

Kevin Mahoney (SBN: 235367)

kmahoney@mahoney-law.net

Michael A. Swift (SBN: 296993)

mswift@mahoney-law.net

MAHONEY LAW GROUP, APC

249 East Ocean Boulevard, Suite 814

Long Beach, CA 90802

Telephone: (562) 590-5550

Facsimile: (562) 590-8400

Attorneys for Plaintiff, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

STANLEY MOSK COURTHOUSE

REINA GUEVARA, as an individual and on behalf of all other aggrieved employees,

Plaintiff,

vs.

DESIGNED METAL CONNECTIONS,
INC. dba PERMASWAGE USA,
PRECISION CASTPARTS
CORPORATION, and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **21STCV11337**

**COMPLAINT FOR DAMAGES AND
RESTITUTION**

1. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Recovery of Unpaid Minimum Wage and Overtime;
2. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to provide Rest Periods;
4. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Provide Accurate Itemized Wage Statements;
5. Violation of the Private Attorneys' General Act, Labor Code § 2698 et seq. for Failure to Pay Wages Due upon Termination of Employment; and
6. Violation of Bus. & Prof. Code § 17200 et seq. (Unfair Business Practices).

DEMAND FOR JURY TRIAL

1 Plaintiff REINA GUEVARA ("Plaintiff"), on behalf of herself and all others similarly situated,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of Plaintiff and the similarly Aggrieved
5 Employees he seeks to represent, as defined herein, as all non-exempt employees employed by or
6 formerly employed by Defendants DESIGNED METAL CONNECTIONS, INC. dba
7 PERMASWAGE USA and PRECISION CASTPARTS CORPORATION ("Defendant"). The
8 Aggrieved Employees consists of all non-exempt employees employed by or formerly employed
9 by Defendant within the state of California who were not subject to a collective bargaining
10 agreement at any time during the relevant statutory period, and were California citizens at the
11 time of the filing of this complaint. The term "Relevant Time Period" or "Time Period" is defined
12 as one (1) year prior to the filing of Plaintiff's initial complaint in this matter through the present.
13 Plaintiff reserves the right to amend this complaint to reflect a different "Time Period" or modify
14 the definition of "Aggrieved Employees" as further discovery is conducted.

15 2. Plaintiff individually, and on behalf of the Aggrieved Employees, who were not
16 subject to a collective bargaining agreement at any time during the relevant statutory period, seeks
17 relief against Defendant for violation of the California Labor Code (herein "Labor Code") as
18 follows: (1) failure to pay all wages due, including minimum, regular, and overtime wages as a
19 result of Defendant's policy of improperly paying its non-exempt hourly employees; (2) failure
20 to provide meal periods or compensation in lieu thereof; (3) failure to provide rest periods or
21 compensation in lieu thereof; (4) failure to provide accurate itemized wage statements; and (5)
22 failure to pay wages upon ending employment to terminated or resigned employees. Plaintiff
23 seeks penalties pursuant to Labor Code section 2608 et seq., the Private Attorneys General Act
24 of 2004 ("PAGA") in connection with Defendant's Labor Code violations.

25 3. Plaintiff further seeks equitable remedies in the form of declaratory relief, and
26 relief under Business and Professions Code section 17200 et seq. for unfair business practices.

27 4. At all relevant times herein, Defendant consistently maintained and enforced
28 against Plaintiff and Aggrieved Employees the following unlawful practices and policies: (a)

1 willfully refusing to pay Plaintiff and Aggrieved Employees for all hours worked, including
2 minimum wage and overtime; (b) failing to provide Plaintiff and Aggrieved Employees with meal
3 and/or rest periods or compensation in lieu thereof; (c) willfully refusing to compensate Plaintiff
4 and Aggrieved Employees wages due and owing at the time Plaintiff's and Aggrieved Employees'
5 employment with Defendant ended; and (d) willfully refusing to furnish to Plaintiff and
6 Aggrieved Employees accurate itemized wage statements upon payment of wages.

7 **JURISDICTION AND VENUE**

8 5. This Court has subject matter jurisdiction over the causes of action alleged in this
9 Complaint, because the Court is a court of general subject matter jurisdiction and is not otherwise
10 excluded from exercising subject matter jurisdiction over said causes of action.

11 6. Venue is proper in the County of Los Angeles, because the Defendant maintains
12 its location and transacts business in this county, the obligations and liability arise in this county,
13 and work performed by Plaintiff and Aggrieved Employees that form the subject of this action
14 occurred in this county.

15 7. The California Superior Court has jurisdiction in the matter, because the individual
16 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal
17 court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled
18 in the state of California. Defendant manufactures separable and permanent fluid fittings and
19 installation tooling for aerospace and defense applications doing business in the State of
20 California.

21 8. Further, there is no federal question at issue as the issues herein are based solely
22 on California statutes and law, including the Labor Code, California Code of Civil Procedure,
23 California Business and Professions Code, and California Rules of Court.

24 **THE PARTIES**

25 **A. The Plaintiff**

26 9. Plaintiff, at relevant times herein, was an employee of the Defendant and entitled
27 to compensation for all hours worked, overtime compensation, and penalties from Defendant.
28 Plaintiff was employed by the Defendant from on or about June 2004 through July 10, 2020, in

1 the County of Los Angeles. Plaintiff was employed by the Defendant during the Relevant Time
2 Period in a non-exempt hourly position. Plaintiff and each of the Aggrieved Employees are
3 identifiable, current and/or formerly-similarly situated persons who were employed in non-
4 exempt hourly positions in California for the Defendant during the Relevant Time Period, and
5 were not subject to a collective bargaining agreement at any point during the relevant statutory
6 period.

