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16 AIRGAS USA, LLC

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF LOS ANGELES

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

21 Plaintiff,

22 v.

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

27 Defendants.

Case No. 20STCV18190

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

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT**

Complaint Filed: May 8, 2020
FAC Filed: December 11, 2020
Trial Date: None

1 This Joint Stipulation of Class and Representative Action Settlement (“Settlement” or
2 “Settlement Agreement”) is made and entered into by and between Plaintiff Charles Yniguez
3 (“Plaintiff or “Yniguez”), individually, and on behalf of all others similarly situated and other
4 aggrieved employees, and Defendant Airgas USA, LLC (“Airgas” or “Defendant”) (collectively,
5 Plaintiff and Defendant are referred to herein as the “Parties”).

6 DEFINITIONS

7 The following definitions are applicable to this Settlement Agreement; definitions
8 contained elsewhere in this Settlement Agreement will also be effective:

9 1. “Action” means the action filed by Plaintiff against Defendant and Airgas
10 Carbonic, Inc. (“Airgas Carbonic”), currently pending in the Los Angeles County Superior Court,
11 entitled *Yniguez v. Airgas USA, LLC*, Case No. 20STCV18190.

12 2. “Aggrieved Employees” means all individuals who were employed by Airgas or
13 Airgas Carbonic, Inc. (“Airgas Carbonic”) in California in their Dry Ice Divisions as non-
14 exempt/hourly employees during the PAGA Period, as defined below.

15 3. “Attorneys’ Fees and Costs” means attorneys’ fees and out-of-pocket litigation
16 expenses agreed upon by the Parties and approved by the Court for Class Counsel’s litigation and
17 resolution of the Action, as well as all costs incurred and to be incurred by Class Counsel in the
18 Action and approved by the Court, including but not limited to, costs associated with
19 documenting the Settlement, providing any notices required as part of the Settlement or Court
20 order, securing the Court’s approval of the Settlement, administering the Settlement, obtaining
21 entry of the Dismissal terminating the Action, and expenses for any experts. In connection with
22 the settlement of the Action, Class Counsel will request attorneys’ fees not in excess of 33.3
23 percent (33.3%) of the Gross Settlement Amount (estimated One Hundred and Sixty-Six
24 Thousand, Five Hundred Dollars (\$166,500)). Defendant has agreed not to oppose Class
25 Counsel’s request for fees and reimbursement of costs as set forth above. However, a ruling by
26 the Court to award Class Counsel amounts less than the amounts stated above shall not be a basis
27 for Plaintiff or Class Counsel to rescind or withdraw from this Settlement, and any such
28

1 difference will remain in the Gross Settlement Amount and will be available to the Class
2 Members.

3 4. “Class Claims” means the First Through Seventh Causes of Action in the First
4 Amended Complaint (and corresponding requests for relief) asserted by Plaintiff on behalf of
5 himself and the Class.

6 5. “Class Counsel” and/or “Plaintiff’s Counsel” means James Hawkins and Christina
7 M. Lucio, James Hawkins APLC.

8 6. “Class List” means a complete list of all Class Members that Defendant will
9 diligently and in good faith compile from its records and provide to the Settlement Administrator
10 within fifteen (15) business days after Preliminary Approval of this Settlement Agreement by the
11 Court. The Class List will be formatted in Microsoft Office Excel, encrypted, and password
12 protected, and will include: (i) each Class Member’s full name; (ii) last known mailing address
13 and telephone number; (iii) Social Security number; (iv) each Class Member’s dates of
14 employment with Airgas or Airgas Carbonic; (v) the respective number of Qualifying
15 Workweeks that each Class Member worked during the Class Period; and (vii) the respective
16 number of PAGA Qualifying Workweeks that each Aggrieved Employee worked during the
17 PAGA Period. At no time during the Settlement process will any Class Member’s address, Social
18 Security number, or telephone number be filed with the Court, except under seal as may be
19 ordered.

20 7. “Class Member(s)” or “Class” means all individuals who were employed by
21 Defendant or Defendant Airgas Carbonic in California in their Dry Ice Divisions as non-
22 exempt/hourly employees during the applicable Class Period, as defined below.

23 8. “Class Period” means the period between May 8, 2016 and the later of (a) the Date
24 of Preliminary Approval, and (b) 90 days from November 3, 2021.

25 9. “Complaint” means Plaintiff’s Complaint, filed on or about May 8, 2020 in Los
26 Angeles County Superior Court.

27 10. “Court” means Judge Elihu M. Berle and/or Los Angeles County Superior Court
28 or any other court exercising jurisdiction over the Settlement.

1 11. “Effective Date” means the date on which the Judgment becomes a Final
2 Judgment.

3 12. “Final Approval/Settlement Fairness Hearing” means the hearing at which the
4 Court considers whether to approve the Settlement and to enter Judgment.

5 13. “Final Judgment” means the latest of: (a) the date of final affirmance on an appeal
6 of the Judgment; (b) the date of final dismissal with prejudice of the last pending appeal from the
7 Judgment; or (c) if no appeal is filed, the expiration date of the time for the filing or noticing of
8 any form of valid appeal from the Judgment (*i.e.*, 60 days after the entry of judgment, pursuant to
9 California Rule of Court 8.104 and California Code of Civil Procedure section 904.1). The Parties
10 intend that the final approval order will encompass an order entering judgment.

11 14. “First Amended Complaint” means Plaintiff’s First Amended Complaint, filed on
12 or about December 11, 2020 in Los Angeles County Superior Court. The term “First Amended
13 Complaint” also includes Plaintiff’s letter to the California Labor and Workforce Development
14 Agency (“LWDA”) dated May 7, 2020, which is referenced in Paragraph 87 of the First
15 Amended Complaint.

16 15. “Gross Settlement Amount” means Five Hundred Thousand Dollars
17 (\$500,000.00), to be paid by Defendant in full satisfaction of all claims arising from the Action
18 which includes Individual Settlement Payments to Participating Class Members and Individual
19 PAGA Payments to Aggrieved Employees; the Incentive Award to Plaintiff; Attorneys’ Fees and
20 Costs to Class Counsel as described above at Paragraph 3; interest; Settlement Administration
21 Costs to the Settlement Administrator; the Participating Class Members’ share of employment
22 taxes; the LWDA Payment; and all other costs associated with the settlement. This Gross
23 Settlement Amount has been agreed to by Plaintiff and Defendant based on the aggregation of the
24 agreed-upon settlement value of individual claims. In no event will Defendant be liable for more
25 than the Gross Settlement Amount except as set forth in Paragraph 99; however, Defendant shall
26 pay all employer-side payroll taxes with funds outside of the Gross Settlement Amount. There
27 will be no reversion of the Gross Settlement Amount to Defendant.

