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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES—SPRING STREET COURTHOUSE

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

13 Plaintiff,

14 v.

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

17 Defendants.

Case No. 20STCV18190

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFF’S MOTION FOR
PRELIMINARY APPROVAL OF JOINT
STIPULATION OF CLASS ACTION
SETTLEMENT**

[Notice of Motion; Declaration of James
Hawkins In Support of Motion for
Preliminary Approval of Class Action
Settlement; Declaration of Plaintiff Charles
Yniguez; [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

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to California Rules of Court, Rule 3.769(d) and (e), Plaintiff Charles Yniguez
4 (“Plaintiff”) respectfully requests that the Court grant preliminary approval of the proposed
5 Joint Stipulation of Class Action Settlement (“Settlement Agreement” or “Settlement” or
6 “Stipulation”) with Defendant Airgas USA, LLC (“Defendants” or “Airgas”)(Exhibit 1 to
7 concurrently submitted Declaration of James R. Hawkins (“Hawkins Decl.”).

8 The basic terms of the Settlement Agreement provide for the following:

- 9
- 10 • The Gross Settlement Amount (“GSA”) of \$500,000;
 - 11 • A Total Net Settlement Amount (GSA less Incentive Award for Plaintiff, Attorneys’
12 Fees and Costs to Class Counsel, Settlement Administration Costs, and the LWDA
13 Payment) distributed to Participating Class Members based on Qualifying
14 Workweeks worked during the Class Period of May 8, 2016 through the date of
15 Preliminary Approval; and PAGA payments to Aggrieved Employees during the
16 PAGA Period of May 7, 2019 through the date of Preliminary Approval;
 - 17 • An award of one-third of the GSA (estimated to be \$166,500) in attorneys’ fees and
18 reimbursement of all costs incurred and to be incurred by Class Counsel in the
19 Action and approved by the Court (estimated to be up to \$27,000);
 - 20 • Incentive Award of up to \$7,500 to Plaintiff as Class Representative;
 - 21 • Settlement Administrator Costs up to \$15,000.00 to be paid to CPT Group, Inc.;
 - 22 • The PAGA Allocation of \$50,000.00, with 75% or \$37,500 to be paid to the LWDA
23 (the “LWDA Payment”); and 25% or \$12,500 allocated to the Net Settlement
24 Amount for distribution to Aggrieved Employees.

25 As discussed below, the proposed Settlement satisfies all criteria for preliminary
26 approval under California law and falls well within the range of reasonableness. The Settlement
27 was reached through informed, arms-length bargaining between experienced attorneys after
28 extensive formal and informal discovery. The Settlement was the product of hard-fought
negotiations with the assistance of Michael Dickstein, through a full-day mediation and months
of negotiations following mediation. Accordingly, Plaintiff respectfully requests that the Court

1 grant preliminary approval of the Settlement, approve the proposed Class Notice, conditionally
2 certify the proposed Class for settlement purposes only, appoint Plaintiff as Class
3 Representative, appoint Plaintiff's Counsel as Class Counsel, authorize the Settlement
4 Administrator to send the Notice to the Class Members, and set a final approval hearing date.

5 II. SUMMARY OF THE LITIGATION

6 This is a putative class action lawsuit originally filed by Plaintiff against Defendant
7 Airgas USA, LLC ("Airgas"), as well as Airgas Carbonic, Inc. ("Airgas Carbonic")
8 (collectively, Defendants), and DOES 1 through 20, on May 8, 2020. (Hawkins Decl. ¶ 3.). The
9 action was filed on behalf of all non-exempt employees of Defendants in California within four
10 years prior to the filing of the Complaint to the present and continuing. (Hawkins Decl. ¶ 4.)
11 The initial Complaint alleged causes of action for (1) failure to pay minimum wages; (2) failure
12 to pay overtime wages; (3) failure to provide meal periods; (4) failure to permit rest breaks; (5)
13 failure to provide accurate itemized wage statements; (6) failure to pay all wages due within the
14 required time and upon separation of employment; and (7) violation of Business and Professions
15 Code §§ 17200, *et seq.* (Id. ¶3. The class action complaint also defined a subclass of putative
16 class members who separated their employment from Defendants within three years prior to the
17 filing of the action to the present and continuing. ("Waiting Time Subclass") (Id. ¶4).

18 On May 7, 2020, Plaintiff provided written notice to the California Labor and Workforce
19 Development Agency ("LWDA") and Airgas and Airgas Carbonic, Inc. of their alleged
20 violations of the California Labor Code. (Hawkins Decl. ¶5.).

21 On July 27, 2020, Plaintiff filed a second separate action in Los Angeles Superior Court
22 against Airgas and Airgas Carbonic (Case No. 20 STCV28508) to seek penalties pursuant to
23 PAGA against the two entities. (Hawkins Decl. ¶6.). In that complaint, Plaintiff sought to
24 recover PAGA penalties on behalf of himself and all other alleged "aggrieved employees,"
25 which included all non-exempt, hourly California employees of Airgas and Airgas Carbonic
26 from a year before the date of Plaintiff's PAGA letter to the present and continuing.

27 On September 21, 2020, Airgas and Airgas Carbonic timely answered the class action
28 complaint with a general denial and asserted various affirmative defenses. (Hawkins Decl. ¶ 7.).
On September 30, 2020, Airgas and Airgas Carbonic similarly timely answered the PAGA

1 complaint with a general denial and various affirmative defenses. (Id. at 8.) Shortly thereafter,
2 Airgas filed a motion to consolidate the two actions. (Id.)

3 On November 30, 2020, the Parties stipulated that Plaintiff would dismiss the PAGA-
4 only case, Case No. 20STCV28508, and would amend his class action complaint to add his
5 PAGA claim to the lower-numbered class action. (Hawkins Decl. ¶9).

6 On December 11, 2020, Plaintiff filed a First Amended Complaint (“FAC”) to add an
7 eighth cause of action for civil penalties pursuant to the Private Attorneys General Act of 2004,
8 Labor Code Section 2698, et seq. (“PAGA”) to the class action complaint. (Hawkins Decl. ¶
9 10). The separate PAGA action was dismissed on January 8, 2021. (Id.)

10 Airgas filed an answer to the FAC on or about January 13, 2021. (Hawkins Decl. ¶11).
11 At all times, Airgas denied Plaintiff’s allegations, disputed that it had violated any California
12 laws or regulations at issue, and, further, maintained that Plaintiff’s claims were not appropriate
13 for class or representative adjudication for numerous reasons. (Id. 11-12)

14 On June 14, 2021, the Parties participated in a day-long private mediation with the
15 assistance of Michael Dickstein. The Parties did not settle the case on June 14, 2021. However,
16 with the continuing assistance of Mr. Dickstein for several months, the Parties later reached an
17 agreement regarding a resolution of the Action. (Hawkins Decl. ¶ 13.)

18 Since the filing of the Action and through execution of the Settlement, Class Counsel
19 conducted a thorough investigation into the facts underlying the claims asserted in the First
20 Amended Complaint. (Hawkins Decl. ¶ 14.) Prior to mediation, the Parties engaged in
21 extensive formal and informal exchanges of information and discovery through which Airgas
22 provided data and documents including relevant written wage and hour policies, policy and
23 practice documents, and wage statements and time records for an anonymized and randomly
24 selected group of the putative class members. (Id. ¶¶ 14-18, 23.) The Parties also engaged in
25 numerous lengthy discussions regarding the data exchanged, the Parties’ respective claims and
26 defenses, and the Plaintiff’s claimed damages. The Parties shared damages information with the
27 mediator and each other for purposes of reaching a settlement. Plaintiff also engaged an expert
28 to review the time and pay data produced and assist with the creation of a damages model. (Id.)

