WILSHIRE LAW FIRM, PLC
3055 Wilshire Blvd, 12th Floor
Los Angeles, CA 90010
Tel: (213) 381-9988
Fax: (213) 381-9989
wilshirelawfirm.com

Molly DeSario, Esq.
James Yoo, Esq.
Ruby Palomares, Esq.
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LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

National Registered Agents, Inc.
Agent for Service of Process for:
Designed Metal Connections, Inc.
330 N Brand Blvd
Glendale, CA 91203
(***Via Certified Mail, Return Receipt Requested***)

Re: ***Narek Tifekchian v. Designed Metal Connections, Inc. dba Permaswage***
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Narek Tifekchian ("Mr. Tafekchian" or "Employee") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, et seq.) against Employee's former employer, Designed Metal Connections, Inc. ("Employer").

The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations, which we allege Employer engaged in with respect to Employee and potentially all of Employer's Aggrieved Employees.

Employee wishes to pursue this action as an Aggrieved Employee, on behalf of the State of California, as well as on behalf of potentially all other persons who worked for Employer in California as a non-exempt or hourly-paid Employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employee and the Aggrieved Employees, or some of them, suffered the Labor Code violations described below.

Employer owns and operates an industry, business, and establishment within the State of California and is, therefore, subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

During Employee's employment, Employer paid Employee an hourly wage and classified him as non-exempt from overtime. Employer typically scheduled Employee to work at least five days in a workweek and at least eleven hours per day, but Employee also worked more than forty (40) hours in a workweek. Employee worked night shifts and was sometimes assigned to day shifts for the same workday, including the duration of on-call or stand-by time.

Throughout Employee's employment, Employer failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employee with legally compliant meal periods, failed to authorize and permit Employee to take rest periods, failed to reimburse for business expenses, and failed to furnish accurate wage statements. Employer's managers also engaged in systematic and a widespread altering of time records to hide violations of the Labor Code. As discussed below, Employee's experience working for Employer was typical and illustrative.

Mr. Tifekchian's Employment with Employer

Employer is a Delaware corporation that manufactures metal connections and fittings at various locations in California, including Los Angeles County, where Employee worked. Employee was an hourly, non-exempt worker of Employer. Mr. Tifekchian worked for Employer as Forge M10 Lead from approximately January 2021 to August 2023. His primary job functions were hot metal pressing and shaping.

In performing Employee's duties, Employee was regularly required to perform work off-the-clock, including overtime, without compensation. Such work included but was not limited to having to do paperwork and fix machines to comply with safety protocols after his shift due to heavy workload and understaffing. In addition, employer failed to pay employee for on call/stand-by time.

Due to understaffing and high workloads, Employee was also frequently deprived of an opportunity to take timely and compliant meal and rest breaks. Additionally, Employer also failed to provide Employee and other Aggrieved Employees with the meal and rest break premiums required by the Labor Code for every noncompliant meal/rest break. For example, Employee's supervisor implemented a rotation system to keep the presses running, requiring employees to take their lunches in turns. As a result, the employee regularly took late meal/rest breaks in an effort to keep the presses operational. Moreover, the employee's meal breaks were often interrupted by calls from management. In fact, Employer engaged in an illegal practice of altering timekeeping records without Employee seeing their manager's entries which did not accurately reflect the true start and end time of such breaks or whether they were taken at all.

Employee and the Aggrieved Employees also incurred unreimbursed business expenses that included, but were not limited to, having to use personal cell phones, internet service and personal vehicles, including mileage incurred, for work-related communications without reimbursement.

Further, Employee's paystubs did not have all of the required information, including, but not limited to, having an incorrect legal employing entity address, rest/meal breaks premiums, the remaining paid sick leave balance, and all wages for all hours worked.

Further, by not paying all meal and rest break penalties due and not paying all hours worked, Employer failed to pay all full and owed final wages in a timely manner.

These are just non-exhaustive examples of the facts and theories Employee asserts, which are described in more detail below.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, employers must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of employer and includes all the time the employee is suffered or was permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employer failed to pay Employee and the Aggrieved Employees, or some of them, for all hours worked, including minimum, straight time, and overtime wages. Employer, at times, required Employee and the Aggrieved Employees, or some of them, to work "off-the-clock," uncompensated. Employer also required Employee, and the Aggrieved Employees, to perform work during uncompensated meal periods and rest periods, as well as before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. For example, Employee completed paperwork and fixed machines to comply with safety protocols after daily shifts and after being clocked out. Employee tried to include off-the-clock work into Employer's timekeeping system because Employer's managers did not have special written forms, required under Employer's policy.