1 16. “Incentive Award to Plaintiff” means the amount to be paid from the Gross
2 Settlement Amount to Plaintiff in exchange for his service to the Class Members and for
3 executing a general release. Plaintiff will request, and Defendant will not oppose, up to Seven
4 Thousand and Five Hundred Dollars (\$7,500.00) as an Incentive Award. A ruling by the Court to
5 award Plaintiff an amount less than the requested amount stated above shall not be a basis for
6 Plaintiff or Class Counsel to rescind or withdraw from this Settlement and any such difference
7 will remain in the Gross Settlement Fund and available to the Class.

8 17. “Individual Settlement Payment” means each Participating Class Member’s
9 respective share of the Total Net Settlement Amount, minus the amount of the PAGA Allocation
10 allocated to payments to Aggrieved Employees.

11 18. “Individual PAGA Payments” means each Aggrieved Employee’s respective share
12 of the amount of the PAGA Allocation allocated to payments to Aggrieved Employees.

13 19. “Judgment” means the judgment to be rendered by the Court pursuant to this
14 Settlement Agreement.

15 20. “LWDA Payment” means the payment from the Gross Settlement Amount
16 allocated to the LWDA’s seventy-five percent (75%) share of the portion of the Gross Settlement
17 Amount allocated by the Parties to Plaintiff’s claims pursuant to the PAGA (*i.e.*, Plaintiff’s
18 Eighth Cause of Action in the First Amended Complaint).

19 21. “Notice of Objection” means a Class Member’s valid and timely written objection
20 to the Settlement (and/or the terms embodied therein). A written Notice of Objection must
21 include: (i) the objector’s full name, date of birth, signature, address, telephone number, and the
22 approximate dates of employment at Defendant and/or Airgas Carbonic in California; (ii) a
23 written statement of all grounds for the objection accompanied by any legal support for such
24 objection (if any); (iii) copies of any papers, briefs, or other documents upon which the objection
25 is based; and (iv) a statement describing whether the objector intends to appear at the Final
26 Approval/Settlement Fairness Hearing.

27 22. “Notice Packet” means the Notice of Class Action Settlement and Mailing
28 Envelope, substantially in the forms attached as **Exhibits A** and **B** hereto.

23. “PAGA Allocation” means the \$50,000 of the Gross Settlement Amount allocated to settlement of the PAGA Claims.

24. “PAGA Claims” means the claim for penalties pursuant to the Labor Code Private Attorneys General Act (“PAGA”) asserted by Plaintiff in his Eighth Cause of Action in the First Amended Complaint.

25. “PAGA Period” means the period between May 7, 2019 and the later of (a) the Date of Preliminary Approval, and (b) 90 days from November 3, 2021.

26. “PAGA Qualifying Workweeks” means the number of calendar days of employment that each Aggrieved Employee worked for Defendant and/or Airgas Carbonic during the PAGA Period, divided by seven (7), and rounding up to the nearest whole number. All Aggrieved Employees will be credited with at least one PAGA Qualifying Workweek.

27. “Participating Class Members” means all Class Members who do not submit timely and valid Requests for Exclusion.

28. “Preliminary Approval” means the Court order granting preliminary approval of the Settlement.

29. “Qualifying Workweeks” means the number of calendar days of employment that each Participating Class Member worked for Defendant and/or Airgas Carbonic during the Class Period, divided by seven (7), and rounding up to the nearest whole number. All Class Members will be credited with at least one Qualifying Workweek.

30. “Released Claims” means all claims, rights, demands, liabilities, and causes of action of Class Members and/or Aggrieved Employees which accrued during the Class Period and which were or could have been alleged based on the facts alleged in the First Amended Complaint, including but not limited to: (i) claims for unpaid minimum (Cal. Lab. Code §§ 1194, 1197, 1197.1) and/or overtime wages (Cal. Lab. Code §§ 218, 510, 1198); (ii) claims for short, missed, untimely or otherwise non-compliant meal periods or a failure to provide meal periods (Cal. Lab. Code §§ 226.7, 512(a)); (iii) claims for short, missed, untimely or otherwise non-compliant rest periods or a failure to authorize and permit rest periods (Cal. Lab. Code § 226.7); (iv) claims for failure to timely pay wages upon termination of employment (Cal. Lab. Code §§

201-203); (v) claims for failure to furnish accurate itemized wage statements (Cal. Lab. Code § 226(a)); (vi) claims for violations of California Business & Professions Code, Section 17200, *et seq.*; and (v) claims pursuant to the PAGA (Cal. Lab. Code §§ 2698 *et seq.*). Each participating Class Member and/or Aggrieved Employee who endorses and deposits his or her settlement check shall also release the Released Parties from all claims under the Fair Labor Standards Act (“FLSA”) that are alleged, related to, or that reasonably could have arisen under the facts alleged in the First Amended Complaint, including but not limited to any unpaid wages, minimum wages, overtime, penalties, premiums, bonuses, interest, liquidated damages, attorneys’ fees, costs, or any kind of relief available under the FLSA.

31. “Released Parties” means Airgas and all of its parent, subsidiary, affiliated and related companies and entities (including, without limitation, Airgas Carbonic), including all of its/their officers, directors, employees, partners, shareholders, investors, and agents, and any entities or partnerships with which they are affiliated.

32. “Request for Exclusion” means a timely letter submitted by a Class Member to the Settlement Administrator pursuant to the terms set forth herein indicating a request to be excluded from the Settlement. To be valid, a Request for Exclusion must: (i) set forth the full name, address, telephone number, and last four digits of the Social Security number of the Class Member requesting exclusion; (ii) be signed by the Class Member; (iii) be returned to the Settlement Administrator; (iv) state “I wish to opt-out from this Settlement”; and (v) be faxed or postmarked on or before the Response Deadline.

33. “Response Deadline” means the deadline by which Class Members must postmark to the Settlement Administrator Requests for Exclusion or serve Notices of Objection to the Settlement, as set forth in Paragraphs 62 and 65 below.

