

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
LAUBY, MANKIN & LAUBY LLP
5198 Arlington Avenue, PMB 513
Riverside, CA 92504
T: (951) 320-1444 | F: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
representative basis, and on behalf of all others
similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California Limited
Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware Corporation;
CRYOGENIC INDUSTRIES SERVICE
COMPANIES, LLC, a California Limited
Liability Company; CRYOQUIP, LLC, a
California Limited Liability Company;
COSMODYNE, LLC, a California Limited
Liability Company; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CVRI2204626
*[Assigned to Hon. Harold Hopp, Dept 1, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing

Date: October 28, 2024
Time: 8:30 a.m.
Dept: 1

Complaint filed: October 25, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of
California. I manage the employment law department and am a partner with the law firm of
Lauby, Mankin & Lauby LLP, which has offices in Orange County and Riverside County. I am

1 thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I
2 submit this declaration in support of Plaintiff's Motion for Final Approval of this Class Action
3 Settlement. If called as a witness, I could and would competently testify thereto.

4 **COUNSEL'S EXPERIENCE**

5 2. I have been a member, in good standing, of the State Bar of California since 2001.
6 I am admitted to practice in the United States District Courts for the Central and Southern
7 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
8 courts in California.

9 3. I have handled well over 500 employee vs. employer litigation matters during my
10 23 years in practice. Over the last 17 years, my practice has almost entirely consisted of
11 representing employees, the majority of which has included class action and representative
12 action wage and hour matters. In total, I have handled upwards of 300 class action and
13 representative action wage/hour cases, and have been appointed by the court as class counsel and
14 have received final court approval and judgment in over half of those actions to date, and
15 anticipate receiving final approval in many more of those in the future.

16 4. As part of these settlements and judgments, I have recovered in excess of \$250
17 million in damages for my clients and the class members (who often work as nurses, ambulance
18 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
19 countless other trades). My team and I once held the record for the largest known PAGA-only
20 case in California's history - a \$12.5 million-dollar court approved settlement, which followed
21 extensive litigation, summary adjudication and writs to the CA Supreme Court against a Fortune
22 50 company (*Garcia v. Macy's*, Los Angeles Superior Court).

23 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
24 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
25 and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case against
26 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
27 Both cases were appealed.
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1 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
2 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17
3 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
4 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
5 only 5% of lawyers receive.

6 **ADEQUACY OF THE SETTLEMENT**

7 7. The Class, as conditionally certified by this Court, consists of two distinct classes
8 of employees, the ACD Class and Cryogenic Class.

9 8. As set forth in the Declaration of Mayra Gonzalez on behalf of the Settlement
10 Administrator, Phoenix Settlement Administrators, the Net Settlement Amount is \$244,756.62,
11 after the deductions set forth in the chart below:

	Total Amount
<i>Gross Settlement Amount</i>	\$ 460,000.00
Attorneys’ Fees (1/3)	\$ 153,333.33
Litigation Costs	\$ 22,910.05
Administrator Costs	\$ 9,000.00
PAGA Penalties	\$ 30,000.00
<i>Net Settlement Amount</i>	\$ 244,756.62

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17 9. The process of mailing the Notice Packets, consisting of a Class Notice, Objection
18 Form, Dispute Form and Exclusion Form, was very successful, as 100% of the Notice Packets
19 were successfully delivered by the Settlement Administrator.

20 10. The response from the Class Members was overwhelmingly positive, as 100% of
21 the Class participated in the Settlement and there were no valid objections.

22 11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in
23 the Motion for Final Approval, this Settlement is very favorable to the Class and the release is
24 narrowly limited to the claims alleged.

25 12. Sufficient information existed to allow Class Counsel to intelligently value this
26 case. Given the parties’ arms’ length bargaining facilitated by an experienced wage and hour
27 mediator, the extensive exchange of informal discovery, the experience of Class Counsel, the
28 fact that all but two Class Members elected to participate and no objections were submitted, the

1 presumption of fairness is justified.

2 13. I believe that the settlement is fair, reasonable and adequate, and in the best
3 interests of the Class, given the litigation risks and delay inherent in further litigation and
4 possible appeals. As set forth in Plaintiff's motion for preliminary approval and the declarations
5 submitted in support thereof, Defendants vigorously challenged Plaintiff's claims, and Plaintiff
6 faced real challenges in certifying the Class and obtaining a recovery on the claims in this matter.
7 Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and
8 that it is desirable that the action be fully and finally settled in the manner and upon the terms
9 and conditions set forth in the Settlement Agreement in order to limit further expense,
10 inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit
11 the operation of Defendants' business without further expensive litigation and the distraction and
12 diversion of its personnel with respect to matters at issue. All parties took into account the
13 uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The
14 parties determined that it is desirable and beneficial to both the Class and Defendants that this
15 case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The
16 recoveries contemplated by the Settlement represent a good result for the Class, fairly
17 proportioned to the likely risk-adjusted recovery in litigation.

18 **ADEQUACY OF COUNSEL AND**
19 **REASONABLENESS OF REQUESTED FEE AND COST AWARDS**

20 14. As set forth above, I have handled upwards of 300 class and representative
21 actions. I have been appointed as class counsel and have successfully resolved approximately
22 half of those cases (while many are ongoing and will successfully resolve in the future) while
23 recovering hundreds of millions of dollars for my clients and Class Members. This is
24 substantially better than average accordingly to Mayer Brown LLP's study entitled, An
25 Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.*, No. 12-
26 55479 (9th Cir. 2014), which found that only one-third of class actions are successful, compared
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1 to two-thirds that are defeated and result in no payment to the class members.¹

2 15. When this case was taken on a contingency fee basis, with my firm agreeing to
3 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
4 course of this litigation, Class Counsel paid all costs including filing fees, court costs, research
5 fees, and mediation costs. There was never a guarantee that we would recoup those expenditures.

6 16. It has been my experience that the benchmark for attorney fee awards in
7 California state cases is one-third of a common settlement fund, which the CA Supreme Court
8 upheld in the *Laffitte v. Robert Half*, 1 Cal.5th 480 case. Here, in accordance with the Settlement
9 Agreement, Class Counsel is seeking a fee of \$153,333.33, which is one-third of the Settlement
10 Amount.

11 17. There are several additional factors why I believe that the Court should award
12 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
13 resulted in a upward adjusted common fund settlement amount of \$460,000.00 on behalf of 325
14 Participating Class Members, who will receive approximately \$753.10 each on average and up to
15 a maximum of \$2,737.18 for those employees that worked the longest during the Class Period.
16 This is a very good result, especially in light of the disputed nature of the claims alleged. This
17 result was achieved by the work and success of my office, who negotiated the settlement after
18 extensive preparation, investigation, mediation, and substantial work thereafter.