California Labor Code § 510 requires that Employer compensate Employee 1.5 times their regular rate of pay when Employee work over eight hours per day, 40 hours per week, or when Employee work up to eight hours on any seventh day of a workweek. Employer failed to properly calculate Employee's regular rate of pay when paying overtime, by failing to include all compensation in Employee's overtime calculations. In failing to pay for all hours worked, Employer also failed to maintain accurate records of the hours Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated the time records in order to pay them less.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the employee's fifth hour of work in a workday, and to allow employee to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employer, at times, wrongfully failed to provide Employee and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law (and also including, but not limited to, failing, at times, to provide Employee and the Aggrieved Employees, or some of them, an opportunity to leave the work premises to take meal periods). Employer also continued to assert control over Employee and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employee and the Aggrieved Employees, or some of them, permission to take a meal period under the conditions required by law, and without properly compensating Employee and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. For example, Employee's supervisor implemented a rotation system to keep the presses running, requiring employees to take their lunches in turns. As a result, Employee regularly took late meal breaks in an effort to keep the presses operational. Moreover, Employee's meal breaks were often interrupted by calls from management. Employer also did not inform Employee of Employee's right to, nor permitted Employee to take, all of Employee's second meal periods when Employee worked at least ten hours of work in a workday and otherwise unlawfully pressured Employee to waive such breaks. Employer also did not provide Employees with the possibility to correct noncompliant meal breaks hours. Accordingly, Employer, at times, failed to provide meal periods to Employee and the Aggrieved Employees, or some of them, in compliance with California law.

Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s). Employer, however, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for meal periods that were not provided.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employer is required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e., more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as is required is itself a violation of California's rest break laws.

Throughout the statutory period, Employer, at times, has wrongfully failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take legally compliant rest periods in a manner required by law. Employer, at times, required Employee and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day without Employer's authorizing and permitting Employee to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employee and the Aggrieved Employees, or some of them, for rest periods that were not authorized or permitted. For example, Employee could not take compliant rest periods due to the implemented rotation system, which postponed meal breaks and, accordingly, some of rest breaks to a later, non-compliant time.

Instead, Employer, at times, continued to assert control over Employee and the Aggrieved Employees, or some of them, by requiring, pressuring, or encouraging them to perform work tasks (including, but not limited to, continuing to work on the presses) which could not be completed without working in lieu of taking mandatory rest periods, or, at times, by denying Employee and the Aggrieved Employees, or some of them, permission to take a rest period. Accordingly, Employer, at times, failed to authorize and permit Employee and the Aggrieved Employees, or some of them, to take rest periods in compliance with California law. Employee and the Aggrieved Employees, or some of them, are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employer, however, at times, failed to pay Employee and the Aggrieved Employees, or some of them, the additional wages to which they were entitled for rest periods that they were not authorized and permitted to take.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on Employer's failure, at times, to pay Employee and the Aggrieved Employees, or some of them, for all wages as discussed above, Employer also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Employer failed and refused to pay the Employee all wages due, and failed to pay those wages twice a month, in that Employee was not paid all wages for all missed meal and rest periods and all wages for all hours worked. As a result, Employer owed Employee the legally required wages for unpaid wages, and Employee and the Aggrieved Employees, or some of them, suffered damages in those amounts.

Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employee seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor, who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the Employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Employer, however, at times, failed to maintain accurate records of hours worked and all meal periods taken or missed by Employee and the Aggrieved Employees, or some of them. Employer also altered, falsified, and manipulated these records. Despite Employee regularly submitting his own notes of overtime worked to his supervisor, the supervisor used their own timekeeping system to calculate hours worked, which did not accurately reflect the actual time for meal and rest periods, off-the-clock, and actual hours worked.

Employer's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employee and the Aggrieved Employees, or some of them, the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employer's records. Therefore, Employee and the Aggrieved Employees, or some of them, had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employer. As a direct result, Employee and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorneys' fees in seeking to compel Employer to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employer's knowing failure, at times, to comply with the California Labor Code and applicable IWC Wage Orders, Employee and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish their employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the Employee is paid, (7) the name of the employee and the last four digits of their social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the Employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by employers to comply with subdivision (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 an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

In addition, California Labor Code § 246(i) requires employers to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited."

Throughout the statutory period, Employer, at times failed to, and continues to fail, to timely furnish Employee and the Aggrieved Employees, or some of them, with accurate, itemized wage statements complying with all of the above requirements. For example, Employee's paystubs do not list the accurate legal employing entity's address, rest/meal break premiums, the remaining paid sick leave balance, and all wages for all hours worked.

Accordingly, Employee and similarly Aggrieved Employees, or some of them, are entitled to recover from Employer the greater of their actual damages caused by Employer's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per Employee. Moreover, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code § 226(e)(2)(B)(iii) for failing to timely furnish accurate itemized wage statements.

Refusal to Make Payment

Labor Code section 216 declares unlawful employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

Employer, at times, violated and continue, at times, to violate Labor Code section 216 by failing to pay Employee and Aggrieved Employees, or some of them, for all hours worked at the proper wage rate and by failing to pay Employee and Aggrieved Employees, or some of them, an additional hour of pay for each meal and/or rest period not provided or that was invalid. (*Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.)

These violations subject Employer to civil penalties under Labor Code section 225.5. Each violation results in a separate civil penalty, for each Aggrieved Employees (or some of them) so affected, for each pay period (or some of them) during which the statute's provisions were violated.[1]

Statutory Wage Violations

Labor Code section 223 makes it unlawful for employers to secretly pay wages lower than required by statute while purporting to pay legal wages.

