

JAMES HAWKINS APLC

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individually and on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

RENEE RAMIREZ, and on behalf of all
others similarly situated,

Plaintiffs,

v.

AIRGAS SAFETY INC., a Delaware
Corporation, and DOES 1-10, inclusive,

Defendants.

Case No.: **CVRI2200084**

Assigned For All Purposes To:
Judge:
Dept.:

**CLASS ACTION COMPLAINT
FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Timely Wages;
3. Failure to Reimburse Business Expenses;
4. Failure to Provide Accurate Itemized Wage Statements; and
5. Violation of Business & Professions Code § 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Renee Ramirez (“Plaintiff”), individually and on behalf of all others similarly
2 situated (hereinafter collectively referred to as the “Class” or “Class Members”), hereby files this
3 Complaint against Defendant Airgas Safety Inc. (“Airgas”); and DOES 1-10, inclusive (collectively
4 “Defendants”) and alleges on information and belief as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This class action is brought pursuant to California Code of Civil Procedure § 382.
7 The monetary damages and restitution sought by Plaintiff exceeds the minimum jurisdiction limits
8 of the California Superior Court and will be established according to proof at trial.

9 2. This Court has jurisdiction over this action pursuant to the California Constitution
10 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
11 those given by statute to other courts. The statutes under which this action is brought do not give
12 jurisdiction to any other court.

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

17 4. Venue is proper in this Court because upon information and belief, one or more of
18 the Defendants, reside, transact business, or have offices in this County and/or the acts or omissions
19 alleged herein took place in this County.

20 **II. PARTIES**

21 5. Defendant Airgas packages and delivers specialty gases worldwide. Plaintiff is
22 informed and believes Airgas is a Delaware entity with locations throughout Riverside County,
23 California. Airgas at all times hereinafter mentioned was and is an employer as defined in and
24 subject to the Labor Code and IWC Wage Orders, whose employees are engaged throughout the
25 State of California and Riverside County.

26 6. Plaintiff Renee Ramirez was, at all times relevant to this action, a resident of
27 California. Plaintiff was employed by Defendants from approximately November 2016 through July
28 2, 2021 as a non-exempt employee. Plaintiff worked for Defendants as a Total Access Specialist at

1 one of Defendants' worksites in California. Plaintiff's job duties included, but were not limited to,
2 cold-calling, prospecting, maintaining sales, growing sales, and working to sell safety equipment,
3 welding supplies, and industrial gas.

4 7. Other than identified herein, Plaintiff is unaware of the true names, capacities,
5 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
6 DOES 1 through 10, but are informed and believe and thereon alleges that said defendants are legally
7 responsible for the wrongful conduct alleged herein and therefore sues these defendants by such
8 fictitious names. Plaintiff will amend this complaint when their true names and capabilities are
9 ascertained.

10 8. Plaintiff is informed and believes and thereon alleges that each defendant, directly
11 or indirectly, or through agents or other persons, employed Plaintiff and other members of the Class,
12 and exercised control over their wages, hours, and working conditions. Plaintiff is informed and
13 believe and thereon allege that each Defendant acted in all respects pertinent to this action as the
14 agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects
15 pertinent hereto, and the acts of each Defendant are legally attributable to the other defendants.

16 **III. CLASS ACTION ALLEGATION**

17 9. Plaintiff brings this action individually and on behalf of all others similarly situated
18 as a class action pursuant to Code of Civil Procedure § 382. The members of the Class are defined
19 as follows:

20 All persons who are or have been employed by Defendants as non-exempt employees or
21 equivalent positions, however titled, in the state of California within four (4) years from the
22 filing of the Complaint in this action until its resolution (collectively referred to as the
"Class" or "Class Members").

23 10. Plaintiff also seeks to represent the subclass(es) composed of and defined as follows:

24 Waiting Time Subclass

25 All Class members who separated their employment from Defendants within three years prior
26 to the filing of this action to the present and continuing.

27 11. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
28 applicable laws to amend or modify the class definition with respect to issues or in any other ways.

