

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

Larry W. Lee (State Bar No. 228175)
Kristen M. Agnew (State Bar No. 247656)
Nicholas Rosenthal (State Bar No. 268297)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder, Esq. (State Bar No. 170131)
POLARIS LAW GROUP LLP
501 San Benito Street, Suite 200
Hollister, CA 95023
Tel: (831) 531-4214
Fax: (831) 634-0333
bill@polarislawgroup.com

Attorneys for Plaintiff and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

HERMIE EVANGELISTA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

LINDE INC.; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **22STCV33708**

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET. SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Hermie Evangelista (“Plaintiff”) hereby submits this Representative Action
2 Complaint (“Complaint”) against Defendant Linde Inc. (“Defendant”), and Does 1 through 50
3 (collectively, “Defendants”), on behalf of himself and other Aggrieved Employees of Defendant,
4 for penalties under the California Labor Code as follows:

5 **INTRODUCTION**

6 1. This representative action is within the Court’s jurisdiction under California
7 Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 2802, and 2698, *et seq.*, and the
8 applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendants.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by failing to: (a) provide paid rest breaks; (b) pay all
14 wages owed upon separation of employment; (c) provide accurate and itemized wage statements;
15 and (d) reimburse business expenses.

16 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
17 have engaged in, among other things a system of willful violations of the California Labor Code
18 and the applicable IWC Wage Orders by creating and maintaining policies, practices, and
19 customs that knowingly deny employees the above stated rights and benefits.

20
21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code
23 sections 201, 202, 203, 204, 226, 226.2, 226.7, 2802, and 2698, *et seq.* and the applicable Wage
24 Orders.

25 6. Venue is proper in Los Angeles County because Defendant maintains operations
26 in El Segundo, California.

27 **PARTIES**

28 7. Plaintiff was employed by Defendant as a truck driver during the approximate

1 period of June 13, 2022 to August 1, 2022. Throughout his employment, Plaintiff was paid on a
2 piece-rate/mileage basis.

3 8. Plaintiff was and is the victims of the policies, practices, and customs of
4 Defendant complained of in this action in ways that have deprived him of the rights guaranteed
5 by California Labor Code sections 201, 202, 203, 204, 226, 226.2, 226.7, 2802, and 2698, *et*
6 *seq.*, and the applicable IWC Wage Orders.

7 9. Plaintiff is informed and believes, and based thereon alleges, that Linde Inc. was
8 and is a Delaware corporation that maintains operations in the State of California.

9 10. Plaintiff is informed and believes, and based thereon alleges, that at all times
10 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
11 and partnerships, licensed to do business and actually doing business in the State of California.
12 As such and based upon all the facts and circumstances incident to Defendants' business,
13 Defendants are subject to the California Labor Code.

14 11. Plaintiff does not know the true names or capacities, whether individual, partner
15 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
16 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
17 complaint when the true names and capacities are known. Plaintiff is informed and believes and
18 based thereon alleges that each of said fictitious defendants was responsible in some way for the
19 matters alleged herein and proximately caused Plaintiff and aggrieved employees to be subject to
20 the illegal employment practices, wrongs and injuries complained of herein.

21 12. At all times herein mentioned, each defendant participated in the doing of the acts
22 hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants,
23 and each of them, were the agents, servants and employees of each of the other defendants, as
24 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
25 course and scope of said agency and employment.

26 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
27 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
28 joint venturer of, or working in concert with each of the other co-Defendants and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity. To
2 the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the
3 remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
4 Defendants.

5 14. At all times herein mentioned, Defendants, and each of them, were members of,
6 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
7 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

8 15. At all times herein mentioned, the acts and omissions of various Defendants, and
9 each of them, concurred and contributed to the various acts and omissions of each and all of the
10 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
11 herein mentioned, Defendants, and each of them, ratified each and every act or omission
12 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
13 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
14 damages as herein alleged.

15 **FIRST CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

17 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
18 **AGAINST ALL DEFENDANTS)**

19 16. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
20 though fully set forth herein.

21 17. Plaintiff brings this cause of action as a proxy for the State of California and, in
22 this capacity, seeks penalties on behalf of all Aggrieved Employees from August 11, 2021,
23 through the present, for Defendant's violations of Labor Code sections 201, 202, 203, 204, 226,
24 226.2, 226.7 and 2802, arising from Defendant's policy and practice of: (a) failing to provide
25 proper rest breaks (b) failing to provide accurate, itemized wage statements; and (c) failing to
26 reimburse for work related expenses.

27 18. Defendant paid Plaintiff and Aggrieved Employees on a piece-rate/mileage basis,
28 but did not provide paid rest periods based on at least the minimum wage. As a result, any duty-

1 free rest breaks Plaintiff and Aggrieved Employees may have taken were not properly
2 compensated. Accordingly, Defendant is responsible for paying premium compensation for
3 missed rest periods, as well as the lost wages for the unpaid rest breaks, pursuant to Labor Code
4 sections 226.2 and 226.7, and the applicable IWC Wage Order.

5 19. Defendant failed in its affirmative obligation to provide accurate itemized wage
6 statements. Pursuant to Labor Code section 226, the wage statements issued to Plaintiff and
7 Aggrieved Employees should have reflected the number of piece-rate units earned and any
8 applicable piece rate. However, the wage statements provided to Plaintiff and other Aggrieved
9 Employees failed to identify such information. More specifically, the wage statements did not
10 identify the applicable rates or miles used to calculate their wages. Rather, the wage statements
11 simply listed the gross sum of the wages without any explanation.

12 20. Defendant regularly failed to reimburse and indemnify Plaintiff and Aggrieved
13 Employees for business expenses necessary for the discharge of their duties, in violation of
14 Labor Code section 2802. Specifically, Defendant failed to pay Plaintiff and Aggrieved
15 Employees for work-related expenses, including without limitation, the costs incurred with the
16 use of personal cell phones/communications.

17 21. On or about August 11, 2022, Plaintiff sent written notice to the California Labor
18 & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
19 sections 201, 202, 203, 204, 226, 226.2, 226.7 and 2802, and the applicable IWC Wage Order,
20 pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To
21 date, the LWDA has not responded to Plaintiff's written notice.

22 22. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
23 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203,
24 204, 226, 226.2, 226.7, and 2802 and the applicable IWC Wage Order for the time period
25 described above, on behalf of herself and other Aggrieved Employees.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
28 this suit is brought against Defendants, jointly and severally, as follows:

1 1. On the First Cause of Action, for civil penalties pursuant to California Labor
2 Code § 2698, *et seq.*, and for interest, costs and attorneys' fees;

3 2. On all causes of action, for attorneys' fees and costs as provided by California
4 Labor Code section 2698 *et seq.* and Code of Civil Procedure section 1021.5; and

5 3. For such other and further relief as the Court may deem just and proper.

6
7 DATED: October 17, 2022

DIVERSITY LAW GROUP, P.C.

8
9 By: _____

Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

Attorneys for Plaintiff and the Aggrieved
Employees