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6 *Attorneys for Plaintiff*
CHARLES YNIGUEZ, individually and
7 on behalf of all others similarly situated

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

13 vs.

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

17 Defendants.

Case No.: 20STCV18190

Assigned for All Purposes to:
Hon. Elihu M. Berle
Dept. 6

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT, APPROVAL OF
CLASS NOTICE, AND CONDITIONAL
CERTIFICATION OF SETTLEMENT CLASS**

Date: June 21, 2022
Time: 10:00 a.m.
Dept.: 6

Complaint Filed: May 8, 2020
FAC Filed: December 11, 2020

1 **[PROPOSED] ORDER**

2 This matter came before the Court on the application of Plaintiff Charles Yniguez
3 (“Plaintiff”) for Preliminary Approval of a Joint Stipulation of Class Action Settlement
4 (“Settlement Agreement”), Approval of Class Notice, and Conditional Certification of the
5 Settlement Class (the “Preliminary Approval Motion”). The Court considered the proposed Joint
6 Stipulation of Class Action Settlement (“Settlement”) attached as Exhibit 1 to the Declaration of
7 James R. Hawkins, the submissions of counsel, and all other papers filed in this action. This
8 Order incorporates, by reference, the definitions in the Settlement. The matter having been
9 submitted, and good cause appearing therefore, this Court **HEREBY ORDERS THE**
10 **FOLLOWING:**

11 1. The provisions of the Settlement are hereby preliminarily approved. The Court
12 finds that the Settlement appears to be fair, adequate, and reasonable to Plaintiff and the
13 Settlement Class, free of collusion and indicia of unfairness, and within the range of possible
14 judicial approval. The Court also finds that the Settlement resulted from arm’s length
15 negotiations and is sufficient to warrant the dissemination of Class Notice to Class Members.

16 2. Pursuant to California Code of Civil Procedure section 382 and California Rule of
17 Court 3.769, and for purposes of, and solely in connection with the Settlement, the Court finds
18 that each of the requirements for certification of the class set forth in Plaintiff’s Preliminary
19 Approval Motion are met and hereby conditionally certifies the following Class (“Settlement
20 Class”):

21 all individuals who were employed by Defendant Airgas USA, LLC or Defendant
22 Airgas Carbonic in California in their Dry Ice Divisions as non-exempt/hourly
23 employees at any time from May 8, 2016 through the date of preliminary approval
by the court.

24 3. Certification of the proposed Class for settlement purposes only is appropriate
25 under California Code of Civil Procedure section 382 and California Rule of Court 3.769. The
26 Court has considered the Settlement and the papers in support of the Motion for Preliminary
27 Approval and finds that the proposed Class is proper and should be certified, for settlement
28

1 purposes only, in the circumstances of this case. Specifically, the Court finds (a) that the Class is
2 ascertainable; (b) the Class is sufficiently numerous such that joinder of all members is
3 impracticable; (c) there are questions of law and fact common to the Class; (d) the named Plaintiff's
4 claims are typical of the claims of the Class; (e) the named Plaintiff and Plaintiff's Counsel have
5 and are able to adequately represent the Class; and (f) class-wide treatment of this dispute is
6 superior to other available methods for adjudicating the controversy. It is therefore ordered that
7 the Class is certified for settlement purposes only.

8 4. If the Settlement is terminated or not consummated, the certification shall be void.
9 In such case, Plaintiff, the Class Members, the Aggrieved Employees, and Defendants Airgas
10 USA, LLC and Airgas Carbonic, Inc. ("Defendants" or "Airgas") shall be returned to their
11 respective statuses as of the date immediately prior to the execution of the Settlement and neither
12 the Settlement nor this Preliminary Approval Order shall have any bearing on, and neither shall be
13 admissible in connection with (a) any issue in this action or any claim raised under any other
14 federal, state, or local law that was intended to be encompassed within Plaintiff's Complaint; (b)
15 whether certification would be appropriate in a non-settlement context; (c) Defendants' liability
16 for any final judgment or to any Class Member; and (d) any judgment ultimately sought to be
17 entered against Defendants or otherwise. If the Settlement is terminated or not consummated,
18 Airgas shall have reserved its rights to oppose any and all class certification motions and to oppose
19 the adequacy of the named Plaintiff as the representative of any putative class or Plaintiff's
20 Counsel as Class Counsel.

