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on behalf of all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – SPRING STREET COURTHOUSE**

CHARLES YNIGUEZ, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AIRGAS USA, LLC, a Delaware limited
liability corporation; AIRGAS
CARBONIC, INC., a Delaware
corporation; and DOES 1 through 20,
inclusive

Defendants .

CASE NO. 20STCV18190

[Assigned to Judge Elihu M. Berle, Dept. 6]

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION FOR FINAL
APPROVAL OF CLASS ACTION AND
PAGA SETTLEMENT AND JUDGMENT**

Date: January 23, 2023

Time: 9:00 a.m.

Dept.: 6

Complaint Filed: May 8, 2020

1 On January 23, 2023, at 9:00 a.m. in Department 6, the Court heard Plaintiff CHARLES
2 YNIGUEZ's ("Plaintiff") Motion for Final Approval of a Class Action and PAGA Settlement
3 ("Motion"), and Motion for Award of Attorneys' Fees, Costs, and Class Representative Incentive
4 Award.

5 The Court now having considered all papers filed and proceedings had herein, having heard
6 the statements of counsel, and otherwise being fully informed in the matter, hereby **GRANTS** the
7 Motion in its entirety. Good cause appearing therefore, this Court **HEREBY MAKES THE**
8 **FOLLOWING DETERMINATIONS AND FINDINGS:**

9 1. The Court has jurisdiction over the claims of the Participating Class Members and
10 Aggrieved Employees asserted in this proceeding and over all Parties to the Settled Lawsuits.

11 2. This Final Approval Order incorporates by reference the Parties' Joint Stipulation
12 of Class Action Settlement ("Settlement" or "Settlement Agreement"), which was attached as
13 **Exhibit "1"** to the Declaration of James Hawkins submitted in connection with Plaintiff's Motion,
14 and all defined terms herein shall have the same meaning as set forth in the Settlement Agreement.

15 3. The Court has considered all relevant factors for determining the fairness of the
16 Settlement Agreement and has concluded that all such factors weigh in favor of granting final
17 approval. In particular, the Court finds that the Settlement Agreement was reached following
18 meaningful investigation and informal discovery conducted by Class Counsel; that the Settlement
19 Agreement is the result of informed, adversarial, and arm's-length negotiations between the Parties;
20 and that the terms of the Settlement Agreement are in all respects fair, adequate, and reasonable. In
21 so finding, the Court has considered all of the evidence presented, including evidence regarding the
22 strength of the Plaintiff's case; the risk, expense, and complexity of the claims presented; the likely
23 duration of further litigation; the amount offered in the Settlement Agreement; the extent of
24 investigation and discovery completed; and the experience and views of Class Counsel.
25 Accordingly, the Court **FINALLY APPROVES** of the terms and conditions contained in the
26 Settlement Agreement as to the Participating Class Members and the Aggrieved Employees. The
27 Court finds that the Settlement is, in all respects, fair, reasonable, adequate, and in the best interests
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1 of the Participating Class Members and Aggrieved Employees and hereby directs implementation
2 of all remaining terms, conditions, and provisions of the Settlement Agreement.

3 4. The Court further finds that the Settlement satisfies the standards and applicable
4 requirements for final approval of this class action settlement under California law, including the
5 provisions of California Code of Civil Procedure sections 382 and California Rules of Court, Rule
6 3.769, and applicable law.

7 5. For purposes of approving the Settlement only, this Court finds and concludes that:
8 (a) the Class Members are ascertainable and so numerous that joinder of all members is
9 impracticable; (b) there are questions of law or fact common to the Class, and there is a well-defined
10 community of interest among Class Members with respect to the subject matter of the claims in the
11 action; (c) the claims of the Plaintiff are typical of the claims of the Class Members; (d) the Plaintiff
12 has fairly and adequately protected the interests of the Class Members; (e) a class action is superior
13 to other available methods for an efficient adjudication of this controversy; and (f) the counsel of
14 record for the Plaintiff, i.e., Class Counsel, is qualified to serve as counsel for the Plaintiff in his
15 individual and representative capacity and for the Class.

16 6. The Parties adequately performed their obligations under the Settlement Agreement
17 and Preliminary Approval Order.

