

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: MCS INDUSTRIES, INC., a Pennsylvania
(**AVISO AL DEMANDADO**): corporation, and DOES 1 through 10,
inclusive

YOU ARE BEING SUED BY PLAINTIFF: GINGER GONZALEZ, on behalf
(**LO ESTÁ DEMANDANDO EL DEMANDANTE**): of herself and all
"aggrieved employees" pursuant to Labor Code § 2698 et
seq.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 07 2021

BY Guadalupe Vasquez
Guadalupe Vasquez DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Bernardino
247 West Third Street
San Bernardino, California 92415-0210

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE:

(Fecha)

JUN 07 2021

Clerk, by

(Secretario)

Guadalupe Vasquez

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: #202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Ginger Gonzalez		FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT JUN 07 2021 BY <u>Guadalupe Vasquez</u> DEPUTY <i>Guadalupe Vasquez</i>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 247 West Third Street MAILING ADDRESS: 247 West Third Street CITY AND ZIP CODE: San Bernardino, 92415-0210 BRANCH NAME: San Bernardino District - Civil Division		
CASE NAME: Gonzalez v. MCS Industries, Inc., et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: CIV SB 2116240 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).



1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15) | Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
☐ Enforcement of judgment (20)
Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☐ Substantial amount of documentary evidence | d. ☐ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 6/7/21

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)



Alex P. Katofsky

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

Ginger Gonzalez

Case No.: **CIV SB 2116240**

VS.

CERTIFICATE OF ASSIGNMENT

MCS Industries, Inc., et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the San Bernardino-Civil District of the Superior Court under Rule 131 and General Order of this court for the checked reason:

☒ **General** ☐ **Collection**

Nature of Action

Ground

- | | |
|---|---|
| ☐ 1. Adoption | Petitioner resides within the district |
| ☐ 2. Conservator | Petitioner or conservatee resides within the district. |
| ☐ 3. Contract | Performance in the district is expressly provided for. |
| ☐ 4. Equity | The cause of action arose within the district. |
| ☐ 5. Eminent Domain | The property is located within the district. |
| ☐ 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| ☐ 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| ☐ 9. Mandate | The defendant functions wholly within the district. |
| ☐ 10. Name Change | The petitioner resides within the district. |
| ☐ 11. Personal Injury | The injury occurred within the district. |
| ☐ 12. Personal Property | The property is located within the district. |
| ☐ 13. Probate | Decedent resided or resides within or had property within the district. |
| ☐ 14. Prohibition | The defendant functions wholly within the district. |
| ☐ 15. Review | The defendant functions wholly within the district. |
| ☐ 16. Title to Real Property | The property is located within the district. |
| ☐ 17. Transferred Action | The lower court is located within the district. |
| ☐ 18. Unlawful Detainer | The property is located within the district. |
| ☐ 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| ☐ 20. Other _____ | |
| ☒ 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT |



The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

MCS Industries, Inc.

9375 Alabama Ave.

NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR

ADDRESS

Redlands
CITY

California
STATE

92374
ZIP CODE

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed on 6/7/21 at Calabasas, CA,
California.

Alex P. Katofsky

Signature of Attorney/Party

1 DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
2 ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
3 MIRIAM L. SCHIMMEL ESQ. SBN 185089
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4 EVAN S. GAINES, ESQ. SBN 287668
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27200 Agoura Rd., Suite 101
6 Calabasas, CA 91301
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7 Facsimile: (818) 703-8984

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 07 2021

BY Guadalupe Vasquez DEPUTY

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

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

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

14 Plaintiff,

15 v.

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

19 Defendants.

CASE NO: **CIV SB 2116240**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 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**



1 Plaintiff GINGER GONZALEZ (“Plaintiff”), on behalf of herself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of MCS
3 INDUSTRIES, INC., a Pennsylvania corporation, and/or any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other California employees who currently work or formerly worked for Defendants
9 (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonus wages and other non-base hourly wages
15 earned by Plaintiff and other non-exempt Aggrieved Employees into their regular rate of pay for
16 purposes of paying them overtime at the correct rates, in violation of Labor Code §§ 510, 558 and
17 1194. Defendants failed to properly blend bonus wages and other non-base hourly wages and instead
18 paid Plaintiff and other Aggrieved Employees overtime based *only* on the base hourly rate of pay,
19 thus depriving Plaintiff and other Aggrieved Employees of all overtime wages earned, in violation of
20 Labor Code §§ 510, 558 and 1194;

21 b. Failing to pay all minimum and overtime wages earned during the course of
22 employment, in violation of Labor Code §§ 510, 558, and 1194, when it rounded down the hours
23 reflected on Plaintiff’s and other non-exempt Aggrieved Employees’ time records to pay fewer hours
24 than were actually worked. On a weekly basis, this rounding deprived Plaintiff and other non-exempt
25 Aggrieved Employees of significant hours worked. These failures to pay all minimum and overtime
26 wages due constitute violations of Labor Code §§ 510, 558, and 1194.

