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Superior Court of California
County of Santa Cruz
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Clerk of the Court by Deputy,
Jessica Betancourt-Gomez

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

ALEJANDRO OLIVARES, on behalf of the State of California and other aggrieved persons,

Plaintiff,

v.

LINDE GAS & EQUIPMENT, INC., a corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24CV01346

PAGA REPRESENTATIVE ACTION COMPLAINT:

1. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.]

Plaintiff Alejandro Olivares ("Plaintiff"), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, alleges as follows:

<u>INTRODUCTION & PRELIMINARY STATEMENT</u>

1. Plaintiff brings this action against Defendant LINDE GAS & EQUIPMENT, INC. and DOES 1 through 10 (LINDE GAS & EQUIPMENT, INC. and DOES 1 through 10 are collectively referred to as "Defendants") for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq*. ("PAGA") stemming from Defendants' failure to pay for all hours worked (including minimum wages, straight time wages, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, and failure to indemnify for necessary expenditures or losses.

2. For over 50 years, California's courts and legislature have recognized that this State's wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that employees are promptly paid the minimum/overtime wages that the Legislature has required for employees. So fundamental are California's wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution, or other damages other than civil penalties—California has enacted the PAGA to permit an individual to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

3. All California employees during the relevant statutes of limitations who are or were harmed by Defendants' illegal practices are "Aggrieved Employees." The Aggrieved Employees worked for Defendants as hourly-paid or non-exempt employees within the applicable statutory period.

4. Plaintiff brings this action against Defendants seeking only to recover penalties on

behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover anything other than penalties as permitted by California Labor Code Section 2699 at this time. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by the PAGA.

5. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Santa Cruz County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

8. Plaintiff Alejandro Olivares is a resident of Santa Cruz County, California who worked for Defendants in California as an hourly-paid, non-exempt employee from approximately 2022 to approximately November 14, 2023.

B. Defendants

9. Plaintiff is informed and believes, and based upon that information and belief

alleges, that LINDE GAS & EQUIPMENT, INC. is, and at all times herein mentioned, was:

(a) A business entity conducting business in numerous counties throughout the State of California, including Santa Cruz County; and

(b) The former employer of Plaintiff and the current and/or former employer of the Aggrieved Employees because Defendant LINDE GAS & EQUIPMENT, INC. suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

10. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary.

11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

12. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships

alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff Alejandro Olivares worked for Defendants in Santa Cruz County, California from approximately 2022 to approximately November 14, 2023. At all times, Defendants paid Plaintiff an hourly wage and classified him as non-exempt from overtime.

14. Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

A. Failure to Pay for All Hours Worked, Including Minimum Wages, Straight Time Wages, and Overtime Wages

15. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

16. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

18. Throughout the statutory period, Defendants maintained a policy and practice of not paying the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendants required the Plaintiff and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring the Aggrieved Employees to perform work during legally required meals periods and after their work shifts ended. Some of this unpaid work performed by the Aggrieved Employees should have been paid at the overtime rate. In failing to

pay for all hours worked, Defendants also failed to maintain accurate records of the hours the Aggrieved Employees worked.

19. For example, Defendant would communicate with Plaintiff before and after his shifts to discuss his routes and changes to his routes for his deliveries, and other work related activities. On average Plaintiff would spend at least 10 minutes a day working off the clock before and after his shift.

20. Defendant would also communicate with Plaintiff on days that he did not work regarding his routes. For example, Plaintiff typically worked Monday-Friday. However, despite that, Plaintiff would receive calls from his managers and Defendant's employees regarding his deliveries, routes and schedule on Sunday.

21. Defendant also had Plaintiff and Aggrieved Employees clock out for meal breaks. However, Plaintiff and Aggrieved Employees were required to work through these periods of time and were not compensated for this time. For example, Plaintiff would be required to unload tanks of gas for customers during this time where he was clocked out. Plaintiff and Aggrieved Employees would be reprimanded if they did not complete all of their routes in the day. Thus, Plaintiff and Aggrieved Employees were forced to work during these periods of time when they were off-the-clock, but were not compensated for it.

22. Likewise, when Plaintiff and Aggrieved Employees were clocked out for meal periods, they would get calls during these uncompensated periods of time that they were required to answer. Defendant required Plaintiff and Aggrieved Employees to not answer any calls while they were driving. Thus, they were required to handle these calls during their meal breaks and required to answer any calls during their meal breaks. However, in spite of this, Plaintiff and Aggrieved Employees were not compensated for this time.