34. “Settlement Administration Costs” means all costs incurred by the Settlement Administrator in administering the Settlement, including, but not limited to, all costs, expenses and fees associated with preparing, issuing and mailing any and all notices, computing, processing, reviewing and mailing Individual Settlement Payments and Individual PAGA Payments, generating Individual Settlement Payment and Individual PAGA Payment checks and

1 related tax reporting forms, preparing any tax returns and other filings required by any
2 governmental authority or agency, preparing any other checks, notices, reports or filings,
3 administering the process set forth in this Agreement regarding unclaimed checks, administering
4 disbursements from the Total Net Settlement Amount, and generating checks to Class Counsel for
5 attorneys' fees and costs, and to Plaintiff for his Incentive Award. The Settlement Administration
6 Costs shall be paid from the Gross Settlement Amount. The Settlement Administrator shall agree
7 to a not-to-exceed cost of Fifteen Thousand Dollars (\$15,000.00).

8 35. "Settlement Administrator" means CPT Group, Inc., the third-party class action settlement
9 administrator agreed to by the Parties and approved by the Court for the purposes of
10 administering this Settlement. The Parties each represent that they do not have any financial
11 interest in the Settlement Administrator or otherwise have a relationship with the Settlement
12 Administrator that could create a conflict of interest.

13 36. "Total Net Settlement Amount" means the portion of the Gross Settlement Amount
14 remaining after deducting the Incentive Award to Plaintiff; Attorneys' Fees and Costs to Class
15 Counsel as described above at Paragraph 3; Settlement Administration Costs to the Settlement
16 Administrator; and the LWDA Payment. The Total Net Settlement Amount will be distributed to
17 Participating Class Members and Aggrieved Employees by the Settlement Administrator; there
18 will be no reversion of the Total Net Settlement Amount to Defendant.

19 LITIGATION BACKGROUND

20 37. On May 7, 2020, Plaintiff provided written notice by U.S. Certified Mail to Defendant and
21 the LWDA of various provisions of the California Labor Code that he alleged Defendant and
22 Airgas Carbonic had violated.

23 38. On May 8, 2020, Plaintiff filed his Complaint, pleading claims for failure to pay wages for
24 all hours worked, failure to pay overtime wages, failure to provide meal periods, failure to
25 provide rest periods, waiting time penalties, and unfair competition. Plaintiff sought relief for
26 himself and all non-exempt, hourly California employees of Defendant and Airgas Carbonic
27 between May 8, 2016 and the present. Defendant timely answered the Complaint with a general
28 denial and asserted various affirmative defenses.

1 39. On July 27, 2020 Plaintiff filed another complaint in Los Angeles Superior Court against
2 Defendant and Airgas Carbonic (Case No. 20STCV28508). That complaint was for penalties
3 pursuant to PAGA. In that complaint, Plaintiff sought to recover PAGA penalties on behalf of
4 himself and all other alleged “aggrieved employees,” which included all non-exempt, hourly
5 California employees of Defendant and Airgas Carbonic. Defendant timely answered this
6 complaint with a general denial and asserted various affirmative defenses.

7 40. On November 30, 2020, the Parties stipulated that Plaintiff would dismiss Case No.
8 20STCV28508 and would amend his Complaint to add his PAGA claim. Plaintiff filed his First
9 Amended Complaint on December 11, 2020, and his PAGA complaint was dismissed on January
10 8, 2021.

11 41. Defendant timely answered the First Amended Complaint. At all times, Defendant
12 disputed that it had violated California wage and hour law and, further, maintained that Plaintiff’s
13 claims were not appropriate for class or representative adjudication for numerous reasons.

14 42. Since the filing of the Action and through execution of this Settlement Agreement, Class
15 Counsel has conducted a thorough investigation into the facts underlying the claims asserted in
16 the First Amended Complaint. Class Counsel has also engaged in extensive informal and formal
17 discovery, including, obtaining Defendant’s relevant written wage and hour policies and
18 procedures in effect during the Class Period and obtaining timekeeping and payroll records for
19 Plaintiff and a sample of putative Class Members. The Parties conferred extensively over the
20 scope of the Parties’ informal information exchange.

21 43. Prior to mediation, Defendant provided Class Counsel with detailed information regarding
22 the size of the Class, the applicable hiring and termination dates for Class Members, and the pay
23 rates of Class Members, in addition to other relevant information.

24 44. On June 14, 2021, the Parties participated in a day-long private mediation with the
25 assistance of mediator Michael Dickstein. The Parties did not settle on June 14, 2021. However,
26 with the assistance of Mr. Dickstein, the Parties later reached an agreement regarding a resolution
27 of the Action, which is memorialized herein.

1 **TERMS OF AGREEMENT**

2 Plaintiff, on behalf of himself and the Class and Aggrieved Employees, and Defendant
3 agree as follows:

4 45. Second Amended Complaint. Within seven (7) days of the execution of this Agreement,
5 Plaintiff will file a Second Amended Complaint, amending the definition of the putative class and
6 of the putative aggrieved employees to only include all non-exempt employees of Airgas
7 Carbonic, Inc. and/or Airgas USA, LLC who worked in California in the Dry Ice Division during
8 the relevant time period(s).

9 46. Conditional Stipulation to Class Certification. Solely for purposes of implementing this
10 Settlement Agreement and effectuating settlement, the Parties hereby conditionally stipulate to
11 class certification. Should this Settlement not be approved by the Court, or the Parties proceed to
12 litigation for any reason, Defendant reserves the right to object to and oppose certification of any
13 class and this Settlement Agreement may not be used as evidence in support of class certification.

14 47. Funding of the Gross Settlement Amount. Within twenty-one (21) days of the Effective
15 Date, Defendant will make a one-time deposit of the Gross Settlement Amount into a qualified
16 settlement account to be established by the Settlement Administrator. After the Effective Date,
17 the Gross Settlement Amount will be used to satisfy all of Defendant's liabilities arising from this
18 Settlement, including interest; Individual Settlement Payments; Individual PAGA Payments; the
19 Incentive Award to Plaintiff; the LWDA Payment; Attorneys' Fees and Costs; and Settlement
20 Administration Costs.