1 Plaintiff is a member of the Class as well the Subclass.

2 12. The term “Class” includes Plaintiff and all members of the Class and the Subclass,
3 if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in this complaint.

4 13. There is a well-defined community of interest in the litigation and the proposed Class
5 is easily ascertainable through the records Defendants are required to keep.

6 14. Numerosity. The members of the Class are so numerous that individual joinder of
7 all of them as plaintiffs is impracticable. While the exact number of the Class Members is unknown
8 to Plaintiff at this time, Plaintiff is informed and believe and thereon alleges that there are at least
9 100 (one hundred) Class Members.

10 15. Commonality. Common questions of law and fact exist as to all Class Members and
11 predominate over any questions that affect only individual members of the Class. These common
12 questions include, but are not limited to:

- 13 i. Whether Defendants failed to pay all lawful earned wages to Plaintiff
14 and Class Members;
- 15 ii. Whether Defendants failed to reimburse Plaintiff and Class Members
16 for necessary business expenses;
- 17 iii. Whether Defendants failed to timely pay all wages due to Plaintiff and
18 Subclass members upon termination or within 72 hours of resignation;
- 19 iv. Whether Defendants provided accurate itemized wage statements
20 pursuant to Labor Code section 226;
- 21 v. Whether Plaintiff and Class Members are entitled to equitable relief
22 pursuant to Business and Professions Code section 17200, *et. seq.*

23 16. Typicality. Plaintiff’s claims herein alleged are typical of those claims which could
24 be alleged by any member of the Class and/or Subclass, and the relief sought is typical of the relief
25 which would be sought by each member of the Class and/or Subclass in separate actions. Plaintiff
26 and all members of the Class and or Subclass sustained injuries and damages arising out of and
27 caused by Defendants' common course of conduct in violation of California laws, regulations, and
28 statutes as alleged herein.

1 17. Adequacy. Plaintiff is qualified to, and will fairly and adequately, protect the
2 interests of each member of the Class and/or Subclass with whom she has a well-defined community
3 of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges an obligation to
4 make known to the Court any relationships, conflicts, or differences with any member of the Class
5 and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the Class and Subclass are
6 versed in the rules governing class action discovery, certification, litigation, and settlement and
7 experienced in handling such matters. Other former and current employees of Defendants may also
8 serve as representatives of the Class and Subclass if needed.

9 18. Superiority. A class action is superior to other available means for the fair and
10 efficient adjudication of the claims of the Class and would be beneficial for the parties and the court.
11 Class action treatment will allow a large number of similarly situated persons to prosecute their
12 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
13 duplication of effort and expense that numerous individual actions would require. The damages
14 suffered by each Class member are relatively small in the sense pertinent to class action analysis,
15 and the expense and burden of individual litigation would make it extremely difficult or impossible
16 for the individual Class Members to seek and obtain individual relief. A class action will serve an
17 important public interest by permitting such individuals to effectively pursue recovery of the sums
18 owed to them. Further, class litigation prevents the potential for inconsistent or contradictory
19 judgments raised by individual litigation.

20 19. Public Policy Considerations: Employers in the state of California violate
21 employment and labor laws every day. Current employees are often afraid to assert their rights out
22 of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because
23 they believe their former employers may damage their future endeavors through negative references
24 and/or other means. The nature of this action allows for the protection of current and former
25 employees' rights without fear of retaliation or damage.

26 IV. FACTUAL ALLEGATIONS

27 20. At all times set forth herein, Defendants employed Plaintiff and other persons in the
28 capacity of non-exempt hourly positions, however titled, throughout the state of California. Plaintiff

1 is informed and believes and thereon alleges that all Class Members are citizens of the State of
2 California.

3 21. Plaintiff was employed by Defendants from approximately November 2016 through
4 July 2, 2021. During the relevant statutory period, Plaintiff worked for Defendants as a full-time,
5 hourly non-exempt employee at one of Defendants' communities in California.

6 22. Defendants continue to employ non-exempt employees, however titled, in California
7 and implement a uniform set of policies and practices to all non-exempt employees, as they were all
8 engaged in the generic job duties of senior caregiving.

