

JAMES HAWKINS, APLC

JAMES R. HAWKINS (State Bar No. 192925)

James@jameshawkinsaplc.com

SAMANTHA A. SMITH (State Bar No. 233331)

Samantha@jameshawkinsaplc.com

9880 Research Drive, Suite 200

Irvine, California 92618

Telephone: (949) 387-7200

Facsimile: (949) 387-6676

Attorneys for Plaintiff Charles Yniguez, and on behalf
of the general public as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHARLES YNIGUEZ, and on behalf of the
general public as private attorneys general,

Plaintiff,

v.

AIRGAS USA, LLC, a Delaware limited
liability corporation; AIRGAS CARBONIC,
INC., a Delaware corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**[PROPOSED] PAGA
REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code § 2698 *et seq*).**

COMES NOW Plaintiff CHARLES YNIGUEZ (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants AIRGAS USA, LLC; AIRGAS CARBONIC, INC.; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failure to pay all wages earned and owed upon separation from Defendant’s employ; and (e) failure to provide accurate itemized wage statements. As a result of these unpaid wages enumerated under Labor Code §2699.5, Plaintiff seeks penalties under Labor Code 2698, *et seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

1 4. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
3 avails itself of the California market so as to render the exercise of jurisdiction over it by the
4 California Courts consistent with traditional notions of fair play and substantial justice.

5 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
6 Civil Procedure section 395. Defendants are doing business throughout California, including but
7 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court
8 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
9 and all other aggrieved employees within the State of California. Defendants employ numerous
10 aggrieved employees in in the State of California.

11 6. On information and belief, Defendants have conducted business within the State
12 of California during the purported liability period and continue to conduct business throughout
13 the State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and
14 the similarly situated non-exempt aggrieved employees within California.

15 7. The California Superior Court also has jurisdiction in this matter because on
16 information and belief there are no federal questions at issue, as the issues herein are based
17 solely on California statutes and law, including the California Labor Code, the IWC Wage
18 Orders, the California Code of Civil Procedure, the California Civil Code, and the California
19 Business and Professions Code.

20 8. On information and belief, during the statutory liability period and continuing to
21 the present ("liability period"), Defendant consistently maintained and enforced against Plaintiff
22 and aggrieved employees, among others, the following unlawful practices and policies in
23 violation of California state wage and hour laws: (a) failure to pay wages including overtime, (b)
24 failure to provide meal periods for every work period exceeding more than ten (10) hours per day
25 and failure to pay an additional hour's of pay or accurately pay an additional hour's of pay in lieu
26 of providing a meal period; (c) failure to provide rest breaks for every four hours or major
27 fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
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1 additional hour's of pay in lieu of providing a rest period; (d) failure to pay all wages earned and
2 owed upon separation from Defendants' employ, and (e) failing to provide accurate itemized
3 wage statements.

4 9. Plaintiff on behalf of the general public as private attorney general and all other
5 aggrieved employees bring this action pursuant to Labor Code 2698, *et seq.* for violations
6 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 266.3, 226.7, 266.3,
7 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, seeking penalties, interest, attorneys' fees and
8 costs.

9 **III. PARTIES**

10 17. Plaintiff Charles Yniguez was, at all times relevant to this action, a resident of
11 California. Plaintiff was employed by Defendants as a non-exempt employee in Los Angeles
12 county from approximately January, 2016 to March, 2020.

13 18. Defendants AIRGAS USA, LLC and AIRGAS CARBONIC, INC produce,
14 package and distribute specialty gases worldwide. Plaintiff estimates there are in excess of 100
15 aggrieved employees who work or have worked for Defendants over the last year.

16 19. Other than identified herein, Plaintiff is unaware of the true names, capacities,
17 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
18 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
19 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants
20 by such fictitious names. Plaintiff will amend this complaint when their true names and
21 capabilities are ascertained.

22 20. Plaintiff is informed and believes and thereon alleges that each Defendant,
23 directly or indirectly, or through agents or other persons, employed Plaintiff and aggrieved
24 employees, and exercised control over their wages, hours, and working conditions. Plaintiff is
25 informed and believes and thereon alleges that each defendant acted in all respects pertinent to
26 this action as the agent of the other defendants, carried out a joint scheme, business plan or
27 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to
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1 the other defendants.

