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Attorneys for Plaintiff CHARLES YNIGUEZ,
individually and on behalf of all other 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]

**DECLARATION OF JAMES R.
HAWKINS IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

[Notice of Motion; Declaration of Charles
Yniguez In Support of Motion for Preliminary
Approval of Class Action Settlement;
Memorandum In Support of Motion for
Preliminary Approval of Class Action
Settlement; [Proposed] Order filed
concurrently herewith]

Date: June 21, 2022

Time: 10:00 a.m.

Dept.: 6

Complaint Filed: May 8, 2020

FAC Filed: December 11, 2020

Trial Date: None

DECLARATION OF JAMES HAWKINS

I, James Hawkins, declare as follows:

1. I am an individual over the age of 18. I am a partner at the law firm of James Hawkins, APLC. I am one of the attorneys of record for Plaintiff Charles Yniguez (hereinafter referred to as "Plaintiff" or "Class Representative"), who filed this action on behalf of himself and the Class Members as defined herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of Class Action Settlement, which Plaintiff filed concurrently herewith, along with the supporting Memorandum of Points and Authorities. I have personal knowledge of the facts set forth below, and if called to testify regarding them, I could and would do so competently.

2. Attached hereto as Exhibit 1 is a true and correct copy of the executed Settlement Agreement which the Parties ask the Court to approve. Attached as Exhibit A to the Settlement Agreement is a true and correct copy of the Notice of Class Action Settlement which the Parties have requested the Court approve for sending to the Settlement Class.

3. On May 8, 2020, Plaintiff Yniguez filed his class action complaint in the Superior Court of the State of California, for the County of Los Angeles (Case No. 20STCV18190) alleging claims for (1) failure to pay minimum wages; (2) failure to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5) failure to provide accurate itemized wage statements; (6) failure to pay all wages due within the required time and upon separation of employment; and (7) violation of Business and Professions Code §§ 17200, *et seq.* ("Class Complaint").

4. Plaintiff filed his Complaint individually and on behalf of all other non-exempt employees who worked for Defendants in the State of California during the relevant period. ("Class Members") The class action complaint also defined a subclass of putative class members who separated their employment from Defendants within three years prior to the filing of the action to the present and continuing. ("Waiting Time Subclass")

5. Plaintiff Yniguez submitted a PAGA notice to the LWDA on May 7, 2020, in accordance with the requirements of Labor Code section 2699.3(a). The PAGA notice alleged that Airgas and Airgas Carbonic had violated the various California Labor Code sections alleged in his class action complaint.

1 6. On July 27, 2020, Plaintiff filed a PAGA complaint in the Superior Court of the State of
2 California, Los Angeles County, Case No. 20STCV28508, in which he alleged the following causes of
3 actions: (1) violation of California Labor Code sections 2698, et seq. (Private Attorney General Act of
4 2004), which includes allegations of (a) failure to pay wages including overtime; (b) failure to provide meal
5 periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional
6 hour's of pay or accurately pay an additional hour's of pay in lieu of providing a meal period; (c) failure to
7 provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional
8 hour's of pay or accurately pay an additional hour's of pay in lieu of providing a rest period; (d) failure to
9 pay all wages earned and owed upon separation from Defendants' employ; and (e) failure to provide
10 accurate itemized wage statements (hereinafter, "PAGA Complaint" or "PAGA Action").

11 7. On September 21, 2020, Airgas and Airgas Carbonic timely answered the class action
12 complaint with a general denial and asserted various affirmative defenses.

13 8. On September 30, 2020, Airgas and Airgas Carbonic similarly timely answered the PAGA
14 complaint with a general denial and various affirmative defenses. Shortly thereafter, Defendants filed a
15 motion to consolidate the two actions.

16 9. On November 30, 2020, the Parties stipulated that Plaintiff would dismiss the PAGA-only
17 case, Case No. 20STCV28508, and would amend his class action complaint to add his PAGA claim to the
18 lower-numbered class action.

19 10. On December 11, 2020, Plaintiff filed a First Amended Complaint ("FAC") to add an
20 eighth cause of action for civil penalties pursuant to the Private Attorneys' General Act of 2004, Labor
21 Code Section 2698, et seq. ("PAGA") to the class action complaint—effectively consolidating the two
22 actions. The separate PAGA action was dismissed on January 8, 2021.

23 11. Airgas filed an answer to the FAC on or about January 13, 2021. At all time, Defendants
24 disputed that it had violated California wage and hour law and, further, maintained that Plaintiff's claims
25 were not appropriate for class or representative adjudication for numerous reasons.

26 12. Defendants continue to deny, each and every material allegation, dispute, and claim raised
27 in the underlying actions. Defendants have at all times denied, and continue to deny, all of these allegations,
28 and denies any and all liability for Plaintiff's claims. Defendants further deny that Plaintiff's allegations are

1 appropriate for class, and/or representative treatment for any purpose other than for settlement purposes
2 only.

3 13. On June 14, 2021, the Parties attended a full-day mediation session with Michael
4 Dickstein, an experienced wage and hour class action and PAGA-action mediator to attempt to resolve the
5 Class Action and PAGA Action. On the day of the mediation, after a full day of arms-length negotiations,
6 the Parties failed to reach an agreement to settle all of the claims alleged in Plaintiff's PAGA Complaint
7 and the Class Action Complaint. However, with the continuing assistance of Mr. Dickstein over months,
8 the Parties later reached an agreement regarding a resolution of the claims. At all times, the Parties'
9 negotiations were adversarial and non-collusive.

10 14. Since the filing of the Action and through execution of the Settlement, Class
11 Counsel conducted a thorough investigation into the facts underlying the claims asserted in the
12 complaint. Prior to mediation, Plaintiff's Counsel conducted a thorough investigation into the
13 factual and legal issues implicated by Plaintiff's claims and were able to objectively assess the
14 settlement's reasonableness.

15 15. Indeed, prior to filing the action, Plaintiff provided to Class Counsel the factual
16 bases for pursuing his actions against Defendants for Labor Code violations. Plaintiff was
17 intimately familiar with Defendants' labor policies and practices, and over the course of multiple
18 interviews, knowledgeably summarized those policies and practices. Plaintiff explained how the
19 policies and practices were instituted and provided valuable insight into how they gave rise to the
20 alleged Labor Code violations. Based on these interviews, Plaintiff's Counsel determined that
21 there were legally sufficient grounds for pursuing the Actions against Defendants. And in
22 preparation for drafting the complaints, Plaintiff's Counsel conducted their own independent
23 preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*, a
24 careful examination of Plaintiff's personnel files and associated records.

25 16. Plaintiff's Counsel propounded formal discovery requests (requests for production
26 and special interrogatories) and informal discovery requests to prepare for mediation. Defendant
27 responded to both. Plaintiff's Counsel received a considerable amount of documents and data,
28 Plaintiff's personnel file, time sheets, earnings statements, and acknowledgements; employee

1 demographic data; class size information; hiring and termination dates; pay rates; a sampling of
2 timecards and time history; a sampling of earning statements; pay data and records; and
3 Defendant's policies and procedures manuals which covered a broad range of topics including,
4 *inter alia*, employee clock-in policies and procedures, attendance policies, meal periods/rest
5 periods, overtime & premium pay, etc. Defendants also provided substantial information
6 concerning the total number of potential class members, the payroll data at issue, and the
7 applicable hourly rates, workweeks and pay periods, and other summary data related to the alleged
8 class. The Parties shared damages information with the mediator and each other for purposes of
9 reaching a settlement. Plaintiff also engaged an expert to review the time and pay data produced
10 and assist with the creation of a damages model.