III. SUMMARY OF SETTLEMENT TERMS

A. The Proposed Settlement Fully Resolves Plaintiff's Claims

1. Composition of the Settlement Class

Through the discovery, information exchange and settlement negotiation process, the Parties have refined the definition of the Class and Aggrieved Employees whose claims will be resolved by the Settlement. (Hawkins Decl. ¶ 25.). Pursuant to the Settlement Agreement, the “Class” is defined to include all individuals who were employed by Defendant Airgas USA, LLC or Airgas Carbonic, Inc. in California in their Dry Ice Divisions as non-exempt/hourly employees during the “Class Period” of May 8, 2016 to the date of Preliminary Approval (the “Class Member(s) or “Class”). (Ex. 1, Settlement, ¶ 7-8). The “Aggrieved Employees” are defined to include all individuals who were employed by Airgas USA, LLC or Airgas Carbonic, Inc. in California in their Dry Ice Divisions as non-exempt/hourly employees during the “PAGA Period” of May 7, 2019 to the date the Court grants Preliminary Approval. (Ex. 1, Settlement, ¶ 2, 25.). It is estimated that the Class consists of approximately 272 individuals. (Ex. 1, Settlement, ¶ 99.). It was also estimated that at the time of mediation, the Class Period included 24,797 workweeks. (Hawkins Decl. ¶ 25.)

As a term of the Settlement, the Parties have agreed that Plaintiff will file a Second Amended Complaint to amend the definition of the putative class and of the putative aggrieved employees to only include all non-exempt employees of Airgas Carbonic, Inc. and/or Airgas USA, LLC who worked in California in the Dry Ice Division during the relevant time periods above. (Settlement, ¶ 45.)

The Parties request that the Court conditionally certify the Class for purposes of implementing the Settlement. (Settlement, ¶ 46.)

2. Settlement Consideration

Plaintiff and Defendant have agreed to settle the underlying class claims in exchange for the GSA of **\$500,000.00**. The GSA includes: (1) automatic payments from the Total Net Settlement Amount to all Class Members who do not opt out (Settlement, ¶52); (2) attorneys’ fees in the amount of up to **33.33%** of the GSA (estimated to be **\$166,500**) (Settlement, ¶ 3, 48)

1 and reimbursement of all litigation costs and expenses incurred (estimated to be up to
2 **\$27,000.00**) to Class Counsel (“Attorneys’ Fees and Costs”) (Id.); (3) Incentive Award to
3 Plaintiff in the amount of up to **\$7,500.00** (“Incentive Award”); (4) fees and expenses of
4 administration of the Settlement to the Settlement Administrator in an amount not to exceed
5 **\$15,000.00** (“Settlement Administration Costs”); (5) the twenty-five percent (25%) share of the
6 PAGA Payment to be a part of the Total Net Settlement Amount that will be distributed to Class
7 Members in the Aggrieved Employees’ group in the amount of **\$12,500.00**; (6) the seventy-five
8 percent (75%) share of PAGA Payment in the amount of **\$37,500.00** to the California Labor and
9 Workforce Development Agency (“LWDA Payment”); and all other costs associated with the
10 settlement. (Settlement, ¶¶ 15, 48-52.)

11 Subject to the Court approving Attorneys’ Fees and Costs, Settlement Administration
12 costs, the PAGA Allocation, and the Incentive Award, the Total Net Settlement Amount
13 (“NSA”) will be distributed to all Participating Class Members and Aggrieved Employees in
14 full. (Settlement, ¶¶ 36, 52.)

15 **3. Formula for Calculating Payments from the Class and PAGA** 16 **Settlement Amounts**

17 The NSA is estimated to be approximately \$246,500 (\$12,500 of which is allocated to
18 PAGA). Individual Settlement Payments will be calculated and apportioned from the NSA
19 (minus the Individual PAGA Payments) based on the number of Qualifying Workweeks a Class
20 Member worked during the Class Period. (Settlement, ¶¶ 53-54.)

21 For the Class Period, Defendant will calculate the total number of Qualifying
22 Workweeks worked by each Class Member and the aggregate Qualifying Workweeks worked
23 by all Class Members. (Settlement, ¶ 54(a).). “Qualifying Workweeks” are the number of
24 calendar days of employment that each Participating Class Member worked for Defendant
25 and/or Airgas Carbonic during the Class Period, divided by seven (7), and rounding up to the
26 nearest whole number. All Class Members will be credited with at least one Qualifying
27 Workweek. (Settlement, ¶ 29.).
28

1 To determine each Class Member's estimated Individual Settlement Payment from the
2 NSA (not including the Aggrieved Employees' share of the PAGA Allocation), the Settlement
3 Administrator will use the following formula: The NSA (not including the Aggrieved
4 Employees' share of the PAGA Allocation) will be divided by the aggregate total number of
5 Qualifying Workweeks, resulting in the "Workweek Value." Each Class Member's Individual
6 Settlement Payment will be calculated by multiplying each individual Class Member's total
7 number of Qualifying Workweeks by the Workweek Value. (Settlement, ¶ 54(b).).

8 The entire NSA (not including the Individual PAGA Payments) will be disbursed to all
9 Class Members who do not submit timely and valid Requests for Exclusion. There is no need
10 for a Class Member to submit a claim form in order to be eligible for and to receive an
11 Individual Settlement Payment.

12 Class Member Individual Settlement Payments will be reduced by any required
13 deductions for each Settlement Class Member, including employee-side tax withholdings and/or
14 deductions. (Settlement, ¶ 15.). Employer-side taxes will be separately paid by Airgas. (Id.)

15 The 25% of the \$50,000 PAGA Allocation due to Aggrieved Employees, which amounts
16 to \$12,500 of the PAGA Allocation, shall be distributed *pro rata* to all Aggrieved Employees
17 based on the number of PAGA Qualifying Workweeks worked by a Aggrieved Employees, as a
18 fraction of the total PAGA Qualifying Workweeks worked by all Aggrieved Employees.
19 (Settlement, ¶ 26, 53.).

20 Given that there are approximately 272 Class Members, the average net recovery will be
21 approximately \$904.41 (Hawkins Decl. ¶ 25, 28.) This average net recovery is significantly
22 greater than other wage and hour class action settlements approved by California state and
23 federal courts. *See, e.g., Sandoval v. Nissho of Cal., Inc.*, Case No. 37-2009-00091861 (San
24 Diego County Super. Ct.) (average net recovery of approximately \$145); *Fukuchi v. Pizza Hut*,
25 Case No. BC302589 (L.A. County Super. Ct.) (average net recovery of approximately \$120);
26 *Contreras v. United Food Group, LLC*, Case No. BC389253 (L.A. County Super. Ct.) (average
27 net recovery of approximately \$120); *Ressler v. Federated Department Stores, Inc.*, Case No.
28 BC335018 (L.A. County Super. Ct.) (average net recovery of approximately \$90); *Doty v.*

1 *Costco Wholesale Corp.*, Case No. CV05-3241 FMC-JWJx (C.D. Cal.) (average net recovery of
2 approximately \$65); *Sorenson v. PetSmart, Inc.*, Case No. 2:06-CV-02674-JAM-DAD (E.D.
3 Cal.) (average net recovery of approximately \$60); *Lim v. Victoria's Secret Stores, Inc.*, Case
4 No. 04CC00213 (Orange County Super. Ct.) (average net recovery of approximately \$35);
5 *Gomez v. Amadeus Salon, Inc.*, Case No. BC392297 (L.A. Super. Ct.) (average net recovery of
6 approximately \$20); *Jones v. Bath & Body Works, Inc.*, No. 2:13-cv-05206-FMO-AJW (C.D.
7 Cal.) (average net recovery of approximately \$50); and *Palencia v. 99 Cents Only Stores*, No.
8 34-2010-00079619 (Sacramento County Super. Ct.) (average net recovery of \$80).

