

Assigned for all purposes to: Compton Courthouse, Judicial Officer: Kristin Escalante

MAYALL HURLEY P.C.
JOHN P. BRISCOE (SBN: 273690)
jbriscoe@mayallaw.com
2453 Grand Canal Boulevard
Stockton, California 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Attorneys for Plaintiff Daniel Rivas

SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DANIEL RIVAS, an individual,

Plaintiff,

vs.

**DESIGNED METAL CONNECTIONS,
INC., a corporation; and DOES 1-100,
inclusive,**

Defendants.

Case No.: 21CMCV00135

COMPLAINT FOR DAMAGES

- 1. FAILURE TO PAY OVERTIME AT
CORRECT RATE**
- 2. FAILURE TO PROVIDE PAID SICK
LEAVE AT CORRECT RATE**
- 3. FAILURE TO PROVIDE MEAL PERIODS
OR PAY PREMIUMS**
- 4. FAILURE TO PROVIDE REST PERIODS
OR PAY PREMIUMS**
- 5. FAILURE TO PAY ALL WAGES DUE AT
END OF EMPLOYMENT**
- 6. FAILURE TO FURNISH ACCURATE
ITEMIZED WAGE STATEMENTS**

JURY TRIAL DEMANDED

Plaintiff Daniel Rivas brings this action against Designed Metal Connections, Inc., a corporation; and Does 1 through 100, for violations of the Labor Code.

PARTIES

1. Plaintiff Daniel Rivas ("Rivas" or "Plaintiff") is and at all times relevant herein was employed in Los Angeles County, California, and was an "employee" as defined by the Labor Code and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

1 2. Defendant Designed Metal Connections, Inc. ("DMCI" or "Defendant") is an Oregon
2 corporation, formed under the laws of Delaware, and at all times relevant was an "employer" as
3 defined by the Labor Code and applicable IWC Wage Order(s).

4 3. DMCI and Does 1-100 are collectively referred to as Defendants.

5 4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
6 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
7 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
8 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each
9 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged
10 and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants.
11 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency
12 and/or employment, with the knowledge and/or consent of said co-Defendant.

13 5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
14 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
15 employee, partner and/or joint venturer of and was acting in concert with each of the remaining
16 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
17 within the course and scope of such agency, service, employment partnership, joint venture and/or
18 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
19 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
20 the remaining Defendants.

21 **VENUE AND JURY TRIAL DEMAND**

22 6. Venue is proper in this court because the unlawful acts alleged herein took place in Los
23 Angeles County, California and Plaintiff's place of employment with Defendants was within Los
24 Angeles County. Plaintiff hereby demands a jury trial.

25 **GENERAL ALLEGATIONS**

26 7. Rivas was hired by DMCI in February 2015 to work as a machinist in Gardena,
27 California. His employment with DMCI ended on October 23, 2020.

1 8. At all times relevant herein, Rivas was properly classified as an hourly employee,
2 eligible for overtime under both federal and California law.

3 9. Throughout Rivas' employment, DMCI repeatedly failed to properly calculate and pay
4 his overtime wages.

5 10. Rivas frequently earned nondiscretionary bonuses in addition to his base hourly pay.
6 **(Exhibit 1.)** These bonuses (part of DMCI's "Quarterly Cash Bonus Plan") were contingent upon the
7 achievement of quarterly financial metrics, and were calculated and paid on a quarterly basis.

8 11. Throughout his employment with DMCI, Rivas worked overtime on a regular basis.
9 However, DMCI uniformly failed to incorporate the value of earned, nondiscretionary bonuses when
10 calculating Rivas' regular rate of pay for purposes of calculating and paying overtime wages. Instead,
11 DMCI paid Rivas his overtime at a lesser rate.

12 12. DMCI also failed to properly calculate and pay paid sick leave or paid time off. When
13 Rivas took paid time off (provided by DMCI in lieu of paid sick leave), DMCI calculated and paid it at
14 Rivas' base hourly pay rate—again, failing to account for and incorporate the value of earned
15 nondiscretionary bonuses. **(Exhibit 2.)**

16 13. Rivas was also not provided with all rest and meal periods to which he was entitled
17 under California law. Frequently, he would be forced to work through his meal breaks in order to meet
18 the demand of the job. On other occasions, Rivas would be given a meal period but not until well after
19 he had worked in excess of five hours.

20 14. Similarly, Rivas was frequently denied the opportunity to take a ten-minute rest period
21 for every four hours worked.

22 15. Rivas was not paid an hour of pay at his regular rate of compensation for every rest and
23 meal period that was not authorized and permitted by DMCI.