11 17. The Parties have conducted themselves in informed, good faith arms-length
12 negotiations after conducting discovery and exchanging extensive evidence and information about
13 the claims and defenses of this lawsuit through informal discovery, and engaging in pre-mediation
14 discussions, telephone conferences, and correspondence all aimed at settling their dispute. The
15 document and data exchanges allowed Plaintiff's Counsel to fully assess the nature and magnitude
16 of the claims being settled, as well as the impediments to recovery, and ultimately enabled
17 Plaintiff's Counsel so as to make an independent assessment of the reasonableness of the
18 settlement's terms.

19 18. In summary, Class Counsel performed a thorough investigation into the claims at
20 issue, which included: (1) determining Plaintiff's suitability as private attorney general and class
21 representative through interviews, investigations, and analyses of his employment files and related
22 records; (2) evaluating all of Plaintiff's potential representative and class claims; (3) engaging in
23 formal and informal discovery, which included production of relevant data; Defendant's
24 timekeeping, meal period and rest break policies; documents evidencing Defendant's handbooks,
25 policies and procedures for managing payment for all hours worked, meal periods and rest breaks;
26 and other relevant information, including Plaintiff's personnel and payroll file; (4) exchanging
27 documents, data, and information based on time and pay records for the putative Class Members
28 to determine the number of current and former putative class members who worked during the

1 relevant time period, the total number of workweeks at issue, the average hourly rate for the
2 putative class and aggrieved employees; (5) researching similar wage and hour class actions as to
3 the claims brought, the nature of the positions, and the type of employer; (6) analyzing employees'
4 time, pay, and wage records; (7) reviewing Defendant's employment policies and practices; (8)
5 researching settlements in similar cases; (9) evaluating Plaintiff's claims and estimating
6 Defendant's potential liability for purposes of settlement; (10) drafting the mediation brief; and
7 (11) participating in the mediation.

8 19. By engaging in such a thorough investigation and evaluation of Plaintiff's claims,
9 Class Counsel can opine that the Settlement, for the consideration and on the terms set forth in
10 the Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
11 Members in light of all known facts and circumstances, including the risk of significant delay and
12 uncertainty associated with litigation, and various defenses asserted by Defendants .

13 20. Defendants categorically deny all of the above-mentioned assertions and
14 allegations raised in and in support of the claims in the Action. To that end, Defendants have
15 denied and continues to deny each, and all of the allegations, claims, and contentions alleged by
16 the Plaintiff in the Action. Defendants have expressly denied and continues to deny all charges of
17 wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions
18 alleged in the Action. Defendants contend that they complied in good faith with wage and hour
19 laws and have dealt legally and fairly with Plaintiff and putative class members. Defendants
20 further deny that, for any purpose other than settling the Action, these claims are appropriate for
21 class or representative treatment. To date, no class has been certified and no court has made any
22 findings that Defendants engaged in any wrongdoing or in any wrongful conduct, or otherwise
23 acted improperly or in violation of any law, rule or regulation with respect to any of the issues
24 presented in this action. Nonetheless, the Parties have concluded that further proceedings in the
25 Action would be protracted and expensive and that it is desirable that the Action be fully and
26 finally settled in the manner and upon the terms and conditions set forth in this Settlement in
27 order to dispose of burdensome and protracted litigation, to permit the operation of Defendants '
28 business without further expensive litigation and the distraction and diversion of its personnel

1 with respect to matters at issue in the Action. Defendants have also taken into account the
2 uncertainty and risks inherent in any litigation, especially in complex cases such as the Action.
3 Defendants have, therefore, determined that it is desirable and beneficial to it that the Action be
4 settled in the manner and upon the terms and conditions set forth in Settlement.

5 21. Defendants supply industrial, medical, and specialty gases as well as hardgoods and
6 related products throughout California. Plaintiff worked as a non-exempt employee performing
7 various tasks relating to Defendants ' business.

8 22. The Parties were represented by experienced class action counsel throughout the
9 negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC. Class
10 Counsel employs seasoned class action attorneys who regularly litigate wage and hour claims
11 through certification and on the merits, and have considerable experience settling wage and hour
12 class actions. Defendants are represented by Faegre, Drinker, Biddle, & Reath, LLP, a respected
13 and seasoned defense firm.

14 23. In preparation for the mediation, Plaintiff's counsel reviewed the entirety of the
15 documents and information produced with the assistance of an expert. The information produced
16 was extrapolated and processed to create a comprehensive damages model. The evidence and
17 information gathered and reviewed by counsel provided a factual framework for a comprehensible
18 and reliable damage model pertaining to all Participating Class Members. The mediation included
19 discussions and examination of the proposed Class and the Parties' respective positions on the
20 legal and factual issues raised in the Complaint.

21 24. As a result of the mediation, the Parties agreed to settle this matter for a Maximum
22 Gross Settlement Amount of \$500,000.00.

23 25. Through the discovery, information exchange and settlement negotiation process,
24 the Parties have refined the definition of the Class whose claims will be resolved by the
25 Settlement. Pursuant to the Settlement Agreement, the "Class" is defined to include all
26 individuals who were employed by Defendant Airgas USA, LLC or Airgas Carbonic, Inc. in
27 California in their Dry Ice Divisions as non-exempt/hourly employees during the "Class Period"
28 of May 8, 2016 to the date of Preliminary Approval (the "Class Member(s) or "Class"). (Ex. 1,

1 Settlement, ¶ 7-8). The “Aggrieved Employees” are defined to include all individuals who were
2 employed by Airgas USA, LLC or Airgas Carbonic, Inc. in California in their Dry Ice Divisions as
3 non-exempt/hourly employees during the “PAGA Period” of May 7, 2019 to the date the Court
4 grants Preliminary Approval. (Ex. 1, Settlement, ¶ 2, 25.). It is estimated that the Class consists
5 of approximately 272 individuals. (Ex. 1, Settlement, ¶ 99.). It was also estimated that at the time
6 of mediation, the Class Period included 24,797 workweeks.

7 26. Counsel for the Parties investigated the applicable law as applied to the facts
8 discovered regarding the claims of Plaintiff, Defendants’ defenses thereto and the damages
9 claimed by Plaintiff on behalf of the Settlement Class. Plaintiff’s counsel balanced the terms of
10 the proposed Settlement against the risk of litigation and probable outcome at the class
11 certification stage, and if any Class were certified, at trial. Based on their own respective
12 independent investigations and evaluations, and after taking into account the sharply disputed
13 factual and legal issues involved in this matter, the risks attending further prosecution of the case,
14 Defendants’ defenses, and the monetary benefits received under the Settlement, Plaintiff’s
15 counsel is of the opinion that Settlement for the consideration and on the terms set forth in the
16 Settlement Agreement is fair, reasonable and adequate and is in the best interests of Plaintiff and
17 the Class.

18 27. I believe that the consideration and terms set forth in the Settlement Agreement are
19 fair, reasonable, and adequate and are in the best interests of the Settlement Class in light of all
20 known facts and circumstances, including the various defenses asserted by Defendants, and
21 numerous potential appellate issues. In addition, the prospect of a potential adverse summary
22 judgment ruling, as well as the uncertainty of class certification, the difficulties of complex
23 litigation, the lengthy process of establishing specific damages and various possible delays and
24 appeals, were also carefully considered in agreeing to the proposed Settlement.