27 c. Failing to pay premium wages to Plaintiff and non-exempt Aggrieved
28 Employees who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC

1 Wage Order 9-2001. Plaintiff and non-exempt Aggrieved Employees were routinely unable to take
2 an off-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, but were
3 not paid premium wages of one hour's pay for each missed rest period. When they were able to take
4 a rest period, they were oftentimes late, cut short, interrupted, or on-duty. Further, when rest periods
5 were provided, Plaintiff and non-exempt Aggrieved Employees were required to carry a two-way
6 radio to which they had to be alert and respond to, resulting in impermissible on-duty rest periods.
7 This violates Labor Code §§ 226.7, 558 and IWC Wage Order No. 9-2001;

8 d. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
9 Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512 and 558 and
10 IWC Wage Order 9-2001. Plaintiff and non-exempt Aggrieved Employees were routinely denied,
11 and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that
12 exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period for every
13 shift worked that exceeded ten hours in duration, but were not paid premium wages of one hour's pay
14 for each missed first or second meal period. When they did receive a meal period, it was routinely
15 provided after the fifth hour of work or they would be required to clock out for their meal period and
16 continue working without compensation. Plaintiff and non-exempt Aggrieved Employees were also
17 required to carry a two-way radio during their meal periods to which they had to be alert and respond
18 to, resulting in on-duty meal periods. This violates Labor Code §§ 226.7, 510, 512, 558, and 1194
19 and IWC Wage Order 9-2001;

20 e. Failing to reimburse all business-related expenses to Plaintiff and other
21 Aggrieved Employees, in violation of Labor Code § 2802. Plaintiff and Aggrieved Employees were
22 required to use their personal cellular phone to make calls for Defendants' benefit, but were not fully
23 reimbursed by Defendants for these cellular phone expenses. This practice violates Labor Code §
24 2802;

25 f. Failing to provide Plaintiff and non-exempt Aggrieved Employees with wage
26 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
27 Plaintiff and other non-exempt Aggrieved Employees were not paid all minimum and overtime wages
28 due and meal and rest period premium wages due. As such, the wage statements provided by

1 Defendants failed to accurately state all gross wages earned, in violation of Labor Code § 226(a)(1),
2 total hours worked, in violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor
3 Code § 226(a)(5), and all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked, in violation of Labor Code § 226(a)(9). Furthermore, and independent of
5 the above allegations, the wage statements issued to Plaintiff and non-exempt Aggrieved Employees
6 failed to set forth all applicable hourly rates in effect during the pay period and the corresponding
7 number of hours worked, in violation of Labor Code § 226(a)(9) as the wage statements set forth
8 various categories of wages earned during the pay period, but omit the corresponding rates or hours
9 worked;

10 g. Requiring Plaintiff to undergo a background check even though her job title
11 and classification did not provide for or allow any form of background check, in violation of the Fair
12 Credit Reporting Act and Labor Code § 1024.5. Plaintiff was employed as a non-exempt employee
13 with the job title of “picking lead” where she assisted various departments with their shipping needs.
14 She was not employed as a manager in any capacity, nor did she fit into the enumerated positions
15 allowing for a background check pursuant to Labor Code § 1024.5. As such, she was not required or
16 permitted to undergo a background check in coordination with her employment. Plaintiff alleges this
17 claim on behalf of herself and all other Aggrieved Employees; and

18 h. Failing to timely pay Plaintiff and other non-exempt Aggrieved Employees all
19 wages due at the separation of her employment based on the time frames required by Labor Code §§
20 201 and 202. As stated above, Plaintiff and non-exempt Aggrieved Employees were not paid all wages
21 due during the course of their employment and, as a result of this failure, they were not timely paid all
22 wages due at the separation of their employment. This violates Labor Code §§ 201-202 and is alleged
23 on behalf of other non-exempt Aggrieved Employees who have ended their employment with
24 Defendants.

25 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
26 2698 *et seq.*, seeks civil penalties for Defendants’ violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose in San Bernardino County, California.

II.

PARTIES

A. Plaintiff

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

B. Defendant

6. Defendant MCS INDUSTRIES, INC., is a Pennsylvania corporation. Defendant MCS INDUSTRIES, INC. employed Plaintiff and Aggrieved Employees in San Bernardino County, California.

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

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

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

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1 III.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
5 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
6 **CODE §§ 201, 202, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR**
7 **CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 558, AND 1024.5**

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

10 11. As a result of the acts alleged above, including the Labor Code violations set forth in
11 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
13 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

14 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
15 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512,
16 1194, and 2802; and

17 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
18 §§ 226.3, 558, and 1024.5.

