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**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.: 22STCV26341

**FIRST CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE § 226;**
- (2) VIOLATION OF LABOR CODE § 2802;**
- (3) VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200, *ET SEQ.***
- (4) VIOLATION OF LABOR CODE § 2698,
*ET. SEQ.***

DEMAND OVER \$25,000.00

1 Plaintiff Hermie Evangelista (“Plaintiff”) hereby submits this First Amended Class and
2 Representative Action Complaint (“Complaint”) against Defendant Linde Inc. (“Defendant”),
3 and Does 1 through 50 (collectively, “Defendants”), on behalf of himself and a class of all other
4 similarly situated current and former employees of Defendants for penalties and/or damages for
5 violation of the California Labor Code, and restitution for unfair business practices in violation
6 of Business and Professions Code section 17200, *et seq.*, as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code
9 sections 226, 2802, and 2698, *et seq.*, Business and Professions Code section 17200, *et seq.* (the
10 “UCL”), and the applicable Wage Orders of the California Industrial Welfare Commission
11 (“IWC”).

12 2. This Complaint challenges systemic illegal employment practices resulting in
13 violation of the California Labor Code and Business and Professions Code against individuals
14 who worked for Defendants.

15 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
16 jointly and severally, have acted intentionally and with deliberate indifference and conscious
17 disregard to the rights of all employees by failing to: (a) provide accurate and itemized wage
18 statements; and (b) reimburse business expenses.

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

23 5. The policies, practices and customs of Defendants described above and below
24 have resulted in unjust enrichment of Defendants and an unfair business advantage over
25 businesses that routinely adhere to the strictures of the California Labor Code and the California
26 Business and Professions Code.

27 **JURISDICTION AND VENUE**

28 6. The Court has jurisdiction over the violations of the California Labor Code

sections 226, 2802, 2698, *et seq.* and the UCL, and the applicable Wage Orders.

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

PARTIES

8. Plaintiff was employed by Defendant as a truck driver during the approximate period of June 13, 2022 to August 1, 2022. Throughout his employment, Plaintiff was paid on a piece-rate/mileage basis.

9. Plaintiff was and is the victims of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived him of the rights guaranteed by California Labor Code sections 226, 2802, and 2698, *et seq.*, the applicable IWC Wage Orders, and the UCL.

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

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

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

13. At all times herein mentioned, each defendant participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, Defendants, and each of them, were the agents, servants and employees of each of the other defendants, as

well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes, and based thereon alleges, that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

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

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

CLASS ACTION ALLEGATIONS

17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to California Code of Civil Procedure section 382. Plaintiff proposes the following class of all current and former employees of Defendant in the State of California, who worked at any time from August 15, 2018, through the present (the “Class” or “Class Members”). Plaintiff further proposes the following subclass:

- a. All current and former non-exempt employees of Defendant in the State of California, who earned any portion of their wages on a piece rate and/or mileage basis at any time from August 15, 2021, through the present (the

“Wage Statement Sub-Class” or “Wage Statement Sub-Class Members”).

18. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identity of the members of the Class is readily ascertainable by review of Defendant’s records, including payroll records. Plaintiff is informed and believes, and based thereon alleges, that Defendant: (a) failed to reimburse all business expenses, in violation of Labor Code section 2802; (b) failed to provide accurate itemized wage statements, in violation of Labor Code section 226; and (c) engaged in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and the individual Plaintiff. Plaintiff’s attorneys have prosecuted and settled wage-and-hour class actions in the past and currently have a number of wage-and-hour class actions pending in California state and federal courts.

20. Defendant uniformly administered a corporate policy, practice of: (a) failing to reimburse all business expenses, in violation of Labor Code section 2802; and (b) failing to provide accurate itemized wage statements, in violation of Labor Code section 226 and the applicable IWC Wage Orders.; and (c) engaging in Unfair Business Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage Orders.

21. Plaintiff is informed and believes, and based thereon alleges, that Defendant had a consistent and uniform policy, practice, and procedure of willfully failing to comply with Labor Code sections 226, and 2802, and, the applicable IWC Wage Orders., and the UCL.

22. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant’s policy and practice of: (a) failing to reimburse all business expenses, in violation of Labor Code section 2802; and (b) failing to provide accurate itemized wage statements, in violation of Labor Code section 226; and (c) engaging in Unfair Business

1 Practices in violation of the UCL, the California Labor Code, and the applicable IWC Wage
2 Orders.

3 23. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
4 Class in that Plaintiff has suffered the harms alleged in this Complaint in a similar and typical
5 manner as the Class Members. Plaintiff was a non-exempt employee. The wage statements
6 issued to Plaintiff, and other employees paid on a piece-rate/mileage basis, did not identify the
7 applicable rates or miles used to calculate their wages. Rather, the wage statements simply listed
8 the gross sum of the wages without any explanation, in violation of Labor Code section 226(a).

9 24. Additionally, Defendant also required Plaintiff and other employees to use their
10 personal cell phones for work purposes, including for communication purposes. Defendant did
11 not reimburse their employees for such costs. Therefore, Plaintiff is a member of the Class and
12 has suffered the alleged violations of Labor Code sections 226 2802, and the UCL.

13 25. The California Labor Code upon which Plaintiff bases these claims are broadly
14 remedial in nature. These laws and labor standards serve an important public interest in
15 establishing minimum working conditions and standards in California. These laws and labor
16 standards protect the average working employee from exploitation by employers who may seek
17 to take advantage of superior economic and bargaining power in setting onerous terms and
18 conditions of employment.

19 26. The nature of this action and the format of laws available to Plaintiff and
20 members of the Class identified herein make the class action format a particularly efficient and
21 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
22 file an individual lawsuit, the corporate defendants would necessarily gain an unconscionable
23 advantage since it would be able to exploit and overwhelm the limited resources of each
24 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
25 Member to pursue an individual remedy would also discourage the assertion of lawful claims by
26 employees who would be disinclined to file an action against their former and/or current
27 employer for real and justifiable fear of retaliation and permanent damage to their careers at
28 subsequent employment.

1 27. The prosecution of separate actions by the individual class members, even if
2 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
3 to individual Class members against Defendant and which would establish potentially
4 incompatible standards of conduct for Defendant, and/or (b) adjudications with respect to
5 individual Class members which would, as a practical matter, be dispositive of the interest of the
6 other Class members not parties to the adjudications or which would substantially impair or
7 impede the ability of the Class members to protect their interests. Further, the claims of the
8 individual members of the Class are not sufficiently large to warrant vigorous individual
9 prosecution considering all of the concomitant costs and expenses.

10 28. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid wages,
13 including interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit
14 according to the mandate of California Labor Code sections 218.5 and 226, the applicable IWC
15 Wage Orders, and Code of Civil Procedure section 1021.5.

16 29. Proof of a common business practice or factual pattern, which the named Plaintiff
17 experienced and is representative of, will establish the right of each of the members of the
18 Plaintiff Class to recovery on the causes of action alleged herein.

19 30. The Class is commonly entitled to a specific fund with respect to the
20 compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to
21 restitution of those funds being improperly withheld by Defendants. This action is brought for
22 the benefit of the entire class and will result in the creation of a common fund.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF LABOR CODE § 226**

25 **(BY PLAINTIFF AND THE WAGE STATEMENT SUB-CLASS AGAINST ALL**
26 **DEFENDANTS)**

27 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
28 though fully set forth herein.

1 32. Defendant failed in its affirmative obligation to provide accurate itemized wage
2 statements, in violation of Labor Code section 226.

3 33. Plaintiff and Wage Statement Sub-Class Members were paid on a piece-
4 rate/mileage basis. As such, the wage statements should have reflected the number of piece-rate
5 units earned and any applicable piece rate, pursuant to Labor Code section 226. However, the
6 wage statements provided to Plaintiff and other Wage Statement Sub-Class Members failed to
7 identify such information. More specifically, the wage statements did not identify the applicable
8 rates or miles used to calculate their wages. Rather, the wage statements simply listed the gross
9 sum of the wages without any explanation.