21 5. The Court appoints and designates the named Plaintiff, Charles Yniguez, as Class
22 Representative.

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1 6. The Court appoints and designates James Hawkins, APLC as Class Counsel. Class
2 Counsel is located at the following address:

3 James R. Hawkins, Esq.
4 Christina M. Lucio, Esq.
5 JAMES HAWKINS APLC
6 9880 Research Drive, Suite 200
7 Irvine, CA 92618
8 Telephone: (949) 387-7200
9 Facsimile: (949) 387-6676

10 Class Counsel is authorized to act on behalf of the Class with respect to all acts or
11 consents required by, or which may be given, pursuant to the Settlement, and such other acts
12 necessary to finalize the Settlement and its terms. Any Class Member may enter an appearance
13 through his or her own counsel at such Class Member's own expense. Any Class Member who
14 does not enter an appearance or appear on his or her own behalf will be represented by Class
15 Counsel.

16 7. The Court hereby approves the terms provided for in the Settlement, finding them
17 to be fair and reasonable and in the best interests of the parties.

18 8. The Court hereby preliminarily approves the Settlement and the Gross Settlement
19 Amount of \$500,000, with the Total Net Settlement Amount to be paid to Class Members who do
20 not opt out or exclude themselves from the class being calculated by subtracting the following
21 from the Gross Settlement Amount: (1) Court-approved Attorneys' Fees (in an amount not to
22 exceed 1/3 of the Settlement Fund (estimated \$166,500)); (2) Attorneys' reimbursement of
23 reasonable and actual costs incurred (not to exceed Twenty-Seven Thousand dollars (\$27,000));
24 (3) Settlement Administration Costs to CPT Group, Inc. (estimated not to exceed \$15,000); (4)
25 the Incentive Award to the Class Representative (not to exceed \$7,500); and (5) the 75%
26 (\$37,500) of the \$50,000 PAGA Allocation to be paid to the LWDA. The Total Net Settlement
27 Amount will be paid as Individual Settlement Payments to Class Members who do not opt out or
28 exclude themselves is anticipated to be approximately \$246,500 (including the Individual PAGA
Payments). There is no reversion to Defendants.

1 9. The Court further preliminarily approves the formulas provided in the Settlement
2 for calculating Individual Settlement Payments based on the number of Qualifying Workweeks a
3 Class Member worked during the Class Period. To determine each Class Member's estimated
4 Individual Settlement Payment from the Total Net Settlement Amount (not including the
5 Aggrieved Employees' share of the PAGA Allocation), the Settlement Administrator will use the
6 following formula: The Total Net Settlement Amount (not including the Aggrieved Employees'
7 share of the PAGA Allocation) will be divided by the aggregate total number of Qualifying
8 Workweeks, resulting in the "Workweek Value." Each Class Member's Individual Settlement
9 Payment will be calculated by multiplying each individual Class Member's total number of
10 Qualifying Workweeks by the Workweek Value. Additionally, Defendants' employer share of
11 payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) on Individual Settlement
12 Payments paid to the Class Members is not a part of the \$500,000 Gross Settlement Amount and
13 Defendants will pay such taxes in a payment separate and apart from the other payments which
14 will be deducted from the Gross Settlement Amount.

15 10. The Court further preliminarily approves the formulas provided in the Settlement
16 for calculating Individual PAGA Payments to Aggrieved Employees based on the number of
17 Qualifying PAGA Workweeks an Aggrieved Employee worked during the PAGA Period. To
18 determine each Aggrieved Employee's estimated share of the PAGA Allocation, the Settlement
19 Administrator will use the following formula: The Aggrieved Employees' 25% share of the
20 PAGA Allocation will be divided by the aggregate total number of PAGA Qualifying
21 Workweeks, resulting in the "PAGA Workweek Value." Each Aggrieved Employee's payment
22 will be calculated by multiplying each individual Aggrieved Employee's total number of PAGA
23 Qualifying Workweeks by the PAGA Workweek Value.