2 **IV. GENERAL ALLEGATIONS**

3 21. At all times set forth herein, Defendants employed Plaintiff and other persons in
4 the capacity of non-exempt positions, however titled, throughout the state of California and
5 within the meaning of the California Labor Code and the implementing rules and regulations of
6 the IWC California Wage Orders.

7 22. Defendants continue to employ non-exempt employees, however titled, in
8 California and implement a uniform set of policies and practices to all non-exempt employees, as
9 they were all engaged in the generic job duties of producing, packaging and distributing specialty
10 gases.

11 23. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
12 were advised by skilled lawyers and other professionals, employees, and advisors with
13 knowledge of the requirements of California's wage and employment laws.

14 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and aggrieved employees were entitled to receive at least
16 minimum wages and that they were not receiving at least minimum wages for work that was
17 required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
18 aggrieved employees were not paid at least minimum wages for all hours worked. This failure
19 to pay for all time worked included failure to pay for time rounded to Defendants' advantage.
20

21 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and aggrieved employees were entitled to receive certain
23 wages for overtime compensation. In violation of the Labor Code and IWC Wage Orders,
24 Plaintiff and aggrieved employees were not properly paid for all of their overtime work
25 because Defendants rounded Plaintiff's and aggrieved employees' time punches to their
26 advantage, among other reasons.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and aggrieved employees were entitled to receive all required

1 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
2 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
3 In violation of the Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees did
4 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and
5 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
6 meal period.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and aggrieved employees were entitled to receive all rest
9 breaks or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
10 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
11 Wage Orders, Plaintiff and aggrieved employees did not receive all rest breaks or payment of
12 one (1) additional hour of pay at Plaintiff and aggrieved employees' regular rate of pay when a
13 rest break was missed.

14 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and aggrieved employees were entitled to receive itemized
16 wage statements that accurately showed their gross and net wages earned and all applicable
17 hourly rates in effect and the number of hours worked at each hourly rate in accordance with
18 California law. In violation of the Labor Code, Plaintiff and aggrieved employees were not
19 provided with accurate itemized wage statements.

20 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
22 wages due upon separation of employment. In violation of the Labor Code, Plaintiff and
23 aggrieved employees did not receive payment of all wages including, but not limited to,
24 unpaid overtime and minimum wage compensation, within permissible time periods.

25 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known they had a duty to compensate Plaintiff and aggrieved employees, and
27 Defendants had the financial ability to pay such compensation but willfully, knowingly and
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intentionally failed to do so all in order to increase Defendants' profits.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

31. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

32. On May __, 2020, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated an intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. Plaintiff also sent a copy of this PAGA representative action complaint to the LWDA.

33. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California non-exempt employees of Defendants.

34. Defendants' conduct violates numerous Labor Code sections including, but not limited to, the following:

- a. Violation of Labor Code §§ 1194, 1197 and 1197.1 for unpaid minimum wages as herein alleged;
- b. Violation of Labor Code §§ 510, 1194 and 1198 for Defendants' failure to compensate Plaintiff and other aggrieved employees with all required overtime pay as herein alleged;
- c. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods and pay premium wages to Plaintiff and other aggrieved employees for every day meal periods were not provided as herein alleged;
- d. Violation of Labor Code § 226 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged; and

1 e. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all earned
2 wages owed to Plaintiff and other aggrieved employees during employment and
3 upon separation of employment as herein alleged.

4 35. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred
5 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
7 violation in which Defendants violated the Labor Code.

8 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all other
9 aggrieved employees are entitled to recover civil penalties against Defendants for violations of
10 Labor Code §§ 201-203, 510, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194,
11 1197, 1197.1, and 1198.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 14 1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;
15 2. For reasonable attorneys' fees and costs to the extent permitted by law,
16 including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and
17 3. For such other and further relief as the Court deems proper.
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19 Dated: May 7, 2020

JAMES R. HAWKINS, APLC

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22 _____
23 James R. Hawkins, Esq.
24 Samantha A. Smith

25 Attorneys for Plaintiff and the general
26 public as private attorneys general
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