7 **B. The Defendant**

8 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
9 Designed Metal Connections, Inc. dba Permaswage USA is a California corporation doing
10 business in the state of California, including in the county of Los Angeles, and is and/or was the
11 employer of the Plaintiff and Aggrieved Employees, during the Relevant Time Period.
12 Furthermore, on information and belief Defendant Precision Castparts Corporation is the parent
13 corporation of Designed Metal Connections, Inc. During the liability period, Defendant employed
14 Plaintiff and similarly-situated persons, and failed to pay Plaintiff and Aggrieved Employees for
15 all hours worked, including minimum wage and overtime premiums for overtime hours worked;
16 failed to provide meal periods or pay a meal period penalty in lieu thereof; failed to provide rest
17 periods or pay a rest period penalty in lieu thereof and; failed to pay due and owing wages upon
18 ending of employment for employees within California. On information and belief, and based
19 thereon, Plaintiff alleges that Defendant is conducting business in good standing in California.

20 11. Plaintiff is ignorant of the true names, capacities, relationships and extent of
21 participation in the conduct herein alleged, of the Defendant sued herein as DOES 1 through 50,
22 inclusive, but on information and belief alleges, that said Defendant is legally responsible for the
23 payment of overtime compensation, rest and meal period compensation and/or Labor Code
24 section 203 penalties to Plaintiff and Aggrieved Employees by virtue of their unlawful practices,
25 and therefore sue these Defendant by such fictitious names. Plaintiff will amend this complaint
26 to allege the true names and capacities of the DOE Defendant when ascertained.

27 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
28 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint

1 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
2 legally attributable to the other Defendant.

3 13. Plaintiff is informed and believes, and based thereon alleges, that each defendant
4 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
5 managing agent, and/or principal of the co-Defendant, and in performing the actions mentioned
6 below was acting, at least in part, within the course and scope of that authority as such agent,
7 proxy, servant, partner, joint venture, single enterprise, joint employer employee, alter-ego,
8 managing agent, and/or principal with the permission and consent of the co-Defendant. Plaintiff
9 also alleges the acts of each Defendant are legally attributable to the other Defendant.

10 14. Plaintiff is informed and believes, and based thereon alleges, that each of the
11 Defendant sued herein was, at all relevant times hereto, the employer, owner, shareholder,
12 principal, joint venture, proxy, agent, employee, supervisor, representative, manager, managing
13 agent, joint employer and/or alter-ego of the remaining Defendant, and was acting, at least in part,
14 within the course and scope of such employment and agency, with the express and implied
15 permission, consent and knowledge, approval and/or ratification of the other Defendant. The
16 above co-Defendant, managing agents, and supervisors aided, abetted, condoned, permitted,
17 approved, authorized and/or ratified the unlawful acts described herein.

18 **ADMINISTRATIVE PREREQUISITES**

19 15. By this complaint, Plaintiff brings this case as a representative action seeking
20 penalties for the state of California in a representative capacity, as provided by the Private
21 Attorneys General Act, Labor Code section 2698 et seq. ("PAGA"), as an aggrieved employee
22 was employed by Defendant and did not receive all wages due, was not paid minimum wage, was
23 not paid overtime, was not provided accurate wage statements, and was not able to take lawful
24 meal and rest breaks or receive premium compensation in lieu thereof.

25 16. Prior to filing this complaint, on December 2, 2020, Plaintiff gave written notice
26 by certified mail to the Labor and Workforce Development Agency ("LWDA") (LWDA Case
27 No. LWDA-CM- 814261-20) and to Defendant of the specified provisions alleged to have been
28 violated, including the facts and theories to support the alleged violation as required by Labor

Code section 2699.3. A true and correct copy of Plaintiff's original letter sent to the LWDA on December 2, 2020, is attached hereto as "Exhibit A."

17. More than sixty-five (65) days have passed since Plaintiff submitted its notice to the LWDA and Defendant of the specific alleged Labor Code violations and the LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations. Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations. Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action.

GENERAL ALLEGATIONS

18. Defendants employed Plaintiff from on or about June 2004 through July 10, 2020, as an hourly nonexempt employee.

19. On December 2, 2020, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") (LWDA Case No. LWDA-CM-814261-20) and to Defendant of the specified provisions alleged to have been violated, including the facts and theories to support the alleged violation as required by Labor Code section 2699.3.

20. Plaintiff hereby files this complaint and seeks penalties pursuant to Labor Code section 2608 et seq., the Private Attorneys General Act of 2004 in connection with Defendant's Labor Code violations.

21. California Labor Code section 1194 provides that notwithstanding any agreement to work for a lesser wage, an employee receiving less than the legal overtime compensation or minimum wage compensation is entitled to recover in a civil action the unpaid balance of their overtime compensation and/or minimum wage compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

22. Further, Business and Professions Code section 17203 provides that any person who engages in unfair competition may be enjoined in any court of competent jurisdiction. Business and Professions Code section 17204 provides that any person who has suffered actual injury and has lost money or property as a result of the unfair competition may bring an action in a court of competent jurisdiction.