24 11. The Court finds on a preliminary basis that the Settlement, including the Class
25 Representative's Incentive Award, Class Counsel Attorneys' Fees and Costs, the Settlement
26 Administrator fees, the PAGA Allocation, and the allocation of payments to Class Members,
27 appears to be within the range of reasonableness of a settlement that could ultimately be given
28 final approval by this Court. It appears to the Court on a preliminary basis that the Settlement is
fair, adequate and reasonable as to all potential Class Members when balanced against the

1 probable outcome of further litigation relating to liability and damages issues. It also appears that
2 extensive and costly investigation, research and court proceedings have been conducted so that
3 counsels for the parties are able to reasonably evaluate their respective positions. It appears to the
4 Court that settlement at this time will avoid substantial additional costs by all parties, as well as
5 avoid the delay and risks that would be presented by the further prosecution of this class action. It
6 also appears that Settlement has been reached as result of intensive, serious and non-collusive,
7 arms-length negotiations.

8 12. The Court hereby approves, as to form and content, the Notice of Class Action
9 Settlement (“Class Notice”) to be sent to Class Members, which is attached hereto as **Exhibit A**
10 and to the Settlement Agreement as Exhibit A. The Court finds that distribution of the Notice to
11 the Class Members substantially in the manner and form set forth in the Settlement and this Order
12 meets the requirements of due process and shall constitute due and sufficient notice to all parties
13 entitled thereto.

14 13. The Court further finds the proposed Class Notice to be the best means practicable
15 of providing notice under the circumstances and when completed shall constitute due and
16 sufficient notice of the Action, proposed Settlement, and Final Approval hearing to all persons
17 affected by and/or authorized to participate in the Settlement, in full compliance with due process
18 and the requirements of the California Rules of Court and California Code of Civil Procedure.

19 14. The provisions of the Settlement are deemed incorporated as if expressly set forth
20 in this Preliminary Approval Order and have the full force and effect of an Order of this Court.
21 Class Members shall have 60 calendar days to object to the Settlement, request exclusion from the
22 Settlement, or dispute the workweeks allocated and identified in the Class Member’s Notice of
23 Class Action Settlement.

24 15. The Court appoints and designates CPT Group, Inc. as the Settlement
25 Administrator. The Court hereby directs the Settlement Administrator to provide the approved
26 Class Notice to the Class Members and administer the Settlement in accordance with the
27 procedures set forth in the Settlement Agreement attached as Exhibit 1 to the Hawkins
28 Declaration. The Notice will also be sent to the PAGA Aggrieved Employees. Aggrieved

1 Employees will not have an opportunity to Request Exclusion from the Settlement or Object to
2 the Settlement.

3 16. Any Class Member may choose to opt out of and be excluded from the Settlement
4 as provided in the Settlement and Class Notice and by following the instructions for requesting
5 exclusion. Any person who timely and properly excludes themselves from the Settlement will not
6 be bound by it or have any right to object, appeal or comment thereon. Any requests for
7 exclusion must be signed by each such Class Member opting out and sent to the Settlement
8 Administrator. The completed Request for Exclusion must be sent to the Settlement
9 Administrator, CPT Group, Inc., at the address on the form. Class Members who have not timely
10 requested exclusion shall be bound by all determinations of the Court, the Settlement and the
11 Judgment. Class Members who do not exclude themselves from the Settlement will receive their
12 Individual Settlement Payment as Participating Class Members and will be bound by the
13 Judgment.

14 17. Any Class Member may object to the Settlement or express his or her views
15 regarding the Settlement and may present evidence and file briefs or other papers that may be
16 proper and relevant to the issues to be heard and determined by the Court as provided in the Class
17 Notice. To object to the Settlement, or any term of it, the person making the objection must not
18 submit a Request for Exclusion (*i.e.*, must not opt-out), and must send the Settlement
19 Administrator a Notice of Objection by the Response Deadline by fax or U.S. Mail. The Notice
20 of Objection must be signed by the Class Member and contain all information required by this
21 Settlement Agreement. The postmark date of the mailing will be deemed the exclusive means for
22 determining whether a written Notice of Objection is timely. The date of the initial mailing of the
23 Notice Packet, and the date the signed Notice of Objection was postmarked, shall be conclusively
24 determined according to the records of the Settlement Administrator. The Settlement
25 Administrator shall deliver any Notice of Objections it receives to Class Counsel and counsel for
26 Defendant within five (5) calendar days of receipt. Counsel for the Parties shall file with the
27 Court any response to the objections submitted by objecting Class Members at least ten (10) court
28 days before the date of the Final Approval/Settlement Fairness Hearing. In addition or as an

1 alternative to a written Notice of Objection, Class Members may appear at the Final
2 Approval/Settlement Fairness Hearing to raise any objections; the Court retains final authority
3 with respect to the consideration and admissibility of any Class Member Notice of Objection and
4 any in-person objections by Class Members at the Final Approval/Settlement Fairness Hearing.
5 Class Members who fail to object in writing in accordance with the above requirements or in
6 person at the Final Approval/Settlement Fairness Hearing by the date the Court issues an order
7 granting final approval of the Settlement will be deemed to have waived all objections to the
8 Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to
9 the Settlement. To the extent a timely Notice of Objection is withdrawn before final approval,
10 such an objection shall be treated as though no objection has been made.