18 7. The Court finds that the approved Class Notice (attached as **Exhibit “A”** to the
19 Settlement Agreement), along with the related notification procedure contemplated by the
20 Settlement Agreement, constituted the best notice practicable under the circumstances.

21 8. The Court finds that notice was provided to the Class Members in compliance with
22 the Settlement Agreement and Preliminary Approval Order, California Code of Civil Procedure
23 section 382, California Rules of Court 3.766 and 3.769, the California and United States
24 Constitutions, and any other applicable law. Specifically, the Class Notice: (i) fully and accurately
25 informed Class Members about the lawsuit and Settlement; (ii) provided sufficient information so
26 that Class Members were able to decide whether to opt-out and pursue their own remedies, or object
27 to the proposed Settlement; (iii) provided procedures for Class Members to request exclusion from
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1 the Settlement, to state written objections to the proposed Settlement, to dispute the number of
2 workweeks, and to appear at the hearing; and (iv) provided the time, date and place of the final
3 fairness hearing. A full opportunity has been afforded to the Class Members to participate in this
4 hearing and all Class Members and other persons wishing to be heard have been heard.
5 Accordingly, the Court determines that all Participating Class Members that did not submit a
6 request for exclusion are bound by this Final Approval Order.

7 9. The Gross Settlement Amount and the means of distributing the Net Settlement
8 Amount to Participating Class Members are fair and reasonable in light of the nature of this case.

9 10. Class Counsel, James Hawkins APLC, has provided services and benefits to absent
10 Class Members and expended efforts and resources to secure the benefits, and is thus entitled to the
11 requested and unopposed attorneys' fees and costs as approved by the Court.

12 11. The Class Representative, Charles Yniguez, has prosecuted this lawsuit, worked
13 with counsel, undertaken the risks associated with litigation, acted to protect the Class's interests,
14 and conferred a benefit on absent Class Members, and is thus entitled to receive a service payment.

15 12. The appointed Settlement Administrator, CPT Group, Inc., rendered services and
16 will continue to render services, in connection with administering the notice and settlement process,
17 and is thus entitled to its requested administration fees.

18 13. The Gross Settlement Amount preliminary approved was \$500,000.00. The
19 escalator provision in paragraph 101 of the Settlement Agreement was triggered and the Gross
20 Settlement Amount increased to approximately \$564,338.24. The Net Settlement Amount to be
21 paid to participating Class Members is being calculated by subtracting the following amounts from
22 the Gross Settlement Amount: (1) Class Counsel's attorneys' fees of \$188,112.75 (1/3 of the Gross
23 Settlement Amount); (2) Class Counsel's documented costs of \$24,035.10; (3) Incentive Award to
24 be paid to the Class Representative of \$7,500.00 (4) 75% of the PAGA Allocation of \$50,000.00
25 (\$37,500.00) to the LWDA and 25% of the PAGA Allocation (\$12,500.00) to the Aggrieved
26 Employees; and (5) the Settlement Administrator fees to CPT Group, Inc. of \$15,000.00. The Net
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1 Settlement Amount which will be paid as individual Settlement Payments to Participating Class
2 Members is estimated to be approximately \$279,690.39. There is no reversion to Defendant.

3 14. Pursuant to Labor Code Section 2699, subdivision (l)(2), the Court approves of the
4 Settlement's provisions relating to settlement of claims under the Private Attorneys General Act of
5 2004, Labor Code Section 2698 et seq. ("PAGA").

6 15. Entry of this Final Approval Order shall constitute a full and complete bar against
7 Plaintiff, Participating Class Members and the Aggrieved Employees (whether individually,
8 cumulatively or in any combination or in any manner) and in favor of the Released Parties (as
9 defined in the Settlement Agreement) from bringing any Released Claims against Defendant and
10 the Released Parties (whether individually, cumulatively or in any combination or in any manner),
11 and shall constitute *res judicata* and collateral estoppel with respect to the Released Claims. As
12 such, as of the Effective Date, the Participating Class Members and Aggrieved Employees are
13 prohibited from pursuing, or seeking to reopen, any Released Claims as defined in the Settlement
14 Agreement and/or the Class Notice.

