

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MICHAEL POWERS and LUIS CALLES,	)	
Individually and on Behalf of All Other	)	
Persons Similarly Situated,	)	
	)	<b>COLLECTIVE ACTION</b>
Plaintiffs,	)	<b>COMPLAINT</b>
	)	
v.	)	Jury Trial Demanded
	)	
AIRGAS, INC., and AIRGAS USA, LLC,	)	Civil Action No.
	)	
Defendants.	)	
	)	
	)	

**INTRODUCTION**

Plaintiffs Michael Powers (“Powers”) and Luis Calles (“Calles”), individually and on behalf of all others similarly situated Branch Managers (“BMs”) (collectively “Plaintiffs”), and similarly situated current and former employees holding comparable positions, but holding different titles, file this Collective Action Complaint (the “Complaint”) against Defendants Airgas, Inc., and Airgas USA, LLC, (collectively as “Defendants” or “Airgas”), seeking all available relief under the Fair Labor Standards Act of 1938 (“FLSA”), 29 U.S.C. §§ 201, *et. seq.* The following allegations are based on personal knowledge as to Plaintiffs’ conduct and are made on information and belief as to the acts of others.

**NATURE OF THE ACTION**

1. Plaintiffs allege on behalf of themselves and other current and former Branch Managers and similarly situated current and former employees holding comparable positions but different titles (“Branch Managers” or “BMs”) employed by Defendants in the United States, who elect to opt into this action pursuant to the Fair Labor Standards Act (hereinafter the “FLSA”), 29 U.S.C. § 216(b) (hereinafter the “Collective” or “Collective Action Members”), that they are

entitled to, *inter alia*: (i) unpaid overtime wages for hours worked above 40 in a workweek, as required by law, and (ii) liquidated damages pursuant to the FLSA, 29 U.S.C. §§ 201, *et seq.*

### **JURISDICTION AND VENUE**

2. This Court has jurisdiction over Plaintiffs' FLSA claims pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

3. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in this District.

4. Defendants regularly conduct business in this District.

5. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

### **THE PARTIES**

#### ***I. The Named Plaintiffs***

6. Plaintiff Powers is an individual residing in Colorado Springs, Colorado.

7. During all relevant times, Plaintiff Powers was employed by Airgas from in or around October 2018 to March 2022 as a BM at Airgas store located in Colorado Springs, Colorado.

8. Plaintiff Powers has consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). *See* Exhibit A.

9. Plaintiff Calles is an individual residing in Turlock, California.

10. During all relevant times, Plaintiff Calles was employed by Airgas from in or around January 2021 to May 2021 as a BM at Airgas store located in Merced, California.

11. Plaintiff Calles has consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b). *See* Exhibit A.

12. Plaintiffs worked in excess of 40 hours per workweek, without receiving wages from Defendants, for all hours worked, as well as overtime compensation as required by federal and state laws.

## ***II. Defendants***

13. Defendant Airgas, Inc. is a foreign business corporation, formed in Delaware with corporate offices located in 259 North Radnor-Chester Road, #100, Radnor, PA 19087-5283.

14. Defendant Airgas, Inc. is a wholly owned subsidiary of Air Liquide S.A.

15. Defendant Airgas USA, LLC is a foreign limited liability corporation, organized and existing under the laws of Delaware, with corporate offices located in 259 North Radnor-Chester Road, #100, Radnor, Pennsylvania, 19087.

16. Defendant Airgas, Inc. and/or Airgas USA, LLC do business as Airgas.

17. According to its website,<sup>1</sup> Defendants are a leading U.S. supplier of industrial, medical and specialty gases, as well as hardgoods and related products; one of the largest U.S. suppliers of safety products; and a leading U.S. supplier of ammonia products and process chemicals. This leading U.S. producer and supplier of industrial, medical and specialty gases, hardgoods and safety products, operates a chain of over 900 Airgas retail locations in 50 states.