19 18. Second, Plaintiff faced significant risks going forward with the litigation. As
20 discussed in the motion for preliminary approval, Defendants raised various defenses throughout
21 this litigation, any one of which, if successful, could have decimated Plaintiff's case. And
22 Defendants vowed to raise all these defenses at trial. Accordingly, Plaintiff faced risky issues
23 going forward with this litigation, and it would have taken several more years to realize any
24 recovery in this action along with the possibility of post-trial appeals.

25 19. Third, Class Counsel are experienced class action litigators. This experience and
26 expertise, combined with the high quality of work performed in this case, resulted in the

27 ¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf
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1 settlement achieved in this case.

2 20. Fourth, Class Counsel has been representing Plaintiff strictly on a contingency fee
3 basis. To that end, we have incurred the risk of non-recovery after investing a substantial
4 amount of time, money, and resources, and have done so since the inception of this case without
5 any payment or compensation. If Plaintiff had lost this case, we would have recovered nothing,
6 and would have lost our out-of-pocket costs. This is not an easy burden for my office, which is a
7 small firm. While some cases result in a positive lodestar and some in a negative lodestar like
8 this case, if, despite these hardships and risks, the best my office could hope for is merely to be
9 paid our hourly rate, then Class Counsel would not be compensated for the hardships and serious
10 risks we face when litigating contingency fee cases, and would not be incentivized to take on
11 similar cases in the future. Indeed, not all class/PAGA cases are successful. Many cases end
12 with no fees or a greatly reduced fee that is far less than lodestar like this one, often due to no
13 fault of counsel (i.e., bankruptcy, change in the law, consolidation- coordination-preemption,
14 being top filed, etc.). As noted in the Mayer Brown LLP's study discussed above, only one-third
15 of class actions are successful, compared to two-thirds that are defeated and result in no payment
16 to the class members.

17 21. Fifth, the request for attorney's fees in the amount of one-third of the common
18 fund falls well within the norms accepted by state and federal courts in California in comparable
19 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
20 recovery under the common fund doctrine was approved by the California Supreme Court in
21 *Laffitte, supra*, 1 Cal.5th 480, 503.

22 22. For all of the above reasons, a common fund fee award here in the amount of one-
23 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

24 23. At my office, this case was primarily handled by Peter Carlson while I performed
25 the role of the supervising attorney. Mr. Carlson's experience is set forth in his declaration, but
26 in sum, he works exclusively with me on employment law matters and has been in practice for
27 10 years. He bills at the hourly rate of \$650/hour. I have been in practice for 23 years, with
28 most of those years handling complex litigation and for over the last 15 years, my practice has

1 almost entirely consisted of handling class action wage and hour matters. My billing rate is
2 \$775/hour. I believe these rates are consistent with Plaintiff and Defense attorneys who handle
3 complex class action litigation, if not somewhat lower.

4 24. The hourly rates above are comparable to those of other attorneys with equal or
5 similar experience, if not somewhat lower (*i.e.*, the Laffey Matrix at www.laffeymatrix.com
6 indicates that the benchmark rates are: \$777/hour for an 8–10-year attorney, \$878/hour for a 11–
7 19-year attorney, and \$1,057/hour for a 20+ year attorney).

8 25. Moreover, the Wolters Kluwer 2023 Real Rate Report (“Real Rate Report”)
9 provides directly applicable information in this regard. The Real Rate Report is based on an
10 enormous and statistically significant compilation of data, comprising millions of billing entries
11 from a hundred thousand individual timekeepers who worked at thousands of law firms. The
12 Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners
13 and associates in major metropolitan areas. For the southern California area: (a) the rate for
14 partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles,
15 and (b) the rates for associates with seven or more years of experience, the median rate is \$674
16 per hour, and the upper quartile rate is \$888 per hour. And, perhaps most importantly, the
17 information provided in the Real Rate Report is not based on self-reported numbers, surveys,
18 sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual
19 hours and fees billed by law firms, which makes it “a much better reflection of true market rates
20 than self-reported rates in all practice areas.” *Brown v. CVS Pharmacy, Inc.* (C.D. Cal. Apr. 24,
21 2017) 2017 U.S. Dist. LEXIS 182309, at *21; *PLCM Group*, 22 Cal.4th at 1085 (holding that
22 rates should be premised upon precisely this form of independent, “objective” rate data that
23 reflects “fair market” rates actually billed to clients “in the community for similar work.”

24 26. The table below includes a summary of the hours worked, plus additional hours
25 that I will bill in finalizing and filing the motion, preparing for and attending the approval
26 hearing, and working with the administrator and defense counsel to issue checks, respond to
27 class members and finalize this matter. The actual aggregated lodestar between the attorneys
28 that worked on this case is approximately \$161,940, which results in a negative multiplier, as

summarized in the following table:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	86²	\$66,650
Peter Carlson <i>Senior Associate</i> (10 Years)	\$650	146.6	\$95,290
Grand Total for All Attorneys			\$161,940

27. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

28. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses included but were not limited to: court filings, messenger services, postage, mediation fees, expert fees, and other incidental expenses directly related to this action. My firm's expenses through the final approval hearing are estimated to be \$22,910.05, which includes filing this motion, process/server costs, and service expenses (see the itemized statement of these costs attached hereto as Exhibit "C"). Since the Settlement Agreement provided for capped costs up to \$25,000, the savings will be placed in the Net Settlement Amount for distribution to the Participating Class Members. Defendants do not oppose this request for costs.

SUBMISSION TO THE LWDA

29. The Motion and declarations, including the Settlement Agreement, have concurrently been submitted to the LWDA. (See Exhibit "D").

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² Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 20 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

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31. A true and correct copy of the Order granting preliminary approval is attached hereto as Exhibit “B.”

