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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. **20STCV28508**
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

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

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 27 2020

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Sherril R. Carter, Executive Officer/Clerk of Court
By: Kristina Vargas, Deputy

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.

4. This Court has jurisdiction over Defendants because, upon information and belief,

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

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

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

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

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

1 wage statements.

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

7 **III. PARTIES**

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

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

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

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

27 **IV. GENERAL ALLEGATIONS**

28 14. At all times set forth herein, Defendants employed Plaintiff and other persons in

1 the capacity of non-exempt positions, however titled, throughout the state of California and
2 within the meaning of the California Labor Code and the implementing rules and regulations of
3 the IWC California Wage Orders.

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

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

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

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

23 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and aggrieved employees were entitled to receive all required
25 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved
26 employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
27 In violation of the Labor Code and IWC Wage Orders, Plaintiff and aggrieved employees did
28 not receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and

aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.

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

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

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

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and aggrieved employees, and Defendants had the financial ability to pay such compensation but willfully, knowingly and 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.

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

1 25. On May 7, 2020, Plaintiff complied with notice requirements pursuant to Labor
2 Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**,
3 indicating that the LWDA and Defendants were put on notice of the claims alleged here and that
4 the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
5 indicated an intent to investigate the claims. Therefore, Plaintiff may proceed with this action in
6 a representative capacity. Plaintiff also sent a copy of this PAGA representative action complaint
7 to the LWDA.

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

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

- 13 a. Violation of Labor Code §§ 1194, 1197 and 1197.1 for unpaid minimum wages as
14 herein alleged;
- 15 b. Violation of Labor Code §§ 510, 1194 and 1198 for Defendants' failure to
16 compensate Plaintiff and other aggrieved employees with all required overtime
17 pay as herein alleged;
- 18 c. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods and
19 pay premium wages to Plaintiff and other aggrieved employees for every day
20 meal periods were not provided as herein alleged;
- 21 d. Violation of Labor Code § 226 for failure to provide accurate itemized wage
22 statements to Plaintiff and other aggrieved employees as herein alleged; and
- 23 e. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all earned
24 wages owed to Plaintiff and other aggrieved employees during employment and
25 upon separation of employment as herein alleged.

26 28. Labor Code §§ 2698, *et seq.* imposes upon Defendants, a penalty of one hundred
27 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
28 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent

violation in which Defendants violated the Labor Code.

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

PRAYER FOR RELIEF

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

1. For penalties according to proof, pursuant to Labor Code §§ 2698 *et seq.*;
2. For reasonable attorneys' fees and costs to the extent permitted by law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, *et seq.*; and
3. For such other and further relief as the Court deems proper.

Dated: July 27, 2020

JAMES R. HAWKINS, APLC

Samantha Smith

James R. Hawkins, Esq.
Samantha A. Smith

Attorneys for Plaintiff and the general
public as private attorneys general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

May 7, 2020

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

AIRGAS USA, LLC

Agent for Service of Process: CT CORPORATION SYSTEM

818 West Seventh Street, Suite 930

Los Angeles, CA 90017

Receipt No.: 7018 1130 0001 8270 3718

AIRGAS CARBONIC, INC

Agent for Service of Process: CT CORPORATION SYSTEM

818 West Seventh Street, Suite 930

Los Angeles, CA 90017

Receipt No.: 7018 1130 0001 8270 3725

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

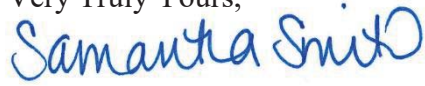
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff CHARLES YNIGUEZ, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, AIRGAS USA, LLC, and AIRGAS CARBONIC, INC.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaint, even if not expressly specified.

Please advise within sixty (60) days of the postmark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,

A handwritten signature in blue ink that reads "Samantha Smith". The signature is written in a cursive, flowing style.

Samantha A. Smith

Enclosure: Proposed PAGA Representative Action Complaint