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Per local Rule, This case is assigned to
Judge Weil, Edward G, for all purposes.

SUMMONS ISSUED

Attorneys for Plaintiff EMERSON TABZON as a designated Private Attorney General,
pursuant to the Private Attorneys General Act

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

EMERSON TABZON, as a designated
Private Attorney General,

Plaintiff,

v.

AIRGAS USA, LLC and DOES 1
through 50, inclusive,

Defendants.

Case No.: C22-01441

COMPLAINT FOR DAMAGES

1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Accurate Itemized Wage Statements;
3. Violation of the Private Attorneys General Act, Labor Code § 2802 for Failure to Reimburse for Necessary Expenditures; and
4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Pay Wages Due Upon Termination of Employment.

1 Plaintiff EMERSON TABZON ("Plaintiff" or "Mr. Tabzon") complains and alleges as
2 follows:

3 **INTRODUCTION**

4 1. This is an action brought on behalf of the state of California as a Private Attorney
5 General pursuant to the Private Attorneys General Act (2004), and more specifically, Labor Code
6 §2698 et seq. as a result of one or more of the violations of the California Labor Code alleged
7 herein by Defendant AIRGAS USA, LLC ("Defendant"). The term "RELEVANT TIME
8 PERIOD" or "TIME PERIOD" is defined as one (1) year and sixty-five (65) days prior to the
9 filing of the complaint. Plaintiff as a Private Attorney General, reserves the right to amend this
10 complaint to reflect a different "Time Period" as further discovery is conducted.

11 2. Plaintiff, on behalf of the State of California as a Private Attorney General seeks
12 relief against Defendant for its: (1) failure to pay all wages due, including regular and overtime
13 wages; (2) failure to provide accurate itemized wage statements; (3) failure to reimburse for
14 necessary business expenses; and (4) failure to pay wages due upon termination of employment.

15 3. At all relevant times herein, Defendant has consistently maintained and enforced
16 the following unlawful policies and practices against its workforce by:

- 17 (a) Willfully refusing to pay all hours worked, including both regular and overtime
18 wages;
- 19 (b) Willfully refusing to furnish accurate itemized wage statements upon payment of
20 wages;
- 21 (c) Willingly refusing to reimburse necessary business expenses; and
- 22 (d) Willfully refusing to pay all wages due upon separation of employment;

23 **JURISDICTION AND VENUE**

24 4. This Court has subject matter jurisdiction over the causes of action alleged in this
25 complaint because the Court is a court of general subject matter jurisdiction and is not otherwise
26 excluded from exercising subject matter jurisdiction over said causes of action.

27 5. Venue is proper in the County of Contra Costa because Defendant AIRGAS USA,
28 LLC, transacts business in this county, the obligations and liability arise in this county.

6. The California Superior Court has jurisdiction in the matter, because of the individual claims are under the seventy-five thousand dollars (\$75,000.00) jurisdictional threshold for Federal Court and this action seeks recovery of civil penalties. Plaintiff is a resident of and/or domiciled in the County of Solano, State of California. Defendant is a Delaware corporation doing business in the State of California.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

THE PARTIES

Plaintiff

8. Mr. Tabzon began his employment with Defendant in or around March 2020, as a truck driver, with duties that include delivering gas products. Mr. Tabzon was terminated by Defendant on or about January 22, 2022. Throughout the Relevant Time Period, Plaintiff worked for Defendants within the County of Contra Costa. Plaintiff was always paid an hourly wage, and was deemed a non-exempt hourly employee by Defendant.

Defendant

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant is a Delaware corporation which distributes industrial gas products throughout the State of California, and is and/or was the employer of Plaintiff and similarly situated employees during the Relevant Time Period.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendant sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendant is legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

11. Plaintiff is informed believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally

1 attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or
2 single business enterprise, integrated enterprise and/or are agents of one another, are alter egos,
3 joint employers and conspire with one another to increase profits by engaging in the conduct
4 described in this complaint.