19 13. Civil penalties recovered will be allocated 75% to the Labor and Workforce
20 Development Agency, and 25% to the affected employees.

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

27 Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as
28 described below.

1 IV.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
5 Aggrieved Employees;
- 6 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
7 and other applicable law;
- 8 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
9 law; and
- 10 4. Such other and further relief as this Court may deem just and proper.

11 Dated: June 7, 2021

Respectfully submitted,

12 GAINES & GAINES
13 A Professional Law Corporation

14 By: *Evan S. Gaines*
15 DANIEL F. GAINES
16 EVAN S. GAINES
17 Attorneys for Plaintiff
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NAME AND ADDRESS OF ATTORNEY OR PARTY WITHOUT ATTORNEY		STATE BAR NUMBER	Reserved for Clerk's File Stamp	
TELEPHONE NO.: E-MAIL ADDRESS: ATTORNEY FOR (Name): FAX NO. (Optional):		TRIAL SETTING CONFERENCE DATE: _____ UNLIMITED CASE: _____ LIMITED CASE: _____		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO				
COURTHOUSE ADDRESS:				
PLAINTIFF:				
DEFENDANT:				
INITIAL TRIAL SETTING CONFERENCE STATEMENT			CASE NUMBER:	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided. This document must be filed and served at least 15 days prior to the trial setting conference date.

1. **Party or parties** (answer one):
 - a. ☐ This statement is submitted by party (*name*):
 - b. ☐ This statement is submitted jointly by parties (*names*):
2. **Service of Complaint** on all parties has ☐ has not ☐ been completed.
3. **Service of Cross-Complaint** on all parties has ☐ has not ☐ been completed.
4. **Description of case** in Complaint:
5. **Description of case** in Cross-Complaint:
6. Has all discovery been completed: Yes ☐ No ☐ Date discovery anticipated to be completed: _____
7. Do you agree to mediation? Yes ☐ No ☐ Please check type agreed to: Private: _____ Court-sponsored: _____
8. **Related cases, consolidation, and coordination:** Please attach a Notice of Related Case.

☐ A motion to ☐ consolidate ☐ Trial dates requested: Yes ☐ No ☐ Available dates: _____
 Time estimate: _____
9. **Other issues:**

☐ The following additional matters are requested to be considered by the Court:
10. **Meet and Confer:**

☐ The parties represent that they have met and conferred on all subjects required by California Rules of Court, Rule 3.724.

☐ The parties have entered into the following stipulation(s):
11. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the Initial Trial Setting Conference, including the written authority of the party where required.
 Date: _____

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)

 (TYPE OR PRINT NAME)

 (SIGNATURE OF PARTY OR ATTORNEY)



SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN BERNARDINO

San Bernardino District
247 West 3rd St
San Bernardino CA 92415
www.sb-court.org
909-708-8678

Gonzalez -v- MCS Industries Inc. et al

NOTICE OF TRIAL SETTING CONFERENCE and NOTICE OF CASE ASSIGNMENT

Case Number

CIVSB2116240

Gaines & Gaines
27200 Agoura Road
Ste 101
Calabasas CA 91301

This case has been assigned to: Lynn Poncin in Department S28 - SBJC for all purposes.

Notice is hereby given that the above-entitled case has been set for Trial Setting Conference on:

Hearing Date: 12/07/2022 at 9:00 AM in Department S28 - SBJC

The Trial Setting Conference will be held in chambers without the appearance of the parties – except for good cause shown. (see Emergency Local Rule 411.1).

Parties shall file and serve no later than 15 days prior to the trial setting conference the mandatory Initial Trial Setting Conference Statement form (local form #13-09001-360) included with this notice. Prior to the date of the initial trial setting conference, the court may entertain a written stipulation by all appearing parties to continue the initial trial setting conference if filed at least 30 days prior to the conference.

Date: 6/11/2021

Nancy CS Eberhardt, Court Executive Officer

By:

Guadalupe Vasquez, Deputy Clerk

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San Bernardino at the above-listed address. I am not a party to this action and on the date and place shown below, I served a copy of the above-listed notice by:

- ☒ Enclosed in a sealed envelope mailed to the interested party addressed above for collection and mailing this date, following standard Court practices.
- ☐ Enclosed in a sealed envelope, first class postage prepaid in the U.S. mail at the location shown above, mailed to the interested party and addressed as shown above or as shown on the attached listing.
- ☐ A copy of this notice was given to the filing party at the counter.
- ☐ A copy of this notice was placed in the bin located at this office and identified as the location for the above law firm's collection of file-stamped documents.

Date of Mailing: 6/11/2021

I declare under penalty of perjury that the forgoing is true and correct. Executed on 6/11/2021 at San Bernardino, CA.

By:

Guadalupe Vasquez, Deputy Clerk