24 16. Because Rivas was not paid overtime at the appropriate rate, and because he was not
25 provided with all reset and meal periods or paid premiums, *supra*, the itemized wage statements
26 furnished to him failed to accurately show (1) gross wages earned, (2) net wages earned, and (3) all
27
28

1 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
2 at each hour rate, in violation of Labor Code section 226, subdivisions (a)(1), (5), and (9), respectively.

3 17. Because Rivas was not paid overtime wages at the appropriate rate, was not paid sick
4 leave/paid time off at the appropriate rate, and was not paid all rest and meal period premiums owing,
5 *supra*, he was not paid all wages due and owing at the close of each pay period, nor upon the cessation
6 of his employment.

7 18. The foregoing list of misconduct is a partial list only and set forth by way of example.

8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PAY OVERTIME AT CORRECT RATE**
10 **(Lab. Code § 510)**
11 **Against Defendants**

12 19. Plaintiff hereby realleges and incorporates by reference each and every allegation set
13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
14 allegations of this cause of action.

15 20. Pursuant to Labor Code section 510, any work in excess of eight hours in one workday
16 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
17 seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-
18 half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
19 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any
20 work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
21 less than twice the regular rate of pay of an employee.

22 21. Pursuant to Labor Code section 1198, the maximum hours of work and standard
23 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
24 conditions of labor for employees and the employment of any employee for longer hours than those
25 fixed by the commission or under conditions of labor prohibited by the order is unlawful.

26 22. During the relevant time period, Plaintiff regularly worked overtime and doubletime.

27 23. During the relevant time period, Defendants intentionally and willfully failed to pay the
28 proper overtime/doubletime wages due to Plaintiff.

1 24. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
2 provided.

3 **SECOND CAUSE OF ACTION**
4 **FAILURE TO PAY SICK LEAVE AT CORRECT RATE**
5 **(Lab. Code, §§ 218, 233, 246 *et seq.*)**
6 **Against Defendants**

7 25. Plaintiff hereby realleges and incorporates by reference each and every allegation set
8 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 26. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
11 employees at that employee's "regular rate of pay."

12 27. According to the California Supreme Court, sick pay is a form of wages. (*Murphy v.*
13 *Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.)

14 28. Labor Code section 233 provides that "any employer who provides sick leave for
15 employees shall permit an employee to use in any calendar year the employee's accrued and
16 available sick leave entitlement, in an amount not less than the sick leave that would be accrued
17 during six months at the employee's then current rate of entitlement, for the reasons specified in
18 subdivision (a) of Section 246.5."

19 29. During the relevant time period, Defendants intentionally and willfully failed to pay
20 Plaintiff sick pay as required by law. Accordingly, Plaintiff did not receive the full amount of paid
21 sick time that she was entitled to receive by law, and was therefore denied the right to use sick
22 leave within the meaning of Labor Code sections 233(a) and (c).

23 30. Any employer who violates Labor Code section 233 is liable to employees for the
24 greater of one days' pay or actual damages, reasonable equitable relief, and reasonable attorneys'
25 fees and costs. (Lab. Code, § 233, subds. (d), (e).)

26 31. Further, Labor Code section 218 authorizes a private right of action to recover unpaid
27 wages.
28

1 32. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
2 provided.

3 **THIRD CAUSE OF ACTION**
4 **FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS**
5 **(Lab. Code, §§ 226.7, 512)**
6 **Against Defendants**

7 33. Plaintiff hereby realleges and incorporates by reference each and every allegation
8 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
9 allegations of this cause of action.

10 34. Labor Code section 226.7 requires employers to provide employees meal periods as
11 mandated by Order of the Industrial Welfare Commission. It states:

- 12 a. No employer shall require any employee to work during any meal or rest
13 period mandated by an applicable order of the Industrial Welfare
14 Commission.
15 b. If an employer fails to provide an employee a meal period or rest period in
16 accordance with an applicable order of the Industrial Welfare Commission,
17 the employer shall pay the employee one additional hour of pay at the
18 employee's regular rate of compensation for each work day that the meal or
19 rest period is not provided.

20 35. Labor Code section 512(a) and the applicable wage order provide that an employer
21 may not employ a person for a work period of more than five hours per day without providing that
22 employee a meal period of not less than thirty minutes, except that if the total work period per day
23 is no more than six hours, the meal period may be waived by mutual consent of both the employer
24 and employee. An employer may not employ a person for a work period of more than ten hours
25 per day without providing an employee with a second meal period of not less than thirty minutes,
26 except that if the total work period per day of the employee is no more than twelve hours, the meal
27 period may be waived by mutual consent of both the employer and the employee, and if the first
28 meal period was not waived.

1 36. During the relevant time period, Plaintiff was not provided with meal breaks as
2 required by law and did not receive an additional hour of premium pay for each missed meal
3 period.