9 **4. Releases by the Participating Class Members and the Aggrieved** 10 **Employees**

11 In exchange for the GSA, Plaintiff and Participating Class Members will agree to release
12 the Released Claims against the Released Parties for the Class Period, as defined in the
13 Settlement Agreement, paragraphs 8, 30-31, 82. The “Released Claims” include all claims,
14 rights, demands, liabilities, and causes of action of Class Members and/or Aggrieved Employees
15 which accrued during the Class Period and which were or could have been alleged based on the
16 facts alleged in the First Amended Complaint, including but not limited to: (i) claims for unpaid
17 minimum (Cal. Lab. Code §§ 1194, 1197, 1197.1) and/or overtime wages (Cal. Lab. Code §§
18 218, 510, 1198); (ii) claims for short, missed, untimely or otherwise non-compliant meal periods
19 or a failure to provide meal periods (Cal. Lab. Code §§ 226.7, 512(a)); (iii) claims for short,
20 missed, untimely or otherwise non-compliant rest periods or a failure to authorize and permit
21 rest periods (Cal. Lab. Code § 226.7); (iv) claims for failure to timely pay wages upon
22 termination of employment (Cal. Lab. Code §§ 201-203); (v) claims for failure to furnish
23 accurate itemized wage statements (Cal. Lab. Code § 226(a)); (vi) claims for violations of
24 California Business & Professions Code, Section 17200, et seq.; and (v) claims pursuant to the
25 PAGA (Cal. Lab. Code §§ 2698 et seq.). Each participating Class Member and/or Aggrieved
26 Employee who endorses and deposits his or her settlement check shall also release the Released
27 Parties from all claims under the Fair Labor Standards Act (“FLSA”) that are alleged, related to,
28 or that reasonably could have arisen under the facts alleged in the First Amended Complaint,

1 including but not limited to any unpaid wages, minimum wages, overtime, penalties, premiums,
2 bonuses, interest, liquidated damages, attorneys' fees, costs, or any kind of relief available under
3 the FLSA. (Settlement, ¶ 30, 68(a).).

4 Any Class Member who, through a settlement agreement with Defendant or any of the
5 Released Parties, released the claims at issue in the Action for the entire Class Period will be
6 excluded from the Settlement. Any release that does not encompass the entire Class Period
7 requires the claims of such individuals to be limited to the time which is unaffected by the prior
8 settlement(s). (Settlement, ¶ 98.)

9 **IV. ARGUMENT**

10 **A. The Court Should Preliminarily Approve the Proposed Class and PAGA** 11 **Action Settlement**

12 **1. Courts Review Class Action Settlements to Ensure that the Terms** 13 **Are Fair, Adequate, and Reasonable**

14 California Rule of Court ("Rule"), Rule 3.769 requires litigants to obtain court approval
15 of class action settlements. Approval occurs in two steps: (1) an early "preliminary" review by
16 the trial court; and (2) a subsequent "final" review after notice of the settlement has been
17 distributed to class members for their comments and objections. Cal. R. Ct. 3.769(c)-(g);
18 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th 1110, 1118 (2010) (the court first
19 "preliminarily approves the settlement" and later "conducts a final approval hearing to inquire
20 into the fairness of the proposed settlement"). The motion for preliminary approval must be
21 accompanied by (1) the settlement agreement, (2) proposed notice to the class, and (3) the
22 proposed order. *Id.* at 3.769(c). The motion must also identify any agreement concerning the
23 payment of attorneys' fees. *Id.* at 3.769(b).

24 If the trial court grants preliminary approval of a settlement, Rule 3.769(f) requires the
25 court to (1) schedule a final approval hearing and (2) approve the method by which the parties
26 are to provide notice to the class of the hearing and "an explanation of the proposed settlement."
27 The court must also approve a procedure for class members to file objections to the settlement.
28 *Id.* at 3.769(f). At the final approval hearing, the court must conduct an inquiry into the fairness
of the proposed settlement. *Id.* at 3.769(g).

1 Although Rule 3.769 does not provide detail as to the scope of review of the proposed
2 settlement, preliminary approval is warranted if the settlement falls within a “reasonable range.”
3 *See North County Contractor’s Assn., Inc. v. Touchstone Ins. Services*, 27 Cal. App. 4th 1085,
4 1089-90 (1994); Conte & Newberg, *Newberg on Class Actions*, §§ 11.26 (4th ed. 2002)
5 (“Newberg”).

6 Reasonableness and fairness are presumed where, as here: (1) the settlement is reached
7 through “arms-length bargaining;” (2) investigation and discovery are “sufficient to allow
8 counsel and the court to act intelligently;” (3) counsel is “experienced in similar litigation;” and
9 (4) the percentage of objectors “is small” (collectively, “Dunk Factors”). *Dunk v. Ford Motor*
10 *Co.*, 48 Cal. App. 4th 1794, 1802 (1996).¹

11 **2. Class Counsel Conducted A Thorough Investigation of the Factual**
12 **and Legal Issues and Were Thus Able to Objectively Assess the**
13 **Settlement’s Reasonableness**

14 Class Counsel conducted a thorough investigation into the factual and legal issues
15 implicated by Plaintiff’s claims, and were able to objectively assess the settlement’s
16 reasonableness. For example, prior to filing the action, Plaintiff provided to Class Counsel the
17 factual bases for pursuing his action against Defendant for Labor Code violations. Plaintiff was
18 intimately familiar with Defendant’s labor policies and practices, and over the course of
19 multiple interviews, knowledgeably summarized those policies and practices to Plaintiff’s
20 Counsel. (Hawkins Decl. ¶ 15.). During those conversations, he explained how the policies and

21 ¹ The presumption of fairness is consistent with California’s public policy goal of favoring settlements.
22 *Stambaugh v. Super. Ct.*, 62 Cal. App. 3d 231, 236 (1976) (“the law wisely favors settlements”);
23 *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1118 (“public policy generally favors the
24 compromise of complex class action litigation”); *7-Eleven Owners for Fair Franchising v. Southland*
25 *Corp.*, 85 Cal. App. 4th 1135, 1151 (2000) (“voluntary conciliation and settlement are the preferred
26 means of dispute resolution . . . [t]his is especially true in complex class action litigation”); *Skulnick v.*
27 *Roberts Express, Inc.*, 2 Cal. App. 4th 884, 891 (1992) (“public policy strongly discourages litigation and
28 encourages settlement [because settlements] can produce peace and goodwill in the community while
reducing the expense and persistency of litigation”). Additionally, in reviewing the fairness of a class
action settlement, due regard should be given to what is “otherwise a private consensual agreement
between the parties.” *Cellphone Termination Fee Cases*, 180 Cal. App. 4th at 1117. The inquiry “must
be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of
fraud or overreaching by, or collusion between, the negotiating parties, and that the settlement, taken as a
whole, is fair, reasonable and adequate to all concerned.” *Id.* at 1118.

1 practices were instituted and provided valuable insight into how they gave rise to the alleged
2 Labor Code violations. (Id.) Based on these interviews with Plaintiff, Class Counsel
3 determined that there were legally sufficient grounds for pursuing the Actions against Defendant
4 and in preparation for drafting the complaint, Class Counsel conducted their own independent
5 preliminary investigations into the factual bases for Plaintiff's claims, which entailed, *inter alia*,
6 a careful examination of Plaintiff's personnel files and associated records. (Id.)

7 Plaintiff propounded formal requests for production and special interrogatories to Airgas
8 USA, LLC and Airgas Carbonic. (Hawkins Decl. ¶ 16.). Defendants provided responses to the
9 discovery. (Id.) Class counsel also sent informal discovery requests to Defense Counsel to obtain
10 additional information and documents to prepare for mediation. (Id.) Class Counsel received a
11 considerable amount of documents and data, including Plaintiff's personnel file and time/pay
12 records; employee demographic data; class size information; hiring and termination dates; pay
13 rates; a sampling of timecards and time history; a sampling of earning statements; pay data and
14 records; and Defendant's policies and procedures manuals which covered a broad range of
15 topics including, *inter alia*, employee clock-in policies and procedures, attendance policies,
16 meal periods/rest periods, overtime & premium pay, etc. (Id.; Settlement, ¶42.) The document
17 and data exchanges allowed Class Counsel to fully assess the nature and magnitude of the
18 claims being settled, as well as the impediments to recovery, and ultimately enabled Class
19 Counsel so as to make an independent assessment of the reasonableness of the settlement's
20 terms. (Hawkins Decl. ¶ 14-19.)