///

1 23. During all, or a portion of the Relevant Period, Plaintiff and Aggrieved Employees
2 were employed by Defendant in the State of California.

3 24. Plaintiff and each of the Aggrieved Employees were non-exempt employees
4 covered under Labor Code section 510, and/or other applicable wage orders, regulations, and
5 statutes, and each of the Aggrieved Employees were not subject to an exemption for executive,
6 administrative and professional employees, which imposed obligations on the part of Defendant
7 to pay Plaintiff and Aggrieved Employees lawful overtime compensation. Plaintiff and Aggrieved
8 Employees were covered by Labor Code section 226.7 and other applicable wage orders,
9 regulations, and statutes which imposed an obligation on the part of Defendant to pay Plaintiff
10 and Aggrieved Employees rest and meal period compensation.

11 25. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
12 Aggrieved Employees for all hours worked.

13 26. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
14 Aggrieved Employees Members minimum wages for all regular hours worked.

15 27. During the Relevant Time Period, Defendant was obligated to pay Plaintiff and
16 Aggrieved Employees overtime compensation of one-and-a-half time for all hours worked over
17 eight (8) hours of work in one (1) day or forty (40) hours in one (1) week, and double-time for
18 hours worked in excess of twelve (12) in one day.

19 28. During the Relevant Time Period, Defendant was obligated to provide Plaintiff
20 and Aggrieved Employees with a work free meal and/or on-duty meal periods, as well as rest
21 period(s).

22 29. Plaintiff and each Aggrieved Employee primarily performed non-exempt work in
23 excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders,
24 regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime
25 compensation at time-and-a-half rate, and when applicable, double-time rates as set forth by the
26 applicable Wage Orders, regulations and/or statutes.

27 30. Aggrieved Employees ended their employment during the Relevant Time Period,
28 but were not paid the above due compensation for all hours worked, including minimum wage

1 for regular hours and overtime compensation, timely upon the termination of their employment
2 as required by Labor Code sections 201, 202, and 203, are entitled to penalties as provided by
3 Labor Code section 203.

4 31. During the Relevant Time Period, Defendants employed a rounding policy
5 wherein Defendants rounded the hours worked Plaintiff and Aggrieved Employees to a factor of
6 15 minutes. Plaintiff alleges that, on average, this rounding favored Defendants and therefore
7 resulted in lost wages to Plaintiff and Aggrieved Employees. As a result, Defendants failed to
8 provide compensation at least at minimum wage rates for all hours worked.

9 32. During the Relevant Time Period, Defendants failed to include Plaintiff and
10 Aggrieved Employees' non-discretionary bonus in the regular rate of pay for the purposes of
11 paying legally mandated overtime when employees worked over eight (8) hours in a day or forty
12 (40) hours in a week which caused the overtime rate of pay paid to Plaintiff and Aggrieved
13 Employee's to be incorrect resulting in lost wages.

14 33. During the Relevant Time Period, Defendant failed and/or refused to schedule
15 Plaintiff and Aggrieved Employees in an overlapping manner so as to reasonably provide meal
16 and/or rest breaks and/or shift relief for Plaintiff and Aggrieved Employees, thereby causing
17 Plaintiff and Aggrieved Employees to work without being given paid ten (10) minute rest periods
18 for every four (4) hours or major fraction thereof worked and without being given a thirty (30)
19 minute meal period for shifts of at least five (5) hours and second thirty (30) minute meal periods
20 for shifts of at least ten (10) hours during which Plaintiff and Aggrieved Employees were relieved
21 of all duties and free to leave the premises.

22 34. Defendant failed and/or refused to schedule Plaintiff and Aggrieved Employees in
23 an overlapping manner so as to reasonably ensure meal and/or rest breaks were taken within the
24 required statutory time frame as required by law. Plaintiff regularly was forced to take her meal
25 breaks late. Furthermore, Defendant failed and/or refused to pay any Plaintiff and Aggrieved
26 Employees one (1) hour's pay at the employees' regular rate of pay as premium compensation for
27 failure to provide rest and/or meal periods or to providing such rest and/or meal periods within
28 the statutory time frame as a result of their scheduling policy.

1 35. Aggrieved Employees who ended their employment during the Relevant Time
2 Period, but were not paid the above due overtime compensation or premium compensation timely
3 upon the termination of their employment as required by Labor Code sections 201, 202, 203, are
4 entitled to penalties as provided by California Labor Code section 203.

5 **FIRST CAUSE OF ACTION**

6 **Violation of PAGA for Failure to Pay All Wages including Overtime**

7 **(Plaintiff against Defendant and Does 1-50)**

8 36. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
9 preceding paragraphs of this complaint as if fully set forth herein.

10 37. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day
11 and forty (40) hours per week. Defendant failed to pay Plaintiff and Aggrieved Employees
12 minimum wage for all hours worked and overtime premium for hours worked in excess of over
13 eight (8) hours per day and forty (40) hours per week for work performed for the Defendant.
14 Defendant failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
15 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
16 Defendant. Defendant failed to schedule Plaintiff and Aggrieved Employees in such a manner
17 that allowed Plaintiff and Aggrieved Employees to be relieved of their shift immediately, thereby
18 causing Plaintiff and Aggrieved Employees to work in excess of eight (8) hours per day and/or
19 forty (40) hours per week. As such, Plaintiff and Aggrieved Employees seek overtime in an
20 amount according to proof. Pursuant to Labor Code section 1194, the Aggrieved Employees seek
21 the payment of all overtime compensation which they earned and accrued four (4) years prior to
22 filing this complaint, according to proof, as part of the civil penalty pursuant to Labor Code
23 section 558, subdivision (a).

