeks to represent request relief as described below.

10 **XII.**

11 **NINTH CAUSE OF ACTION**

12 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

13 **UNFAIR COMPETITION PURSUANT TO**

14 **BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.**

15 54. Plaintiff incorporates paragraphs 1 through 53 of this Complaint as though fully set
16 forth herein.

17 55. This is a Class Action for Unfair Business Practices. Plaintiff, on her own behalf and
18 on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant
19 to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this
20 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public,
21 and Class Members. Plaintiff seeks to enforce important rights affecting the public interest within
22 the meaning of Code of Civil Procedure § 1021.5.

23 56. Plaintiff is a "person" within the meaning of Business & Professions Code § 17204,
24 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
25 appropriate equitable relief.

26 57. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business
27 practices.
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1 58. Wage and hour laws express fundamental public policies. Properly providing
2 employees with all wages and expense reimbursement due is a fundamental public policy of this State
3 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
4 vigorously minimum labor standards, to ensure that employees are not required or permitted to work
5 under substandard and unlawful conditions, and to protect law-abiding employers and its employees
6 from competitors who lower their costs by failing to comply with minimum labor standards.

7 59. Defendants have violated statutes and public policies. Through the conduct alleged
8 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
9 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
10 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
11 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
12 guaranteed to all employees under law.

13 60. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
14 §17200 *et seq.* of the Business & Professions Code.

15 61. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
16 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
17 17200 *et seq.* of the Business & Professions Code.

18 62. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
19 similarly situated have been damaged in a sum as may be proven.

20 63. Unless restrained by this Court, Defendants will continue to engage in the unlawful
21 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
22 should make such orders or judgments, including the appointment of a receiver, as may be necessary
23 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
24 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
25 to, disgorgement of profits which may be necessary to restore Plaintiff and Class Members to the
26 money Defendants have unlawfully failed to pay.

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XIII.

TENTH CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO LABOR CODE § 2698 ET SEQ. FOR VIOLATIONS
OF LABOR CODE §§ 201, 202, 226, 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 558, AND 1024.5**

65. Plaintiff incorporates paragraphs 1 through 64 of this Complaint as though fully set forth herein.

66. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

67. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226, 226.7, 510, 512, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3, 558, and 1024.5.

68. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

69. On March 8, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 8, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the aggrieved employees she seeks to represent request relief as described below.

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RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages pursuant to Labor Code § 1194 in the amount of all unpaid minimum and overtime wages due to Plaintiff and Class Members;
2. For compensatory damages in the amount of one hour of wages for each day on which a meal period was not properly provided to Plaintiff and Class Members pursuant to Labor Code §§ 226.7 and 512;
3. For compensatory damages in the amount of one hour of wages for each day on which a rest period was not properly provided to Plaintiff and Class Members pursuant to Labor Code § 226.7;
4. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
5. For penalties pursuant to Labor Code § 203 for Plaintiff and Class Members;
6. For reimbursement of all expenses incurred by Plaintiff and Class Members pursuant to Labor Code § 2802;
7. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
8. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
9. An award of prejudgment and post-judgment interest;
10. An award providing for payment of costs of suit, pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and other applicable law;
11. An award of attorneys' fees, pursuant to Labor Code §§ 226(h), 2699(g)(1), 2802, and other applicable law; and

1 12. Such other and further relief as this Court may deem just and proper.

2 Dated: June 14, 2022

Respectfully submitted,

3 GAINES & GAINES
4 A Professional Law Corporation

5 By: _____
6 DANIEL F. GAINES
7 EVAN S. GAINES
8 Attorneys for Plaintiff

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

11 Dated: June 14, 2022

Respectfully submitted,

12 GAINES & GAINES
13 A Professional Law Corporation

14 By: _____
15 DANIEL F. GAINES
16 EVAN S. GAINES
17 Attorneys for Plaintiff