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

12 24. Plaintiff is informed and believes, and thereon alleges, that Defendants employed
13 and exercised control over the wages, hours, and working conditions. Among other elements of
14 control, Defendants provided Plaintiff and Class Members with specific work duties to complete
15 daily and how those duties were to be performed.

16 25. Plaintiff is informed and believes, and thereon alleges, in violation of the Labor Code
17 and IWC Wage Orders, Plaintiff and Class Members were not paid all lawful wages (including
18 minimum and overtime wages) and that they were not receiving all wages earned for work that was
19 required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Class
20 Members were not paid all wages (including minimum and overtime wages) for all hours worked at
21 the proper rates of pay.

22 26. Plaintiff is informed and believes, and thereon alleges, that Defendants also
23 inaccurately calculated the "regular rate of pay" by failing to include bonuses and stipends in its
24 calculation, effectively underpaying wages owed on overtime rates, sick pay, and meal premiums.
25 Defendants knew or should have known that shift differentials and other non-discretionary wages,
26 including, but not limited to, bonuses and incentive pay were included in the computation of
27 Plaintiff's and Class Members' regular rate of pay for purposes of calculating overtime rate of pay,
28 the rate of pay for paid sick leave, and meal premiums. As a result, Plaintiff and Class Members

1 were uniformly underpaid for overtime wages, paid sick leave, and meal premiums.

2 27. Moreover, Plaintiff and the Class Members were required to incur necessary
3 expenses in the discharge of their duties. These necessary expenses included, but were not limited
4 to: Plaintiff's and Class Members' use of their personal internet connection for work-related
5 purposes; Plaintiff's and Class Members' necessary personal purchases of office equipment to
6 enable working from home, including Plaintiff's purchase of a \$50 office chair; and Plaintiff's and
7 Class Members' use of their personal cell phones for work related matters, on some days using their
8 personal phones up to eight hours to answer work calls and respond to customer text messages.
9 Defendant did not reimburse Plaintiff and Class Members for these expenses in accordance with
10 Labor Code § 2802.

11 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiff and Waiting Time Subclass Members for all wages owed including unpaid
15 wages, meal and rest period premiums, and Defendants had the financial ability to pay such
16 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
17 because of the above-specified violations.

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

24 **FIRST CAUSE OF ACTION**

25 **FAILURE TO PAY MINIMUM WAGES**

26 **(Against All Defendants)**

27 30. Plaintiff incorporates and re-allege each and every allegation contained above as
28 though fully set forth herein.

31. At all times relevant, the IWC wage orders applicable to Plaintiff's and the Class

1 require employers to pay its employees for each hour worked at least minimum wage. “Hours
2 worked” means the time during which an employee is subject to the control of an employer and
3 includes all the time the employee is suffered or permitted to work, whether or not required to do
4 so, and in the case of an employee who is required to reside on the employment premises, that time
5 spent carrying out assigned duties shall be counted as hours worked.

6 32. At all relevant times, Labor Code § 1197.1 states “[a]ny employer or other persons
7 acting individually as an officer, agent, or employee of another person, who pays or causes to be
8 paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by
9 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
10 damages payable to the employee, and any applicable penalties pursuant to Section 203...”

11 33. At all times relevant, Plaintiff and Class Members regularly performed non-exempt
12 work and thus were subject to the overtime requirements of the IWC Wage Orders, CCR § 11000,
13 *et. seq.* and the Labor Code.

14 34. Defendants did not include stipends and/or non-discretionary pay when calculating
15 the regular rate of pay for purposes of paying Plaintiff and Class Members for overtime wages, paid
16 sick leave, and meal premiums. Consequently, Plaintiff and Class Members were not paid all wages
17 owed.

18 35. Pursuant to Labor Code §§ 510, 558 and 1194, Plaintiff and Class Members are
19 entitled to recover their unpaid wages and overtime compensation, as well as interest, costs, and
20 attorneys’ fees.