18. Defendants were and still are doing business at its corporate offices and retail locations in Pennsylvania, along with 49 other states.

19. Defendants employ/employed Plaintiffs and other similarly situated current and former Branch Managers at its Airgas locations across the United States.

20. At all times relevant, Defendants, have been an employer within the meaning of Section 3(d) of the FLSA, 29 U.S.C. § 203(d).

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<sup>1</sup> <https://www.airgas.com/company> last accessed April 1, 2024.

21. At all times relevant, Defendants, have been an enterprise within the meaning of Section 3(r) of the FLSA, 29 U.S.C. § 203(r).

22. At all times relevant herein, Defendants, have been an enterprise engaged in commerce or the production of goods for commerce within the meaning of Section 3(s) (1) of the FLSA because it has had employees engaged in commerce or in the production of goods for commerce, or employees handling, selling, or otherwise working on goods or materials that have moved in or were produced for commerce by any person, 29 U.S.C. § 203(s)(1).

23. Defendants, have had, and have a gross volume of sales, made or done business in an amount of at least \$500,000.

24. At all times relevant, Plaintiffs and all similarly situated Branch Managers were engaged in commerce or in the production of goods for commerce as required by 29 U.S.C. §§ 206-207.

25. Defendants issued paychecks to the Plaintiffs, and all similarly situated employees during their employment.

26. The Plaintiffs were paid on a salary basis and deemed exempt from overtime by Defendants.

27. Defendants suffered, permitted or directed the work of Plaintiffs and similarly situated employees, and Defendants benefited from work performed by Plaintiffs and similarly situated employees.

28. Defendants did not pay Plaintiffs and other similarly situated employee's overtime wages for hours they worked for its benefit in excess of forty (40) hours in a workweek.

29. Pursuant to Defendants' policy, pattern, and practice, Defendant did not pay Plaintiffs and other similarly situated employee's proper overtime wages for hours they worked for Defendants' benefit in excess of 40 hours in a workweek.

30. Plaintiffs and similarly situated employees worked in excess of forty (40) hours per workweek, without receiving overtime compensation as required by the FLSA.

### **FACTUAL ALLEGATIONS**

31. Defendants employed Plaintiffs, and the Collective Action members, as BMs.

32. Defendants maintain control, oversight, and discretion over the operation of its stores, including its employment practices with respect to Plaintiffs, the Collective Action members.

33. Plaintiffs' and the Collective Action members' performed work as Branch Managers that was integrated into the normal course of Defendants' business.

34. Consistent with Defendants' policy, pattern and/or practice, Plaintiffs, the Collective Action members, regularly worked in excess of 40 hours per workweek without being paid overtime wages.

35. Plaintiff Powers actually worked approximately 50-55 hours per week during each week and was not paid for the hours worked in excess of 40. For example, during the week of February 20-27, 2022, Plaintiff Powers worked approximately 50 hours.

36. Plaintiff Calles actually worked approximately 55-60 hours per week during each week and was not paid for the hours worked in excess of 40. For example, during the week of May 9-16, 2021, Plaintiff Calles worked approximately 55 hours.

37. The number of shifts Plaintiffs and each Collective Action Member worked per week can be ascertained from Defendants' records.

38. Defendants assigned all of the work performed by Plaintiffs and the Collective Action and is aware of all the work that they have performed.

39. This work required little skill and no capital investment.

40. This work required of the Plaintiffs the Collective Action, did not include managerial responsibilities.

41. Throughout the Collective Action Period, Plaintiffs, and the Collective Action Members, performed the following primary job duties including but not limited to: loading and unloading delivery vehicles, accepting shipments, sorting cylinders, stocking, using the forklift to move stock, processing deliveries and returned cylinders, time-consuming secretarial work related to gas cylinder deliveries and returns, customer service, cleaning, inventory, and covering shifts for hourly employees.

42. Throughout the Collective Action Period, the primary job duties of Plaintiffs, the Collective Action members, did not include hiring, firing, disciplining, or directing the work of other employees, and exercising meaningful independent judgment and discretion.