33. The LWDA's confirmation of receipt of this Motion and Declaration is attached hereto as Exhibit "D."

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 4, 2024, at Riverside, California.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

Brian J. Mankin, Esq. [CSB No. 216228]
brian@lmlfirm.com
 Peter J. Carlson, Esq. [CSB No. 295611]
peter@lmlfirm.com
 LAUBY, MANKIN & LAUBY LLP
 5198 Arlington Avenue, PMB 513
 Riverside, CA 92504
 Tel: (951) 320-1444 | Fax: (951) 320-1445

Attorneys for Plaintiff, on a representative basis and on behalf of all others similarly situated

Daniel J. Kessler, Esq. [Bar No. 173710]
dkessler@bkcgllaw.com
 Ros M. Lockwood, Esq. [Bar No. 194718]
rlockwood@bkcgllaw.com
 Michael P. McConnell, Esq. [Bar No. 317981]
mmccconnell@bkcgllaw.com
 BURKHALTER KESSLER CLEMENT & GEORGE LLP
 2020 Main Street, Suite 600
 Irvine, California 92614
 Tel: (949) 975-7500 | Fax: (949) 975-7501

Attorneys for Defendants, Nikkiso America, Inc.; ACD, LLC; Cryogenics Industries, Inc.;
 Cryogenic Industries Service Companies, LLC; Cryoquip, LLC; Integrated Cryogenics
 Solutions, LLC; and Cosmodyne, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
 representative basis, and on behalf of all
 others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
 Corporation; ACD, LLC, a California Limited
 Liability Company; CRYOGENIC
 INDUSTRIES, INC., a Delaware
 Corporation; CRYOGENIC INDUSTRIES
 SERVICE COMPANIES, LLC, a California
 Limited Liability Company; CRYOQUIP,
 LLC, a California Limited Liability
 Company; COSMODYNE, LLC, a California
 Limited Liability Company; and DOES 1
 through 20, inclusive;

Defendants.

Case No.: CVRI2204626

*[Assigned to Hon. Harold Hopp, Dept 10, for
 all purposes]*

CLASS AND PAGA SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

1 This Class Action and PAGA Settlement Agreement and Release of Claims is entered
2 into by and between Plaintiff Carlos Flores, individually and on behalf of all others similarly
3 situated, and on behalf of the State of California, and Defendants Nikkiso America, Inc., ACD,
4 LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC,
5 Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, and is approved by their respective
6 counsel of record, subject to the terms and conditions hereof and the Court's approval.

7 **A. Definitions**

8 1. "Action" or "Lawsuit" means and refers to the case entitled *Carlos Flores v.*
9 *Nikkiso America, Inc., et al.*, Riverside County Superior Court, Case No. CVRI2204626.

10 2. "ACD" means and refers to Defendant ACD, LLC, which also does business in
11 California as ACD and Nikkiso ACD.

12 3. "ACD Class" means all current and former nonexempt (hourly paid) employees
13 employed by ACD in California during the ACD Class Period.

14 4. "ACD Class Period" is January 1, 2020, through January 16, 2024.

15 5. "Aggrieved Employee(s)" means all current and former nonexempt (hourly paid)
16 employees employed by ACD in California during the PAGA Period.

17 6. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
18 Action and PAGA Settlement Agreement and Release of Claims.

19 7. "Class" is defined all members of the ACD Class and Cryogenic Class.

20 8. "Class Member(s)" refers to individual members of the Class.

21 9. "Class Counsel" refers to Brian Mankin and Peter Carlson of Lauby, Mankin &
22 Lauby LLP.

23 10. "Class Data" means a complete list that Defendants will diligently and in good
24 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
25 which shall include, for each Class Member: the individual's full name; last known address;
26 Social Security Number; total Weeks Worked during the PAGA Period, total Weeks Worked in
27 the ACD Class during the ACD Class Period and the total Weeks Worked in the Cryogenic Class
28 during the Cryogenic Class Period.

1 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Carlos Flores.

2 12. “Combined Class Period” is deemed to be any time during the period of October
3 25, 2018 (start of the Cryogenic Class Period) and January 16, 2024 (end of the ACD Class
4 Period).

5 13. “Complaint” refers to the operative second amended complaint, which pleads
6 class action and PAGA representative claims against Defendants.

7 14. “Court” (or “Judge”) means the California Superior Court, County of Riverside.

8 15. “Cryogenic” collectively means and refers to Defendants Nikkiso America, Inc.,
9 ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC,
10 Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC.

11 16. “Cryogenic Class” means current and former nonexempt (hourly paid) employees
12 employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc.,
13 Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and
14 Integrated Cryogenic Solutions, LLC in California during the Cryogenic Class Period.

15 17. “Cryogenic Class Period” is October 25, 2018, through December 31, 2019.

16 18. “Defendants” means and refers to Defendants Nikkiso America, Inc., ACD, LLC,
17 Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC,
18 Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC.

19 19. “Defendants’ Counsel” or “Defense Counsel” means and refers to Burkhalter
20 Kessler Clement & George.

21 20. “Effective Date” is defined as the latest of the following dates: (i) if no Class
22 Member timely and properly intervenes or files a motion to vacate the Judgment under Code of
23 Civil Procedure § 663, then the date the Court enters an order granting Final Approval of the
24 Class Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
25 sixty-one (61) calendar days following the date the Court enters an order granting Final
26 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
27 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
28 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or

1 other collateral attack (including any requests for rehearing and/or petitions for *certiorari*),
2 resulting in final judicial approval of the Class Settlement.

3 21. “Escalator Clause:” Defendants represent that there are approximately 315 Class
4 Members who worked approximately 25,000 Workweeks during the Combined Class Period.
5 Should the total number of Workweeks exceed 27,500 (which is 10% more than Defendants’
6 representation), then the Settlement Amount shall increase by \$18.40 (Settlement Amount
7 divided by 25,000) for each additional Workweek above 27,500.

8 22. “Final Approval” refers to the order of the Court granting final approval of this
9 Settlement Agreement and entering a judgment approving this Agreement on substantially the
10 terms provided herein or as may be modified by subsequent agreement of the Parties.

11 23. “Individual Class Payment” refers to each Participating Class Members share of
12 the Net Settlement Amount, as further discussed in Paragraph 54(c) below.

13 24. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
14 PAGA Penalties, as further discussed in Paragraph 54(h) below.

15 25. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 54(b)
16 below.

17 26. “Notice” means the notice of proposed class settlement that will be sent to the
18 Class Members, and which will advise each Class Member of the settlement and his or her
19 estimated Individual Class Amount, Individual PAGA Payment, Workweeks worked and will
20 further advise of the setting of a Final Approval Hearing.

21 27. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
22 Form, and the Dispute Form to be sent to all Class Members.

23 28. “Objecting Class Member” means a Class Member, other than Plaintiff, who
24 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 75(c)
25 below.

26 29. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
27 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
28 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well

1 as the Individual PAGA Payment allocated to each Aggrieved Employee.

2 30. "PAGA Period" is period from October 25, 2021, through January 16, 2024.

3 31. "Participating Class Member" means any and all Class Members who are deemed
4 to participate and receive an Individual Class Payment and do not opt-out by submitting timely
5 valid Requests for Exclusion.