24 38. During the Relevant Time Period, Defendants employed a rounding policy
25 wherein Defendants rounded the hours worked Plaintiff and Aggrieved Employees to a factor of
26 15 minutes. Plaintiff alleges that, on average, this rounding favored Defendants and therefore
27 resulted in lost wages to Plaintiff and Aggrieved Employees. As a result Defendants failed to
28 provide compensation at least at minimum wage rates for all hours worked.

1 39. During the Relevant Time Period, Defendants failed to include Plaintiff and
2 Aggrieved Employees' non-discretionary bonus in the regular rate of pay for the purposes of
3 paying legally mandated overtime when employees worked over eight (8) hours in a day or forty
4 (40) hours in a week which caused the overtime rate of pay paid to Plaintiff and Aggrieved
5 Employee's to be incorrect resulting in lost wages.

6 40. In addition, Plaintiff and Aggrieved Employees would be required to work through
7 their meal and rest periods, however, they were not compensated for this time.

8 41. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
9 Aggrieved Employees all wages including both minimum wage and overtime. Plaintiff and
10 Aggrieved Employees were denied proper wages as a result of Defendant' policy of having
11 Plaintiff and Aggrieved Employees work through meal and/or rest periods and failing to
12 compensate Plaintiff and Aggrieved Employees for all hours worked at the proper rate of pay
13 pursuant to Labor Code section 510. Defendant has regularly violated the Labor Code with respect
14 to meeting the requirements of paying wages earned, including minimum wage, overtime, double-
15 time and remuneration when calculating the employees' regular rate of pay, as herein before
16 alleged. Defendant intentionally excluded remuneration that must be included in all employees'
17 regular rate of pay in order to avoid payment of overtime wages and other benefits in violation of
18 the Labor Code and the order issued by the IWC. Thereby, Defendant is able to reduce its
19 overhead and operating expenses and gain an unfair advantage over competing airlines who
20 comply with state law.

21 42. Since the LWDA has not indicated that it will be investigating and it has been
22 more than 65 days since Plaintiff mailed her letter, and because Defendant took no corrective
23 action to remedy the allegations set forth above, Plaintiff, as a representative of the people of the
24 State of California, will seek any and all penalties otherwise capable of being collected by the
25 Labor Commission, the LWDA and/or the Department of Labor Standards Enforcement
26 ("DLSE"). This includes each of the following, as set forth in Labor Code section 2699.5, which
27 provides that section 2699.3, subdivision (a) applies to any alleged violation of the following
28 provisions: 510 and 1194.

43. Plaintiff is informed and believes that Defendant has violated, and continues to violate, provisions of the California Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

45. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

**Violation of PAGA for Failure to Provide Meal Periods or Compensation in Lieu Thereof,
Cal. Labor Code §§ 226.7 And 512
(Plaintiff against Defendant and Does 1-50)**

47. Labor Code sections 226.7 and 512 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

49. Industrial Welfare Commission (IWC) Wage Order No. 9-2001 (Wage Order 9) section 11(C) states,

1 “Unless the employee is relieved of all duty during a 30-minute meal period, the meal
2 period shall be considered an “on duty” meal period and counted as time worked. An “on
3 duty” meal period shall be permitted only when the nature of the work prevents an
4 employee from being relieved of all duty and when by written agreement between the
5 parties an on-the-job paid meal period is agreed to. The written agreement shall state that
6 the employee may, in writing, revoke the agreement at any time.”

7 50. The burden to prove that a meal or rest period violation has occurred normally
8 rests on the Plaintiff. However, under *Safeway, Inc. v. Superior Court* 2015 238 Cal.App.4th
9 1138, 1159-60), where an employer fails to keep accurate records of meal and rest periods, a
10 presumption of meal and rest period violations is created, shifting the burden to the employer to
11 prove that meal and rest period violations did not occur.

12 51. Defendant failed to schedule non-exempt employees in an adequately overlapping
13 manner so as to reasonably ensure Plaintiff and Aggrieved Employees could take and/or receive
14 such meal periods within the statutory timeframe. Defendant denied Plaintiff and Aggrieved
15 Employees duty free meal periods, as a result, Plaintiff and Aggrieved Employees were often
16 forced to forego meal periods and/or work during their meal periods. In so doing, Defendant has
17 intentionally and improperly denied meal periods to Plaintiff and Aggrieved Employees in
18 violation of Labor Code sections 226.7 and 512 and other regulations and statutes.

19 52. Defendant failed to keep accurate records of the meal periods taken by Plaintiff
20 and Aggrieved Employees.

21 53. At all times relevant hereto, Plaintiff and Aggrieved Employees have worked more
22 than five (5) hours in a workday.

23 54. At varying times relevant hereto, Plaintiff and Aggrieved Employees at times have
24 worked more than ten (10) hours in a workday.

25 55. At all times relevant hereto, Defendant, failed to schedule non-exempt positions
26 in a manner so as to reasonably provide meal and/or work free meal period as required by Labor
27 Code sections 226.7 and 512.