21 48. Attorneys' Fees and Costs. Defendant agrees not to oppose or impede any application or
22 motion for Attorneys' Fees and Costs in the amounts set forth in Paragraph 3 above, which will
23 be paid from the Gross Settlement Amount, subject to approval by the Court. The Parties agree
24 that the Court's approval of an award of fees in an amount less than 33.33% of the Gross
25 Settlement Amount (estimated \$166,500) shall not permit or be grounds for Plaintiff or Class
26 Counsel to cancel, void, back out, or otherwise revoke their acceptance of this Settlement and the
27 Parties' shall proceed with the Settlement notwithstanding.

1 49. Incentive Award to Plaintiff. Subject to Court Approval, an Incentive Award will be paid
2 to Plaintiff of not more than Seven Thousand and Five Hundred Dollars (\$7,500.00). The
3 Incentive Award to Plaintiff will be paid from the Gross Settlement Amount.

4 50. Settlement Administration Costs. The Settlement Administrator will be paid for the
5 reasonable costs of administration of the Settlement and distribution of payments from the Class
6 Settlement Amount, which the Settlement Administrator agrees will be capped at Fifteen
7 Thousand Dollars (\$15,000.00).

8 51. Payment and Notice to the LWDA. In consideration of claims made in the Action
9 pursuant to the PAGA, Class Counsel will request that the Court approve a PAGA Allocation of
10 Fifty Thousand Dollars (\$50,000.00) of the Gross Settlement Amount to these claims. Seventy-
11 five percent (75%) of this amount will be paid by the Settlement Administrator to the LWDA –
12 *i.e.*, the LWDA Payment – from the Gross Settlement Amount and the remaining twenty-five
13 percent (25%) will be distributed from the Total Net Settlement Amount to Aggrieved Employees
14 as set forth in Paragraph 53. The Court’s adjustment, if any, of the amount allocated to Plaintiff’s
15 PAGA claim(s), will not invalidate this Settlement Agreement. In accordance with section
16 2699(l)(2) of the California Labor Code, a copy of this Settlement Agreement shall be provided to
17 the LWDA on the same day that Plaintiff files his motion for preliminary approval of this
18 Settlement with the Court.

19 52. Total Net Settlement Amount. The entire Total Net Settlement Amount will be
20 distributed to Participating Class Members. No portion of the Total Net Settlement Amount will
21 revert to or be retained by Defendant.

22 53. Individual PAGA Payment Calculations. Individual PAGA Payments will be calculated
23 and apportioned from the 25% of the PAGA Allocation allocated to payment to Aggrieved
24 Employees, based on the number of Qualifying PAGA Workweeks an Aggrieved Employee
25 worked during the PAGA Period, as follows:

- 26 a. Defendant will calculate the total number of PAGA Qualifying Workweeks worked
27 by each Aggrieved Employee during the PAGA Period and the aggregate total
28

number of PAGA Qualifying Workweeks worked by all Aggrieved Employees during the PAGA Period.

- b. To determine each Aggrieved Employee's estimated share of the PAGA Allocation, the Settlement Administrator will use the following formula: The Aggrieved Employees' 25% share of the PAGA Allocation will be divided by the aggregate total number of PAGA Qualifying Workweeks, resulting in the "PAGA Workweek Value." Each Aggrieved Employee's payment will be calculated by multiplying each individual Aggrieved Employee's total number of PAGA Qualifying Workweeks by the PAGA Workweek Value.

54. Individual Settlement Payment Calculations. Individual Settlement Payments will be calculated and apportioned from the Total Net Settlement Amount (minus the Individual PAGA Payments) based on the number of Qualifying Workweeks a Class Member worked during the Class Period, as follows:

- a. Defendant will calculate the total number of Qualifying Workweeks worked by each Class Member during the Class Period and the aggregate total number of Qualifying Workweeks worked by all Class Members during the Class Period.
- b. To determine each Class Member's estimated Individual Settlement Payment from the Total Net Settlement Amount (not including the Aggrieved Employees' share of the PAGA Allocation), the Settlement Administrator will use the following formula: The Total Net Settlement Amount (not including the Aggrieved Employees' share of the PAGA Allocation) will be divided by the aggregate total number of Qualifying Workweeks, resulting in the "Workweek Value." Each Class Member's Individual Settlement Payment will be calculated by multiplying each individual Class Member's total number of Qualifying Workweeks by the Workweek Value.
- c. The entire Total Net Settlement Amount (not including the Individual PAGA Payments) will be disbursed to all Class Members who do not submit timely and valid Requests for Exclusion.

1 55. No Credit Towards Benefit Plans. The Individual Settlement Payments and Individual
2 PAGA Payments made to Participating Class Members and/or Aggrieved Employees under this
3 Settlement, as well as any other payments made pursuant to this Settlement, will not be utilized to
4 calculate any additional benefits under any benefit plans to which any Class Members and/or
5 Aggrieved Employees may be eligible, including, but not limited to: profit-sharing plans, bonus
6 plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any
7 other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not
8 affect any rights, contributions, or amounts to which any Class Members and/or Aggrieved
9 Employees may be entitled under any benefit plans.

10 56. Administration Process. The Parties agree to cooperate in the administration of the
11 Settlement and to make all reasonable efforts to control and minimize the costs and expenses
12 incurred in administration of the Settlement.

13 57. Delivery of the Class List. Within fifteen (15) business days after Preliminary Approval
14 of this Settlement, Defendant will provide the Class List to the Settlement Administrator.

15 58. Notice by First-Class U.S. Mail. Within fifteen (15) calendar days after receiving the
16 Class List from Defendant, the Settlement Administrator will mail a Notice Packet to all Class
17 Members via regular First-Class U.S. Mail, using the most current, known mailing addresses
18 identified in the Class List.

19 59. Confirmation of Contact Information in the Class Lists. Prior to mailing the Notice
20 Packets, the Settlement Administrator will perform a search based on the National Change of
21 Address Database in order to update and correct any addresses that may have changed. Any
22 Notice Packets returned to the Settlement Administrator as non-deliverable with a forwarding
23 address on or before the Response Deadline will be sent promptly via regular First-Class U.S.
24 Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the
25 date of such re-mailing on the Notice Packet. If no forwarding address is provided, the
26 Settlement Administrator will promptly attempt to determine the correct address using a skip-
27 trace, or other search using the name, address, and/or Social Security number of the Class
28 Member involved, and will then perform a single re-mailing. In the event the procedures in this

Paragraph are followed and the intended recipient of a Notice Packet still does not receive the Notice Packet, the Class Member shall be bound by all terms of the Settlement and any Judgment entered by the Court if the Settlement is approved by the Court. The Settlement Administrator shall at all times protect the privacy rights of Class Members.