15 16. The Settlement Agreement is not a concession or admission and shall not be used
16 against Defendant as an admission or indication with respect to any claim of any fault or omission
17 by Defendant. Except as necessary to enforce the terms of the Settlement Agreement, neither the
18 Settlement, nor any document, statement, proceeding or conduct related to the Settlement, nor any
19 reports or accounts thereof, shall in any event be construed as, offered or admitted into evidence
20 as, received as or deemed to be in evidence for any purpose adverse to the Defendant, including,
21 but not limited to, evidence of a presumption, concession, indication or admission by Defendant of
22 any liability, fault, wrongdoing, omission, concession, or damage, except for legal proceedings
23 concerning the implementation, interpretation, or enforcement of the Settlement Agreement.

24 17. Pursuant to the terms of the Settlement Agreement, Defendant shall not be liable for
25 more than the agreed upon Gross Settlement Amount.
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1 18. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in
2 connection with the administration of the Settlement which are not materially inconsistent with
3 either this Final Approval Order or the terms of the Settlement.

4 **IT IS ORDERED, ADJUDGED, AND DECREED THAT:**

5 **1. Class Members.** The Class is defined and certified as all individuals who were
6 employed by Defendant Airgas USA, LLC or Defendant Airgas Carbonic in California in their Dry
7 Ice Divisions as non-exempt/hourly employees at any time from May 8, 2016 through and including
8 September 16, 2022 (hereinafter “Class Members”). All Class Members who did not timely opt-
9 out are bound by the terms of the Settlement Agreement, and release all of their claims as defined
10 in the Settlement Agreement.

11 **2. Class Period:** The Class Period is defined as the period from May 8, 2016, to
12 September 16, 2022.

13 **3. Binding Effect of Order.** This order applies to all “Released Claims” and
14 “Released PAGA Claims” settled under the Settlement Agreement. This Settlement binds all Class
15 Members who did not submit valid requests for exclusion (opt-out) from the Settlement (also
16 known as “Participating Class Members”) and the Aggrieved Employees.

17 **4. Plaintiff’s Release.** Plaintiff, in his individual capacity, is deemed to have released
18 and discharged Defendant and the Released Parties from any and all Plaintiff’s Released Claims,
19 known or unknown, as described in the Settlement Agreement, paragraphs 83 and 84.

20 **5. Class Members’ Release.** Plaintiff and all Class Members who did not properly
21 request exclusion are deemed to have released and discharged the Released Parties from all
22 Released Claims under the Settlement Agreement. The full and complete terms of the releases
23 described in this paragraph are set forth in the Settlement Agreement, paragraph 30, 32 and 83.

24 **6. Aggrieved Employee Release.** Plaintiff and all Aggrieved Employees are deemed
25 to have released and discharged the Released Parties from all Released PAGA Claims under the
26 Settlement Agreement. The full and complete terms of the releases described in this paragraph are
27 set forth in the Settlement Agreement, paragraph 84.

1 **7. FLSA Release.** In addition, participating Class Members who worked for
2 Defendant during the FLSA period from May 8, 2016, through September 16, 2022, and that cashes,
3 deposits, or otherwise negotiates the Individual Settlement Payment check shall be deemed to have
4 opted into the FLSA release set forth in paragraph 69(a) of the Settlement Agreement for purposes
5 of fully and finally releasing all FLSA claims that they may have against the Released Parties.

6 **8. Funding of Settlement.** Within 21 business days after the Effective Date, as
7 defined in the Settlement Agreement, Defendant shall deposit the Gross Settlement Amount
8 (including the additional amount owed under the escalator provision of paragraph 101) and the
9 amount that the Settlement Administrator advises is due for employer-side payroll taxes into the
10 account created by the Settlement Administrator for administration of the Settlement according to
11 the terms of the Settlement Agreement. The Settlement Administrator shall calculate and distribute
12 the court-approved allocations and the Net Settlement Amount to the participating Class Members
13 and Aggrieved Employees. The distribution shall be in accordance with the instructions and
14 timeline set forth in the Settlement Agreement.

15 **9. Uncashed Checks.** Individual Settlement Payment checks shall be negotiable for
16 180 days from the date of issuance. Funds represented by Individual Settlement Payment and
17 Individual PAGA Payment checks returned as undeliverable and Individual Settlement Payment
18 and Individual PAGA Payment checks remaining un-cashed for more than one-hundred and eighty
19 (180) calendar days after issuance shall be distributed within fifteen (15) business days of the
20 expiration of the 180-day check-cashing period by the Settlement Administrator to the State of
21 California, Department of the Controller Unclaimed Property Fund in the name(s) of the
22 corresponding Class Member(s) and/or Aggrieved Employee(s).