43. The primary job duties of Plaintiffs, the Collective Action members did not materially differ from the duties of non-exempt hourly paid employees.

44. The primary duties of Plaintiffs the Collective Action members, were manual in nature.

45. The Plaintiffs, and the Collective Action members, performance of manual labor and non-exempt duties occupied the majority of Plaintiffs, and the Collective Action members working hours.

46. Pursuant to a centralized, company-wide policy, pattern and/or practice, Defendants classified Branch Managers and other similarly situated current and former employees

holding comparable positions but different titles, as exempt from coverage of the overtime provisions of the FLSA.

47. Defendants did not perform a person-by-person analysis of the job duties of Branch Managers when making the decision to classify all of them uniformly as exempt from the overtime protections of the FLSA.

48. Defendants established labor budgets to cover labor costs for the stores in which Plaintiffs the Collective Action members, worked.

49. Defendants did not provide sufficient resources in the labor budgets for non-exempt employees to complete all the non-exempt tasks in each store.

50. Defendants knew or recklessly disregarded the fact that failing to provide sufficient resources in store labor budgets resulted in Plaintiffs and other similarly situated Branch Managers (who were not paid overtime) to work more than forty (40) hours in a workweek and primarily perform manual and non-exempt duties during their workweeks, without receiving overtime compensation. This allowed Defendants to avoid paying additional wages (including overtime) to the non-exempt store-level employees.

51. Defendants acted willfully and knew, by virtue of the fact that its District Managers and Area Vice Presidents (as its authorized agents) actually saw the Plaintiffs and other similarly situated Branch Managers perform primarily manual labor and non-exempt duties, that as a result of the underfunded labor budgets Defendants had non-exempt employees primarily performing such work.

52. Defendants knew that Plaintiffs and other similarly situated Branch Managers were not performing activities that would suffice to make their actual job duties comply with any FLSA exemption and, Defendants, a substantial corporate entity aware of its obligations under the FLSA,

it, accordingly, acted willfully or recklessly in failing to classify Plaintiffs and other similarly situated Branch Managers as non-exempt employees.

53. Defendants are aware of or should have been aware, through their District Managers and Area Vice Presidents (as its authorized agents), that Plaintiffs and other similarly situated Branch Managers were primarily performing non-exempt duties. As a retailer operating over 900 retail locations in the United States, Defendants knew or recklessly disregarded the fact that the FLSA required it to pay employees primarily performing non-exempt duties an overtime premium for hours worked in excess of 40 per workweek.

54. Defendants' unlawful conduct as described above, was willful and/or in reckless disregard of the FLSA.

55. Defendants' unlawful conduct was accomplished through Defendants' centralized, company-wide policy, pattern, and practice of attempting to minimize labor costs by violating the FLSA.

56. As part of its regular business practice, Defendants have intentionally, willfully, and repeatedly engaged in a policy, pattern, and practice of violating the FLSA with respect to Plaintiffs, the members of the Collective Action. This policy, pattern, and practice includes, but it is not limited to Defendants' knowledge of its obligations and the kind of work that Plaintiffs, the Collective Action members, were and, have been performing, and that as a result, Defendants have been:

- a. willfully misclassifying Plaintiffs and the members of the Collective Action as exempt from the overtime requirements of the FLSA;
- b. willfully failing to pay Plaintiffs and the members of the Collective Action overtime wages for hours they worked in excess of 40 hours per week; and

- c. willfully failing to provide enough money in its store-level labor budgets for its non-exempt employees to perform their duties and responsibilities, forcing its Branch Managers to perform such non-exempt tasks.

57. Defendants' willful violations of the FLSA are further demonstrated by the fact that during the course of the Collective Action Period, and continuing to the present, Defendants failed to maintain accurate and sufficient time records for Plaintiffs and the members of the Collective Action. Defendants acted recklessly or in willful disregard of the FLSA by instituting a policy and/or practice that did not allow Plaintiffs to record all hours worked.