6 32. "Parties" means Plaintiff and Defendants, collectively.

7 33. "Preliminary Approval Date" means the date the Court approves the Settlement
8 Agreement and enters the Preliminary Approval Order.

9 34. "Preliminary Approval Order" means the judicial Order to be entered by the
10 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
11 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
12 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
13 approval hearing on the fairness of the terms of Settlement, including approval of attorneys' fees
14 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
15 object to Plaintiff's motion for preliminary approval but will be provided with an opportunity to
16 review and comment upon the motion before it is filed.

17 35. "QSF" means the Qualified Settlement Fund set up by the Settlement
18 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
19 from which the settlement payments shall be made.

20 36. "Released Class Claims" or "Class Claims" by the Participating Class Members
21 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
22 and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum
23 wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to
24 provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final
25 wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful
26 competition.

27 37. "Released PAGA Claims" means any and all PAGA claims that Plaintiff alleged
28 against the Released Parties based on the facts stated in the relevant LWDA notice letter and

only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

38. “Released Parties” means Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, together with their officers, directors, employees, and agents.

39. “Release” shall mean the release and discharge of the Released Class Claims by Plaintiff and all Participating Class Members and their assignees.

40. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the Class Members.

41. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 75(a) below.

42. “Settlement Amount” is \$460,000, subject to the Escalator Clause and exclusive of Defendants’ obligation to fund its share of payroll taxes, as further discussed in Paragraph 49(c) below.

43. “Settlement Administrator” means and refers to Phoenix Settlement Administrators, the third-party class action settlement administrator agreed to by the Parties, that will provide the Notice Packet to the Class Members and distribute the settlement amounts as described in this Agreement.

44. “Settlement Administration Costs” means the costs payable from the Settlement Amount to the Settlement Administrator for administering this Settlement, including, but not

1 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
2 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
3 reporting and remittance obligations, distributing the Settlement Amount, and providing
4 necessary reports and declarations, as requested by the Parties. The Settlement Administration
5 Costs shall be paid from the Settlement Amount, and shall not exceed the amount approved by
6 the Court, regardless of any additional costs that the Settlement Administrator may request or
7 feel is necessary to administer the Settlement.

8 45. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any
9 and all work weeks during the Combined Class Period during which the Class Member worked
10 at least one day in the ACD Class and/or Cryogenic Class. Likewise, in the context of
11 Aggrieved Employees, it means any and all weeks worked during the PAGA Period during
12 which the Aggrieved Employee worked at least one day for ACD in California.

13 **B. General Terms**

14 46. On October 24, 2022, Plaintiff Carlos Flores submitted the LWDA Notice Letter
15 by giving written notice by online filing to the Labor and Workforce Development Agency
16 (“LWDA”) and by certified mail to Defendant Nikkiso America of the specific provisions of the
17 Labor Code alleged to have been violated, including the facts and theories to support the alleged
18 violations. On November 22, 2022, Plaintiff submitted an amended notice in order to add all
19 Defendants to the LWDA Notice Letter.

20 47. On October 25, 2022, Plaintiff Carlos Flores filed the instant class action against
21 Defendant Nikkiso America, which he also amended on about November 22, 2022, to add all
22 Defendants to the Action. Then after the 65-day exhaustion period without the LWDA asserting
23 jurisdiction over the PAGA claims, Plaintiff filed the operative second amended Complaint,
24 alleging class and representative action claims, including: (1) failure to pay minimum wages, (2)
25 failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest
26 breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages upon
27 separation of employment, (7) failure to provide accurate itemized wage statements, (8) unfair
28 and unlawful competition, and (9) related PAGA claims. Defendants filed their Answer to the

1 Second Amended Complaint on about March 7, 2023.

2 48. Defendants deny Plaintiff's claims and allegations and contend that the Action is
3 not suitable for class certification.

4 49. The Class Representative believes he can proceed with the representative and
5 class claims, that the Action is meritorious, and that class certification is appropriate.

6 50. The Parties have conducted a thorough investigation into the facts of the Action.
7 This includes an exchange of formal discovery, as well as an extensive exchange of informal
8 discovery, including a sampling of payroll and timekeeping records for Class Members. Class
9 Counsel is both knowledgeable about and has done extensive research with respect to the
10 applicable law and potential defenses to the claims of the Class. Class Counsel has diligently
11 pursued an investigation of the Class Members' claims against Defendants. Based on the
12 foregoing data and on their own independent investigation and evaluation, Class Counsel is of
13 the opinion that the settlement with Defendants for the consideration and on the terms set forth in
14 this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the Class
15 Members in light of all known facts and circumstances, including the risk of significant delay
16 and uncertainty associated with litigation, various defenses asserted by Defendants, and
17 numerous potential appellate issues.

18 51. On January 16, 2024, the Parties participated in a full-day mediation with Eve
19 Wagner, a highly-respected wage-and-hour mediator. At the conclusion of mediation and
20 extensive arms-length negotiations, the Parties reached a global settlement and entered into a
21 Memorandum of Understanding.

22 52. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
23 to be performed or judgment to be entered pursuant to the terms of the Settlement and
24 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
25 any statute or law or liability on the claims or allegations in the Action.

26 53. Stipulation for Class Certification. For settlement purposes only, Defendants will
27 stipulate that the Participating Class Members may be conditionally certified as a Class. This
28 stipulation to certification is in no way an admission that class action certification is proper and

1 shall not be admissible in this action except for the sole purposes of enforcing this Agreement.
2 Should, for whatever reason, the Court fail to issue Final Approval, the Parties' stipulation to
3 class certification as part of the Settlement shall become null and void ab initio and shall have no
4 bearing on, and shall not be admissible in this Action in connection with, the issue of whether
5 certification would be appropriate in a non-settlement context. Defendants expressly reserve
6 their rights and declare that they would continue to oppose class certification and the substantive
7 merits of the case should the Court fail to issue Final Approval. Plaintiff expressly reserves his
8 rights and declares that he will continue to pursue class certification and a trial should the Court
9 fail to issue Final Approval.

10 **C. Terms of Settlement**

11 54. The financial terms of the Settlement are as follows:

12 (a) Settlement Amount: The Parties agree to settle this Action for the
13 Settlement Amount, which is the maximum amount that will be paid by Defendants (except for
14 the employer's share of payroll taxes), which includes payments to the Participating Class
15 Members, PAGA Penalties (to the Aggrieved Employees and LWDA), Attorneys' Fees and
16 Costs Award, and Settlement Administration Costs. Defendants shall separately pay the
17 employer's share of its payroll tax obligations, which shall be reported through the Settlement
18 Administrator.