21 In summary, Class Counsel performed a thorough investigation into the claims at issue,
22 which included: (1) determining Plaintiff's suitability as private attorney general and class
23 representative through interviews, investigations, and analyses of his employment files and
24 related records; (2) evaluating all of Plaintiff's potential representative and class claims; (3)
25 engaging in formal and informal discovery, which included production of relevant data;
26 Defendant's timekeeping, meal period and rest break policies; documents evidencing
27 Defendant's handbooks, policies and procedures for managing payment for all hours worked,
28 meal periods and rest breaks; and other relevant information, including Plaintiff's personnel and

1 payroll file; (4) exchanging documents, data, and information based on time and pay records for
2 the putative Class Members to determine the number of current and former putative class
3 members who worked during the relevant time period, the total number of workweeks at issue,
4 the average hourly rate for the putative class and aggrieved employees; (5) researching similar
5 wage and hour class actions as to the claims brought, the nature of the positions, and the type of
6 employer; (6) analyzing employees' time, pay, and wage records; (7) reviewing Defendant's
7 employment policies and practices; (8) researching settlements in similar cases; (9) evaluating
8 Plaintiff's claims and estimating Defendant's potential liability for purposes of settlement;
9 (10) drafting the mediation brief; and (11) participating in the mediation. (Hawkins Decl. ¶ 18.)

10 By engaging in such a thorough investigation and evaluation of Plaintiff's claims, Class
11 Counsel can opine that the Settlement, for the consideration and on the terms set forth in the
12 Settlement Agreement, is fair, reasonable, an adequate, and is in the best interests of Class
13 Members in light of all known facts and circumstances, including the risk of significant delay
14 and uncertainty associated with litigation, and various defenses asserted by Defendant.
15 (Hawkins Decl. ¶ 19.) Defendants categorically denied all liability and the allegations raised,
16 and contend the action could not be tried on a representative basis. (Id. at ¶ 20.)

17 **3. The Settlement Was Reached Through Arm's-Length Bargaining in** 18 **which All Parties Were Represented by Experienced Counsel**

19 "[W]hat transpires in settlement negotiations is highly relevant to the assessment of a
20 proposed settlement's fairness." *State of Cal. v. Levi Strauss & Co.*, 41 Cal. 3d 460, 482 (1986).
21 Courts presume the absence of fraud or collusion in the negotiation of a settlement, unless
22 evidence to the contrary is offered; thus, there is a presumption that settlement negotiations are
23 conducted in good faith. Newberg, § 11.51.

24 As explained above, the Parties settled this matter with the assistance of an experienced
25 wage and hour class and PAGA action mediator, Michael Dickstein. Mr. Dickstein helped to
26 manage the Parties' expectations and provided a useful, neutral analysis of the issues and risks
27 to both sides. The Parties engaged in a full day of arms-length negotiations during the
28 mediation. (Hawkins Decl., ¶ 13.) The process was so adversarial, the Parties were unable to

1 reach an agreement the day of the mediation and needed additional assistance from Mr.
2 Dickstein in negotiations over months before agreeing on a settlement amount and signing an
3 MOU. (Id.) See *In re Bluetooth Headset Prod. Liab. Litig.*, 654 F.3d 935, 948 (9th Cir. 2011)
4 (the presence of a neutral mediator is a factor weighing in favor of finding of no collusion); *In*
5 *re Apple Computer, Inc. Derivative Litig.*, No. C 06-4128 JF (HRL), 2008 U.S. Dist. LEXIS
6 108195 (N.D. Cal. Nov. 5, 2008) (mediator’s participation weighs considerably against any
7 inference of a collusive settlement); *D’Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)
8 (a “mediator’s involvement in pre-certification settlement negotiations helps to ensure that the
9 proceedings were free of collusion and undue pressure.”); *Villegas v. J.P. Morgan Chase & Co.*,
10 No. 09–00261, 2012 WL 5878390, at *6 (N.D. Cal. Nov. 21, 2012) (participation in mediation
11 “tends to support the conclusion that the settlement process was not collusive”); *Ogbuehi v.*
12 *Comcast of California/Colorado/Fla./Oregon, Inc.*, 303 F.R.D. 337, 350 (E.D. Cal. 2014)
13 (participation in mediation “tends to support the conclusion that the settlement process was not
14 collusive”). At all times, the Parties’ negotiations were adversarial and non-collusive. (Id. at 13.)

15 The Parties were represented by experienced class action counsel throughout the
16 negotiations resulting in this Settlement. Plaintiff is represented by James Hawkins, APLC.
17 Class Counsel employs seasoned class action attorneys who regularly litigate wage and hour
18 claims through certification and on the merits, and have considerable experience settling wage
19 and hour class actions. (Hawkins Decl. ¶ 22.). Defendant is represented by Faegre Drinker
20 Biddle & Reath LLP, a respected and seasoned defense firm. (Id.)

21 **4. The Consideration Provided for the Class and PAGA Claims Is Fair**
22 **and Reasonable in Light of the Amount in Controversy Discounted**
23 **by the Risks of Continued Litigation**

24 In seeking approval, a settling party must provide sufficient information to “enable the
25 court to make an independent assessment of the adequacy of the settlement terms.” *Kullar v.*
26 *Foot Locker Retail, Inc.*, 168 Cal. App. 4th 116, 131-32 (2008). However, “[i]t is well-settled
27 law that a cash settlement amounting to only a fraction of the potential recovery will not per se
28 render the settlement inadequate or unfair.” See *Officers for Justice v. Civil Serv. Comm’n of*
City & Cty. Of San Francisco, 688 F.2d 615, 628 (9th Cir. 1982). “The proposed settlement is

not to be judged against a hypothetical or speculative measure of what might have been achieved by the negotiators.” *Id.* at 625. “Estimates of a fair settlement figure are tempered by factors such as the risk of losing at trial, the expense of litigating the case, and the expected delay in recovery (often measured in years).” *In re Toys R Us-Delaware, Inc.—Fair & Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 453 (C.D. Cal. 2014). In other words, in valuing the claims within a realistic *range* of outcomes, the settling plaintiff should discount the value of the settled claims for risks such as changes in the law, the probability of success, and other factors.²

Settling parties are not, however, required to partake in a hypothetical accounting exercise: “**Kullar does not ... require any such explicit statement of [maximum] value**; it requires a record which allows ‘an understanding of the amount that is in controversy and the realistic range of outcomes of the litigation.’” *Munoz v. BCI Coca-Cola Bottling Co.*, 186 Cal. App. 4th 399, 409-10 (2010) (quoting *Kullar*, 168 Cal. App. 4th at 120 (emphasis added)). Overall, “the most important factor” in determining “whether a settlement is fair and reasonable” is the “strength of the case for plaintiffs on the merits, balanced against the amount offered in the settlement.” *Id.* at 409 n.6 (quoting *Kullar*, 168 Cal. App. 4th at 130). As explained in detail below, the Gross Settlement Amount is within the range of reasonableness in light of the nature and magnitude of the claims being settled and the various potential impediments to recovery.