25 28. The Gross Settlement Amount includes, without limitation, attorneys’ fees of
26 33.3% of the Gross Settlement Amount (estimated at \$166,500.00) (“Attorneys’ Fees”) plus
27 litigation costs according to proof (estimated not to exceed \$27,000.00) (“Costs”); (3) class
28 representative incentive award not to exceed \$7,500.00 to Plaintiff (“Incentive Award”); (4) all

1 litigation costs according to proof (estimated not to exceed \$27,000.00) (“Costs”); (3) class
2 representative incentive award not to exceed \$7,500.00 to Plaintiff (“Incentive Award”); (4) all
3 settlement administration fees and costs (estimated not to exceed \$15,000.00) (“Settlement
4 Administration Costs”); (5) Penalties paid pursuant to PAGA in the amount of \$50,000.00
5 (“PAGA Allocation”) of which seventy five percent (75%) or \$37,500.00 will be paid the LWDA¹
6 and twenty five percent (25%) or \$12,500.00 will be distributed pro rata to all Aggrieved
7 Employees. This is a non-reversionary settlement. Defendant will separately pay all employer-
8 side payroll taxes with funds outside of the Gross Settlement Amount. (Ex. 1, ¶ 15.) After
9 estimated Court-approved deductions, the Net Settlement Amount is estimated to be
10 approximately \$246,000 (\$12,500 of which is allocated to PAGA). Assuming approval of all
11 allocations and equal distribution, the average award is estimated to be approximately \$904.41 per
12 Class Member (\$246,000/272 Class Members).

13 29. Fairness of the Settlement is demonstrated by the uncertainty and risks to Plaintiff
14 involved both in not prevailing on one or more of the causes of action or theories alleged in the
15 operative Complaint and in non-certification, and if successful, Defendant’s dispute of the ability
16 of Plaintiff to maintain certification in this case. Defendant also argued it maintained lawful
17 written policies that were provided to the class members. Yet, despite the defenses proffered by
18 Defendant, the proposed Settlement commits Defendant to pay each Class Member a portion of
19 the NSA. The amount to be paid to the Class is fair, adequate and reasonable given the significant
20 risk to Plaintiff and the Class in continuing with the litigation and not prevailing on their claims at
21 class certification or at trial or not being paid anything even if trial was successful.

22 30. The predominant claims in this action arise from alleged violations of California
23 law with respect to Defendants’ failure to provide meal periods and permit and authorize rest
24 periods, failing to pay overtime at the correct rate, and failing to pay all wages earned at
25 termination. Plaintiff alleges that these practices resulted directly from the implementation and

26 _____
27 ¹ The Motion for Preliminary approval along with a copy of the Settlement Agreement was filed
28 with the LWDA on March 24, 2022.

1 applicable policies and procedures were legally complaint. In addition, Defendants argued that a
2 number of Plaintiff's claims were preempted by the federal Motor Carrier Safety Action of 1984
3 applicable to all drivers in the purported class. Defendants further argued that they maintained
4 legally compliant policies regarding timekeeping, off the clock work, meal periods, rest periods,
5 and wage payments, and that to the extent there were any violations, they were anecdotal and
6 could not be proven on a class-wide or representative basis. Defendants argued that they properly
7 paid minimum wages and overtime as required by law. Defendants contended that the evidence
8 proves that there was no standard policy of rounding employee time punches. In addition,
9 Defendants denied that they failed to properly pay the regular rate of pay for overtime hours
10 worked. Defendants further argued that, even assuming there was a lack of preemption as to
11 certain members of the Class, to the extent a meal or rest period was missed, late or short, it was a
12 matter of individual preference and the existence of a violation could not be determined without an
13 evaluation of the circumstances of each instance. Defendants argued that these issues were
14 accordingly not ripe for certification. Defendants contended that Plaintiff's derivative wage
15 statement and waiting time claims failed for the same reasons that the underlying claims failed.
16 Further, with regard to final payment of wages, Defendants argued that as a matter of policy and
17 practice, wages were timely paid in connection with termination. Defendants contended that any
18 anecdotal evidence to the contrary constituted a one-off situation but was not indicative of any
19 wide-spread policy or practice.

20 32. Plaintiff also acknowledged that the Labor Code section 203 claim was uncertain given
21 the defenses asserted for the underlying meal and rest break claims and potential lack of evidence
22 of the "willfulness" prong necessary for a Labor Code § 203 claim. Further, California's Second
23 District Court of Appeals in *Naranjo, et al. v. Spectrum Security Services, Inc.* held that unpaid premium
24 wages for meal break violations do not entitle employees to additional remedies under the California
25 Labor Code for inaccurate wage statements or waiting time penalties. Class Counsel recognized these
26 risks of an adverse finding on certification as to these claims.

27 33. Defendants' time keeping records, payroll records, and other relevant data points, were
28 analyzed with the assistance of an expert to come up with a damage model to determine

1 Defendants' exposure.

2 34. Plaintiff's counsel also recognized that class certification was somewhat uncertain
3 given the numerous hurdles that had to be cleared under the California Supreme Court decision in
4 *Brinker Restaurant Corp. v. Superior Court*. Plaintiff also considered Defendants' arguments that
5 subsequent decisions citing and relying on the U.S. Supreme Court decision in *Wal-Mart v. Dukes*,
6 564 U.S. 338 (2011) arguably made it more difficult to certify a class in this case based upon the
7 need to demonstrate that common issues are superior and could be dealt with in "one stroke" and
8 that the "trial by formula" (*Duran v. U.S. Bank* (2014) 59 Cal.4th 1172) could not satisfy such
9 requirements based upon due process grounds. While Plaintiff disagreed that the subsequent
10 decisions citing *Walmart* applied to the facts in this case, Plaintiff acknowledged the associated
11 risks. Additionally, Plaintiff believes the cases denying certification are distinguishable and that
12 the facts in this case are more akin to the facts in cases where certification had been granted.
13 Nevertheless, Class Counsel recognizes the risk of an adverse finding on certification and
14 considered and weighed this risk in determining to settle and compromise these claims. Lastly,
15 Plaintiff believe the decisions in *Sav-On Drug Stores, Inc. v. Sup. Ct.* (2004) 34 Cal. 4th 319, 340
16 and *Bell v. Farmers Ins. Exchange*, (2004) 115 Cal. App. 4th 715 provide the applicable framework
17 for class certification trial by formula plans. See also *Duran v. Superior Court*, 2014 Cal. LEXIS
18 5569 (Cal. Aug. 13, 2014).

19 35. Further, beyond the risk of an adverse ruling on the merits or certification, Class
20 Counsel considered the fact that continued litigation would likely take years and would be
21 extremely expensive given the breadth and complexity of the claims. In this case, post-trial and
22 appellate proceedings are likely to occur, which will surely drag the case far into the future even
23 with a positive trial result. When facing a distant and unsure resolution of the allegations in this
24 action, the swift, sure and substantial Settlement is all the more reasonable. Avoiding such costly
25 litigation in favor of more immediate benefits to the Class was a consideration favoring settlement.
26 Given these realities, it is highly likely that the future expense of this litigation, and its likely
27 duration if the settlement is not approved, would be significant and weigh heavily in favor of
28 approval of this settlement.

1 36. The GSA is well within the acceptable range of reasonableness for the claims of the
2 Participating Class Members. After analysis and review of Defendant's time and pay record
3 production and other payroll data with Plaintiff's expert, Class counsel estimates the overall
4 maximum value of the claims exclusive of PAGA to be approximately \$4.8 million should
5 Plaintiff prevail at the class certification stage and at trial on all claims in their entirety and survive
6 any appeals. Plaintiff estimated the total maximum liability including PAGA (at \$100 for a single
7 violation throughout the PAGA period) to be approximately \$5.38 million. As of the time of the
8 mediation, there were an estimated 24,797 workweeks and 13,324 pay periods during the class
9 period, approximately 110,353 shifts, and approximately 5,365 pay periods during the PAGA
10 Period. Based upon the expert review of the wages paid and records provided, the value of the
11 failure to pay wages including overtime claim due to failure to pay the correct regular rate was
12 \$74,755. Assuming a 100% violation rate on shifts over 3.5 hours, Defendants owe class
13 members in premium wages \$2,274,748 for missed rest periods (\$21.41 avg. regular rate x
14 106,247 eligible shifts). Plaintiff further estimated Defendants owe class members in premium
15 wages \$1,258,351.34 for missed meal periods (\$21.41 avg. regular rate x 58,774 violations).
16 Defendants owe to class members \$430,850 in wage statement violations. Defendants owe to
17 class members \$802,618.08 in waiting time penalties (142 employees x 8.8 hours per day x 30
18 days x \$21.41 avg hourly rate). Plaintiff also estimated that assuming one violation at \$100 per
19 pay period Defendants owe to class members \$536,500 in PAGA penalties (5,365 pay periods x
20 \$100). If PAGA penalties were stacked and subsequent violation rates applied, Plaintiff estimated
21 the overall maximum value of the PAGA claims (including LC 226.3) to be approximately \$7.4
22 million at \$100/\$200 and \$250/\$1000 for LC 226.3.