60. Notice Packets. All Class Members will be mailed a Notice Packet. Each Notice Packet will provide: (i) information regarding the nature of the Action; (ii) a summary of the Settlement's principal terms; (iii) the Class definition; (iv) the total number of Qualifying Workweeks the respective Class Member worked for Defendant and/or Airgas Carbonic during the Class Period (according to Defendant's records); (v) the Class Member's estimated Individual Settlement Payment; (vi) the formula for calculating Individual Settlement Payments; (vii) the dates which comprise the Class Period; (viii) instructions on how to submit Requests for Exclusion and/or Notices of Objection; (ix) the Response Deadline; and (x) the claims to be released pursuant to the Settlement of the Action. The Response Deadline shall be sixty (60) calendar days from the date the Settlement Administrator initially mails the Notice Packet to the Class Member; if the 60-day deadline falls on a Sunday or federal holiday, the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

61. Disputed Information on Notice Packets. Class Members will have an opportunity to dispute the information provided in their Notice Packets. To the extent Class Members dispute their employment dates or the number of Qualifying Workweeks with which they have been credited, Class Members may produce – by no later than the Response Deadline – evidence to the Settlement Administrator showing that such information is inaccurate. The Settlement Administrator will decide the dispute. Defendant's records will be presumed correct, but the Settlement Administrator will evaluate the information and evidence submitted by the Class Member and will make the final decision as to the merits of the dispute. All disputes will be decided within ten (10) business days of the Response Deadline.

62. Request for Exclusion Procedures. Any Class Member wishing to opt-out from the Settlement Agreement must sign and fax or postmark a written Request for Exclusion to the Settlement Administrator by the Response Deadline. In the case of Requests for Exclusion that

1 are mailed to the Settlement Administrator, the postmark date will be the exclusive means to
2 determine whether a Request for Exclusion has been timely submitted. At no time will any of the
3 Parties or their counsel seek to solicit or otherwise encourage Class Members to opt-out from the
4 Settlement.

5 63. Defective Submissions. If a Class Member's Request for Exclusion is defective as to the
6 requirements listed herein, that Class Member will be given an opportunity to cure the defect(s).
7 The Settlement Administrator will mail the Class Member a cure letter within three (3) business
8 days of receiving the defective submission to advise the Class Member that his or her submission
9 is defective and that the defect must be cured to render the Request for Exclusion valid. The
10 Class Member will have until the later of (i) the Response Deadline or (ii) fifteen (15) calendar
11 days from the date of the cure letter to postmark a revised Request for Exclusion. If the revised
12 Request for Exclusion is not postmarked or received within that period, it will be deemed
13 untimely.

14 64. Settlement Terms Bind All Class Members Who Do Not Opt-Out. Any Class Member
15 who does not affirmatively opt-out of the Settlement by submitting a timely and valid Request for
16 Exclusion will be bound by all of its terms, including those pertaining to the Released Claims, as
17 well as any Final Judgment that may be entered by the Court if it grants final approval to the
18 Settlement.

19 65. Objection Procedures. To object to the Settlement, or any term of it, the person making
20 the objection must not submit a Request for Exclusion (*i.e.*, must not opt-out), and must send the
21 Settlement Administrator a Notice of Objection by the Response Deadline by fax or U.S. Mail.
22 The Notice of Objection must be signed by the Class Member and contain all information
23 required by this Settlement Agreement. The postmark date of the mailing will be deemed the
24 exclusive means for determining whether a written Notice of Objection is timely. The date of the
25 initial mailing of the Notice Packet, and the date the signed Notice of Objection was postmarked,
26 shall be conclusively determined according to the records of the Settlement Administrator. The
27 Settlement Administrator shall deliver any Notice of Objections it receives to Class Counsel and
28 counsel for Defendant within five (5) calendar days of receipt. Counsel for the Parties shall file

1 with the Court any response to the objections submitted by objecting Class Members at least ten
2 (10) court days before the date of the Final Approval/Settlement Fairness Hearing. In addition or
3 as an alternative to a written Notice of Objection, Class Members may appear at the Final
4 Approval/Settlement Fairness Hearing to raise any objections; the Court retains final authority
5 with respect to the consideration and admissibility of any Class Member Notice of Objection and
6 any in-person objections by Class Members at the Final Approval/Settlement Fairness Hearing.
7 Class Members who fail to object in writing in accordance with the above requirements or in
8 person at the Final Approval/Settlement Fairness Hearing by the date the Court issues an order
9 granting final approval of the Settlement will be deemed to have waived all objections to the
10 Settlement and will be foreclosed from making any objections, whether by appeal or otherwise, to
11 the Settlement. At no time will any of the Parties or their counsel seek to solicit or otherwise
12 encourage Class Members to submit written objections to the Settlement or appeal from the
13 Judgment. To the extent a timely Notice of Objection is withdrawn before final approval, such an
14 objection shall be treated as though no objection has been made.

15 66. Certification Reports Regarding Individual Settlement Payment Calculations. The
16 Settlement Administrator will provide counsel for Defendant and Class Counsel a weekly report
17 that: (i) certifies the number of Class Members who have submitted valid Requests for Exclusion
18 and the number of Notices of Objection to the Settlement it has received to date; and (ii) states
19 whether any Class Member has submitted a challenge to any information contained in their
20 Notice Packet. Additionally, the Settlement Administrator will provide to Class Counsel and
21 Defendant's counsel any updated reports regarding the administration of the Settlement
22 Agreement as needed or requested.

23 67. Access to Information. The Settlement Administrator will maintain all Requests for
24 Exclusion and Notices of Objection received from Class Members. The Claims Administrator
25 will provide copies to the Parties of all documents, including, but not limited to the Requests for
26 Exclusion returned by any Class Member upon reasonable request, or as otherwise set forth
27 herein. To protect the privacy of the Class Members, the Claims Administrator shall redact the
28

1 private personal information of the Class Members prior to providing such copies. Private
2 personal information includes: birthdates, addresses, social security numbers, and phone numbers.

3 68. Distribution Timing of Individual Settlement Payments and Individual PAGA Payments.

4 Within fifteen (15) calendar days after Defendant deposits the funds comprising the Gross
5 Settlement Amount into the account, per Paragraph 47 above, the Settlement Administrator will
6 issue payments to: (i) Participating Class Members (including the Incentive Award to Plaintiff);
7 (ii) Aggrieved Employees; and (iii) Class Counsel.