Airgas categorically denies all of the Plaintiff’s assertions and allegations raised in and

² Federal district courts also recognize that there is an inherent “range of reasonableness” in determining whether to approve a settlement “which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.” *In re World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 66 F. Supp. 3d 477, 482 (S.D.N.Y. 2015); *see also Nat’l Rural Telecomm. Coop. v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (“well-settled law that a proposed settlement may be acceptable even though it amounts to only a fraction of the potential recovery”); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 461 (S.D.N.Y. 2004) (“settlement amount’s ratio to the maximum potential recovery need not be the sole, or even dominant, consideration when assessing settlement’s fairness”); *In re IKON Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 184 (E.D. Pa. 2000) (“the fact that a proposed settlement constitutes a relatively small percentage of the most optimistic estimate does not, in itself, weigh against the settlement; rather the percentage should be considered in light of strength of the claims”); *Officers for Just. v. Civ. Serv. Comm’n of City & Cty. of San Francisco*, 688 F.2d 615, 628 (9th Cir. 1982) (it is “the complete package,

1 in support of the claims in the action. (Hawkins Decl. ¶ 20.) To that end, Airgas has denied and
2 continues to deny each, and all of the allegations, claims, and contentions alleged by the
3 Plaintiff in the action. Airgas has expressly denied and continues to deny all charges of
4 wrongdoing or liability against it arising out of any of the conduct, statements, acts or omissions
5 alleged in the action. Airgas contends that it complied in good faith with wage and hour laws
6 and has dealt legally and fairly with Plaintiff and putative class members. Airgas further denies
7 that, for any purpose other than settling the action, these claims are appropriate for class or
8 representative treatment. Nonetheless, the Parties have concluded that further proceedings in
9 the action would be protracted and expensive and that it is desirable that the action be fully and
10 finally settled in the manner and upon the terms and conditions set forth in this Settlement in
11 order to dispose of burdensome and protracted litigation, to permit the operation of Airgas’
12 business without further expensive litigation and the distraction and diversion of its personnel
13 with respect to matters at issue in the action. The Parties have also taken into account the
14 uncertainty and risks inherent in any litigation, especially in complex cases such as the action.
15 The Parties have, therefore, determined that it is desirable and beneficial that the action be
16 settled in the manner and upon the terms and conditions set forth in Settlement. (Id. ¶¶19-20.)

17 Accounting for the risks of continued litigation and impediments to discovery, Plaintiff
18 determined that a settlement amounting to \$500,000.00 was fair and reasonable, and courts have
19 routinely approved settlements that provided a similar discounted range of the maximum
20 potential recovery. *See, e.g., In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256-58 (D.
21 Del. 2002) (recognizing that a reasonable settlement amount can be 1.6% to 14% of the total
22 estimated damages); *In Re Armored Car Antitrust Litig.*, 472 F. Supp. 1357, 1373 (N.D. Ga.
23 1979) (settlements with a value of 1% to 8% of the estimated total damages were approved); *In*
24 *Re Four Seasons Secs. Laws Litig.*, 58 F.R.D. 19, 37 (W.D. Okla.1972) (approving 8% of
25 damages); *Balderas v. Massage Envy Franchising, LLP*, 2014 WL 3610945, at *5 (N.D. Cal.
26 July 21, 2014) (finding that settlement which amounted to 8% of maximum recovery “[fell]

27
28 taken as a whole rather than the individual component parts, that must be examined for overall fairness”).

1 within the range of possible initial approval based on the strength of plaintiff's case and the risk
2 and expense of continued litigation."); *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036,
3 1042 (N.D. Cal. 2008) (approving settlement of 6% to 8% of estimated damages).³

4 Based upon the information received, Plaintiff's counsel estimates that the Gross
5 Settlement Amount is approximately 37.3% of the total realistic value of the crux of Plaintiff's
6 claims in the action. (Hawkins Decl. ¶ 37.)

7 **B. The Consideration Provided for the PAGA Claim Is Fair and Reasonable In**
8 **Light of the Amount in Controversy Discounted by the Risks of Continued**
9 **Litigation**

10 Pursuant to the Settlement Agreement, \$50,000 from the Gross Settlement Amount shall
11 be allocated to the resolution of the PAGA claim, of which 75% (\$37,500) will be paid directly
12 to the LWDA, and the remaining 25% (\$12,500) will be paid to Aggrieved Employees who
13 worked during the PAGA Period beginning May 7, 2019 to the date of preliminary approval.
(Settlement Agreement, ¶ 25, 53.)

14 This result was reached after good-faith negotiation between the parties. The amount
15 was valued as follows: Based on information and evidence produced by Defendant, Class
16 Counsel determined that aggrieved employees worked a combined total of approximately **5,365**
17 PAGA Pay Periods during the PAGA Period. (Hawkins Decl. ¶ 36.) Plaintiff's counsel
18 contended that statutory penalties would be calculated according to Labor Code 2699(f)(2): If,
19

20 ³ See also *In re Uber FCRA Litig.*, No. 14-cv-05200-EMC, 2017 U.S. Dist. LEXIS 101552, at *23- 24
21 (N.D. Cal. June 29, 2017) (granting preliminary approval to class action settlement where gross
22 settlement fund, prior to deducting attorneys' fees and services awards, was valued at 7.5% or less of
23 total possible verdict); *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2016 U.S. Dist. LEXIS
24 140759, at *21 (N.D. Cal. Oct. 11, 2016) (granting preliminary approval to class action settlement
25 representing "8.1% of the full verdict value" with net settlement amount representing approximately
26 5.3% of full verdict value); *Stovall-Gusman v. W.W. Granger, Inc.*, No. 13-cv-02540-HSG, 2015 WL
27 3776765, at *4 (N.D. Cal. June 17, 2015) (granting final approval to settlement with net recovery to
28 Plaintiffs valued at 7.3% of potential maximum recovery); *Cruz v. Sky Chefs, Inc.*, No. 12-cv-02705-
DMR, 2014 WL 7247065, at *5 (N.D. Cal. Dec. 19, 2014) (granting final approval where gross
settlement amount represented 8.6% of the maximum potential recovery from the class claims and
estimated amount distributable to class after accounting for attorneys' fees and other deductions
represented approximately 6.1% of maximum potential recovery); *In re LDK Solar Sec. Litig.*, No. 07-
cv-05182-WHA, 2010 WL 3001384, at *2 (N.D. Cal. July 29, 2010) (granting final approving where
"[t]he proposed settlement amount is [. . .] only about five percent of the estimated damages before fee
and costs—even before any reduction thereof for attorney's fees and costs.").

1 at the time of the alleged violation, the person employs one or more employees, the civil penalty
2 is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
3 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
4 subsequent violation, unless there is a civil penalty otherwise specifically provided.

5 However, a number of courts have found that the “subsequent” penalty under PAGA
6 applies only after a court or the Labor Commissioner determines that the employer has violated
7 the Labor Code. *See Vieyara-Flores v. Sika Corp.*, No. EDCV19606JVSKKX, 2019 WL
8 2436998, at *5 (C.D. Cal. June 10, 2019) (“employers are not subject to heightened penalties . .
9 . until a court or commissioner notifies the employer that it is in violation of the Labor Code . . .
10 [Plaintiff] has not offered evidence that the Labor Commission or a court has notified them of
11 PAGA violations [thus] PAGA’s heightened penalty of \$200 for subsequent violations will not
12 be calculated to determine the amount in controversy”); *Steenhuyse v. UBS Fin. Servs., Inc.*, 317
13 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) (same); *Chen v. Morgan Stanley Smith Barney, LLC*,
14 No. 8:14-CV-01077 ODW (FFMx), 2014 WL 4961182 (C.D. Cal., October 2, 2014) (“Under
15 the Labor Code, if an employer does not have notice that they are committing a violation, they
16 are not subject to the heightened penalties.”); *Trang v. Turbine Engine Components*
17 *Technologies Corp.*, No. CV 12–07658 DDP (RZx), 2012 WL 6618854 (C.D. Cal. Dec. 19,
18 2012) (“courts have held that employers are not subject to heightened penalties for subsequent
19 violations unless and until a court or commissioner notifies the employer that it is in violation of
20 the Labor Code”), citing *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157 (2008).