19 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
20 Settlement Amount less the Attorneys' Fees and Costs Award, the Settlement Administration
21 Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service
22 Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated
23 to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and
24 allocated to the Participating Class Members.

25 (c) Individual Class Payments for the Class will be calculated and apportioned
26 from the Net Settlement Amount based on the number of Weeks Worked by a Class Member
27 during the Combined Class Period. Each specific Individual Class Payment will be calculated
28 by: (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all

1 Participating Class Members during the Combined Class Period, and (b) multiplying the result
2 by each Participating Class Members' Weeks Worked. The entire Net Settlement Amount will be
3 disbursed to all Participating Class Members. If there are any valid and timely Requests for
4 Exclusion, the Settlement Administrator shall proportionally increase the Individual Class
5 Payment for each Participating Class Member according to the number of Weeks Worked, so
6 that the amount actually distributed to Participating Class Members equals one hundred percent
7 (100%) of the Net Settlement Amount.

8 (d) Allocation of Individual Class Payments: The Individual Class Payments
9 to Participating Class Members will be allocated as follows: one-third (33.333%) will be
10 allocated as wages subject to withholding of all applicable local, state and federal taxes; and two-
11 thirds (66.667%) will be allocated for interest and statutory penalties (pursuant to, e.g.,
12 California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The
13 Settlement Administrator will issue to each Participating Class Member an Internal Revenue
14 Service Form W-2 and comparable state forms with respect to the wage allocation and a Form
15 1099 with respect to the penalties and interest allocations.

16 (e) Service Payment to Class Representative: Not applicable.

17 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
18 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
19 Settlement Amount, plus reasonable litigation costs not to exceed \$25,000 ("Attorney's Fees and
20 Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys'
21 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
22 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
23 obligation to pay any attorneys' fees, costs or expenses to Class Counsel. Should the Court
24 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
25 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
26 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
27 Settlement Agreement or otherwise void the Settlement. The Settlement Administrator shall
28 issue to Class Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs

1 awarded by the Court.

2 (g) Settlement Administration Costs: The fees and other charges of the
3 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$9,000, unless
4 (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
5 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
6 approval), or (2) as otherwise approved by all Parties and the Court.

7 (h) PAGA Penalties: The Parties agree that \$30,000 is allocated to PAGA
8 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
9 amount, \$22,500 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
10 Private Attorney General Act of 2004 ("PAGA") and \$7,500 (25%) will form the Individual
11 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
12 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
13 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
14 Settlement.

15 (i) Tax Liability: Class Counsel and Defendants make no representations as
16 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
17 the Class Members are not relying on any statement or representation by Class Counsel or
18 Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
19 understand and agree that they will be solely responsible for the payment of any taxes and
20 penalties assessed on their respective Individual Class Payments and Individual PAGA
21 Payments, described herein. Forms 1099 will be distributed in the manner required by the
22 Internal Revenue Code of 1986 (the "Code") and consistent with this Agreement. If the Code,
23 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
24 this Agreement, the processes set forth in this Section may be modified in a manner to bring
25 Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and
26 Aggrieved Employees understand and agree that they will be solely responsible for the payment
27 of any taxes and penalties assessed on their respective payments described herein.

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

25 (k) “Non-Reversionary” Settlement. This is a “non-reversionary” settlement.
26 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
27 Participating Class Members and Aggrieved Employees will not have to make a claim to receive
28 an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of

1 Individual Class Payment or Individual PAGA Payments will be made directly to each
2 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
3 responsible for accurately and timely reporting and remittance obligations with respect to
4 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
5 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
6 forth herein.

7 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
8 reasonable and will so represent same to the Court.

9 **D. Release by the Participating Class Members**

10 55. Upon entry of the Final Approval Order and Defendants' funding of the
11 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
12 Class Payments, and except as to such rights or claims as may be created by this Agreement,
13 Plaintiff and the Participating Class Members will forever completely release and discharge the
14 Released Parties from the Released Class Claims. In terms of the applicable release periods,
15 Participating Members of the ACD Class shall release the Released Class Claims for the ACD
16 Class Period, and Participating Members of the Cryogenic Class shall release the Released Class
17 Claims for the Cryogenic Class Period.

18 56. Each Participating Class Member will be deemed to have made the foregoing
19 Release as if by manually signing it.

20 57. Class Representative, on behalf of himself and the Class, acknowledges and
21 agrees that the claims for unpaid wages and untimely payment of wages in the Action are
22 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
23 them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that
24 California Labor Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code §
25 206.5 provides in pertinent part as follows: "An employer shall not require the execution of any
26 release of any claim or right on account of wages due, or to become due, or made as an advance
27 on wages to be earned, unless payment of those wages has been made."

28 ///

1 **E. Release of PAGA Claims**

2 58. Upon entry of the Final Approval Order and Defendants' funding of the
3 Settlement Amount and all employer payroll taxes owed on the wage portion of the Individual
4 Class Payments, Plaintiff – in his individual capacity and on behalf of the State of California and
5 LWDA – shall completely release and discharge the Released Parties from the Released PAGA
6 Claims for the PAGA Period.

7 59. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
8 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
9 releasing the Released PAGA Claims.

10 60. It is the intent of the Parties that the Final Approval Order shall have full
11 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

12 **F. Release by Plaintiff and Class Representative**

13 61. Upon entry of the Final Approval Order and Defendants' funding of the
14 Settlement Amount, and all employer payroll taxes owed on the wage portion of the Individual
15 Class Payments, Class Representative does hereby, for himself and his spouses, heirs,
16 successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators,
17 guardians, personal representatives, and assigns forever and completely release and discharge the
18 Released Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
19 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
20 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
21 damages, exemplary damages, interest, attorneys' fees, and costs) of any nature whatsoever,
22 from the beginning of time through the execution of this Stipulation, whether known or
23 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
24 upon, or relating to Class Representative's employment with Defendants or the remuneration for
25 or termination of such employment (the "Class Representative's Claims").