B. <u>Failure to Provide Meal Periods</u>

23. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of the sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in a workday. Further,

employees are entitled to be paid one hour of additional wages for each workday they were not provided with a required meal period(s).

24. Despite these legal requirements, Defendants wrongfully failed to provide the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period. The Aggrieved Employees routinely worked through meal periods "off-the-clock," and Defendants frequently paid the Aggrieved Employees less than all their work time. Much of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records of the hours the Aggrieved Employees worked. Defendants also regularly, but not always, required the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying the Aggrieved Employees permission to take a meal period. Accordingly, Defendants' policy and practice was not to provide meal periods to the Aggrieved Employees in compliance with California law.

25. The Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendants, however, regularly failed to pay the Aggrieved Employees the additional wages to which they were entitled for meal periods that were not provided.

C. <u>Failure to Authorize and Permit Rest Periods</u>

26. Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

27. Throughout the statutory period, Defendants wrongfully failed to authorize and

permit the Aggrieved Employees to take legally compliant rest periods. Defendants regularly required the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendants continued to assert control over the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying the Aggrieved Employees permission to take a rest period. Accordingly, Defendants' policy and practice was to not authorize and permit the Aggrieved Employees to take rest periods in compliance with California law.

28. The Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest periods. Defendants, however, regularly failed to pay the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

D. <u>Failure to Pay All Earned Wages Twice Per Month</u>

29. Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

30. Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendants systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages not paid, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

E. <u>Failure to Maintain Accurate Records of Hours Worked and Meal Periods</u>

31. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

32. Defendants, however, failed to maintain accurate records of hours worked by Plaintiff and the Aggrieved Employees. Defendants also failed to maintain accurate records of all meal periods taken or missed the Aggrieved Employees.

33. Defendants' failure to provide and maintain records required by the California Labor Code and applicable IWC Wage Orders deprived the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

F. Failure to Timely Pay All Wages at Termination

34. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled

to his or her wages at the time of quitting.

35. Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendants failed, and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These unpaid wages include wages for unpaid work time (including minimum wages, straight time wages, overtime wages, rest and recovery periods, and other nonproductive time), missed meal period premium wages, and missed rest period premium wages.

36. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

37. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

G. **Failure to Furnish Accurate Itemized Wage Statements**

38. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and 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 the corresponding number of hours worked at each hourly rate by the employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

39. The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Labor Code § 226(e)(1).)

40. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

41. Because Defendants violated Labor Code § 226, Plaintiff and the Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) dollars per employee.

H. <u>Failure to Indemnify for Necessary Expenditures</u>

42. Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties.

43. Throughout the statute of limitations period applicable to this cause of action, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants.

44. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary business expenses, including, without limitation, use of personal cell phones.

45. For example, Plaintiff was required to use his personal cell phone for work related purposes. Plaintiff would use his personal cell phone to communicate with customers for deliveries and communicate with Defendant regarding the deliveries.

46. Defendant's managers would require Plaintiff to take work related calls. If Plaintiff did not take answer calls, he would get reprimanded.

47. Additionally, during a portion of the Class Period, Plaintiff would have to use his personal cell phone for GPS for making his deliveries.

48. Plaintiff made complaints to Defendant about using his personal cell phone for work related purposes. However, in spite of this, Defendant did not reimburse Plaintiff for his cell phone usage.

49. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

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

51. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable IWC Orders.

52. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Section 2699.3."

53. Plaintiff has exhausted his administrative remedies pursuant to California Labor

Code § 2699.3. On March 5, 2024, he gave written notice by online filing to the Labor and Workforce Development Agency ("LWDA") and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former Aggrieved Employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee on March 5, 2024. Plaintiff's PAGA case number is LWDA-CM- 1014859-24 (*Alejandro Olivares, et al. v. Linde Gas & Equipment, Inc.*).

54. The statute of limitations is tolled while a plaintiff exhausts his or her administrative remedies with California's LWDA prior to suit, which is required by the statute. (*See* Labor Code § 2699.3(d).)

55. More than sixty-five (65) days have elapsed since Plaintiff provided notice, but the LWDA has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

56. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties on behalf of the State of California and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

57. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum wages, straight time wages, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,

failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, failing to furnish accurate wage statements, and failing to indemnify for necessary expenditures;

2. An award of civil penalties on behalf of himself and all similarly aggrieved employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: May 9, 2024

WILSHIRE LAW FIRM

By: ______________________________
Justin F. Marquez
Erik A. Dos Santos

Attorneys for Plaintiff