21 It should be noted that PAGA gives the Court wide latitude to reduce the amount of civil
22 penalties “based on the facts and circumstances of a particular case” when “to do otherwise
23 would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” Cal. Lab.
24 Code § 2699(h). In reducing PAGA penalties, courts have considered issues including whether
25 the employees suffered actual injury from the violations, whether the defendant was aware of
26 the violations, and the employer’s willingness to fix the violation. *Carrington v. Starbucks*
27 *Corp.*, 30 Cal. App. 5th 504, 528 (2018) (awarding PAGA penalties of only 0.2% of the
28 maximum); *see also Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1037 (N.D. Cal. 2016); *Fleming*

1 v. *Covidien Inc.*, No. ED CV 10-01487 RGK (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug.
2 12, 2011).

3 For example, during the penalty phase of trial in *Carrington*, the plaintiff requested
4 PAGA penalties in the amount of approximately \$70 million. The trial court instead awarded
5 only \$150,000—or 0.21% of the maximum—and stated that this reduction was warranted
6 because imposing the maximum penalty would be “unjust, arbitrary, and oppressive” based on
7 Starbucks’s “good faith attempts” to comply with meal period obligations and because the court
8 found the violations were minimal. *Carrington*, 30 Cal. App. 5th at 517. The Court of Appeal
9 affirmed the lower court’s reduced award of a \$150,000 penalty under PAGA. *Id.* at 529.

10 Likewise, in *Covidien*, the Court reduced the potential penalties by over 82%, awarding
11 \$500,000 instead of maximum penalties of \$2.8 million. *Covidien*, 2011 WL 7563047 at *4; *see*
12 *also Thurman v. Bayshore Transit Mgmt.*, 203 Cal. App. 4th 1112, 1135-36 (2012) (affirming
13 30% reduction under specified PAGA claim where the employer produced evidence that it took
14 its obligations seriously); *Elder v. Schwan Food Co.*, No. B223911, 2011 WL 1797254, at *5-*7
15 (Cal. Ct. App. May 12, 2011) (reversing trial court decision denying any civil penalties where
16 violations had been proven, remanding for the trial court to exercise discretion to reduce, but not
17 wholly deny, civil penalties); *Li v. A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK,
18 2012 WL 2236752, at *17 (N.D. Cal. June 15, 2012) (denying PAGA penalties for violation of
19 California Labor Code section 226 as redundant with recovery on a class basis pursuant to
20 California Labor Code section 226, directly); *Aguirre v. Genesis Logistics*, No. SACV 12-00687
21 JVS (ANx), 2013 WL 10936035 at *2-*3 (C.D. Cal. Dec. 30, 2013) (reducing penalty for past
22 PAGA violations from \$1.8 million to \$500,000, after rejecting numerous other PAGA claims).

23 Plaintiff therefore determined an appropriate range of settlement for PAGA penalties as
24 a percentage of the settlement range that was consistent with other hybrid class/PAGA
25 settlements approved by California courts.⁴ Where PAGA penalties are negotiated in good faith

26
27 ⁴ *Dearaujo v. Regis Corp.*, No. 2:14-cv-01408-KJM-AC, 2016 WL 3549473 at *3 (E.D. Cal. June 29,
28 2016) (preliminarily approving \$1.95 million settlement containing \$10,000 PAGA penalties with
\$7,500 paid to LWDA); *Garcia v. Gordon Trucking, Inc.*, No. 1:10-CV-0324 AWI SKO, 2012 WL

1 and “there is no indication that [the] amount was the result of self-interest at the expense of
2 other Class Members,” such amounts are generally considered reasonable. *Hopson v.*
3 *Hanesbrands Inc.*, Case No. 08-00844, 2009 U.S. Dist. LEXIS 33900, at *24 (N.D. Cal. Apr. 3,
4 2009); *see, e.g., Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 579 (2010) (“[T]rial court did
5 not abuse its discretion in approving a settlement which does not allocate any damages to the
6 PAGA claims.”).

7 **C. The Court Should Preliminarily Approve the Negotiated Class**
8 **Representative Incentive Award**

9 Incentive payments and/or service awards “are fairly typical in class action cases.”
10 *Cellphone Termination Fee Cases*, 186 Cal. App. 4th 1380, 1393 (2010) (affirming incentive
11 awards of \$10,000); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958 (9th Cir. 2009),
12 citing 4 Newberg on Class Actions (4th ed. 2002) § 11:38, and Eisenberg & Miller, *Incentive*
13 *Awards to Class Action Plaintiffs: An Empirical Study*, 53 UCLA L. Rev. 1303 (2006). Service
14 awards “are intended to compensate class representatives for work done on behalf of the class,
15 to make up for financial or reputational risk undertaken in bringing the action, and, sometimes,
16 to recognize their willingness to act as a private attorney general.” *Rodriguez*, 563 F.3d at 958–
17 59. “[T]he rationale for making enhancement or incentive awards to named plaintiffs is that they
18 should be compensated for the expense or risk they have incurred in conferring a benefit on
19 other members of the class.” *Clark v. American Residential Services LLC*, 175 Cal. App. 4th

20 5364575 at *7 (E.D. Cal. Oct. 31, 2012) (approving \$3.7 million settlement containing \$10,000 PAGA
21 penalties with \$7,500 paid to LWDA); *Chu v. Wells Fargo Invst., LLC*, No. C 05–4526 MHP, 2011 WL
22 672645 at *1 (N.D. Cal Feb. 16, 2011) (approving \$6.9 million settlement containing \$10,000 PAGA
23 penalties with \$7,500 paid to LWDA); *Guerrero v. R.R. Donnelley & Sons Co.*, Case No. RIC 10005196
24 (Riverside County Super. Ct. July 16, 2013; Judge Matthew C. Perantoni) (gross settlement fund of
25 \$1,100,000, of which \$3,000 (or 0.3%) was allocated to the settlement of PAGA penalties); *Parra v.*
26 *Aero Port Services, Inc.*, No. BC483451 (L.A. County Super. Ct. April 20, 2015; Judge Jane Johnson)
27 (gross settlement fund of approximately \$1,458,900, of which \$5,000 (or 0.3%) was allocated to the
28 settlement of PAGA penalties); *Thompson v. Smart & Final, Inc.*, No. BC497198 (L.A. County Super.
Ct. Nov. 18, 2014; Judge William F. Highberger) (gross settlement fund of \$3,095,000, of which
approximately \$13,333 (or 0.4%) was allocated to the settlement of PAGA penalties); *Chavez v. Vallarta*
Food Enterprises, Inc., No. BC490630 (L.A. County Super. Ct. Nov. 10, 2014; Judge William F.
Highberger) (gross settlement fund of \$1,545,900, of which \$10,000 (or 0.6%) was allocated to the
settlement of PAGA penalties); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County
Super. Ct. Oct. 3, 2013; Judge Kenneth R. Freeman) (gross settlement fund of \$1,535,000, of which
\$1,000 (or 0.1%) was allocated to the settlement of PAGA penalties).

785, 806 (2009).

Approximately 272 current and former employees will share a \$500,000.00 settlement fund due entirely to the effort and commitment of Charles Yniguez. Subject to Court approval, therefore, the Settlement provides for a Incentive Award of \$7,500.00.⁵ The Incentive Award is fair and reasonable compensation for Plaintiff's effort in pursuing the action, assisting counsel with the litigation and settlement, regularly conferring with counsel on the status of their case and the strategies for prosecuting the claims, and reviewing the proposed settlement to ensure that its terms are fair and provide adequate relief for the Settlement Class. (Hawkins Decl. ¶40; *see generally* Charles Yniguez Decl.)