28 ///

1 56. Defendant's failure to schedule Plaintiff and Aggrieved Employees in such a way
2 as to provide meal periods, and/or work free meal periods to Plaintiff and Aggrieved Employees,
3 and/or to provide on-duty meal periods in accordance with the applicable Wage Order, has caused
4 Plaintiff and Aggrieved Employees to suffer, and continue to suffer, damages in amounts which
5 are presently unknown, but which exceed the jurisdictional limits of this Court and which will be
6 ascertained according to proof at trial.

7 57. Further, Defendant's failure to maintain accurate records of the meal periods taken
8 by Plaintiff and Aggrieved Employees creates a presumption of the violations having occurred
9 and shifts the burden to Defendant to prove they did not occur.

10 58. Plaintiff individually, and on behalf of the Aggrieved Employees, requests
11 recovery of meal period compensation pursuant to Labor Code section 226.7 which they are owed
12 beginning four (4) years prior to filing this Complaint as well as the assessment of any statutory
13 penalties against these Defendant, and each of them, in a sum as provided by the Labor Code
14 and/or other statutes.

15 59. Since the LWDA has not indicated that it will be investigating and 65 days have
16 passed since Plaintiff mailed her letter, and because Defendant took no corrective action to
17 remedy the allegations set forth above, Plaintiff, as a representative of the people of the State of
18 California, will seek any and all penalties otherwise capable of being collected by the Labor
19 Commission, the LWDA and/or the Department of Labor Standards Enforcement ("DLSE").
20 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
21 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
22 510 and 1194.

23 60. Plaintiff is informed and believes that Defendant has violated and continues to
24 violate provisions of the california Labor Code and applicable Wage orders related to the
25 payment of minimum wages including overtime.

26 61. Plaintiff, as a personal representative of the general public, will and does seek to
27 recover any and all penalties for each and every violation shown to exist or to have occurred
28 during the Relevant Time Period, in an amount according to proof, as to those penalties that are

1 otherwise only available to public agency enforcement actions. Funds recovered will be
2 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
3 reimbursed to the LWDA.

4 62. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
5 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

6 **THIRD CAUSE OF ACTION**

7 **Violation of PAGA for Failure to Provide Rest Period or Compensation in Lieu Thereof,**

8 **Cal. Labor Code §§ 226.7 And 512**

9 **(Plaintiff against Defendant and Does 1-50)**

10 63. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
11 preceding paragraphs of this complaint as if fully set forth herein.

12 64. Labor Code section 226.7 provides that employers authorize and permit all
13 employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours.

14 65. Labor Code section 226.7, subdivision (b) provides that if an employer fails to
15 provide an employee rest periods in accordance with this section, the employer shall pay the
16 employee one (1) hour of pay at the employee's regular rate of compensation for each workday
17 that the rest period is not provided.

18 66. Defendant, and each of them, failed and or refused to implement a relief system
19 by which Plaintiff and Aggrieved Employees could receive rest periods and/or work free rest
20 periods. Defendant denied Plaintiff and Aggrieved Employees duty free rest periods by
21 interrupted Plaintiff and Aggrieved Employees' rest periods. By and through their actions,
22 Defendant intentionally and improperly denied duty free rest periods to the Plaintiff and
23 Aggrieved Employees in violation of Labor Code sections 226.7 and 512.

24 67. Furthermore, Defendant failed to provide Plaintiff and Aggrieved Employees with
25 duty free rest periods or failed to provide Plaintiff and Aggrieved Employees with rest periods all
26 together in violation of Labor Code sections 226.7 and 512.

27 68. Defendant failed to keep accurate records of the rest periods taken by Plaintiff and
28 Aggrieved Employees.

69. At all times relevant hereto, Plaintiff and Aggrieved Employees, have worked more than four (4) hours in a workday.

70. By virtue of the Defendant' unlawful failure to provide rest periods to Plaintiff and Aggrieved Employees as a result of their scheduling and shift relief system, Plaintiff and Aggrieved Employees have suffered, and will continue to suffer, damages, in amounts which are presently unknown, but which exceed the jurisdictional limits of this Court and which will be ascertained according to proof at trial.

71. Plaintiff, by virtue of Plaintiff's employment with Defendant, Defendant's failure to provide Plaintiff and Aggrieved Employees with rest breaks, and Defendant's policy of requiring employees to work through their rest periods without receiving compensation in lieu thereof, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Labor Code section 2699.5.

72. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or the DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions: 226.7 and 512.

73. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least 75% of the penalties recovered being reimbursed to the LWDA.

74. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

///

///

1 **FOURTH CAUSE OF ACTION**

2 **Violation of PAGA for Failure to Provide Accurate Wage Statements,**

3 **Cal. Labor Code § 1174 And 226 (A), (E)**

4 **(Plaintiff against Defendant and Does 1-50)**

5 75. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
6 preceding paragraphs of this Complaint as if fully set forth herein.

7 76. Labor Code section 226, subsection (a) states in pertinent part that, “every
8 employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her
9 employees, either as a detachable part of the check, draft, or voucher paying the employee’s
10 wages, or separately when wages are paid by personal check or cash, an accurate itemized
11 statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee . .
12 . ; (3) the number of piece-rate units earned . . . ; (4) all deductions . . . ; (5) net wages; (6) the
13 inclusive dates of the period for which the employee is paid; (7) the name of the employee and
14 only the last four digits of his or her social security number or an employee identification number
15 other than a social security number; (8) the name and address of the legal entity that is the
16 employer . . . ; and (9) all applicable hourly rates in effect during the pay period and corresponding
17 number of hours worked at each hourly rate by the employee...” (Lab. Code, § 226.)