- 8 a. The Settlement Administrator shall ensure that the back of each settlement check
9 issued to Participating Class Members states clearly:

10 **CONSENT TO RELEASE FLSA CLAIMS**

11 By signing, endorsing, depositing, cashing, or negotiating this
12 check, I hereby reaffirm that I am releasing and/or have released
13 Airgas USA, LLC (and all related individuals and entities,
14 including, without limitation, Airgas Carbonic, Inc.) (the “Released
15 Parties”) from the wage and hour claims released in the Joint
16 Stipulation of Class and Representative Action Settlement in
17 Yniguez v. Airgas USA, LLC, *et al.*, Los Angeles Superior Court
18 Case No. 20STCV18190 (the “Action”), approved by the Los
19 Angeles Superior Court on [insert final approval date]. I further
20 acknowledge that I fully and completely release the Released
21 Parties from all claims, liabilities, and/or causes of action pursuant
22 to the Fair Labor Standards Act (“FLSA”) that are alleged, related
23 to, or that reasonably could have arisen under the same facts alleged
24 in the Action and that arise out of services rendered by me to any of
25 the Released Parties between May 8, 2016 and [insert the later of
26 (a) the Date of Preliminary Approval, and (b) 90 days from
27 November 3, 2021], including but not limited to any unpaid wages,
28 overtime, penalties, premiums, bonuses, interest, liquidated
damages, attorneys’ fees, costs, or any kind of relief available under
the FLSA.

- 22 b. Within thirty (30) calendar days of the Effective Date, the Settlement Administrator
23 will also issue a payment to itself for Court-approved services performed in
24 connection with the Settlement. Also within thirty (30) calendar days of the
25 Effective Date, the Settlement Administrator shall provide to the Parties, for filing
26 with the Court, a declaration verifying, under oath, that it has mailed payments to
27 each Participating Class Member and/or Aggrieved Employee.

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

70. Certification of Completion. No later than twenty (20) calendar days prior to the Final Approval/Settlement Fairness Hearing, the Settlement Administrator will provide a written declaration under oath to: (i) certify completion of administration of the Notice Packets to the Court and counsel for all Parties; and (ii) provide all Settlement-related data, including the number of Class Members who submitted valid Requests for Exclusion and/or Notices of Objection to the Settlement.

71. Tax Treatment of Individual Settlement Payments. All Individual Settlement Payments will be allocated as (i) 30% as payment for alleged back wages, for which IRS Forms W-2 will be issued; and (ii) 70% as alleged liquidated damages, penalties, and interest, for which IRS Forms 1099-MISC will be issued.

72. Tax Treatment of Individual PAGA Payments. All Individual PAGA Payments will be allocated as 100% alleged liquidated damages, penalties, and interest, for which IRS Forms 1099-MISC will be issued.

73. Administration of Taxes by the Settlement Administrator. The Settlement Administrator will be responsible for, *inter alia*: (i) issuing to Plaintiff, Participating Class Members, Aggrieved Employees, and Plaintiff's Counsel any W-2, 1099, or other tax forms as may be required by law for all amounts paid pursuant to this Settlement; and (ii) forwarding all payroll taxes, if any, and penalties to the appropriate government authorities.

74. Tax Liability. Defendant makes no representation as to the tax treatment or legal effect of the payments called for hereunder, and Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel are not relying on any statement, representation, or calculation by

1 Defendant or by the Settlement Administrator in this regard. Plaintiff, Participating Class
2 Members, Aggrieved Employees, and Class Counsel understand and agree that they will be solely
3 responsible for the payment of any taxes and penalties assessed on the payments described herein.

4 75. Circular 230 Disclaimer. EACH PARTY TO THIS AGREEMENT (FOR PURPOSES
5 OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS
6 AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”)
7 ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT,
8 AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE
9 PARTIES OR THEIR ATTORNEYS OR OTHER ADVISERS, IS OR WAS INTENDED TO
10 BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE
11 CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF
12 UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS
13 AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
14 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR
15 ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT,
16 (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE
17 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO
18 ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY
19 COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY
20 OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE
21 ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISER TO ANY OTHER
22 PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY
23 OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF
24 WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE
25 ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY
26 TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS
27 AGREEMENT.

1 76. California Labor Code Section 206.5. In consideration of Defendant's payment of the
2 sums provided herein, each and every Participating Class Member will be deemed to have also
3 acknowledged and agreed that California Labor Code section 206.5 is not applicable to any
4 Participating Class Member because there is a good faith dispute as to whether any wages are due
5 at all to any such Participating Class Member.

6 77. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant that
7 they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
8 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
9 cause of action or right herein released and discharged.

10 78. Nullification of Settlement Agreement. In the event that (a) the Court does not finally
11 approve the Settlement as provided herein or (b) the Settlement does not become final for any
12 other reason, then this Settlement Agreement, and any documents generated to bring it into effect,
13 will be null and void. Any order or Judgment entered by the Court in furtherance of this
14 Settlement Agreement will likewise be treated as void from the beginning.

15 79. Preliminary Approval. Class Counsel shall file (and set for hearing at the earliest
16 available date) a motion for an order: (a) preliminarily approving this Settlement; (b) concluding
17 that the Settlement Class meets the prerequisites for class certification for settlement purposes
18 only; (c) approving the Notice Packet to be provided to Class Members; (d) establishing a
19 procedure for Class Members to request exclusion or object; (e) setting a date for a Final
20 Approval/Settlement Fairness Hearing; and (f) enjoining Class Members and/or Aggrieved
21 Employees from filing, initiating, or continuing to prosecute any actions, claims, complaints, or
22 proceedings in Court, with the LWDA or with any other entity or in any other forum regarding
23 the Released Claims. In conjunction with the Preliminary Approval hearing, Plaintiff will submit
24 this Settlement Agreement, which sets forth the terms of this Settlement, and will include the
25 proposed Notice Packet, which will include both the proposed Notice of Class Action Settlement
26 document and the proposed Mailing Envelope, attached as Exhibits A and B, respectively. Prior
27 to moving for Preliminary Approval, Class Counsel shall share the draft motion with Defendant's
28 counsel and provide Defendant two business (2) days to review and propose revisions.