23 37. Based on these figures, taking into account the risks associated with continued
24 litigation and certification, Defendant's defenses, and differences in the Parties' estimates of
25 violation rates, Plaintiff estimated that the total realistic liability for the crux of Plaintiff's claims
26 was approximately \$1.34 million. Thus, the \$500,000 million settlement is approximately 37.3%
27 of the realistic liability. Thus, I respectfully submit that the settlement is well within the ballpark
28 of reasonableness.

1 38. As a result, the GSA of 500,000 represents a reasonable recovery. The proposed GSA
2 is within the “ballpark of reasonableness” and should be approved. Counsel for Plaintiff believe
3 that this is a fair and reasonable Settlement in light of the complexities of the case, the state of the
4 law and uncertainties of class certification and litigation, the policies and practices Defendants has
5 had in place or implemented during the purported liability period, and the benefit to be recovered
6 for the Class. Given the risks inherent in litigation, this settlement is fair, adequate, and reasonable
7 and is in the best interests of the Settlement Class, and should be preliminarily approved.

8 39. Based on the estimated Net Settlement Amount of \$246,500 (\$12,500 of which is
9 allocated to Individual PAGA payments), provides on average each Settlement Class Member
10 with approximately \$904.41 per Class Member (\$246,500/272). The lowest amount a Settlement
11 Class Member will receive is \$9.94 and the highest amount a Settlement Class Member will
12 receive is approximately \$3,041.64 (approximately 306 workweeks). To the extent any amount for
13 Attorneys’ Fees, Costs, Settlement Administration Costs or Incentive Awards are not awarded, the
14 difference in those amounts will be added to the NSA. This is a guaranteed amount of money paid
15 to Participating Class Members now, rather than the continued risk of further litigation and
16 receiving no money sometime in the far future and after trial and appeals.

17 40. The Class Representative has provided extensive supporting documents and
18 assisted Class Counsel in developing information necessary to litigate and settle this case. Plaintiff
19 also conducted record review and consultation with counsel in preparation for discovery and
20 eventual mediation, and to assist in evaluating and proving the claims. The settlement provides for
21 an Incentive Payment to be paid to the Class Representative in the amount of \$7,500 subject to
22 Court approval. The purpose is to compensate the Class Representative an additional enhanced
23 incentive payment, taking into consideration the risks, time, effort and expenses incurred in
24 coming forward to provide invaluable information and negotiate and litigate this matter on behalf
25 of all Participating Class Members who otherwise, would probably not file their own individual
26 claims to recover what may be relatively low damages. Further, the Incentive Payment of
27 \$7,500.00 as an Incentive award to the Class Representative is a very fair and justified as part of
28 the Settlement based on the risks Plaintiff has taken and benefits conferred upon the Settlement

1 Class. I respectfully submit that the Incentive Award is fair and reasonable compensation for
2 Plaintiff's effort in pursuing the action, assisting counsel with the litigation and settlement,
3 regularly conferring with counsel on the status of their case and the strategies for prosecuting the
4 claims, and reviewing the proposed settlement to ensure that its terms are fair and provide
5 adequate relief for the Class.

6 41. Class certification, as requested by the Parties for the purposes of the settlement
7 only, should be granted because Plaintiff allege that the proposed Participating Class Members'
8 claims all stem from the same alleged conduct, i.e., that Defendants violated California law as a
9 matter of policy and practice because they: (1) failed to pay minimum wages; (2) failed to pay
10 overtime wages; (3) failed to provide meal periods; (4) failed to permit rest breaks; (5) failed to
11 provide accurate itemized wage statements; (6) failed to pay all wages due within the required
12 time and upon separation of employment; and (7) engaged in a violation of Business and
13 Professions Code §§ 17200, *et seq.* In addition to compensatory damages and penalties, Plaintiff
14 and the Class seek restitution, attorneys' fees, costs, and interest. Accordingly, Plaintiff's interests
15 are entirely coextensive with the interests of the Class. Plaintiff maintains that Plaintiff was
16 injured by the same company-wide practices to which the proposed Settlement Class was subject
17 and seek the same relief. Under these specific circumstances, the commonality requirement for
18 class certification is satisfied. The typicality requirement for certification is also met as it is
19 alleged that the Class Representatives and the proposed Settlement Class were subjected to similar
20 violations based upon similar conduct, policies and practices.

21 42. The adequacy requirement for certification is also met. The Class Representative
22 and Class Counsel have prosecuted this action vigorously on behalf of the Settlement Class. The
23 Class Representative will receive a reasonable award for the time and effort spent assisting Class
24 counsel with factual issues surrounding the case. Other than this specific payment to the Class
25 Representative, all of the Participating Class Members will receive a proportionate share of the
26 NSA, as detailed above provided they do not exclude themselves. Further, all Aggrieved
27 Employees during the PAGA Period will receive their pro rata share of the 25% of the PAGA
28 Allocation for distribution to the Aggrieved Employees. As a result, there is no conflict of interest

1 between the Class Representative and the Participating Class Members. Further, the NSA will be
2 fairly distributed among Participating Class Members, and no “settlement allocation” questions
3 will be raised.

4 43. Common questions of law and fact predominate over individual questions and
5 class-wide treatment of this dispute is superior to individual litigation. Plaintiff alleges that the
6 proposed Settlement Class in this case is sufficiently cohesive, since all Participating Class
7 Members share a common nucleus of facts and potential legal remedies, and since all of the
8 Participating Class Members and the Class Representative seek compensation for unpaid wages
9 and premiums, and other civil and statutory penalties from Defendants for the allegations
10 described in the Complaints. Moreover, the California statutes relating to each of Plaintiff’s
11 claims, and Airgas’ defenses thereto, apply with equal force and effect to all Class Members.
12 Factually, Plaintiff contends that Defendant’s policies and practices apply class-wide and
13 Defendant’s liability can be determined by facts common to all members of the class. Members.
14 By way of example, common questions about compensation or lack thereof for work performed by
15 Participating Class Members and the Participating Class Members’ potential legal remedies are
16 identical. The alternative method of resolution is individual claims for relatively small amounts of
17 damages, but individual cases would be uneconomical for potential plaintiffs because the cost of
18 litigation dwarfs potential recovery. The wage and hour issues are both numerous and substantial.
19 Therefore, a class action is the preferred method of resolution.

20 44. The class notice plan here calls for the Settlement Administrator, CPT Group, Inc..
21 to mail a Notice of Proposed Class Action Settlement to all known and reasonably ascertainable
22 Participating Class Members based on Defendant’ records. Further, the Settlement Administrator
23 will conduct a skip-trace and use all reasonable efforts to locate Participating Class Members and
24 will re-mail all returned envelopes with forwarding addresses. The notice is consistent with the
25 class certification notices approved by numerous state and federal courts, and is the best notice
26 practicable under circumstances of this case. The proposed Participating Class Members are
27 ascertainable because all of the Participating Class Members have worked for Defendants during
28 the Class Period and can be identified through Defendants’ records. To the best of my knowledge,

1 neither party or its counsel owns or is affiliated with CPT.