Plaintiff will file a formal motion for the negotiated Incentive Award once preliminary

⁵ Such amounts are reasonable by reference to the amounts that California courts (both federal and state) have repeatedly found to be reasonable for wage and hour class action settlements: *See Carter v. GMRI Inc.*, No. RIC 1506085 (Riverside County Super. Ct. Jan. 10, 2017) (awarding \$10,000 enhancement payments to the named plaintiffs); *Crook v. Barton Healthcare System*, No. SC20150146 (El Dorado County Super. Ct. Dec. 9, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Singh v. American Building Supply, Inc.*, No. 34-2015-00179889-CU-OE-GDS (Sacramento County Super. Ct. Oct. 3, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Alvarez v. MAC Cosmetics Inc.*, No. CIVDS1513177 (San Bernardino County Super. Ct. July 29, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coffey v. Beverages & More, Inc.*, No. BC477269 (L.A. County Super. Ct. July 26, 2016) (awarding \$10,000 enhancement payment to the named plaintiff); *Restoration Hardware Wage and Hour Cases*, No. JCCP4794 (L.A. County Super. Ct. April 28, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Cook v. United Insurance Co. of Amer.*, No. CIVMSC10-00425 (Contra Costa County Super. Ct. April 15, 2016) (awarding \$10,000 enhancement payments to the named plaintiffs); *Quintana v. Claire's Boutiques, Inc.*, No. 5:13-cv-00368-PSG (N.D. Cal. Dec. 1, 2015) (awarding \$10,000 enhancement payments to the named plaintiffs); *Paredes v. American Family Care, Inc.*, No. 34-2014-00167060-CU-OE-GDS (Sacramento County Super. Ct. Nov. 17, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Hoagland v. Brooks Brothers Group, Inc.*, No. BC511534 (L.A. County Super. Ct. July 16, 2015) (awarding \$10,000 enhancement payment to the named plaintiff); *Baker v. L.A. Fitness Int'l, LLC*, No. BC438654 (L.A. County Super. Ct. Dec. 12, 2012) (awarding \$10,000 enhancement payments to three of the named plaintiffs); *Blue v. Coldwell Banker Residential Brokerage Co.*, No. BC417335 (L.A. County Super. Ct. Mar. 21, 2011) (awarding \$10,000 enhancement payment); *Buckmire v. Jo-Ann Stores, Inc.*, No. BC394795 (L.A. County Super. Ct. June 11, 2010) (awarding \$10,000 enhancement payments to the named plaintiffs); *Coleman v. Estes Express Lines, Inc.*, No. BC429042 (L.A. County Super. Ct. Oct. 3, 2013) (awarding \$10,000 enhancement payment); *Ethridge v. Universal Health Services, Inc.*, No. BC391958 (L.A. County Super. Ct. May 27, 2011) (awarding \$10,000 enhancement payment); *Hickson v. South Coast Auto Insurance Marketing, Inc.*, No. BC390395 (L.A. County Super. Ct. Mar. 27, 2012) (awarding \$10,000 enhancement payment); *Hill v. Sunglass Hut Int'l, Inc.*, No. BC422934 (L.A. County Super. Ct. July 2, 2012) (awarding \$10,000 enhancement payments to the named plaintiffs); *Kabamba v. Victoria's Secret Stores, LLC*, No. BC368528 (L.A. County Super. Ct. Aug. 19, 2011) (awarding enhancement payments of \$10,000 to the named plaintiffs); *Magee v. American Residential Services, LLC*, No. BC423798 (L.A. County Super. Ct. Apr. 21, 2011) (awarding \$15,000 enhancement payment).

1 approval of the Settlement is granted. Plaintiff respectfully submits that the above showing is
2 sufficient for preliminary approval of the negotiated Incentive Award.

3 **D. The Court Should Preliminarily Approve the Negotiated Attorneys' Fees**
4 **and Costs**

5 The purpose of an attorneys' fee award in class action litigation is to reward counsel who
6 took the risk of non-payment and invested in a case that achieved a substantial positive result for
7 the class. California courts routinely award attorneys' fees equalling one-third or more of the
8 potential value of the common fund. *See Laffitte v. Robert Half, Inc.*, 1 Cal. 5th 480 (2016)
9 (affirming a fee award representing one-third of the common fund); *Chavez v. Netflix, Inc.*, 162
10 Cal. App. 4th 43, 66 n.11 (2008) ("Empirical studies show that, regardless whether the
11 percentage method or the lodestar method is used, fee awards in class actions average around
12 one-third of the recovery."). At final approval, Plaintiff will seek Court-approval of attorneys'
13 fees of 33.33% of the Gross Settlement Amount (estimated to be approximately \$166,500) and
14 reimbursement of litigation costs and expenses incurred (estimated not to exceed \$27,000).

15 **E. The Court Should Appoint CPT Group, Inc. as the Settlement**
16 **Administrator.**

17 Class Counsel proposes the appointment of CPT Group, Inc. ("CPT"), an experienced,
18 reputable third-party settlement administrator, as the third-party Settlement Administrator to
19 administer the proposed Settlement. Neither party or its counsel owns or is affiliated with
20 ILYM. (Hawkins Decl. ¶ 44.) Pursuant to the terms of the Settlement Agreement, CPT will
21 print and distribute the Notice to the Class by First Class mail after performing a search based
22 on the National Change of Address Database; establish a mailing address and toll-free telephone
23 number to receive Class Members' inquiries about the proposed Settlement; will receive,
24 review, and process all objections to the proposed Settlement; will receive and process any
25 written disputes and supporting documentation submitted by the Class Members as to their
26 number of workweeks; will handle inquiries from Class Members regarding the proposed
27 Settlement; will calculate each Class Members' individual share of the Net Settlement Amount;
28 will mail the settlement checks to the Settlement Class Members; and will perform any other

1 usual and customary duties for administering a class action settlement. CPT's fees and expenses
2 shall be paid out of the GSA, not to exceed \$15,000.00. (Settlement, ¶ 58-61.)

3 **F. California Law Authorizes Provisional Certification for Settlement Purposes**

4 **1. The California Standard for Class Certification**

5 Class actions are statutorily authorized “when the question is one of common or general
6 interest, of many persons, or when the parties are numerous, and it is impracticable to bring
7 them all before the court.” Cal. Civ. Proc. Code § 382; *Lee v. Dynamex, Inc.*, 166 Cal. App. 4th
8 1325, 1332 (2008). Class certification is appropriate when there is an “ascertainable class and a
9 well-defined community of interest among class members.” *Sav-On Drug Stores, Inc. v.*
10 *Superior Court*, 34 Cal. 4th 319, 326 (2004). Class treatment is appropriate even if class
11 members at some point may be required to make an individual showing as to eligibility for
12 recovery. *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008); *Sav-On*,
13 34 Cal. 4th at 333.

14 Conditional certification of the proposed Settlement Class is particularly warranted here
15 given the relatively relaxed standard for certification at the preliminary approval stage. *See*
16 *Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794 (1996) (courts can apply a “lesser standard of
17 scrutiny” for class certification in settlement cases).⁶ In *Dunk*, the California Court of Appeal
18 specifically rejected the argument that the standard for certifying a class for purposes of
19 settlement is identical to the standard for certifying the same class for purposes of litigation:

20 Geer argues the court must use the same standard under Federal Rules of Civil
21 Procedure, rule 23 (28 U.S.C.) to determine the propriety of both settlement and
22 litigation class certifications . . . That rule is contrary to the Ninth Circuit rule,
stated in *Officers for Justice v. Civil Service Com. supra*, 688 F.2d at p. 633, and
the position of the leading commentators (Newberg & Conte, *supra*, § 11.28 at p.