26 62. Without limiting the generality of the foregoing, this general release by Plaintiff
27 includes all federal, state and local statutory claims, federal and state common law claims
28 (including but not limited to those for contract, tort and equity), including without limitation any

1 claims for breach of any implied or express contract or covenant; claims for promissory estoppel;
2 claims of entitlement to any pay; claims of wrongful denial of insurance and employee benefits
3 (except workers' compensation benefits); claims for failure to hire, public policy violations,
4 defamation, invasion of privacy, fraud, misrepresentation, emotional distress, assault/battery, or
5 other common law or tort matters; claims of harassment, retaliation or discrimination based on
6 age, race, color, religion, sex, national origin, ancestry, physical or mental disability, protected
7 activity, medical condition, marital status, sexual preference, union activity, or veteran status;
8 claims under the Americans with Disabilities Act, Age Discrimination in Employment Act, Title
9 VII of the Civil Rights Act of 1964 (as amended), the Civil Rights Act of 1991; 42 USC sec.
10 1981, 42 USC sec. 1983, the Older Workers Benefit Protection Act, the Family and Medical
11 Leave Act; claims for unfair competition; claims based on legal restrictions on Defendants' right
12 to terminate, not to hire or promote employees, or to change an employee's compensation; and
13 claims based on any federal, state or other governmental statute, regulation or ordinance, all
14 statutory, constitutional, contractual or common law claims for wages, damages, unpaid costs or
15 expenses, penalties, liquidated damages, punitive damages, interest, attorneys' fees, litigation
16 costs, restitution, or equitable relief, or any other claims arising under the Fair Labor Standards
17 Act, the Employment Retirement Security Income Act of 1974, the California Constitution, the
18 California Fair Employment and Housing Act, the California Unfair Competition Act (California
19 Business and Professions Code section 17200 et seq.), the California Labor Code, or Industrial
20 Welfare Commission Wage Orders, or arising out of or based upon the following categories of
21 allegations regardless of the forum in which they may be brought, to the fullest extent such
22 claims are releasable by law: (i) all claims for unpaid overtime; (ii) all claims for unpaid wages;
23 (iii) all claims for meal break violations; (iv) all claims for rest period violations; (v) all claims
24 for paid sick leave violations; (vi) all claims for the failure to timely pay wages upon
25 termination; (vii) all claims for the failure to timely pay wages during employment; (viii) all
26 claims for wage statement violations; (ix) all claims for reporting time pay; and (x) all other
27 penalties recoverable for such claims under PAGA.

63. Plaintiff agrees that there is a risk that any injury that he may have suffered by reason of the Released Parties' relationship with him might not now be known, and there is a further risk that said injuries, whether known or unknown at the date of this Settlement Agreement, might possibly become progressively worse, and that as a result thereof further damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and discharge the Released Parties, and understands that by the execution of this Settlement Agreement no further claims for any such injuries that existed at the time of the execution of this Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time period from the beginning of time to the execution of this Settlement Agreement.

64. Plaintiff expressly waives and relinquishes all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and does so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Notwithstanding the provisions of Section 1542, and for the purpose of implementing a full and complete release and discharge of all parties, Class Representative expressly acknowledges that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Class Representative knew of, as well as all claims that he does not know or suspect to exist in his favor against the Released Parties, or any of them, for the time period from the beginning of time to the execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Class Representative's claims. Notwithstanding the above, the general release by Class Representative shall not extend to claims for workers' compensation benefits, claims for unemployment benefits, or other claims that may not be released by law.

1 **G. Interim Stay of Proceedings**

2 65. Pending completion of all prerequisites necessary to effectuate this Settlement,
3 the Parties agree, subject to Court approval, to a stay of all proceedings in the Action except such
4 as are necessary to effectuate the Settlement.

5 **H. Notice Process**

6 66. Appointment of Settlement Administrator. The Parties have agreed to the
7 appointment of the Settlement Administrator to perform the duties of a settlement administrator,
8 including mailing the Notice Packet, using standard devices to obtain forwarding addresses,
9 independently reviewing and verifying documentation associated with any claims or opt-out
10 requests, resolving any disputes regarding the calculation or application of the formula for
11 determining the Individual Class Payments and Individual PAGA Payments, drafting and
12 mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing
13 all necessary tax forms, and performing such other tasks as set forth herein or as the Parties
14 mutually agree or that the Court orders.

15 67. Disputes Regarding Settlement Administration. Any and all disputes relating to
16 administration of the Settlement by the Settlement Administrator (except for disputes regarding
17 Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction
18 over the terms and conditions of this Agreement, until Plaintiff and Defendants notify the Court
19 that all payments and obligations contemplated by this Agreement have been fully carried out.
20 Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to
21 resolve the dispute without the necessity of Court intervention. The Settlement Administrator
22 shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved
23 Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid
24 pursuant to this Agreement.

25 68. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
26 Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement
27 Administrator will run a check of the Class Members' addresses against those on file with the
28 U.S. Postal Service's National Change of Address List. The Class Data provided to the

1 Settlement Administrator will remain confidential and will not be used or disclosed to anyone,
2 except as required by applicable tax authorities, pursuant to Defendants' express written consent,
3 or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,
4 nothing herein shall prevent Class Counsel from communicating with Class Members regarding
5 the Action and Settlement.

6 69. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the
7 Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel
8 containing a preliminary calculation of all payments to be paid from the Settlement Amount,
9 including the estimated Individual Class Payments to each Class Member and Individual PAGA
10 Payments to each Aggrieved Employee (a person's name shall be redacted and a control number
11 used in place of the name). In the event that the total Workweeks worked by all Class Members
12 triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the
13 increased Settlement Amount, and related increased payments from the Settlement Amount,
14 including increased Attorneys' Fees and Costs and any increased Settlement Administration
15 Costs, all of which shall be subject to Court approval.

16 70. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the
17 Settlement Administrator to the Class Members, by first class mail, in English and Spanish,
18 within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data.
19 For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form,
20 an Objection Form, and a Dispute Form. The Settlement Administrator shall use standard
21 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
22 envelopes are returned.

23 71. Returned Notice Packets. The Settlement Administrator will take steps to ensure
24 that the Notice Packet is received by all Class Members, including utilization of the National
25 Change of Address Database maintained by the United States Postal Service to review the
26 accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class
27 Member for whom an updated address is located within ten (10) calendar days following both
28 the Settlement Administrator learning of the failed mailing and its receipt of the updated address.

1 The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the
2 Class Member that the exclusion (opt-out) request or objection must be returned by the later of
3 the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

4 72. Presumption Regarding Receipt of Notice Packet. It will be conclusively
5 presumed that if an envelope has not been returned to Settlement Administrator by the Response
6 Deadline that the Class Member received the Notice Packet.

7 73. Disputes Regarding Class Data. Class Members are deemed to participate in the
8 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
9 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
10 Payment and Individual PAGA Payment, as well as the number of Weeks Worked during the
11 Class Period and the PAGA Period. Class Members may dispute their Weeks Worked by timely
12 submitting evidence to the Settlement Administrator. Defendants' records will be presumed
13 determinative absent reliable evidence to rebut Defendants' records, but the Settlement
14 Administrator will evaluate the evidence submitted by the Class Member and provide the
15 evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good
16 faith about the evidence to determine the Class Member's actual number of Work Weeks, and
17 estimated Individual Class and PAGA Payments. If Class Counsel and Defense Counsel are
18 unable to agree, they agree to submit the dispute to the Court to render a final decision. Class
19 Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks
20 Worked, object or opt out, unless extended by the Court.