10 34. Such a pattern, practice and uniform administration of corporate policy as
11 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Wage
12 Statement Sub-Class in a civil action, for all damages or penalties pursuant to Labor Code
13 section 226, including interest thereon, attorneys' fees, and costs of suit according to the mandate
14 of California Labor Code section 226.

15 **SECOND CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 2802**

17 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

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

20 36. This cause of action is brought pursuant to Labor Code section 2802, which
21 provides that employees are entitled to be indemnified for expenses and losses in discharging the
22 duties of their employers.

23 37. At all relevant times herein, Defendant regularly failed to reimburse and
24 indemnify Plaintiff and Class Members for business expenses necessary for the discharge of their
25 duties. Specifically, Defendant failed to pay Plaintiff and Class Members for work-related
26 expenses, including without limitation, the costs incurred with the use of personal cell phones.
27 Costs that Plaintiff and Class Members incurred in connection with the use of personal cell
28 phones were not reimbursed.

38. Defendant had a uniform corporate pattern and practice and procedure regarding the above practice in violation of Labor Code section 2802.

39. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of damages owed, including interest thereon, penalties, attorneys' fees, and costs of suit according to the mandate of California Labor Code section 2802.

THIRD CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200, *ET SEQ.*

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

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

41. Defendant has engaged and continues to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above, including by failing to reimburse all business expenses, in violation of Labor Code section 2802;

42. Defendant's utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendant's competitors.

43. Plaintiff seeks, individually and on behalf of other members of the Class similarly situated, full restitution of monies, as necessary and according to proof, to restore any and all monies withheld, acquired and/or converted by the Defendant by means of the unfair practices complained of herein.

44. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed by California Business & Professions Code section 17200, *et seq.*, including those set forth herein above thereby depriving Plaintiff and other members of the Class the minimum working condition standards and conditions due to them under the California laws as specifically described therein.

1 **FOURTH CAUSE OF ACTION**

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

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

5 45. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 46. Plaintiff brings this cause of action as a proxy for the State of California and, in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from August 11, 2021,
9 through the present, for Defendant's violations of Labor Code sections 226 and 2802, arising
10 from Defendant's policy and practice of: (a) failing to provide accurate, itemized wage
11 statements and (b) failing to reimburse for work related expenses.

12 47. Defendant failed in its affirmative obligation to provide accurate itemized wage
13 statements. Pursuant to Labor Code section 226, the wage statements issued to Plaintiff and
14 Aggrieved Employees should have reflected the number of piece-rate units earned and any
15 applicable piece rate. However, the wage statements provided to Plaintiff and other Aggrieved
16 Employees failed to identify such information. More specifically, the wage statements did not
17 identify the applicable rates or miles used to calculate their wages. Rather, the wage statements
18 simply listed the gross sum of the wages without any explanation.

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

24 49. On or about August 11, 2022, Plaintiff sent written notice to the California Labor
25 & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
26 sections 226 and 2802, and the applicable IWC Wage Order, pursuant to Labor Code section
27 2698, *et seq.*, the Private Attorneys General Act ("PAGA"). To date, the LWDA has not
28 responded to Plaintiff's written notice.

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

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Class and Sub-Classes;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as class counsel;
4. Upon the First Cause of Action, for damages or penalties pursuant to California Labor Code section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to California Labor Code section 2802, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business & Professions Code section 17200, *et seq.*, for the time periods described above;
7. Upon the Fourth Cause of Action, for civil penalties pursuant to California Labor Code § 2698, *et seq.*, and for interest, costs and attorneys' fees;
8. On all causes of action for attorneys' fees and costs as provided by California Labor Code sections 218.5, and 226, and Code of Civil Procedure section 1021.5; and
9. For such other and further relief the Court may deem just and proper.

1 DATED: February 13, 2023

DIVERSITY LAW GROUP, P.C.

2
3 By:



Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

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5 Attorneys for Plaintiff and the Class
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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On February 13, 2023, I served the following document(s) described as: **FIRST CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

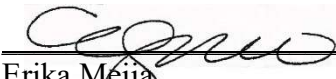
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 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the ACE Attorney Service E-Filing System at the website www.efile.acelegal.com, addressed to all parties appearing on this proof of service for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 13, 2023, at Los Angeles, California.



Erika Mejia