21 **SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY TIMELY PAY WAGES**

23 **(Against All Defendants)**

24 36. Plaintiff incorporates and re-alleges each and every allegation contained above as
25 though fully set forth herein.

26 37. Labor Code §§ 201-202 requires an employer who discharges an employee to pay
27 compensation due and owing to said employee immediately upon discharge and that if an employee
28 voluntarily leaves his or her employment, his or her wages shall become due and payable not later

1 than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours
2 previous notice of his or her intention to quit, in which case the employee is entitled to his or her
3 wages on their last day of work.

4 38. Labor Code § 203 provides that if an employer willfully fails to pay compensation
5 promptly upon discharge, as required by Labor Code §§ 201-202, the employer is liable for waiting
6 time penalties in the form of continued compensation for up to thirty (30) workdays.

7 39. During the relevant time period, Defendants willfully failed and refused, and
8 continue to willfully fail and refuse, to pay Plaintiff and Waiting Time Subclass Members their
9 wages, earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their
10 voluntarily leaving Defendants' employ. These wages include regular and overtime.

11 40. As a result, Defendants are liable to Plaintiff and members of the Waiting Time
12 Subclass for waiting time penalties pursuant to Labor Code § 203, in an amount according to proof
13 at the time of trial.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO REMIBURSE FOR BUSINESS EXPENSES**

16 **(Against All Defendants)**

17 41. Plaintiff incorporates and re-alleges each and every allegation contained above as
18 though fully set forth herein.

19 42. Labor Code § 2802 requires employers to indemnify their employees for all
20 necessary expenditures or losses incurred by employees in direct consequence of the discharge of
21 their duties.

22 43. During the relevant time period, Plaintiff and Class Members incurred necessary
23 business-related expenses that were not fully reimbursed by Defendant including, but not limited to,
24 compensation for home internet usage, the purchase of office equipment, and the use of Plaintiff's
25 and Class Members' personal cell phones.

26 44. In violation of Labor Code § 2802, Defendant failed to indemnify Plaintiff and Class
27 Members for business-related expenses (described above).

28 45. In committing the violations as herein alleged, Defendant has intentionally and

1 willfully failed to fully reimburse Plaintiff and Class Members for necessary business-related costs
2 and expenses. As a direct result, Plaintiff and Class Members have suffered (and in the case of those
3 still employed by Defendant, continue to suffer) substantial losses.

4 **FOURTH CAUSE OF ACTION**

5 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

6 **(Against All Defendants)**

7 46. Plaintiff incorporates and re-alleges each and every allegation contained above as
8 though fully set forth herein.

9 47. Section 226(a) of the California Labor Code requires Defendants to itemize in wage
10 statements all deductions from payment of wages and to accurately report total hours worked by
11 Plaintiff and the Class including applicable hourly rates and reimbursement expenses among other
12 things. Defendants have knowingly and intentionally failed to comply with Labor Code section 226
13 and 204 on wage statements that have been provided to Plaintiff and the Class.

14 48. IWC Wage Orders require Defendants to maintain time records showing, among
15 others, when the employee begins and ends each work period, meal periods, split shift intervals and
16 total daily hours worked in an itemized wage statement, and must show all deductions and
17 reimbursements from payment of wages, and accurately report total hours worked by Plaintiffs and
18 the Class. On information and belief, Defendants have failed to record all or some of the items
19 delineated in Industrial Wage Orders and Labor Code § 226.

20 49. As a result of Defendants' knowing and intentional failure to comply with Labor
21 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their statutorily-
22 protected rights. Specifically, Plaintiff and Class Members have been injured by Defendants'
23 intentional violation of Labor Code § 226(a) because they were denied both their legal right to
24 receive, and their protected interest in receiving, accurate itemized wage statements under Labor
25 Code § 226(a). In addition, Defendants have made it difficult to calculate the amount of wages and
26 compensation owed to Plaintiff and Class Members. Plaintiff has had to file this lawsuit and will be
27 required to conduct discovery and perform computations in order to analyze whether in fact Plaintiff
28 was paid correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses

1 and lost time. Plaintiff would not have had to engage in these efforts and incur these costs had
2 Defendants provided wage statements accurately showing her regular and overtime rates of pay,
3 among other things. This has also delayed Plaintiff's ability to demand and recover the
4 underpayment of wages from Defendants.