18 77. Defendant knowingly and intentionally failed to provide timely and accurate
19 itemized wage statements to Plaintiff and Aggrieved Employees in accordance with Labor Code
20 section 226, subsection (a) by failing to record the accurate number of hours worked, the accurate
21 rate of pay for each hour worked, the accurate amount of premiums wages earned, the accurate
22 net pay, and the accurate gross pay. Such failure caused injury to Plaintiff and Aggrieved
23 Employees.

24 78. Plaintiff and Aggrieved Employees are entitled to damages under Labor Code
25 section 226 subsection (a) and the greater of all actual damages or fifty dollars (\$50.00) for the
26 initial pay period in which a violation occurs and one-hundred (\$100.00) per employee for each
27 violation in each subsequent pay period, pursuant to Labor Code section 226 subsection (e).

28 ///

1 79. Plaintiff, by virtue of his employment with Defendant, is an aggrieved employee
2 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
3 as a representative of the general public to enforce California's labor laws, and the penalty
4 provisions identified in Labor Code section 2699.5.

5 80. Plaintiff, as a representative of the people of the State of California, will seek any
6 and all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE.
7 This includes each of the following, as set forth in Labor Code section 2699.5, which provides
8 that section 2699.3, subdivision (a) applies to any alleged violation of the following provisions:
9 201-203, 226, 226.7, 510, 512, 1174, and 1194.

10 81. Plaintiff, as a personal representative of the general public, will and does seek to
11 recover any and all penalties for each and every violation shown to exist or to have occurred
12 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
13 otherwise only available to public agency enforcement actions. Funds recovered will be
14 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
15 reimbursed to the LWDA.

16 82. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
17 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

18 **FIFTH CAUSE OF ACTION**

19 **Violation of PAGA for Failure to Pay Wages of Terminated or Resigned Employees,**

20 **Cal. Labor Code §§ 201-203**

21 **(Plaintiff against Defendant and Does 1-50)**

22 83. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
23 preceding paragraphs of this Complaint as if fully set forth herein.

24 84. Plaintiff and certain members of the Aggrieved Employees who ended their
25 employment with Defendant during the Relevant Time Period were entitled to be promptly paid
26 both minimum wage and lawful overtime compensation and other premiums, as required by Labor
27 Code sections 201, 202, and 203.

28 /-/-/

1 85. Defendant refused and/or failed to promptly compensate Plaintiff and Aggrieved
2 Employees wages owed as a result of Defendant's failure to provide meal and/or rest periods as
3 well as pay both minimum and overtime compensation owed for work performed for Defendant.

4 86. Plaintiff, by virtue of her employment with Defendant, is an aggrieved employee
5 with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve
6 as a representative of the general public to enforce California's labor laws, and the penalty
7 provisions identified in Labor Code section 2699.5.

8 87. Plaintiff, as a representative of the people of the State of California, will seek any
9 and all penalties otherwise capable of being collected by the Labor Commission and/or the
10 DLSE. This includes each of the following, as set forth in Labor Code section 2699.5, which
11 provides that section 2699.3, subdivision (a) applies to any alleged violation of the following
12 provisions: 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194.

13 88. Plaintiff, as a personal representative of the general public, will and does seek to
14 recover any and all penalties for each and every violation shown to exist or to have occurred
15 during the Relevant Time Period, in an amount according to proof, as to those penalties that are
16 otherwise only available to public agency enforcement actions. Funds recovered will be
17 distributed in accordance with the PAGA, with at least 75% of the penalties recovered being
18 reimbursed to the LWDA.

19 89. Additionally, Plaintiff and Aggrieved Employees are entitled to attorneys' fees
20 and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

21 **SIXTH CAUSE OF ACTION**

22 **Violation of Business and Professions Code § 17200 et seq.**

23 **(Plaintiff against Defendant and Does 1-50)**

24 90. Plaintiff and Aggrieved Employees reallege and incorporate by reference the
25 preceding paragraphs of this complaint as if fully set forth herein.

26 91. Business and Professions Code section 17200 et. seq. (also referred to herein as
27 the "Unfair Business Practices Act" or "Unfair Competition Law") prohibit unfair competition in
28 the form of any unlawful, unfair or fraudulent business act or practice.

1 92. Business and Professions Code section 17204 allows "any person who has suffered
2 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
3 a civil action for violation of the Unfair Competition Law ("UCL").

4 93. Labor Code section 90.5, subdivision (a) states that it is the public policy of
5 California to vigorously enforce minimum labor standards in order to ensure employees are not
6 required to work under substandard and unlawful conditions, and to protect employers who
7 comply with the law from those who attempt to gain competitive advantage at the expense of their
8 workers by failing to comply with minimum labor standards.

9 94. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the
10 filing of this lawsuit, Defendant committed acts of unfair competition as defined by the Unfair
11 Business Practices Act, by engaging in the unlawful, unfair and fraudulent business practices and
12 acts described in this Complaint including but not limited to violations of Labor Code sections
13 204, 1197, 1198 of the 226.7 and 512 as well as other statutes.