2 45. The Notice also fulfills the neutrality requirement. It summarizes the proceedings
3 to date and the terms and conditions of the Settlement in an informative and coherent manner, and
4 is accurate, objective, and understandable to Participating Class Members, as is required under
5 prevailing precedent. The Notice clearly states the Settlement does not constitute an admission of
6 liability by Defendants and recognizes the Court has not ruled on the merits. It also states the final
7 settlement approval decision has yet to be made. The Notice also clearly instructs the Participating
8 Class Members on how to object or exclude themselves from the Settlement. Therefore,
9 Participating Class Members will have the option to participate or exclude themselves simply by
10 following the instructions in the notice. The Settlement Class consists of primarily of non-exempt
11 employees who speak English. Thus, the Notice of Class Action Settlement is drafted in a manner
12 that is likely to be readily understood by the Settlement Class. Accordingly, the Notice complies
13 with the standards of fairness, completeness and neutrality required of a Notice of Class Action
14 Settlement. The Notice therefore is neutral, objective and understandable.

15 46. I have a great deal of experience in wage and hour class action litigation. I have
16 obtained certification of numerous classes. I have also been approved as class counsel in many
17 other wage/hour class actions, and I am currently litigating numerous others. Although not an all-
18 inclusive list, over the years I have prosecuted the following class action matters as lead and/or co-
19 lead counsel, all of which implicated similar law and facts to those associated with this action:

20 a. *Aguilar v. 7-Eleven, Inc., et. al.*, Orange County Superior Court- Case No.: 30-
21 2009-00268714-CU-OE-CXC. Certified Wage and Hour Class action seeking premium
22 wages for meal period and rest periods and resultant penalties. Class
23 Notice pending.

24 b. *Carey, et. al. v. Arthur J. Gallagher, et. al.*, USDC, SOUTHERN DISTRICT- Case
25 No.: 09-cv-0168. Wage and Hour Class action seeking past wages of overtime for mis-
26 classification of insurance claims adjusters employed by Gallagher Bassett, a third
27 party administrator (TPA) in the State of California. Certification granted. Plaintiffs'
28 counsel co-lead counsel. Case settled, Final Approval granted, no objections and funds

1 fully distributed.

2 c. *Dao v. 3M Company*, et al. USDC, CENTRAL DISTRICT, Case No. CV-08-
3 04554. Wage and Hour Class Action case seeking past wages for “off the clock”,
4 overtime and meal and rest break violations for production workers in the State of
5 California. Plaintiffs’ Counsel appointed as Lead Counsel. Case settled, Final Approval
6 granted, no objections and funds fully distributed.

7 d. *Ortiz v. Kmart*, USDC, CENTRAL DISTRICT, Case No. SACV 06-638 ODW.
8 Wage and Hour Class Action case seeking past wages for meal and rest period
9 violations for non-exempt employees in the State of California. Plaintiffs’ counsel
10 appointed co-lead counsel. Case settled, Final Approval granted, no objections and
11 funds fully distributed.

12 e. *Morgan v. Aramark Campus*, LLC, USDC, CENTRAL DISTRICT, Case No.
13 SACV08-00412. Wage and Hour Class Action case seeking past wages for meal and
14 rest period violations for non-exempt employees in the State of California. Plaintiffs’
15 Counsel appointed as Lead Counsel. Case settled, Final Approval granted, no
16 objections and funds fully distributed.

17 f. *West v Iron Mountain Information Management, Inc, et. al.*; Los Angeles County
18 Superior Court, Case No. BC393709. Wage and Hour Class Action seeking past wages
19 for overtime, meal and rest break violations for driver employees in the State of
20 California. Settlement for “binding arbitration.” Arbitration Award for Plaintiff Class.
21 Arbitration Award confirmed. Plaintiffs’ counsel, lead trial counsel and class counsel.

22 g. *Gonzalez v. Superior Industries Inter, Inc., et al.*, Los Angeles County Superior
23 Court, Case No. BC 357912. Wage and Hour Class Action seeking past wages for
24 overtime, meal and rest breaks violations for production employees in the State of
25 California. Plaintiffs’ counsel appointed as lead counsel. Case settled, Final Approval
26 granted, no objections and funds fully distributed.

27 h. *Acosta v. Fleetwood Travel Trailers of California, Inc.*, et al., Riverside County
28 Superior Court, Case No. RIC 440630. Wage and Hour Class Action seeking past

1 wages for overtime, meal and rest break violations for production employees in the
2 State of California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
3 Approval granted, no objections and funds fully distributed.

4 i. *Walker v. Sharkeez, et al.*, Orange County Superior Court, Case No. 05CC00293.
5 Wage and Hour Class Action seeking past wages for unlawful deductions, meal and
6 rest break violations for restaurant employees in the State of California. Plaintiffs'
7 counsel appointed as lead counsel. Case settled, Final Approval granted and funds fully
8 distributed.

9 j. *Padron v. Universal Protection Service, et al*, Orange County Superior Court, Case
10 No. 05CC00013. Wage and Hour Class Action seeking past wages for overtime, meal
11 and rest break violations for security officers in the State of California. Plaintiffs'
12 counsel appointed as co-lead counsel. Case settled, Final Approval granted, no
13 objections and funds fully distributed.

14 k. *Martinez v. Securitas Security Services USA, et al.*, Santa Clara Superior Court,
15 Case No. 105-CV047499, et al. J.C.C.P. No. 4460. Wage and Hour Class Action
16 seeking past wages for meal and rest break violations for security officers employed by
17 Defendants in the State of California. Plaintiffs' counsel and co-counsel. Case settled,
18 Final Approval granted and funds fully distributed.

19 l. *Velasquez-Lopez v. Hotel Cleaning Services, Inc. et al.*, Riverside Superior Court,
20 Case No. RIC 420909. Wage and Hour Class Action seeking past wages for overtime,
21 meal and rest break violations for housekeepers employed by Defendants in the State
22 of California. Plaintiffs' counsel appointed as lead counsel. Case settled, Final
23 Approval granted, no objections and funds fully distributed.

24 m. *Ruiz, et al. v. Unisourse Worldwide, Inc., et al.*, USDC, CENTRAL DISTRICT,
25 Case No. CV09-05848. Wage and Hour Class Action seeking past wages for meal and
26 rest period violations for non-exempt employees employed by Defendants in the state
27 of California. Case settled. Awaiting Preliminary Approval hearing. Plaintiff has
28 petitioned the Court for Lead Counsel.

1 n. *Herrador v. Culligan International Company, et al.*, USDC, CENTRAL
2 DISTRICT, Case No. SACV 08-680. Wage and Hour Class Action seeking past wages
3 for field and branch employees of Defendants in the State of California. Plaintiffs'
4 counsel appointed as lead counsel. Case settled and awaiting Final Approval.

5 o. *Defries v. Domain Restaurants, et al.*, Orange County Superior Court, Case No.
6 05CC00128. Wage and Hour Class Action seeking past wages for restaurant
7 employees of Defendants in the State of California. Plaintiffs' counsel appointed as
8 lead counsel. Case settled, Final Approval granted, no objections and funds fully
9 distributed.

10 p. *Denton v. BLB Enterprises, Inc., et al.*, Orange County Superior Court, Case No.
11 07CC01292. Wage and Hour Class Action seeking unpaid overtime, meal and rest
12 break violations for security guards employed by Defendants in the State of California.
13 Plaintiffs' counsel appointed as lead counsel. Case settled, Final Approval granted, no
14 objections and funds fully distributed.

15 q. *Rios v. Sandberg Furniture Manufacturing Co., Inc, et al.*, Los Angeles Superior
16 Court, Case No. BC411477. Wage and Hour Class Action seeking unpaid meal and
17 rest break violations for production employees employed by Defendants in the State of
18 California. Plaintiff counsel appointed as lead counsel. Case settled, Final Approval
19 granted, no objections and funds fully distributed.