23 **10. Attorneys' Fees and Costs.** Class Counsel is awarded \$_____ in
24 attorneys' fees (\$188,112.75 or 1/3 of the Gross Settlement Amount requested) and
25 \$_____ in costs (\$24,035.10 requested). The Court finds that this amount is justified
26 under the common fund doctrine, the range of awards ordered by this Court, the excellent results
27 obtained, the substantial risk borne by Class Counsel in litigating this matter, the high degree of
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1 skill and quality of work performed, the financial burden imposed by the contingency basis of Class
2 Counsel's representation of Plaintiff and the Class, and the additional work required of Class
3 Counsel to bring this Settlement to conclusion. The Settlement Administrator on Defendant's
4 behalf must pay Class Counsel this amount according to the timeline set forth in the Settlement
5 Agreement.

6 **11. Service Award.** Plaintiff Charles Yniguez is awarded \$_____ as a
7 service award (\$7,500 requested). The Settlement Administrator on Defendant's behalf must pay
8 Plaintiff this amount according to the timeline set forth in the Agreement.

9 **12. Payment of Settlement Administration Costs.** Payment of \$_____
10 (\$15,000 requested) shall be made to CPT Group, Inc. for its services as the Settlement
11 Administrator according to the timeline set forth in the Agreement.

12 **13. LWDA Payment.** The Court approves the PAGA Allocation of \$50,000. Payment
13 of \$_____ (\$37,500 requested) shall be paid to the Labor Workforce & Development
14 Agency as 75% of the PAGA Allocation. The Settlement Administrator on Defendants' behalf must
15 pay the LWDA this amount according to the timeline set forth in the Settlement Agreement. The
16 remainder (25% of the PAGA Allocation) shall be paid to the Aggrieved Employees in accordance
17 with the Settlement Agreement.

18 **14. Final Report.** The Parties shall file a report concerning any uncashed checks or
19 other cash residue by _____ (October 9, 2023 proposed). The report shall be
20 in the form of a declaration from the Settlement Administrator and shall describe: (i) the date the
21 checks were mailed, (ii) the total number of checks mailed to class members, (iii) the average
22 amount of those checks, (iv) the number of checks that remain uncashed, (v) the total value of those
23 uncashed checks, (vi) the average amount of the uncashed checks, and (vii) the nature and date of
24 the disposition of those unclaimed funds.

25 **15. Final Report Hearing.** The Court sets a compliance hearing for
26 _____, 2023 at _____ a.m./p.m.
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1 **16. Judgment.** The Court finds that there is no reason for delay and directs the Clerk
2 to enter judgment in accordance with the terms of this Final Approval Order as of the date of this
3 order. By operation of the entry of this Final Approval Order, the Parties and the Participating Class
4 Members are ordered to perform their respective duties and obligations under the Settlement
5 Agreement.

6 **17. Notice of Judgment:** Plaintiff is to give notice to all Class Members of this Final
7 Approval Order and Judgment in accordance with California Rule of Court 3.771(b) by filing a
8 Notice of Entry of Judgment of this Final Approval Order and Judgment with the Court as follows:
9 “Please take notice that on January 23, 2023, the Court entered an Order Granting Final Approval
10 of Class Action and PAGA Settlement and entering Judgment in the above-titled matter. Attached
11 hereto as Exhibit 1 is a true and correct copy of the signed Order and Judgment.”

12 **18. Copy to LWDA.** Within 10 days of entry of this Final Approval Order and
13 Judgment, Plaintiff shall provide a copy of this Final Approval Order and Judgment to the LWDA,
14 pursuant to Labor Code Section 2699, subdivisions (l), (3), & (4).

15 **19. Court’s Jurisdiction.** Pursuant to the Parties’ request, California Code of Civil
16 Procedure section 664.6, and California Rule of Court 3.769(h), the Court retains jurisdiction over
17 this action and the Parties until final performance of the Settlement Agreement.
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27 **20.** _____
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IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: _____, 2022

Honorable Elihu M. Berle
JUDGE OF THE SUPERIOR COURT

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