23 ⁶ See also Newberg on Class Actions § 13:18 (5th ed.) (courts “declin[e] to treat formal class certification
24 as a prerequisite for preliminary approval and undertak[e] a more cursory class certification analysis at
25 the preliminary approval stage.”); *Dearaujo v. Regis Corp.*, No. 2:14-CV- 01408-KJM-AC, 2016 WL
26 3549473, at *6 (E.D. Cal. June 30, 2016) (“[D]espite the Supreme Court’s cautions in *Amchem* . . . , a
27 cursory approach appears the norm.”); *In re Amtrak Train Derailment in Philadelphia, Pennsylvania*,
28 No. 15-MD-2654, 2016 WL 1359725, at *4 (E.D. Pa. Apr. 6, 2016) (“[A] settlement class can be
preliminarily certified based on a less rigorous analysis than that necessary for final certification.”); *In re*
Processed Egg Prod. Antitrust Litig., No. 08-MD-2002, 2014 WL 828083, at *2 (E.D. Pa. Feb. 28,
2014) (at the preliminary approval stage, “the Court must determine whether the proposed class should
be conditionally certified, and leave the final certification decision for the Fairness Hearing.”).

11–58), which allow a lesser standard of scrutiny for settlement cases . . . We agree with the latter. The two basic purposes for the Rule 23 certification requirements, as they relate to questions of a nationwide class, are: (1) to keep the lawsuit manageable for trial; and (2) to protect the interests of the non-representative class members. The first purpose is inapposite in the settlement context, and the second, as it relates to commonality of issues, only makes a difference if the non-representative class members would do much better by litigating on their own or in their own jurisdiction. The second category concerns are protected by the trial court’s fairness review of the settlement.

Id. at n.19.

2. The Proposed Settlement Class Is Ascertainable and There Is a Well-Defined Community of Interest Among Class Members

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 is “determined by examining (1) the class definition, (2) the size of the class, and (3) the means available for identifying class members.” *Lee*, 166 Cal. App. 4th at 1334. Class members are ascertainable where they may be readily identified without unreasonable expense or time by reference to official records. *Id.*

The community of interest requirement embodies three factors: (1) predominant common questions of law or fact; (2) a class representative with claims or defenses typical of the class; and (3) a class representative and counsel who can adequately represent the class. Cal. Civ. Proc. Code § 382.

In April of 2012, the California Supreme Court expounded on the element of predominance:

The “ultimate question” the element of predominance presents is whether “the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.”

Brinker Rest. Corp. v. Super. Ct., 53 Cal. 4th 1004, 1021 (2012) (citations omitted).

Pursuant to the Settlement Agreement, the “Class” includes all individuals who were employed by Defendant Airgas USA, LLC or Airgas Carbonic, Inc. in California in their Dry Ice Divisions as non-exempt/hourly employees during the “Class Period” of May 8, 2016 to the date of Preliminary Approval (the “Class Member(s) or “Class”). (Ex. 1, Settlement, ¶ 7-8). It is estimated that the Class consists of approximately 272 individuals. (Ex. 1, Settlement, ¶ 99.).

1 Because all Class Members are either current or former employees of Defendants, the class is
2 readily ascertainable from Defendant's regular business records. (Hawkins Decl. ¶44.)

3 Here, common issues of fact and law predominate because the California statutes
4 relating to each of Plaintiff's claims, and Airgas' defenses thereto, apply with equal force and
5 effect to all Class Members. Factually, Plaintiff contends that Defendant's policies and practices
6 apply class-wide and Defendant's liability can be determined by facts common to all members
7 of the class. The wage and hour issues are both numerous and substantial, and a class action is
8 the most advantageous method of dealing with the claims of the Settlement Class Members. (Id.
9 at ¶ 43.)

10 Plaintiff's wage and hour claims are typical of the proposed Settlement Class because
11 they arise from the same factual bases and are based on the same legal theories applicable to the
12 other Class Members. Likewise, Plaintiff's interests are entirely coextensive with the interests
13 of the Class. Plaintiff maintains that Plaintiff was injured by the same company-wide practices
14 to which the proposed Settlement Class was subject and seek the same relief. Plaintiff has
15 already demonstrated his ability to advocate for the interests of the Class by initiating this
16 litigation, undertaking representative discovery, and evaluating the proposed settlement to
17 assure that it is fair. (Id. at ¶ 41.)

18 Additionally, Plaintiff is represented by competent counsel who have extensive
19 experience in litigating wage and hour class action cases. (Hawkins Decl. ¶ 46.) Plaintiff's
20 Counsel has successfully briefed, argued, certified, and gained state and federal court settlement
21 approval of the same class-wide causes of action that are at issue in this case. (Id.) Plaintiff's
22 Counsel's wage and hour class action expertise establishes that they are well qualified to
23 represent the interests of this Class.

24 A class action is superior to a multitude of individual lawsuits. (Id. at ¶ 43.) Given the
25 size and amount of each individual Class Member's claim, Class Members likely have little
26 incentive to litigate their claims on an individual basis because the out-of-pocket expense and
27 personal commitment necessary to litigate each claim outweighs any potential recovery. In sum,
28 class treatment is superior to individual, case-by-case adjudication. (Id.)

1 **3. The Proposed Notice Properly Informs Class Members about the**
2 **Case and the Settlement**

3 Class members are entitled to the best practical notice under the circumstances. *Kass v.*
4 *Young*, 67 Cal. App. 3d 100, 106 (1977). The purpose of the notice is to give class members
5 sufficient information to decide whether they should accept the benefits offered, opt out and
6 pursue their own remedies, or object to the settlement. *Trotsky v. Los Angeles Fed. Savings &*
7 *Loan Assn.*, 48 Cal. App. 3d 143, 151-52 (1975). The notice must advise class members “that
8 they may be excluded from the class if they so request and that they will be bound by the
9 judgment, whether favorable or not, if they do not request exclusion.” *Kass*, 67 Cal. App. 3d at
10 106. In a case such as this involving a significant number of class members, California
11 authorities generally require service of the class notice by mail or similar reliable means.
12 *Chance v. Super. Ct.*, 58 Cal. 2d 275, 290 (1962); *Cartt v. Super. Ct.*, 50 Cal. App. 3d 960, 972
13 (1975).⁷

14 The Parties have jointly drafted the Notice of Proposed Settlement of Class Action
15 (“Notice” or “Class Notice”) which fairly and neutrally informs Class Members of their rights
16 and remedies in this action. The proposed Class Notice will be mailed to all Class Members by
17 First Class mail and will include information regarding the nature of the lawsuit, a summary of
18 the substance of the Settlement’s terms, the class definition, the procedure and time period
19 within which to submit Requests for Exclusions or objections to the Settlement, the date for the
20 final approval hearing, the formula used to calculate settlement payments, and the terms and
21 scope of the Released Claims. (Ex. 1, Settlement Agreement, Exhibit A and B; Hawkins Decl.
22 ¶¶ 44-45.)

23 In the event Class Notices are returned as undeliverable, the Settlement Administrator
24 will attempt to locate a current address using, among other resources, a skip-trace search. (Ex. 1,
25 Settlement ¶ 59)

26

27 ⁷ Due process does not require that each Class Member actually receive a notice, but rather a procedure
28 reasonably certain to reach Class Members. Wright, A. Miller & M. Kane, *Federal Practice and*
 Procedure § 1789, at 253 (2d ed. 1986). If appropriate notice is given, Class Members will be bound by
 the judgment even if they never actually receive the notice. *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir.

1 Accordingly, both the method of disseminating the Class Notice and content of the Class
2 Notice satisfy due process and the requirements of California law. *See* Cal. R. Ct. 3.776(e)-(f);
3 *State of Cal. v. Levi Strauss*, 41 Cal. 3d 460, 485 (1986) (the class notice must “fairly apprise
4 the class members of the terms of the proposed compromise and of the options open to
5 dissenting class members.”).

6 **V. CONCLUSION**

7 For the foregoing reasons, the Parties have negotiated a fair and reasonable settlement of
8 claims. Having appropriately presented the materials and information necessary for
9 preliminary approval, the Parties respectfully requests that the Court grant preliminary
10 approval of the proposed Settlement in accordance with the above and the Parties’ Settlement
11 Agreement.

12 Dated: March 22, 2022

Respectfully submitted,

13 By: _____

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