20 r. *McMurray v. Dave and Busters, Inc.*, et al., Orange County Superior Court, Case
21 No. 06CC00099. Wage and Hour Class Action seeking past wages for meal and rest
22 break violations for restaurant employees employed by Defendants in the State of
23 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final
24 Approval granted, no objections and funds fully distributed.

25 s. *Osuna v. DFG Restaurants, Inc.*, et al., Los Angeles Superior Court, Case No. BC
26 330145. Wage and Hour Class Action seeking past wages of overtime for mis-
27 classification of managers employed by Defendant, DBA Carl's Jrs. in the State of
28 California. Plaintiffs' counsel appointed as co-lead counsel. Case settled, Final

1 Approval granted, no objections and funds fully distributed.

2 t. *Burns v. Gymboree Operations, Inc.*, et al., San Francisco Superior Court, Case No.
3 CGC-07-461612. Wage and Hour Class Action seeking past wages for meal and rest
4 break violations for non-exempt employees employed by Defendants in the State of
5 California. Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval
6 granted, no objections and funds fully distributed.

7 u. *Willems v. Diedrich Coffee, Inc.*, et al., Orange County Superior Court, Case No.
8 07CC00015. Wage and Hour Class Action seeking past wages of overtime for mis-
9 classification of managers employed by Defendants in the State of California.
10 Plaintiffs' counsel appointed lead counsel. Case settled, Final Approval granted, no
11 objections and funds fully distributed.

12 v. *Davila, et al. v. Beckman Coulter, Inc.*, et al., Orange County Superior Court, Case
13 No. 07CC01347. Wage and Hour Class Action seeking past wages for overtime, meal
14 and rest break violations for production workers employed by Defendants in the State
15 of California. Plaintiffs' counsel appointed lead counsel. Case settled; final approval
16 granted; no objections and funds fully distributed.

17 w. *Perez v. Naked Juice Company of Glendora, Inc.*, Los Angeles Superior Court,
18 Case No. BC387088. Wage and Hour Class Action seeking past wages for overtime,
19 meal and rest period violations for production employees employed by Defendants in
20 the State of California. Plaintiff counsel appointed as lead counsel. Case settled, Final
21 Approval granted, no objections and funds fully distributed.

22 47. Here, the Parties' agreement to pay Class Counsel Fees of 33.3% (estimated up to
23 \$166,500) of the GSA is reasonable. My firm and I have been the only counsel to represent
24 Plaintiff the Settlement Class in this matter, and we have borne the entire risk and cost of this
25 litigation on a pure contingency fee basis. The legal issues raised drew significantly upon our
26 experience and the extensive review and analysis of documents and information by me and others
27 at my firm. In a complex action such as this, the proposed attorneys' fees are, at the very least, on
28 the low side of the market rate for contingency fees as we have invested numerous hours and costs

1 into the litigation of this matter.

2 48. Additional hours will be required due to the administration of the Settlement by Class
3 Counsel, administration of the Settlement, and preparation for final approval, the attorneys' fees
4 exceed the requested amounts. To the extent the Court would like to receive detail regarding the
5 hours our firm has invested in this matter as Class Counsel, we will provide this information to the
6 Court in advance of the final approval hearing. Plaintiff's counsel will file a motion for attorneys'
7 fees and costs to be heard concurrently with the motion for final approval in accordance with the
8 terms of the settlement agreement.

9 49. Despite the complexity of the case, Class Counsel has, through the investment of
10 substantial effort and the resources of my law firm been able to secure an outstanding settlement
11 on behalf of the Settlement Class. Plaintiff would have faced substantial legal and factual
12 obstacles in demonstrating that class certification was appropriate. Plaintiff would also have been
13 required to establish a significant amount of witness testimony, pattern and practice evidence,
14 statistical evidence, sampling evidence, expert testimony, and other evidence in order to present
15 their case both at the class certification stage and trial. Defendants vigorously contested liability,
16 the amount of claimed damages, and the propriety of class certification, and would have continued
17 to do so through trial. Accordingly, I believe the Settlement to be fair, reasonable, and adequate
18 and in the best interests of the Settlement Class. The fairness and adequacy of the Settlement is
19 confirmed by all known facts and circumstances, including the risk of significant delay and
20 uncertainty associated with litigation, the various defenses asserted by Defendant, and numerous
21 potential appellate issues.

22 I declare under penalty of perjury that the foregoing is true and correct. Executed on March 21,
23 2022 at Irvine, California.

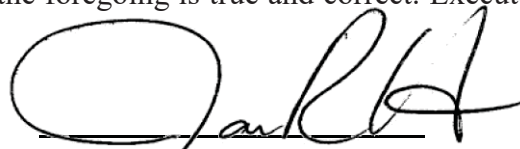
24 
25 James R. Hawkins
26
27
28

EXHIBIT 1

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15 Attorneys for Defendant
16 AIRGAS USA, LLC

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19
20 COUNTY OF LOS ANGELES

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

23 Plaintiff,

24 v.

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

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

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

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

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

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

CONSENT TO RELEASE FLSA CLAIMS

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

- b. Within thirty (30) calendar days of the Effective Date, the Settlement Administrator will also issue a payment to itself for Court-approved services performed in connection with the Settlement. Also within thirty (30) calendar days of the Effective Date, the Settlement Administrator shall provide to the Parties, for filing with the Court, a declaration verifying, under oath, that it has mailed payments to 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
28

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
28

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.
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Four Embarcadero Center
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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

- 27 -

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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.

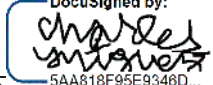
107. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement Agreement, and further intend that this Settlement Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible and subject to disclosure in any 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

EXHIBIT 2

THIS IS AN IMPORTANT COURT-APPROVED NOTICE. READ CAREFULLY.

Yniguez v. Airgas USA, LLC, et al.
Los Angeles Superior Court - Case No. 20STCV18190

IF YOU WERE EMPLOYED AS A NON-EXEMPT/HOURLY-PAID EMPLOYEE IN THE DRY ICE DIVISION OF AIRGAS USA, LLC AND/OR AIRGAS CARBONIC, INC., A CLASS ACTION LAWSUIT MAY AFFECT YOUR RIGHTS.

This is a court-authorized notice. It is not a solicitation from a lawyer.

- You have been identified as a Class Member in a lawsuit brought by a former employee of Airgas USA, LLC (“Airgas”) and Airgas Carbonic, Inc. (“Airgas Carbonic”).
- The lawsuit alleges that Airgas and Airgas Carbonic failed to properly pay non-exempt employees in their Dry Ice Division for all hours worked (including overtime), failed to provide compliant meal periods and rest breaks, failed to timely pay wages owed upon separation, and failed to issue accurate itemized wage statements. The lawsuit also seeks penalties under the Private Attorney General Act, Labor Code section 2698 et. seq. Airgas maintains that it and Airgas Carbonic complied with California law, and that, in settling the lawsuit, they do not admit any of the allegations.
- The Court has preliminarily approved a class action settlement with Airgas (the “Settlement”), which will affect all individuals who were employed by Airgas and/or Airgas Carbonic as non-exempt/hourly employees in their Dry Ice Division at any time between May 8, 2016 and the Date of Preliminary Approval.
- If the Court grants final approval of the Settlement, there will be money available to you.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	You do not need to do anything to participate in the Settlement. By doing nothing, you become part of the Class and will collect a settlement award as detailed below. But, you give up certain rights to sue Airgas separately.
EXCLUDE YOURSELF FROM THE SETTLEMENT	If you ask to be excluded from the Settlement, you won’t receive any settlement award. But, you keep any rights to sue Airgas separately.
OBJECT TO THE SETTLEMENT	If you wish to object to the Settlement, there are instructions below. If you object to the Settlement, you will remain a member of the Class, and if the Court approves the Settlement, you will be bound by

	the terms of the Settlement in the same way as Class Members who do not object.
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- **Regardless of the option you choose, you will not be retaliated against for exercising your rights.**
- Your options are explained in this Notice. To object to the Settlement or to ask to be excluded, you must act before [RESPONSE DEADLINE], 2022.
- **Any questions?** Read on or contact Class Counsel or the Settlement Administrator listed below.