11 18. The Settlement Administrator shall file a declaration concurrently with the filing
12 of any motion for final approval, authenticating a copy of every request for exclusion and/or
13 objection received by the Settlement Administrator.

14 19. Defendants must exercise any right to void the Settlement before the Final
15 Approval Hearing in accordance with the terms of the Settlement. Similarly, if Plaintiff wishes to
16 exercise any right to void the Settlement pursuant to the terms of the Settlement Agreement, they
17 must exercise any such right before the Final Approval Hearing.

18 20. The motion for final approval shall be filed by the Class Representatives through
19 Class Counsel no later than sixteen (16) court days before the Final Fairness and Approval
20 Hearing.

21 21. Upon final approval and completion of administration, all Class Members who
22 have not submitted requests for exclusion and the Class Representative will be deemed to have
23 forever released and discharged the Released Claims applicable to them and waived their rights
24 for the applicable Released Claims, as set forth in the preliminarily approved Settlement.

25 22. The Court reserves the right to adjourn or continue the date of the Final Fairness
26 and Approval Hearing and all dates provided for in the Settlement without further notice to the
27 Class and retains jurisdiction to consider further applications concerning the Settlement.
28

1 However, Class Counsel will give notice to any objecting party of the continuance of any hearing
2 on the motion for Final Approval.

3 23. The Court order the following schedule for further proceedings:

- 4 a. No later than _____, Airgas shall provide a list containing Class
5 Members' (i) each Class Member's full name; (ii) last known mailing
6 address and telephone number; (iii) Social Security number; (iv) each
7 Class Member's dates of employment with Airgas or Airgas Carbonic; (v)
8 the respective number of Qualifying Workweeks that each Class Member
9 worked during the Class Period; and (vii) the respective number of PAGA
10 Qualifying Workweeks that each Aggrieved Employee worked during the
11 PAGA Period.
- 12 b. No later than _____, the Settlement Administrator shall send
13 the Notice of Class Action and Private Attorney General Act ("PAGA")
14 Settlement (the "Notice") via first-class mail to Class Members.
- 15 c. No later than _____, Class Members may submit a request for
16 exclusion from the Settlement in accordance with the Settlement.
- 17 d. No later than _____, Class Members may submit a dispute or
18 challenge to the information in the Notice in accordance with the
19 Settlement.
- 20 e. No later than _____, Class Members may submit objections
21 in accordance with the Settlement.
- 22 f. No later than _____ [20 calendar days prior to the Final
23 Approval Hearing], the Settlement Administrator shall provide Class
24 Counsel and Defense Counsel a declaration under oath to: (i) certify
25 completion of administration of the Notice Packets to the Court and
26 counsel for all Parties; and (ii) provide all Settlement-related data,
27 including the number of Class Members who submitted valid Requests for
28 Exclusion and/or Notices of Objection to the Settlement.

g. A Final Approval Hearing shall be held before this Court on _____ at _____ a.m./p.m. to determine all necessary matters concerning the Settlement, including, whether this Court should grant final approval, whether there should be any Attorneys' Fees and Costs Award and/or Incentive Award, and the amounts of any such award.

24. Any objecting Class Member may appear, in person or by counsel, at the Final Approval Hearing to show cause why the Settlement should not be approved as fair, adequate, and reasonable, or to object to any request for an Attorneys' Fees and Costs Award and/or Incentive Award. An objecting Class Member is not required to appear, in person or by counsel, at the Final Approval Hearing to have his or her objection considered by the Court.

25. Nothing in this Preliminary Approval Order is, or may be construed as, an admission or concession on any point of fact or law by or against the Plaintiff or Defendants.

26. Class Counsel, Defendants, and the Settlement Administrator are directed to carry out their obligations under the Settlement.

IT IS SO ORDERED.

DATED: _____ By: _____
JUDGE OF THE SUPERIOR COURT