14 95. The violations of these laws and regulations, as well as of the fundamental
15 California public policies protecting workers, serve as unlawful predicate acts and practices for
16 purposes of Business and Professions Code section 17200 et. seq.

17 96. The acts and practices described above constitute unfair, unlawful and fraudulent
18 Business Practices, and unfair competition, within the meaning of Business and Professions Code
19 section 17200 et. seq. Among other things, the acts and practices have forced Plaintiff and other
20 similarly situated employees to labor for many hours without receiving the meal and rest periods
21 and minimum wage and overtime compensation, to which they are entitled by law, while enabling
22 Defendant to gain an unfair competitive advantage over law-abiding employers and competitors.

23 97. As a direct and proximate result of Defendant's acts, Plaintiff and Aggrieved
24 Employees have suffered injury in fact in being denied their statutorily entitled meal and rest
25 periods and full compensation for hours of labor. As a result of Defendant's unlawful acts of
26 unfair competition, Plaintiff and Aggrieved Employees have lost money and property in the form
27 of a loss of wages, meal and rest period premiums in an amount to be proven at trial.

28 ///

98. Business and Professions Code section 17203 provides that a court may make such orders or judgments as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition

99. Business and Professions Code section 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of such unfair competition. Plaintiff and Aggrieved Employees are entitled to restitution pursuant to Business and Professions Code section 17203 for all wages and payments unlawfully withheld from employees, including the fair value of the meal and rest periods taken away from them, during the four-year period prior to the filing of this Complaint.

100. Business and Professions Code section 17202 provides, "Notwithstanding section 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition." Plaintiff and Aggrieved Employees are entitled to enforce all applicable penalty provisions of the Labor Code pursuant to Business and Professions Code section 17202.

101. Plaintiff's success in this action will enforce important rights affecting public interest, and in that regard, Plaintiff sues on behalf of the general public, as well as himself and other similarly situated employees. Plaintiff and Aggrieved Employees seek and are entitled to restitution, civil penalties, and declaratory relief, and all other equitable remedies owing them.

102. Plaintiff herein takes upon herself enforcement of these laws and lawful claims. There is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right, and it would be against the interests of justice to penalize Plaintiff by forcing her to pay attorney's fees from the recovery in this action. Attorney's fees are appropriate pursuant to Code of Civil Procedure section 1021.5 and otherwise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and Aggrieved Employees pray for judgment as follows:

1. For civil penalties for each violation for Plaintiff and each Aggrieved Employee as provided by law, including but not limited to, those civil penalties provided by statute, provided by PAGA and for unpaid wages pursuant to Labor Code section 558;

2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699(g) and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699(g) and any other statutory basis, and;
4. For all such other and further relief as the Court may deem just and proper.

Dated: March 24, 2021

MAHONEY LAW GROUP, APC



Kevin Mahoney
Michael A. Swift
Attorneys for Plaintiff REINA GUEVARA
and on behalf of all employees similarly situated

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff, REINA GUEVARA, hereby demands a jury trial on all issues to triable.

3 Dated: March 24, 2021

4 **MAHONEY LAW GROUP, APC**

5 

6 _____
7 Kevin Mahoney
8 Michael A. Swift
9 Attorneys for Plaintiff REINA GUEVARA
10 and on behalf of all employees similarly situated

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 
27
28

EXHIBIT A



Kevin Mahoney, Esq.
(562) 590-5550 phone
(562) 590-8400 fax
kmahoney@mahoney-law.net

December 2, 2020

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY

PAGAFilings@dir.ca.gov

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2970 0000 2983 5837

Return Receipt Requested

PERMASWAGE® USA
14800 South Figueroa Street
Gardena, CA 90248

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2970 0000 2983 5844

Return Receipt Requested

Designed Metal Connections, Inc.
14800 South Figueroa Street
Gardena, CA 90248

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2970 0000 2983 5851

Return Receipt Requested

Designed Metal Connections, Inc.
4650 SW Macadam Avenue, Suite 300
Portland, OR 97239

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2970 0000 2983 5868

Return Receipt Requested

Precision Castparts Corp.
4650 SW Macadam Avenue, Suite 300
Portland, OR 97239

VIA U.S. MAIL & CERTIFIED MAIL# 7019 2970 0000 2983 5875

Return Receipt Requested

National Registered Agents, Inc.
Amanda Garcia – Agent for Service of Process
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

***Re: Reina Guevara v. Designed Metal Connections, Inc. d.b.a. PERMASWAGE® USA,
and Precision Castparts Corp.***

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION § 2698 ET SEQ.**

To: California Labor and Workforce Development Agency; Designed Metal Connections, Inc. d.b.a. PERMASWAGE® USA and Precision Castparts Corp.

From: Reina Guevara, on behalf of herself and other aggrieved employees who were subject to the Employer's wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Ms. Reina Guevara ("Ms. Guevara" or "Employee"), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 *et seq.* ("PAGA"), on behalf of herself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Designed Metal Connections, Inc. dba Permaswage USA, a California foreign corporation existing under the laws of Delaware (hereinafter "Employer" or "Permaswage") manufactures separable and permanent fluid fittings and installation tooling for aerospace and defense applications. Precision Castparts Corp. is a California corporation existing under the laws of Oregon, and upon information and belief it is the parent corporation of Designed Metal Connections, Inc. Ms. Guevara began her employment with Employer in or around June 2004 as an hourly, non-exempt employee, where she remained employed until July 10, 2020.