BASIC INFORMATION

1. Why did I get this notice?

Airgas’ payroll records show that you currently work or previously worked for Airgas and/or Airgas Carbonic as a non-exempt/hourly-paid employee in their Dry Ice Division. This Notice explains that the Court has given preliminary approval to a settlement in a conditionally certified class action lawsuit that may affect you. You received this Notice because you have a right to know about the proposed Settlement of this lawsuit and about your rights and options before the Court decides whether to grant final approval of the Settlement. You have the right to participate in the Settlement and receive a cash payment from the settlement funds available. You also have the right to exclude yourself from this Settlement and seek to preserve your own rights to file a separate lawsuit on your own behalf. Lastly, you have the right to object to the terms of this Settlement or any part of it.

Judge Elihu M. Berle of the Superior Court of the State of California, County of Los Angeles, is overseeing this class action. The lawsuit is known as *Yniguez v. Airgas USA, LLC, et al.*, Case No. 20STCV18190.

2. What is this lawsuit about?

This lawsuit was filed by a former employee of Airgas and Airgas Carbonic named Charles Yniguez (“Plaintiff”). This lawsuit is about whether Airgas and/or Airgas Carbonic properly compensated non-exempt employees in their Dry Ice Divisions for all hours worked (including overtime), provided proper meal periods and rest periods, timely paid all wages owed upon termination of employment, and/or provided proper wage statements. In addition, Plaintiff alleged claims for interest, penalties, costs and/or attorneys’ fees that are derivative of the claims described above. Plaintiff brought his lawsuit on behalf of himself and also sought to bring it on behalf of a Class consisting of all nonexempt/hourly employees employed by Airgas and/or Airgas Carbonic in their Dry Ice Division at any time between May 8, 2016 and the Date of Preliminary Approval. Based on Airgas’ records, you are among the individuals included in the Class that Plaintiff sought to represent.

Throughout the litigation, Airgas has denied—and continues to deny—the factual and legal allegations in the case and has maintained that it has valid defenses to the claims. Airgas denies any wrongdoing

and asserts that its and Airgas Carbonic's practices at all times complied with the law. However, Airgas has voluntarily agreed to the terms of a negotiated settlement, without any admission of fault, in order to avoid the burden and expense of further litigation.

3. What is a class action?

In a class action lawsuit such as this, persons called "Class Representatives" sue on behalf of other people who may have similar claims as part of a single lawsuit. The people together are a "Class" or "Class Members." In this lawsuit, Plaintiff (Mr. Yniguez) is the Class Representative. The companies sued are called the Defendants (Airgas and Airgas Carbonic). The court resolves the issues for everyone in the Class—except for those people who choose to exclude themselves from the Class.

4. Why is there a settlement?

Both Plaintiff and Airgas (collectively, the "Parties") believe that the Settlement is fair, reasonable, and in the best interest of the Class Members. The Court has not decided in favor of Plaintiff or Airgas with regard to the claims alleged by Plaintiff in the lawsuit. Instead of the significant expense of time and resources that it would take to continue litigating the claims, including the burden associated with attempting to bring these claims to trial and disputes over class certification, both sides agreed to a settlement. By agreeing to the settlement, they avoid the costs, distractions, and risks inherent in any litigation, and Class Members, such as you, can get compensation.

The Parties conducted extensive investigation and discovery into the facts and issues in the lawsuit and, through their attorneys, participated in lengthy negotiations and analysis, including an all-day mediation with a prominent mediator of wage and hour class actions. The Settlement represents what the Parties believe to be a fair compromise of the disputed claims in this lawsuit.

5. Why is this lawsuit a class action?

As part of the Settlement, the Parties agreed to conditionally certify the Class with respect to all of the claims Plaintiff alleged against Airgas as a class action, for settlement purposes only, and to move towards Court approval of the Settlement. The Court has not ruled on the merits of these claims, and the decision to certify the agreed upon Class for settlement purposes should not be viewed as a prediction that Plaintiff or the Class would ultimately prevail on the merits of the action.

Before any payments are issued pursuant to this Settlement, the Court must approve the Settlement and issue a Judgment. The Court will make a final determination on the Settlement (*i.e.*, decide whether to approve it) at the Final Approval/Settlement Fairness Hearing, discussed in Section 17 below.

6. What are the terms of the Settlement?

In exchange for a release of all claims that were alleged in the lawsuit by all Class Members, Airgas agreed to pay a gross total of \$500,000.00 to fully settle this lawsuit. This amount is called the "Gross Settlement Amount."

Out of the Gross Settlement Amount, Plaintiff will ask the Court to approve a class representative Incentive Payment of up to \$7,500.00 for his efforts in prosecuting the lawsuit. Class Counsel will ask for an award of 33.33% of the Gross Settlement Amount (*i.e.*, \$166,500.00) for their attorneys' fees and reimbursement of costs and expenses incurred in this case (estimated up to \$27,000). Plaintiff will also ask the Court to award up to \$15,000 from the Gross Settlement Amount to the Claims Administrator, to pay for the cost of administering this Settlement (*i.e.*, mailing this Notice, printing checks, etc.). The Gross Settlement Amount will also include a \$37,500 payment to the California Labor and Workforce Development Agency for penalties allocated to Plaintiff's claims pursuant to the California Labor Code Private Attorneys General Act and payments to some employees pursuant to the California Labor Code Private Attorneys General Act.

The money remaining after the above deductions from the Gross Settlement Amount is called the "Net Settlement Amount." The Net Settlement Amount will be used to issue Individual Settlement Payments to Class Members who do not opt-out of the Settlement (based on the formula below), and to cover the employee-side share of related payroll taxes.

Individual Settlement Payments to Class Members will be calculated as follows:

1. Airgas will calculate the total number of "Qualifying Workweeks" worked by each Class Member during the relevant time period—called the "Class Period." The number of Qualifying Workweeks for each Class Member will be based on the number of days that each Class Member worked according to Airgas' records, divided by seven and rounded up to the nearest whole number. Each Class Member will be credited with at least one Qualifying Workweek. Airgas will also determine the aggregate total number of Qualifying Workweeks for the entire Class.
2. To determine each Class Member's estimated Individual Settlement Payment, the Settlement Administrator will divide the Net Settlement Amount by the aggregate total number of Qualifying Workweeks for the entire Class, which will result in the "Workweek Value." Each Class Member's Individual Settlement Payment will be calculated by multiplying each Class Member's total number of Qualifying Workweeks by the Workweek Value.
3. The Individual Settlement Payments will be reduced by any authorized or required deductions, including employee-side tax withholdings/deductions.

The entire Net Settlement Amount will be disbursed to Class Members who do not timely request to be excluded. Your estimated Individual Settlement Payment is listed in Section 8 of this Notice.

Each Individual Settlement Payment will represent wages and penalties allocated using the following formula: 30% allocated to wages; 70% allocated to liquidated damages, penalties, and interest. Unless you do not participate in the Settlement, you will receive IRS Forms W-2 and 1099 for these payments from the Settlement Administrator.

WHO IS IN THE CLASS?

7. Am I part of this Class?

The Class includes: All individuals who were employed by Airgas and/or Airgas Carbonic in California as non-exempt/hourly employees in their Dry Ice Division at any time(s) between May 8, 2016 through **the Date of Preliminary Approval** (the “Class Period”).

If you worked for Airgas and/or Airgas Carbonic as a non-exempt/hourly employee in their Dry Ice Division at any time during the Class Period, you are a part of the Class – *i.e.*, you are a Class Member.