1 80. Final Settlement Approval Hearing and Entry of Judgment. Upon expiration of the
2 deadlines to fax or postmark Requests for Exclusion and/or Notices of Objection to the
3 Settlement, and with the Court's permission, a Final Approval/Settlement Fairness Hearing will
4 be conducted to determine the final approval of the Settlement along with the amounts properly
5 payable for: (i) Individual Settlement Payments; (ii) Individual PAGA Payments; (iii) the
6 Incentive Award to Plaintiff; (iv) Attorneys' Fees and Costs; (v) the LWDA Payment; and (vi) all
7 Settlement Administration Costs. The Final Approval/Settlement Fairness Hearing will not be
8 held any earlier than thirty (30) calendar days after the Response Deadline. Class Counsel will be
9 responsible for drafting all documents necessary to obtain final approval. Class Counsel will also
10 be responsible for drafting the attorneys' fees and costs application to be heard at the Final
11 Approval/Settlement Fairness Hearing.

12 81. Final Judgment and Continued Jurisdiction. At the Final Approval/Settlement Fairness
13 Hearing, Class Counsel shall petition the Court to enter an order granting final approval of the
14 Settlement and judgment. The Order and Judgment shall declare that Plaintiff and all
15 Participating Class Members and/or Aggrieved Employees are bound by the release of claims
16 described in the Notice Packet and herein. Prior to petitioning the Court, Class Counsel shall
17 share the draft order with Defendant's counsel and provide Defendant five (5) business days to
18 review and propose revisions. After entry of Judgment, the Court will have continuing
19 jurisdiction solely for purposes of addressing: (i) the interpretation and enforcement of the terms
20 of the Settlement, (ii) Settlement administration matters, and (iii) such post-Judgment matters as
21 may be appropriate under court rules, the Code of Civil Procedure, and/or as set forth in this
22 Settlement Agreement.

23 82. Releases by Plaintiff and by Participating Class Members. Upon the Effective Date: (i)
24 Plaintiff and all Participating Class Members and/or Aggrieved Employees will be deemed to
25 have expressly waived and relinquished, to the fullest extent permitted by law, any and all of the
26 Released Claims against any and all of the Released Parties; and (ii) with regard to his individual
27 claims, Plaintiff will be deemed to have expressly waived and relinquished, to the fullest extent
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1 permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil
2 Code, which provides:

3 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
4 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
5 EXIST IN HIS OR HER FAVOR AT THE TIME OF
6 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
7 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
8 SETTLEMENT WITH THE DEBTOR.

9 Plaintiff agrees not to sue or otherwise make a claim against any of the Released Parties for the
10 Released Claims after the Effective Date. In addition, as to Plaintiff only, the Released Claims
11 shall also include any and all claims, known and unknown, under any local, state, or federal law,
12 in tort, common law, or contract, whether pleaded in the First Amended Complaint or not, except
13 any pending Workers' Compensation claims and any other claims that cannot be released as a
14 matter of law ("Plaintiff's General Release").

15 83. Exhibits Incorporated by Reference. The terms of this Settlement Agreement include the
16 terms set forth in any attached Exhibits, which are incorporated by this reference as though fully
17 set forth herein. Any Exhibits to this Settlement Agreement are an integral part of the Settlement.

18 84. Headings. The descriptive headings of any paragraphs or sections of the Settlement
19 Agreement are inserted for convenience of reference only and do not constitute a part of this
20 Agreement.

21 85. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute the
22 entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral
23 agreements may be deemed binding on the Parties. The Parties expressly recognize California
24 Civil Code Section 1625 and California Code of Civil Procedure Section 1856(a), which provide
25 that a written agreement is to be construed according to its terms and may not be varied or
26 contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
27 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

28 86. Amendment or Modification. No amendment, change, or modification to this Settlement
Agreement will be valid unless in writing and signed, either by the Parties or their counsel.

1 87. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant and
2 represent they are expressly authorized by the Parties whom they represent to negotiate this
3 Settlement Agreement and to take all appropriate actions required or permitted to be taken by
4 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any
5 other documents required to effectuate the terms of this Settlement. The Parties and their counsel
6 will cooperate with each other and use their best efforts to effect the implementation of the
7 Settlement and to promote and encourage 100% participation among the Class Members. If the
8 Parties are unable to reach agreement on the form or content of any document needed to
9 implement the Settlement, or on any supplemental provisions that may become necessary to
10 effectuate the terms of this Settlement, the Parties may seek the assistance of the Court to resolve
11 such disagreement.

12 88. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,
13 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

14 89. California Law Governs. All terms of this Settlement Agreement will be governed by and
15 interpreted according to the laws of the State of California, without regard to choice of law
16 principles.

17 90. Execution in Counterparts. This Settlement Agreement is subject only to the execution of
18 all Parties. However, the Settlement Agreement may be executed in one or more counterparts.
19 All executed counterparts and each of them, including facsimile and scanned portable document
20 format ("PDF") copies of the signature page, will be deemed to be one and the same instrument.
21 A facsimile or PDF copy shall be considered an original for all purposes.

22 91. Acknowledgement that the Settlement is Fair and Reasonable. The Parties and their
23 respective counsel believe this Settlement is a fair, adequate, and reasonable settlement of the
24 Action and have arrived at this Settlement after arm's-length negotiations and in the context of
25 adversarial litigation, taking into account all relevant factors, present and potential.

26 92. Invalidity of Any Provision. Before declaring any provision of this Settlement Agreement
27 invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible
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consistent with applicable precedents so as to define all provisions of this Settlement Agreement valid and enforceable.

93. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that Plaintiff or Class Counsel may appeal any reduction to the Attorneys' Fees and Costs below the amount they request from the Court, and either party may appeal any court order that materially alters the Settlement Agreement's terms.

94. Interim Stay of Proceedings. The Parties agree that all proceedings in the Action shall be stayed, except such proceedings necessary to implement and complete the Settlement, pending completion of the hearings referenced herein.