4 37. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REST PERIODS OR PAY PREMIUMS**
7 **(Lab. Code, § 226.7)**
8 **Against Defendants**

9 38. Plaintiff hereby realleges and incorporates by reference each and every allegation
10 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 39. Labor Code section 226.7 requires employers to provide employees rest periods as
13 mandated by Order of the Industrial Welfare Commission. It states:

- 14 a. No employer shall require any employee to work during any meal or rest
15 period mandated by an applicable order of the Industrial Welfare
16 Commission.
17 b. If an employer fails to provide an employee a meal period or rest period in
18 accordance with an applicable order of the Industrial Welfare Commission,
19 the employer shall pay the employee one additional hour of pay at the
20 employee's regular rate of compensation for each work day that the meal or
21 rest period is not provided.

22 40. Section 11 of the applicable IWC Wage Order provides:

23 “(A) Every employer shall authorize and permit all employees to take rest periods,
24 which insofar as practicable shall be in the middle of each work period. Nothing in
25 this provision shall prevent an employer from staggering rest periods to avoid
26 interruption in the flow of work and to maintain continuous operations, or from
27 scheduling rest periods to coincide with breaks in the flow of work that occur in the
28 course of the workday. The authorized rest period time shall be based on the total
hours worked daily at the rate of ten (10) minutes net rest time for every four (4)
hours worked, or major fraction thereof. Rest periods shall take place at employer
designated areas, which may include or be limited to the employees' immediate work
area.

1 (B) Rest periods need not be authorized in limited circumstances when the disruption
2 of continuous operations would jeopardize the product or process of the work.
3 However, the employer shall make up the missed rest period within the same workday
4 or compensate the employee for the missed ten (10) minutes of rest time at his/her
regular rate of pay within the same pay period.

5 (C) A rest period need not be authorized for employees whose total daily work time
6 is less than three and one-half (3 ½) hours. Authorized rest period time shall be
counted as hours worked for which there shall be no deduction from wages.

7 (D) If an employer fails to provide an employee a rest period in accordance with the
8 applicable provisions of this order, the employer shall pay the employee one (1) hour
9 of pay at the employee's regular rate of compensation for each workday that the rest
period is not provided."

10 41. During the relevant time period, Plaintiff was not provided with rest breaks as
11 required by law and did not receive an additional hour of premium pay for each missed rest break.

12 42. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

13 **FIFTH CAUSE OF ACTION**
14 **FAILURE TO PAY ALL WAGES DUE AT END OF EMPLOYMENT**
15 **(Lab. Code, § 201, *et seq.*)**
16 **Against Defendants**

17 43. Plaintiff hereby realleges and incorporates by reference each and every allegation set
18 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
allegations of this cause of action.

19 44. Labor Code section 201 provides that if an employer discharges an employee, the wages
20 earned and unpaid at the time of discharge are due and payable immediately.

21 45. Labor Code section 202 requires an employer to pay an employee all earned wages
22 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
23 if the employee has given 72 hours previous notice of his or her intention to quit.

24 46. As set forth above, Plaintiff was not timely paid all earned but unpaid wages when her
25 employment with Defendants ended.

26 47. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
27 provided.

SIXTH CAUSE OF ACTION
FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS
(Lab. Code, § 226(a))
Against Defendants

48. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

49. Pursuant to Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each temporary services assignment.”

50. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees. (Lab. Code, § 226, subd. (e)(1).)

51. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and

1 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
2 during the pay period or any of the other information required to be provided pursuant to Labor Code
3 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
4 and address of the employer and iv) the name of the employee and the last four digits of his or her
5 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
6 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
7 the information without reference to other documents or information. (Lab. Code, § 226, subd.
8 (e)(2)(C).)

9 52. As set forth above, Defendants intentionally and willfully failed to furnish accurate
10 itemized wage statements which complied with Labor Code section 226.

11 53. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
12 provided.

13 PRAYER FOR RELIEF

14 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

- 15 1. That this Court award injunctive relief, including that available under Labor Code
16 sections 226(h) and 248.5(e);
- 17 2. That this Court award unpaid wages, including meal and rest break premiums;
- 18 3. That this Court award statutory penalties including, but not limited to, those available
19 under Labor Code sections 203 and 226;
- 20 4. That this Court award statutory attorneys’ fees and costs, including those available
21 under Labor Code sections 218.5, 226(e)(1) and (h), 248.5(e), 1194, as well as those
22 available under Code of Civil Procedure section 1021.5;
- 23 5. That this Court award prejudgment and post-judgment interest according to any
24 applicable provision of law or as otherwise permitted by law; and
- 25 6. That this Court award such other and further relief as the court deems just and proper.

26 ///

27 ///

1 **DATED:** June 3, 2021

MAYALL HURLEY P.C.