Ms. Guevara alleges Employer violated various sections of the Labor Code, including sections 201, 202, 203, 226, 226.7, 227.3, 510, 512, 1174, and 1194 by failing to provide Ms. Guevara and all other aggrieved employees with meal and rest periods or premium pay, failing to pay all wages owed, including minimum wage and overtime, failing to provide accurate wage statements and maintain accurate payroll records, and failing to provide all wages earned at end of employment. Ms. Guevara and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employer in non-exempt positions in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Permaswage Failed to Provide Ms. Guevara and Other Aggrieved Employees with Meal and Rest Periods, or Premium Compensation in Lieu Thereof, in Violation of California Law

Ms. Guevara alleges that she and other aggrieved employees were often precluded from taking timely and uninterrupted meal and rest breaks in accordance with California law due to the nature of their shifts. Ms. Guevara and other aggrieved employees allege that they did not always receive at least one duty-free, uninterrupted meal period within the first five (5) hours worked, and a second meal period before the start of the 11th hour of work. (*Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041-42.) When employees failed to receive their meal break, they

did not always receive premium pay as compensation for the missed meal break.

Ms. Guevara further alleges that she and other aggrieved employees often did not receive at least one duty-free, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, as required by the Labor Code. Ms. Guevara and other aggrieved employees were generally precluded from taking rest periods due to Employers' failure to sufficiently staff shifts to provide relief and thereby allow Ms. Guevara and other aggrieved employees the opportunity to take rest breaks. When employees were prevented from taking rest breaks, they did not receive premium pay for the missed rest break.

Employer's conduct is actionable under PAGA as violations of Labor Code sections 226.7 and 512, and Wage Order 5.

B. Permaswage Failed to Pay Ms. Guevara and Other Aggrieved Employees for all Hours Worked, Including Minimum Wage and Overtime, in Violation of California Law

Employer failed to pay Ms. Guevara and other aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. As can be seen from Ms. Guevara's wage statements, Employer rounded the hours worked by Ms. Guevara and other aggrieved employees to a factor of 15 minutes. Ms. Guevara alleges that on average, this rounding favored Employer and therefore resulted in lost wages to Ms. Guevara and other aggrieved employees. As a result, Employer failed to provide compensation at least at a minimum wage rate for all hours worked as required by the Labor Code. Employer's failure to provide Ms. Guevara and other aggrieved employees pay for all hours worked is a violation of California's minimum wage laws, as Ms. Guevara and other aggrieved employees should have been provided at least the applicable minimum wage for all hours worked.

Further, to the extent that Ms. Guevara and other aggrieved employees worked shifts of at least eight (8) hours per day, or forty (40) hours per week, all unpaid wages described above in excess of the hours specified herein were required to be compensated at a rate of at least one-and-a-half times each employee's base rate of pay. To the extent such hours exceeded twelve (12) in one day or eight (8) on the seventh consecutive day worked, such hours were required to be compensated at a rate of at least two times each employee's base rate of pay.

Employer failed to include Ms. Guevara's and other aggrieved employees' non-discretionary bonus in the regular rate of pay for purposes of paying legally mandated overtime when they worked over eight (8) hours in a day or forty (40) hours in a week, which caused Ms. Guevara's overtime rate to be incorrect. The incorrect overtime rate resulted in lost wages to Ms. Guevara and other aggrieved employees.

Employer's failure conduct is actionable under PAGA as a violation of Labor Code sections 227.3, 510 and 1194, and Wage Order 5.

C. Permaswage Failed to Provide Ms. Guevara and Other Aggrieved Employees with

Compliant Wage Statements, and Failed to Timely Pay All Wages Owed Upon Severance of Employment, in Violation of California Law

By failing to include on Ms. Guevara's and other aggrieved employees' pay stubs all meal and rest break premium wages and full compensation for all regular hours and overtime hours worked, Employer failed to keep accurate payroll records and failed to provide Ms. Guevara and other aggrieved employees with complete and accurate wage statements. This conduct is in violation of Labor Code sections 226 and 1174, and Wage Order 5, and is actionable under PAGA.

As a further result of Employer's failure to pay all wages owed as described herein, Employer also violated Labor Code sections 201, 202, 203, and 204, and Wage Order 5, due to its uniform policy, practice, and procedure of failing to pay all wages earned to former employees at the time their employment ended.

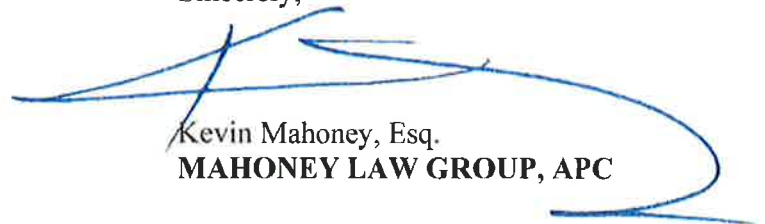
D. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Ms. Guevara becomes aware of additional compensation owed or losses incurred by Ms. Guevara or by any other aggrieved employee of the Employer, Ms. Guevara expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: kmahoney@mahoney-law.net

Sincerely,



Kevin Mahoney, Esq.
MAHONEY LAW GROUP, APC