58. During the course of the Collective Action Defendants failed to post or keep posted a notice explaining the minimum wage and overtime wage requirements, as provided under the FLSA. This failure to post or keep posted a notice explaining the minimum wage and overtime wages was willful or in reckless disregard of the Plaintiffs' and other similarly situated Branch Managers rights under the FLSA.

59. Due to the foregoing, Defendants' failure to pay overtime wages for work performed by the Plaintiffs, the Collective Action Members in excess of 40 hours per workweek was willful and has been widespread, repeated and consistent.

#### **FLSA COLLECTIVE ACTION ALLEGATIONS**

60. Pursuant to 29 U.S.C. §§ 207 and 216(b), Plaintiffs seek to prosecute their FLSA claims as a Collective Action on behalf of all persons who are or were formerly employed by Airgas as Branch Managers and individuals holding comparable salaried positions with different titles employed by Defendants within the United States at any time three years prior to the date of filing this Complaint, to the entry of judgment in this case (the "Collective Action Period").

61. During the relevant time period, Defendants have employed numerous Branch Managers who are similarly situated to Plaintiffs in that they have performed the same duties as Plaintiffs and have been subjected to the same illegal pay practices as Plaintiffs.

62. During the relevant time period, Branch Managers, including Plaintiffs have been victims of a common policy, plan, or scheme by Defendants to misclassify Branch Managers as exempt and to deny them overtime compensation required by the FLSA.

63. During the relevant time period, Branch Managers, including Plaintiffs, have been uniformly affected by Defendants' centralized, companywide policy and/or practice to classify them as exempt and to deny them overtime compensation required by the FLSA, which applied at all of Defendants' locations in the United States.

64. Defendants' misclassification of Plaintiffs and other similarly situated Branch Managers, and Defendants' unlawful compensation policies and/or practices, have been in willful disregard of the rights of Plaintiffs and other similarly situated Branch Managers under the FLSA.

65. Defendants are liable under the FLSA for, *inter alia*, failing to pay proper overtime wages to Plaintiffs and other similarly situated employees.

66. Upon information and belief, there are many similarly situated current and former Branch Managers who have not been paid overtime wages in violation of the FLSA who would benefit from the issuance of a court-supervised notice of this lawsuit and the opportunity to join. Thus, notice should be sent to the Collective pursuant to 29 U.S.C. § 216(b).

67. The similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records.

**FIRST CAUSE OF ACTION**  
**FAIR LABOR STANDARDS ACT: UNPAID OVERTIME WAGES**  
**(Brought on Behalf of Plaintiffs and All Collective Action Members)**

68. Plaintiffs re-allege and incorporate all of the preceding paragraphs.

69. At all relevant times, Defendants have been, and continue to be, employers engaged in interstate commerce and/or the production of goods for commerce, within the meaning of the FLSA, 29 U.S.C. §§ 206(a) and 207(a).

70. At all relevant times, Defendants employed Plaintiffs, and employed or continue to employ, each of the Collective Action Members within the meaning of the FLSA.

71. Defendants have engaged in a widespread pattern and practice of violating the FLSA, as described in this Complaint.

72. Plaintiffs have consented in writing to be a party to this action, pursuant to 29 U.S.C. § 216(b).

73. The overtime wage provisions set forth in 29 U.S.C. §§ 201, *et seq.*, apply to Defendants.

74. At all relevant times and continuing to the present, Defendants have had a policy, plan and/or practice of refusing to pay overtime compensation to its Branch Managers and similarly situated employees in comparable positions but holding different titles for all hours worked in excess of 40 hours per workweek.

75. As a result of Defendants' willful failure to compensate its employees, including Plaintiffs and Collective Action Members at a rate not less than one and one-half times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendants have violated and, continue to violate, the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 207(a)(1) and 215(a).