5 50. Plaintiff and Class Members are entitled to recover from Defendants the greater of
6 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or an
7 aggregate penalty not exceeding \$4,000 dollars per employee.

8
9 **FIFTH CAUSE OF ACTION**

10 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200, *et seq.***

11 **(Against All Defendants)**

12 51. Plaintiff incorporates and re-alleges each and every allegation contained above as
13 though fully set forth herein.

14 52. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
15 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
16 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
17 meaning of the California Code of Civil Procedure §1021.5.

18 53. Defendants' policies, activities, and actions as alleged herein, are violations of
19 California law and constitute unlawful business acts and practices in violation of California Business
20 and Professions Code §§17200, *et seq.*

21 54. A violation of California Business and Professions Code §§17200, *et seq.*, may be
22 predicated on the violation of any state or federal law. Defendants' policies and practices have
23 violated state law in at least the following respects:

24 (a) Failing to pay all lawful wages owed to Plaintiff and Class
25 Members in violation of Labor Code §§ 510, 511, 1182.12, 1194, 1197 and
26 1198;

27 (b) Failing to properly reimburse Plaintiff and Class Members
28 for incurred business expenses in violation of Labor Code § 2802;

1 (c) Failing to provide Plaintiff and Class Members with
2 accurate itemized wage statements in violation of Labor Code § 226; and

3 (d) Failing to timely pay all earned wages to Plaintiff and Class
4 Members upon separation of employment in violation of Labor Code §§ 201,
5 202 and 203.

6 55. Defendants intentionally avoided paying Plaintiff and Class Members' wages and
7 monies, thereby creating for Defendants an artificially lower cost of doing business in order to
8 undercut their competitors and establish and gain a greater foothold in the marketplace.

9 56. Pursuant to Business and Professions Code §§ 17200, *et seq.* Plaintiff and Class
10 Members are entitled to restitution of the wages unlawfully withheld and retained by Defendants
11 during a period that commences four years prior to the filing of the Complaint; an award of attorney's
12 fees pursuant to Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on her own behalf and on behalf of all others similarly situated, prays for relief and
15 judgment against Defendants and DOES 1 through 10, jointly and severally, as follows:

16 1. For certification of the proposed Class and Subclass and any other appropriate
17 subclasses under California Code of Civil Procedure § 382;

18 2. For appointment of Renee Ramirez as the class representative;

19 3. For appointment of James Hawkins, APLC as class counsel for all purposes;

20 4. For general damages;

21 5. For special damages;

22 6. For statutory penalties to the extent permitted by law, including those pursuant to
23 the Labor Code and IWC Wage Orders;

24 7. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

25 8. For an order requiring Defendants to restore and disgorge all funds to each
26 employee acquired by means of any act or practice declared by this Court to be unlawful, unfair
27 or fraudulent and, therefore, constituting unfair competition under Business and Professions Code
28 §§ 17200, *et seq.*;

1 9. For an award of damages in the amount of unpaid compensation including, but not
2 limited to, unpaid wages, benefits and penalties;

3 10. For pre-judgment interest;

4 11. For reasonable attorney's fees, costs of suit and interest to the extent permitted by
5 law, including pursuant to Code of Civil Procedure § 1021.5 and Labor Code § 1194; and

6 12. For such other relief as the Court deems just and proper.

7
8 Dated: January 6, 2022

JAMES HAWKINS APLC

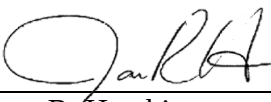
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11 By: 
12 James R. Hawkins
13 Attorneys for Plaintiff

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

16
17 Dated: January 6, 2022

JAMES HAWKINS APLC

18
19 By: 
20 James R. Hawkins
21 Attorneys for Plaintiff