8. I’m still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting **[INSERT]**, the Settlement Administrator, at the designated phone number for this matter at **[INSERT]**, or by calling or writing the lawyers representing the Class in this case, at the phone number or address listed in Section 19 below.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class or ask to be excluded from the Settlement, as well as whether you want to object to the Settlement. You have to decide these issues by no later than **[RESPONSE DEADLINE]**, because additional steps may be required, depending on what you decide.

9. What is my approximate settlement payment?

According to payroll records maintained by Airgas, the total number of days you worked for Airgas and/or Airgas Carbonic as a non-exempt/hourly employee in their Dry Ice Division during the Class Period is ____; this means that you would be credited with ____ Qualifying Workweeks, based on the formula described in Section 6 above.

Based on information provided above and anticipated court-approved deductions, it is estimated your personal share of the Net Settlement Amount proceeds will be \$_____, less applicable taxes and withholdings.

You do not need to do anything further to receive your Individual Settlement Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you.

Individual Settlement Payment checks returned as undeliverable and all Individual Settlement Payment Checks uncashed 180 days after issuance will be void. The funds from any voided checks will be distributed as to the State of California, Department of the Controller, Unclaimed Property Fund, in the name(s) of the corresponding Class Member(s).

Disputing Your Payment Amount

If you believe your total days worked during the Class Period shown above is not correct, you may send a letter to the Settlement Administrator indicating what you believe is correct. You should also send any documents or other information that support your belief that the information set forth above is incorrect. The Settlement Administrator will resolve any dispute based upon Airgas’ records and any information you provide. Any dispute must be mailed to the Settlement Administrator no later than **[DATE]**.

10. What rights am I releasing if I participate in the Settlement?

If you do not exclude yourself from the Settlement pursuant to the procedures outlined herein (by the deadline), you will release all claims, rights, demands, liabilities, and causes of action which accrued during the period from May 8, 2016 to **the Date of Preliminary Approval** 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 (Cal. Lab. Code §§ 226.7, 512(a)); (iii) claims for short, missed, untimely or otherwise non-compliant 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.*) (“Released Claims”). Each Class Member who endorses and deposits his or her settlement check is also releasing all claims under the Fair Labor Standards Act that are alleged, related to, or that reasonably could have arisen under the facts alleged in the First Amended Complaint filed by Plaintiff.

The release waives and releases all claims against 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 (collectively, the “Released Parties”).

You will release these Released Claims through the end of the Class Period. Your release is included in the Settlement Agreement negotiated by Plaintiff and Airgas, and you will re-affirm the release when you cash or deposit (or otherwise negotiate) your settlement check.

10. How do I object to the settlement?

If you are a member of the Class and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt-out). Also, no later than **[DATE]**, you must fax or mail a written Notice of Objection to the Settlement Administrator (at the address in Section 16 below).

The Notice of Objection must include: (i) your full name, date of birth, signature, address, telephone number and the approximate dates of your employment at Airgas and/or Airgas Carbonic in California; (ii) a written statement of all grounds for the objection accompanied by any legal support for such objection; (iii) copies of any papers, briefs, or other documents upon which your objection is based; and (iv) a statement describing whether you intend to appear at the Final Approval/Settlement Fairness Hearing. You may also choose to attend the Final Approval/Settlement Fairness Hearing to notify the Court of your objection.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Class. If you exclude yourself from the Class—sometimes called “opting-out” of the Class—you won't get any money or benefits from the Settlement. However, you may then be able to sue or continue to sue Airgas and/or Airgas Carbonic for your own claims, if permitted by law. If you exclude yourself, you will not be legally bound by the Court's disposition of this lawsuit.

Airgas may withdraw from this Settlement if more than 20% of the Class Members opt-out (*i.e.*, request to be excluded). If you exclude yourself, you should talk to your own lawyer soon, because any claims you have may be subject to a statute of limitations.

12. How do I ask to be excluded from the Class?

If you are a Class Member and would like to exclude yourself from the Settlement, you need to submit a written statement requesting exclusion from the Class called a “Request for Exclusion.” To be valid, the Request for Exclusion must: (i) set forth your full name, address, telephone number, and last four digits of your Social Security number; (ii) be signed by you; (iii) be returned to the Settlement Administrator by fax or by U.S. Mail to the address in Section 16 below; (iv) state **“I wish to opt-out from this Settlement”**; and (v) be faxed or postmarked on or before [RESPONSE DEADLINE]. The date of the fax transmission receipt or postmark on the mailing envelope shall be the exclusive means used to determine whether a mailed Request for Exclusion has been timely submitted.

Any Class Member who opts out of the Class will not be entitled to any recovery under the Settlement and will not be bound by the Settlement or have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely Request for Exclusion on or before [RESPONSE DEADLINE] will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Settlement is approved by the Court.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court decided that the law firm James Hawkins APLC is qualified to represent you and all Class Members. The law firm is called “Class Counsel” in the context of this case. The law firm’s attorneys are experienced in handling similar cases against other employers. Class Counsel’s contact information is contained in Section 19 below.

Class Counsel has investigated and researched the facts and circumstances in this case and the applicable law, and believes the Settlement is fair, adequate, reasonable, and in the best interests of the Class Members.

14. How will the lawyers be paid?

As part of the Settlement with Airgas, Class Counsel has requested 33.3% of the Gross Settlement Amount (*i.e.*, \$166,500.00) in attorneys’ fees, to be paid from the Gross Settlement Amount to

compensate Class Counsel for their work on this matter. Class Counsel will also request reimbursement for the costs and expenses incurred with bringing and litigating this action. It is estimated that such costs may be up to \$27,000. You will not have to pay Class Counsel's fees and costs; they will be paid exclusively from the Gross Settlement Amount.

15. How will the Plaintiff be paid?

As part of the Settlement with Airgas, Class Counsel has requested an enhancement payment of up to \$7,500.00 to be paid to Plaintiff (Mr. Yniguez) for his efforts in this matter during investigation, discovery, mediation and the like, while serving as Class Representative and taking on the burden and risks of litigation.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

16. Who is handling the Settlement Administration process?

[INSERT CLASS ADMINISTRATOR CONTACT INFORMATION]

17. When is the Final Approval/Settlement Fairness Hearing and do I have to attend?

The Final Approval/Settlement Fairness Hearing has been set for [DATE] at [TIME] in Department 6 of the Superior Court of the State of California, County of Los Angeles, located at 312 North Spring Street, Los Angeles, California 90012.

You are not required to attend the hearing to be a part of the Settlement, but you are welcome to do so. If you wish to object to the Settlement, you may appear at the hearing to object.

Please note that the hearing may be continued without further written notice to the Class. For further information about the hearing, you may consult the Court's online Case Summary, by visiting <http://www.lacourt.org/casesummary/ui/index.aspx?casetype=civil>.

18. When will I get money after the hearing?

Your Individual Settlement Payment from the Net Settlement Amount will be paid within approximately 100 days after the Court grants Final Approval of the Settlement, or, if there is any objection to the Settlement that is not withdrawn or if an appeal is filed, then after all rights to appeal are exhausted (assuming Court approval stands).

GETTING MORE INFORMATION

19. Are more details available?

This Notice is only a summary of the case and the Settlement. For more detailed information, you may refer to the pleadings, the operative settlement agreement (titled "Joint Stipulation of Class and Representative Action Settlement"), and the other papers filed in the case. You may access these documents by visiting the office of the Clerk of the Court for the Superior Court of California, County

of Los Angeles, Spring Street Courthouse, located at 312 North Spring Street, Room 255, Los Angeles, California 90012. The Clerk's Office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except court holidays.

In addition, you may contact the Settlement Administrator:

[INSERT]

You may also contact Class Counsel with any questions or to request to see documents:

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
<https://www.jameshawkinsaplc.com/>

PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT, OR TO ANY OF AIRGAS' MANAGERS, SUPERVISORS, OR AIRGAS' ATTORNEYS WITH QUESTIONS.