5 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
6 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
7 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
8 below was acting, at least in part, within the course and scope of that authority as such agent,
9 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
10 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
11 are legally attributable to the other Defendants.

12 **PAGA ADMINISTRATIVE PREREQUISITE**

13 13. Plaintiff brings this case as private Attorney General pursuant to the Private
14 Attorneys General Act (2004), and mores specifically, Labor Code §2698 et seq. seeking
15 penalties, as provided by the Private Attorneys General Act, Labor Code section 2698 et seq.
16 (“PAGA”).

17 14. Prior to filing this complaint, on May 5, 2022, Plaintiff gave written notice by
18 certified electronic mail to the Labor and Workforce Development Agency (“LWDA”) and to
19 Defendant of the specified provisions alleged to have been violated, including the facts and
20 theories to support the alleged violation as required by Labor Code section 2699.3. A true and
21 correct copy of Plaintiff’s original letter sent to the LWDA is attached hereto as “Exhibit A.”

22 15. More than sixty-five (65) days have passed since Plaintiff submitted his May 3,
23 2022, notice to the LWDA and Defendant of the specific alleged Labor Code violations, and the
24 LWDA has not provided notice to Plaintiff of its intent to investigate such alleged violations.
25 Plaintiff further has received no notice of Defendant’s intent to cure any of the alleged violations.
26 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action as a Private
27 Attorney General with regard to his May 3, 2022, PAGA notice.

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1 **FACTUAL ALLEGATIONS**

2 16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its
3 employees the benefits due under California's wage and hour laws for work performed in
4 California. Defendant wrongfully refused to compensate its employees for minimum wages,
5 overtime compensation, provide accurate wage statements, reimbursement and pay wages owed
6 at the end of the employment, as required under California law.

7 17. Throughout the Relevant Time Period, Defendant employed hourly non-exempt
8 positions throughout California. Defendant in compensated said positions at an hourly rate less
9 than twice that of the state minimum wage and such positions remained under the direct control
10 and supervision of Defendant. Accordingly, these positions remain non-exempt from California's
11 wage and hour laws yet Defendant failed to pay overtime, and otherwise pay all wages due to
12 these non-exempt employees as required by law.

13 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
14 policies and practices described herein are common within the State of California.

15 19. Plaintiff is informed and believes, and based thereon alleges, that at all times
16 herein mentioned, Defendant was advised by skilled lawyers, employees and other professionals
17 who were knowledgeable about California's wage and hour laws, employment and personnel
18 practices, and the requirements of California law.

19 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
20 or should have known that by not compensating its employees for all hours worked, including
21 minimum, regular, and overtime wages, for work that was required to be performed was in
22 violation of the California labor code. In violation of the Labor Code and IWC Wage Orders,
23 Defendant failed to pay its employees earned wages by failing to compensate at the mandatory
24 minimum wage. Defendant also failed to pay its employees at the requisite overtime and double
25 time rate for all hours worked in excess of eight (8) hours and/or twelve (12) hours per workday.

26 21. Plaintiff alleges that Defendant failed to compensate its employees at the legally
27 mandated wage rates for all hours worked. Furthermore, during the Relevant Time Period,
28 Defendant had a policy and/or practice of rounding the hours worked by its employees which

1 resulted in the systemic under-compensation of its employees. Defendant did not include all
2 remuneration, specifically non-discretionary bonuses, for the purpose of paying overtime at the
3 legally mandated rate, in violation of the California labor code.

4 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
5 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
6 times the employee's base rate of pay. Similarly, all excess hours over twelve (12) hours in a day
7 were required to be compensated at a rate of two times the employee's base rate of pay. Defendant
8 did not include all remuneration, specifically non-discretionary bonuses, for the purpose of paying
9 overtime.

10 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
11 or should have known that it was required to provide its employees with itemized wage statements
12 that accurately showed their actual hours worked, total hours worked, number of hours worked at
13 each hourly rate, gross and net wages earned, and premium wages earned per pay period in
14 accordance with California law. In violation of the Labor Code, Defendant failed to provide its
15 employees with accurate itemized wage statements showing their rate of pay, the actual hours
16 worked, correct premium wages earned per pay period, as well as the total hours work per pay
17 period.