As described above, Employer, at times, willfully and systematically denied Employee and other Aggrieved Employees, or some of them, of minimum and overtime wage compensation for all hours worked which resulted in the payment of less than statutorily required wages owed to them. Employer, at times, acted with the intent to deprive some or all of them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, Employer, at times, paid Employee and other Aggrieved Employees, or some of them, lower wages than those to which they were entitled, while purporting that Employee and all Aggrieved Employees were properly paid. As such, Employee and Aggrieved Employees, or some of them, are entitled to recover penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code § 2699(f)-(g).

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify their employees for all necessary business expenditures or losses that have been incurred by the employee in direct discharge of their duties. Throughout the statutory period applicable to this cause of action, Employer, at times, wrongfully required Employee and the Aggrieved Employees, or some of them, to pay expenses that they incurred in direct discharge of their duties for Employer. Employee and the Aggrieved Employees, or some of them, at times, paid out-of-pocket for necessary employment-related expenses. Employee and the Aggrieved Employees, or some of them, incurred substantial expenses as a direct result of performing their job duties for Employer, but Employer failed to indemnify Employee and the Aggrieved Employees, or some of them, for these employment-related expenses. For example, Employee used his personal cell phone, internet service, and personal vehicle, including mileage incurred, for work-related communications without reimbursement.

As a result, Employer is liable to Employee and the Aggrieved Employees, or some of them, for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Employee and the Aggrieved Employees, or some of them, for necessary business expenditures.

Failure to Timely Pay All Wages at Termination

Labor Code sections 201 and 202 provide that, if employers discharge an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves their employment, their wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting. Direct deposits of wages to an employee's bank, saving and loan, or credit union account that were previously authorized by the employee are immediately terminated when

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[1] Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty…for each failure to pay each employee") (emphasis added).

an employee quits or is discharged, and the payment of wages upon termination of employment in the manner described above shall apply unless the employee has voluntarily authorized that deposit and provided that the employers comply with the provisions of Labor Code § 213(d) relating to the payment of wages upon termination or quitting of employment.

Within the applicable statute of limitations, the employment of Employee and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employer, at times, failed, and continue, at times, to fail, to pay Employee and terminated Aggrieved Employees, or some of them, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employer's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), and missed meal and rest period premium wages.

Failure to Pay for On Call/Stand by Time

An employer is obligated to pay the wages of an hourly employee for all time that the employee is under the control of the employer. This includes all the time the employee is suffered or permitted to work, whether or not required to do so. In IWC Orders 4 and 5, there is a modified definition of hours worked for specified occupations. (IWC, § 2).

On call or stand by time at the work site is considered hours worked for which the employee must be compensated even if the employee does nothing but wait for something to happen. "[A]n employer, if he chooses, may hire a man to do nothing or to do nothing but wait for something to happen. Refraining from other activities often is a factor of instant readiness to serve, and idleness plays a part in all employment in a stand-by capacity". (*Armour & Co. v. Wantock* (1944) 323 U.S. 126.) Examples of compensable work time include, but are not limited to, meal periods and sleep periods during which times the employees are subject to the employer's control. (See *Bono Enterprises v. Labor Commissioner* (1995) 32 Cal.App.4th 968 and *Aguilar v. Association For Retarded Citizens* (1991) 234 Cal.App.3d 21.)

Whether on call or stand by time off the work site is considered compensable must be determined by looking at the restrictions placed on the employee. A variety of factors are considered in determining whether the employer-imposed restrictions turn the on-call time into compensable "hours worked." These factors, set out in a federal case, *Berry v. County of Sonoma* (1994) 30 F.3d 1174, include whether there are excessive geographic restrictions on the employee's movements; whether the frequency of calls is unduly restrictive; whether a fixed time limit for response is unduly restrictive; whether the on call employee can easily trade his or her on call responsibilities with another employee; and whether and to what extent the employee engages in personal activities during on-call periods. Travel time is considered compensable work hours where the employer requires its employees to meet at a designated place and use the employer's designated transportation to and from the work site. (*Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575.)

Employer required Employee to be on call on weekends. Several times, Employee was not compensated for on-call work when he arrived at the workplace and was denied access to perform his job duties because other coworkers were unavailable.

Action for Civil Penalties Under PAGA

In light of the above, Employee alleges that Employer violated the foregoing provisions of the Labor Code with respect to Employee and the Aggrieved Employees, or some of them:

Therefore, on behalf of potentially Aggrieved Employees, Employee seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 510, 558.1, 1174(d), 1174, 1174.5, 1194, 1198, 210, 2699, 2699(f)(2), 201, 202, 204, 213(a), 216, 223, 226, 226(a), 226.3, 246(i), 199, 226.6, 225.5, 2802(a), 2802, 2699(f)(2) and IWC Orders 4, 5, 7(A)(3).

Employee has placed Employer on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

WILSHIRE LAW FIRM

m. desario

Molly DeSario, Esq.