2 By


JOHN P. BRISCOE

Attorneys for Plaintiff

Exhibit 1

CO. FILE DEPT. CLOCK VCHR. NO.
HWJ 480694 005054 XN50P 0000050235 1
ROMO

317-0001

DESIGNED METAL CONNECTIONS, INC.,
DBA PERMASWAGE USA
14800 SOUTH FIGUEROA ST.
GARDENA, CA 90248

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 0

Social Security Number:

Earnings	rate	hours	this period	year to date
Bonus			650.29	650.29
Regular				2,445.76
Overtime				2,557.56
DOUBLE TIME				8.26
DT SD3				0.54
Holiday				977.60
Meal Premium				71.82
Shift Diff				57.04
Shift Diff				97.50
Gross Pay			\$650.29	6,866.37

Deductions	Statutory		
Federal Income Tax	-128.76	950.91	
Social Security Tax	-40.32	416.67	
Medicare Tax	-9.43	97.45	
CA State Income Tax	-59.87	378.58	
CA SUI/SDI Tax	-6.50	67.20	
Other			
401K	-65.03*	338.94	
Dental (Pre Tax		16.63	
Medical (Pre Ta		126.02	
Vision Pretax		3.27	
401K Loan 1		140.92	
Net Pay		\$340.38	
Checking 1	-340.38		
Net Check		\$0.00	

Earnings Statement



Period Beginning: 01/20/2020
Period Ending: 01/26/2020
Pay Date: 01/31/2020

DANIEL RIVAS

* Excluded from federal taxable wages

Your federal taxable wages this period are \$585.26

Other Benefits and

Information	this period	total to date
401K Er Match	32.51	262.71
GII Imputed Inc		0.01
Ytd 401K Er Mtc		262.71

Important Notes

310-323-6200

BASIS OF PAY: HOURLY

DESIGNED METAL CONNECTIONS, INC.,
DBA PERMASWAGE USA
14800 SOUTH FIGUEROA ST.
GARDENA, CA 90248

Advice number: 00000050235
Pay date: 01/31/2020

Deposited to the account of DANIEL RIVAS
account number transit ABA amount \$340.38

THIS IS NOT A CHECK

NON-NEGOTIABLE

Exhibit 2

CO. FILE DEPT. CLOCK VCHR. NO.
HWJ 480694 005053 XN50P 0000360096 1
TREECE

226-0001

DESIGNED METAL CONNECTIONS, INC.,
DBA PERMASWAGE USA
14800 SOUTH FIGUEROA ST.
GARDENA, CA 90248

Taxable Marital Status: Single
Exemptions/Allowances:
Federal: 1
CA: 0

Social Security Number:

Earnings	rate	hours	this period	year to date
Regular	23.6300	24.00	567.12	27,872.77
Overtime	35.4450	7.78	275.76	16,177.51
Pto	23.6300	8.00	189.04	1,626.50
Bonus				1,953.20
DOUBLE TIME				192.74
DT SD3				12.54
Holiday				1,533.68
Meal Premium				278.97
Shift Diff				588.07
Shift Diff				899.73
Gross Pay			\$1,031.92	51,135.71

Deductions	Statutory		
Federal Income Tax		-90.19	6,257.08
Social Security Tax		-61.73	3,089.35
Medicare Tax		-14.44	722.51
CA State Income Tax		-31.22	2,396.68
CA SUI/SDI Tax		-9.95	498.28
Other			
Dental (Pre Tax)		-3.36*	124.15
Medical (Pre Ta)		-32.10*	1,153.22
Vision Pretax		-0.84*	30.15
401K		-61.91*	2,683.03
401K Loan 1		-35.23	1,268.28
Net Pay		\$690.95	
Checking 1		-145.95	
Checking 2		-100.00	

Earnings Statement



Period Beginning: 08/24/2020
Period Ending: 08/30/2020
Pay Date: 09/04/2020

DANIEL RIVAS

Other	this period	year to date
Checking 3	-30.00	
Savings 1	-415.00	
Net Check	\$0.00	

* Excluded from federal taxable wages
Your federal taxable wages this period are \$933.71

Other Benefits and Information	this period	total to date
Pto Balance	41.43	
401K Er Match	46.44	2,079.24
Glt Imputed Inc		0.01
Totl Hrs Worked	31.78	
Ytd 401K Er Mtc		2,079.24

Important Notes
310-323-6200

BASIS OF PAY: HOURLY

DESIGNED METAL CONNECTIONS, INC.,
DBA PERMASWAGE USA
14800 SOUTH FIGUEROA ST.
GARDENA, CA 90248

Advice number: 00000360096
Pay date: 09/04/2020

Deposited to the account of	account number	transit	ABA	amount
DANIEL RIVAS		XXXX	XXXX	\$145.95
		XXXX	XXXX	\$30.00
		XXXX	XXXX	\$100.00
		XXXX	XXXX	\$415.00

THIS IS NOT A CHECK

NON-NEGOTIABLE