18 24. By failing to include on its wage statements all minimum wage and overtime and
19 double-time owed, Defendant failed to keep and provide accurate wage statements in violation of
20 the California labor code.

21 25. Defendant willfully failed to reimburse its employees for necessary business
22 expenses incurred during their employment with Defendant. Specifically, Defendant required,
23 and on information and belief continues to require, its employees to communicate with one
24 another through their personal cellular phones. Defendant required, and on information and belief
25 continues to require, employees to use their personal cellular phones to send and receive messages
26 from supervisors, dispatch, customers and co-drivers along with receiving directions on their
27 personal cellular phones. Defendant failed to reimburse employees for the expense of using their
28 personal cellular phones for business purposes in violation of the Labor Code and the IWC Wage

1 Orders.

2 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
3 or should have known that its employees were entitled to timely payment of wages due upon
4 separation of employment. In violation of the Labor Code, Defendant failed to pay all wages due,
5 within permissible time periods, upon separation of employment.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF PAGA FOR RECOVERY OF UNPAID MINIMUM WAGE AND**
8 **OVERTIME**

9 **(Plaintiff As a Private Attorneys General Against All Defendants)**

10 27. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
11 complaint as if fully set forth herein.

12 28. Any work in excess of eight hours in any workday and any work in excess of forty
13 (40) hours in a workweek shall be compensated at a rate of no less than one and one-half times
14 the regular rate of pay for an employee. (Labor Code § 510(a); IWC Wage Order 4-2001, Sect.
15 3(A).) Any work in excess of twelve (12) hours in a workday shall be compensated at the rate of
16 twice the regular rate of pay for an employee. (*Ibid.*)

17 29. Defendant's employees regularly worked over eight (8) hours per day and forty
18 (40) hours per week. Defendant failed to pay its employees minimum wage for all hours worked
19 and overtime premium for hours worked in excess of over eight (8) hours per day and/or forty
20 (40) hours per week for work performed for the Defendant. Defendant failed to schedule its
21 employees in such a manner that allowed its employees to be relieved of their shift immediately,
22 thereby causing said employees to work in excess of eight (8) hours per day and/or forty (40)
23 hours per week.

24 30. Since the LWDA has not indicated that it will be investigating more than sixty-
25 five (65) days since Plaintiff provided notice, and because Defendant took no corrective action to
26 remedy the allegations set forth above, Plaintiff, as a Private Attorney General, will seek any and
27 all penalties otherwise capable of being collected by the Labor Commission, the LWDA and/or
28 the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following,

as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 510 and 1194.

31. Plaintiff is informed and believes that Defendant has violated, and continues to violate, provisions of the Labor Code and applicable Wage Orders related to the payment of minimum wages and overtime.

32. Plaintiff, as a Private Attorney General, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions.

33. Additionally, Plaintiff as a Private Attorney General are entitled to attorney's fees and costs pursuant to Labor Code sections 2699, subdivision (g)(1), 218.5, 1194, and prejudgment interest.

SECOND CAUSE OF ACTION

VIOLATION OF PAGA FOR FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Plaintiff As a Private Attorney General Against All Defendants)

34. Plaintiff realleges and incorporates by reference the preceding paragraphs of this complaint as if fully set forth herein.

35. Labor Code section 226, subdivision (a), states in pertinent part that, "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 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 . . . ; (4) all deductions . . . ; (5) net wages; (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 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 corresponding

1 number of hours worked at each hourly rate by the employee..." (Lab. Code, § 226.)

2 36. Defendant knowingly and intentionally failed to provide timely and accurate
3 itemized wage statements to its employees in accordance with Labor Code section 226,
4 subdivision (a), by failing to record the accurate number of hours worked, the accurate rate of pay
5 for each hour worked, the accurate amount of premiums wages earned, the accurate net pay, and
6 the accurate gross pay. Such failure caused injury to its employees in violation of the California
7 labor code.