21 74. Declaration of Due Diligence. The Settlement Administrator shall provide
22 counsel for the Parties, at least five (5) days after the initial Response Deadline, a declaration of
23 due diligence and proof of mailing with regard to the mailing of the Notice Packet.

24 75. Class Members' Rights. Each Class Member will be fully advised of the
25 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
26 from the Class Claims portion of the Settlement. The Notice Packet will inform the Class
27 Members of the Court-established deadlines for filing objections or requesting exclusion from
28 the Settlement in accordance with the following guidelines:

1 (a) Requests for Exclusion from Class. Any Class Member, other than
2 Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion
3 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
4 Settlement Administrator and postmarked on or before the Response Deadline in order to be
5 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
6 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
7 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
8 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
9 with these requirements: (i) will not have any rights under this Agreement, including the right to
10 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
11 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
12 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
13 to the Released PAGA Claims to the fullest extent permitted by law and receive an Individual
14 PAGA Payment. All Parties and their counsel, including Defendants and their agents and
15 employees, shall not encourage or solicit opt-outs or objections, directly or indirectly, through
16 any means.

17 (b) Binding Effect on Participating Class Members. All Participating Class
18 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
19 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
20 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
21 Settlement.

22 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
23 does not submit a valid and timely Request for Exclusion may object to the terms of this
24 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
25 Member that intends to object must mail the Objection Form to the Settlement Administrator.
26 The Objection Form must be postmarked on or before the Response Deadline in order to be
27 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
28 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall

1 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
2 and the Settlement Administrator shall attach the same to its declaration of due diligence and file
3 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
4 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
5 and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
6 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
7 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
8 preserved by becoming a party of record by timely and properly intervening or filing a motion to
9 vacate the judgment under Code of Civil Procedure § 663.

10 (d) Failure to Object. Any Class Member who does not timely and properly
11 become a party of record by intervening or filing a motion to vacate the judgment waives any
12 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
13 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
14 under California Code of Civil Procedure § 473, and extraordinary writs.

15 (e) Responses to Objections. Counsel for the Parties may file a response to
16 any objections submitted by Objecting Class Members at least five (5) court days before the date
17 of the Final Approval Hearing.

18 (f) Class Members will have until the Response Deadline to object or submit
19 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
20 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
21 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
22 Counsel or Defense Counsel.

23 76. Funding of the Settlement Amount. Defendants shall jointly and severally deposit
24 the Settlement Amount, plus Defendants' share of payroll taxes, with the Settlement
25 Administrator within fifteen (15) days after the Effective Date.

26 77. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
27 Settlement Amount by Defendants, the Settlement Administrator shall mail the Individual Class
28 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved

1 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, the payment
2 to the LWDA for PAGA Penalties, and will pay itself the Settlement Administration Costs.
3 Disbursement of the Class Counsel's Attorney's Fees and Cost, Service Payment to the Class
4 Representative, Settlement Administration Costs shall not precede disbursement of the
5 Individual Class Payments and the PAGA Penalties.

6 78. Deadline for Cashing Settlement Checks. Participating Class Members and
7 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
8 Administrator to cash their settlement checks. The release will be binding upon all Participating
9 Class Members who do not cash their checks within the 180-day period. In the event that any
10 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
11 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
12 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
13 Counsel of the results. If a new address is located by these means, the Administrator will have
14 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
15 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
16 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
17 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
18 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
19 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
20 payment on such check. If the check in question has not been negotiated prior to the stop
21 payment order, the Settlement Administrator will issue a replacement check.

22 a. If any Participating Class Member's check is not cashed within the time
23 periods noted above, the check will be void and a stop-payment will be issued, and the
24 Settlement Administrator shall issue the unclaimed funds to the California State Controller's
25 Office in the name of the Class Member.

26 b. If any Aggrieved Employee's check is not cashed within the time periods
27 noted above, the check will be void and a stop-payment will be issued, and the Settlement
28 Administrator shall issue the unclaimed funds to the California State Controller's Office in the

1 name of the Aggrieved Employee.

2 **I. Duties of the Parties Prior to the Court's Approval**

3 79. Plaintiff will move the Court for Preliminary Approval of this Settlement and
4 entry of the Preliminary Approval Order accomplishing the following:

5 (a) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
7 and a hearing on fees, costs and the Service Payments;

8 (b) Approving as to form and content the proposed Notice Packet;

9 (c) Directing the mailing of the Notice Packet by first class mail to the Class
10 Members;

11 (d) Preliminarily approving this Settlement; and

12 (e) Preliminarily certifying the class for purposes of this Settlement.

13 Further, pursuant to Labor Code section 2699(l)(2), Plaintiff shall submit a copy of this
14 Agreement and the Motion for Preliminary Approval to the LWDA, no later than the same day
15 Plaintiff files the Motion for Preliminary Approval with the Court.

16 **J. Duties of the Parties Following Court's Final Approval**

17 80. In connection with the Final Approval Hearing provided for in this Agreement,
18 Class Counsel shall submit a proposed Final Approval Order:

19 (a) Approving the Settlement, adjudging the terms thereof to be fair,
20 reasonable and adequate, and directing consummation of its terms and provisions;

21 (b) Approving Class Counsel's application for an award of attorneys' fees and
22 reimbursement of litigation costs and expenses, and the payment to the Settlement Administrator
23 for costs of administering the settlement; and

24 (c) Entering judgment approving settlement.

25 **K. Voiding the Agreement**

26 81. If the Court fails or refuses to issue the Final Approval Order or fails to approve
27 any material condition of this Agreement which effects a fundamental change of the Settlement,
28 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the

option of either Party.

82. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

83. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

L. Other Terms

84. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

85. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

86. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

87. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

88. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were

1 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
2 and compromise the matters at issue in the Complaint to avoid further substantial expense and
3 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
4 taken into account the uncertainty and risks inherent in litigation, and without conceding any
5 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
6 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
7 terms and conditions set forth in this Agreement.

8 89. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
9 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
10 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
11 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
12 Agreement with the intention of avoiding further disputes and litigation with the attendant
13 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
14 related documents such as the notices, and motions for preliminary and final approval, shall,
15 pursuant to California Evidence Code § 1152 and/or Federal Rule of Evidence 408, be
16 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
17 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
18 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
19 approved, the stipulation will be of no force or effect.