95. Notice To Counsel. All notices, requests, demands, and other communications required or permitted to be given pursuant to this Settlement Agreement shall be in writing and shall be delivered (i) personally or (ii) mailed, postage prepaid, by first-class U.S. Mail with a concurrent copy by email, to the undersigned persons at their respective addresses as set forth herein:

Class Counsel

James R. Hawkins, Esq.
Christina M. Lucio, Esq.
James Hawkins, APLC
9880 Research Dr.
Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
Facsimile: (949) 387-6676
E-mail: james@jameshawkinsaplc.com
E-mail:
christina@jameshawkinsaplc.com

Counsel for Defendant

Cheryl D. Orr, Esq.
Kristin M. Halsing, Esq.
Faegre Drinker Biddle & Reath LLP
Four Embarcadero Center
27th Floor
San Francisco, CA 94111
Telephone: (415) 591-7500
Facsimile: (415) 591-7510
E-mail: cheryl.orr@faegredrinker.com
E-mail: kristin.halsing@faegredrinker.com

96. Non-Admission of Liability. The Parties enter into this Settlement to resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of continued litigation. In entering into this Settlement, Defendant does not admit – and in fact specifically denies – that it violated any federal, state, or local law; violated any common law; violated any regulations or guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any

misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, will be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Settlement, this Settlement Agreement and its terms and provisions will not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or non-compliance with, federal, state, local, or other applicable law.

97. Option to Rescind the Settlement Agreement. Defendant may elect to rescind the Settlement if twenty percent (20%) or more of the Class Members submit timely Requests for Exclusion and do not rescind them by the Response Deadline. If Defendant wishes to exercise its conditional right to rescind, it must do so by written communication to Class Counsel that is received by Class Counsel within twenty (20) calendar days of the Response Deadline. In the event that Defendant exercises their conditional right to rescind, the Parties will be restored to their litigation positions as of November 3, 2021, except that all deadlines and/or hearings pending as of November 3, 2021 will be rescheduled to afford the Parties sufficient time to resume litigation. Furthermore, in the event that Defendant exercises its conditional right to rescind, Defendant will be responsible for all Settlement Administration Costs incurred up to the date of rescission.

98. Excluded Class Members. Any Class Member who, through a settlement agreement with Defendant or any of the Released Parties that was executed prior to the date of Preliminary Approval, released the claims at issue in the Action for the entire Class Period will: (i) not be included in the Class; (ii) be excluded from the settlement payment calculations discussed herein; and (iii) not be entitled to notice (including a Notice Packet) as provided herein. Any release that does not encompass the entire Class Period requires the claims of such individuals to be limited to the time which is unaffected by the prior settlement(s).

99. Proportional Increase in Gross Settlement Amount. Prior to the Parties' execution of their Memorandum of Understanding, Defendant estimated that the size of the Class was/is 272. If the

1 number of Class Members exceeds 272 by more than 7.5% (*i.e.*, more than 292 Class Members)
2 as of the end of the Class Period, the Gross Settlement Amount will increase on a pro rata basis
3 per additional Class Member exceeding 272.

4 100. No Publicity. Except as provided herein or ordered by the court, the Parties and their
5 counsel agree that they will not issue any press releases, initiate any contact with the press,
6 respond to any press inquiry, or have any communication with the press about the fact, amount, or
7 terms of the Settlement; Class Counsel shall do nothing to publicize this Settlement or use it for
8 marketing purposes, including on websites or on the Internet.

9 101. Waiver. No waiver of any condition or covenant contained in this Settlement Agreement
10 or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or
11 constitute a further waiver by such party of the same or any other condition, covenant, right, or
12 remedy.

13 102. Enforcement Actions. In the event that one or more of the Parties institutes any legal
14 action or other proceeding against any other Party or Parties to enforce the provisions of this
15 Settlement or to declare rights and/or obligations under this Settlement, the successful Party or
16 Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys'
17 fees and costs, including expert witness fees, incurred in connection with any enforcement
18 actions.

19 103. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
20 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
21 construed more strictly against one party than another merely by virtue of the fact that it may
22 have been prepared by counsel for one of the Parties, it being recognized that, because of the
23 arm's-length negotiations between the Parties, all Parties have contributed to the preparation of
24 this Settlement Agreement.

25 104. Representation By Counsel. The Parties acknowledge that they have been represented by
26 counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and
27 that this Settlement Agreement has been executed with the consent, recommendation, and advice
28 of counsel.

105. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement will be subject to final Court approval.

106. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

107. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff agrees that, by signing this Settlement Agreement, he is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement and further warrants and represents that he has no objection to any of the terms of this Settlement. Any attempt by Plaintiff to opt-out of the Settlement or otherwise not comply with this Settlement Agreement shall be deemed void and of no force or effect. Any such request for exclusion shall therefore be void and of no force or effect.

READ CAREFULLY BEFORE SIGNING

The Parties hereby agree to and execute this Joint Stipulation of Class and Representative Action Settlement agreement.

PLAINTIFF

Dated: _____

Plaintiff Charles Yniguez

AIRGAS USA, LLC

Dated: 03/22/2022

Name: Marcelo Fioranelli

Title: Chief Executive Officer

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APPROVED AS TO FORM

Dated: March 23, 2022

**FAEGRE DRINKER BIDDLE & REATH
LLP**

By: 
Cheryl D. Orr
Kristin M. Halsing

Attorneys for Defendant AIRGAS USA, LLC

Dated: _____

JAMES HAWKINS, APLC

By: _____
James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiff CHARLES YNIGUEZ

105. All Terms Subject to Final Court Approval. All amounts and procedures described in this Settlement Agreement will be subject to final Court approval.

106. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

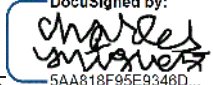
107. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law. Plaintiff agrees that, by signing this Settlement Agreement, he is bound by the terms herein stated and further agrees not to request to be excluded from the Settlement and further warrants and represents that he has no objection to any of the terms of this Settlement. Any attempt by Plaintiff to opt-out of the Settlement or otherwise not comply with this Settlement Agreement shall be deemed void and of no force or effect. Any such request for exclusion shall therefore be void and of no force or effect.

READ CAREFULLY BEFORE SIGNING

The Parties hereby agree to and execute this Joint Stipulation of Class and Representative Action Settlement agreement.

PLAINTIFF

Dated: 3/23/2022

DocuSigned by:

 5AA818F95E9348D...
 Plaintiff Charles Yniguez

AIRGAS USA, LLC

Dated: _____

Name: _____

Title: _____

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APPROVED AS TO FORM

Dated: _____

**FAEGRE DRINKER BIDDLE & REATH
LLP**

By: _____

Cheryl D. Orr
Kristin M. Halsing

Attorneys for Defendant AIRGAS USA, LLC

Dated: March 22, 2022

JAMES HAWKINS, APLC

By: _____

James R. Hawkins
Christina M. Lucio

Attorneys for Plaintiff CHARLES YNIGUEZ