8 37. Plaintiff, as a Private Attorney General pursuant to the Private Attorneys General
9 Act (2004), and more specifically, Labor Code §2698, will and does seek to recover any and all
10 penalties for each and every violation shown to exist or to have occurred during the Relevant
11 Time Period, in an amount according to proof, as to those penalties that are otherwise only
12 available to public agency enforcement actions. Funds recovered will be distributed in accordance
13 with the PAGA.

14 38. Additionally, Plaintiff is entitled to attorneys' fees and costs pursuant to Labor
15 Code section 2699, subdivision (g)(1), and prejudgment interest.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF PAGA FOR FAILURE TO REIMBURSE**

18 **NECESSARY BUSINESS EXPENDITURES**

19 **(Plaintiff As a Private Attorney General Against All Defendants)**

20 39. Plaintiff realleges and incorporates by reference the allegations in the preceding
21 paragraphs.

22 40. Labor Code section 2802 states that "An employer shall indemnify his or her
23 employee for all necessary expenditures or losses incurred by the employee in direct consequence
24 of the discharge of his or her duties...."

25 41. Defendant failed to reimburse its employees for necessary expenditures as a direct
26 consequence of the discharge of their duties.

27 42. Defendant knowingly, willingly, and intentionally attempted to offset the cost of
28 doing business on its employees in violation of the California labor code.

1 43. Defendant had a corporate practice and policy of requiring its employees to
2 shoulder the burden of Defendant's cost of doing business by failing to reimburse its employees
3 for necessary business expenditures, specifically by requiring its employees to utilize their
4 personal cell phone for work-related purposes.

5 44. Plaintiff acting as a Private Attorney General pursuant to the Private Attorneys
6 General Act (2004), and more specifically, Labor Code §2698, will and does seek to recover any
7 and all penalties for each and every violation shown to exist or to have occurred during the
8 Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise
9 only available to public agency enforcement actions. Funds recovered will be distributed in
10 accordance with the PAGA.

11 45. Accordingly, Plaintiff entitled to attorneys' fees and costs pursuant to Labor Code
12 section 2699, subdivision (g)(1), and prejudgment interest.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF PAGA FOR FAILURE TO PAY WAGES DUE UPON**

15 **TERMINATION OF EMPLOYMENT**

16 **(Plaintiff As a Private Attorney General Against All Defendants)**

17 46. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
18 complaint as if fully set forth herein.

19 47. Employees who ended their employment with Defendant during the Relevant
20 Time Period, were entitled to be promptly paid all wages owed, including both minimum wage
21 and lawful overtime compensation and other premiums, as required by Labor Code sections 201
22 and 203.

23 48. Defendant refused and/or failed to promptly compensate its employees for wages
24 owed as a result of Defendant's failure to properly pay both minimum and overtime compensation
25 owed for work performed for Defendant.

26 49. Plaintiff, as a Private Attorney General pursuant to the Private Attorneys General
27 Act (2004, and more specifically, Labor Code §2698 et seq, will seek any and all penalties
28 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes

each of the following, as set forth in Labor Code section 2699.5, which provides that section 2699.3, subdivision (a), applies to any alleged violation of the following provisions: 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194.

50. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the Relevant Time Period, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA.

51. Additionally, Plaintiff as a Private Attorney General is entitled to attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1), and prejudgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff as a Private Attorney General pray for judgment as follows:

1. For civil penalties for each violation as provided by law, including, but not limited to, those civil penalties provided by PAGA;
2. For costs of suit and expenses incurred herein pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis or pursuant to the California Rules of Court;
3. For reasonable attorneys' fees pursuant to Labor Code section 2699, subdivision (g), and any other statutory basis; and
4. For all such other and further relief as the Court may deem just and proper.

Dated: July 14, 2022

MAHONEY LAW GROUP, APC



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Robert Costa, Esq.

Attorneys for Plaintiff EMERSON TABZON