76. As a result of Defendants' willful failure to record, report, credit, and compensate its employees, including Plaintiffs and the Collective Action Members, Defendants failed to make, keep, and preserve records with respect to each of its employees sufficient to determine the wages, hours and other conditions and practices of employment in violation of the FLSA, 29 U.S.C. §§ 201, *et seq.*, including 29 U.S.C. §§ 211(c) and 215(a).

77. As a result of Defendants' policy and practice of minimizing labor costs by underfunding labor budgets for its stores, Defendants knew or recklessly disregarded the fact that Plaintiffs and the Collective Action Members were primarily performing manual labor and non-exempt tasks.

78. Due to Defendants' (a) failure to provide enough labor budget funds, (b) failure to take into account the impact of the underfunded labor budgets on the job duties of Plaintiffs and Collective Action Members, (c) actual knowledge, through its District Managers and Area Vice Presidents that the primary duties of Plaintiffs and the Collective Action Members were manual labor and other non-exempt tasks, (d) failure to perform a person-by-person analysis of Plaintiffs' and the Collective Action Members' job duties to ensure that they were performing exempt job duties, (e) instituting a policy and practice that did not allow Plaintiffs and the Collective Action Members to record all hours worked, and (f) failure to post or keep posted a notice explaining the minimum wage and overtime wage requirements, Defendants knew and/or showed reckless disregard that its conduct was prohibited by the FLSA. 29 U.S.C. § 255(a).

79. As a result of Defendants' FLSA violations, Plaintiffs, on behalf of themselves and the Collective Action Members, are entitled to (a) recover from Defendants their unpaid wages for all of the hours worked by them, as overtime compensation; (b) recover an additional, equal amount as liquidated damages for Defendants' willful violations of the FLSA; and, (c) recover

their unreasonably delayed payment of wages, reasonable attorneys' fees, and costs and disbursements of this action, pursuant to 29 U.S.C. § 216(b).

80. Defendants' violations of the FLSA have been willful, thus a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs and the Collective Action Members are entitled to and pray for the following relief:

- a. Designation of this action as an FLSA collective action and prompt issuance of notice to all similarly situated members of the collective, apprising them of the pendency of this action, and permitting them to assert timely FLSA claims in this action by filing individual Consents to Become A Party Plaintiff, in accordance with 29 U.S.C. § 216(b),
- b. Equitable tolling of the FLSA statute of limitation as a result of Defendants' failure to post requisite notices under the FLSA;
- c. A declaratory judgment that the practices complained of are unlawful under the FLSA;
- d. An amount of unpaid wages for all hours worked in excess of 40 hours in a workweek, at a rate of one and one-half times the regular rate of pay under the FLSA, using the following common methodology for calculating damages:  
 $((\text{Annual Salary} \div 52) \div 40) \times \text{Total Number of Overtime Hours Worked} \times 1.5$ ;
- e. An amount of liquidated and punitive treble damages, and/or civil penalties as a result of Airgas's willful failure to pay for all hours worked in excess of 40 hours

in a workweek, at a rate of one and one-half times the regular rate of pay pursuant to 29 U.S.C. § 216(e)(2);

- f. An amount of damages representing the employer's share of FICA, FUTA, state unemployment insurance, and any other required employment taxes;
- g. An injunction against Defendants their officers, agents, successors, employees, representatives and any and all persons acting in concert with them, as provided by law, from engaging in each of the unlawful practices, policies and patterns set forth herein;
- h. An amount of prejudgment and post-judgment interest;
- i. An amount of costs and expenses of this action together with reasonable attorneys', expert fees and an amount of a service payment to the Plaintiffs; and
- j. Such other and further relief as this Court deems just and proper.

**DEMAND FOR TRIAL BY JURY**

Pursuant to FED. R. CIV. P. 38(b), Plaintiffs and the Collective Action Members demand a trial by jury on all questions of fact raised by this Complaint.

Dated: April 1, 2024

By: s/ Jason Conway

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