20 90. No Publicity. The Parties will not publicize the Settlement or disclose it to third
21 parties prior to the Court granting Preliminary Approval, except as required or necessary to
22 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
23 Class Representatives agree that they will not discuss the Settlement with the media, any
24 settlement and verdict reporting service, any social media postings or other Internet postings.
25 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
26 other case materials in the Action related to seeking and obtaining Court approval of this
27 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
28 Members or their representatives about this Settlement, including through the posting of Court-

1 filed documents on Class Counsel's websites for access solely by the Class Members, or to
2 prevent the Parties or their representatives from communicating with financial or legal advisors
3 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
4 the Action has been settled on terms mutually agreeable to the Parties.

5 91. Notices. Unless otherwise specifically provided herein, all notices, demands or
6 other communications given hereunder shall be in writing and shall be deemed to have been duly
7 given as of the third business day after mailing by United States registered or certified mail,
8 return receipt requested, addressed:

9 *To the Class:*

10 Brian J. Mankin
11 *brian@lmlfirm.com*
12 Lauby, Mankin & Lauby LLP
13 5198 Arlington Ave, PMB 513
14 Riverside, CA 92504
15 Tel: (951) 320-1444 | Fax: (951) 320-1445

16 *To Defendant:*

17 Daniel J. Kessler
18 *dkessler@bkcglaw.com*
19 Ros M. Lockwood
20 *rlockwood@bkcglaw.com*
21 BURKHALTER KESSLER CLEMENT & GEORGE LLP
22 2020 Main Street, Suite 600
23 Irvine, California 92614
24 Tel: (949) 975-7500 | Fax: (949) 975-7501

25 92. Construction. The Parties hereto agree that the terms and conditions of this
26 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
27 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
28 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
and Defendants expressly waive the common-law and statutory rule of construction that
ambiguities should be construed against the drafter of an agreement and further agree, covenant,
and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

1 93. Captions and Interpretations. Paragraph titles or captions contained herein are
2 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
3 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
4 contractual and not merely a recital.

5 94. Modification. This Agreement may not be changed, altered, or modified, except
6 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
7 Agreement may not be discharged except by performance in accordance with its terms or by a
8 writing signed by all of the Parties hereto.

9 95. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
10 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
11 provide written notice to the other Party and allow an opportunity to cure the alleged
12 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
13 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
14 own attorneys' fees and costs. This provision shall not apply to any legal action or other
15 proceeding instituted by any person or entity other than Plaintiff or Defendant.

16 96. Choice of Law. This Settlement Agreement shall be governed by and construed,
17 enforced and administered in accordance with the laws of the State of California, without regard
18 to its conflicts-of-law rules.

19 97. Integration Clause. This Settlement Agreement contains the entire agreement
20 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
21 or contemporaneous agreements, understandings, representations, and statements, whether oral
22 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
23 hereunder may be waived except in writing.

24 98. Binding On Assigns. This Agreement shall be binding upon and inure to the
25 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
26 successors and assigns.

27 99. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
28 because the members of the Class are numerous, it is impossible or impractical to have each

Class Member execute this Agreement. The Notice Packet will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

100. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: May 23, 2024

PLAINTIFF AND CLASS REPRESENTATIVE,

carlos flores

carlos flores (May 23, 2024 21:34 PDT)

Carlos Flores

Dated: 6/7/2024

DEFENDANT NIKKISO AMERICA, INC.

DocuSigned by:

Koichi Miyamae

99F38C0CGA6743B...

By: Koichi Miyamae

Title: CFO

Dated: 6/6/2024

DEFENDANT ACD, LLC

DocuSigned by:

Mark Gaines

B96D3237CEF945E...

By: Mark Gaines

Title: CFO / EVP Corp. Holdings

Dated: 6/6/2024

DEFENDANT CRYOGENIC INDUSTRIES, INC.

DocuSigned by:

Mark Gaines

B96D3237CEF945E...

By: Mark Gaines

Title: CFO / EVP Corp. Holdings

1 Dated: 6/6/2024
2 _____

**DEFENDANT CRYOGENIC INDUSTRIES SERVICE
COMPANIES, LLC**

3 DocuSigned by:
4 *Mark Gaines*
5 _____
6 B96D3237CEF945E...

7 By: Mark Gaines
8 _____
9 Title: CFO / EVP Corp. Holdings
10 _____

11 Dated: 6/6/2024
12 _____

DEFENDANT CRYOQUIP, LLC

13 DocuSigned by:
14 *Mark Gaines*
15 _____
16 B96D3237CEF945E...

17 By: Mark Gaines
18 _____
19 Title: CFO / EVP Corp. Holdings
20 _____

21 Dated: 6/6/2024
22 _____

DEFENDANT COSMODYNE, LLC

23 DocuSigned by:
24 *Mark Gaines*
25 _____
26 B96D3237CEF945E...

27 By: Mark Gaines
28 _____
29 Title: CFO / EVP Corp. Holdings
30 _____

31 Dated: 6/6/2024
32 _____

**DEFENDANT INTEGRATED CRYOGENIC
SOLUTIONS, LLC**

33 DocuSigned by:
34 *Mark Gaines*
35 _____
36 B96D3237CEF945E...

37 By: Mark Gaines
38 _____
39 Title: CFO / EVP Corp. Holdings
40 _____

41 ///
42 ///
43 ///
44 ///
45 ///

1 **APPROVED AS TO FORM:**

2 Dated: May 24, 2024

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

3 

4
5 Brian J. Mankin
Attorneys for Plaintiff

6
7 Dated: June 7, 2024

DEFENSE COUNSEL:
BURKHALTER KESSLER CLEMENT & GEORGE LLP

8
9
10 /s/ Ros Lockwood

11 Daniel J. Kessler, Esq.; Ros M. Lockwood, Esq.
12 Attorneys for Defendants
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EXHIBIT “B”

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

CARLOS FLORES, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

NIKKISO AMERICA, INC., a Delaware
Corporation; ACD, LLC, a California
Limited Liability Company; CRYOGENIC
INDUSTRIES, INC., a Delaware
Corporation; CRYOGENIC INDUSTRIES
SERVICE COMPANIES, LLC, a
California Limited Liability Company;
CRYOQUIP, LLC, a California Limited
Liability Company; COSMODYNE, LLC,
a California Limited Liability Company;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2204626

*[Assigned to Hon. Harold Hopp, Dept 1, for all
purposes]*

~~PROPOSED~~ ORDER:

- 1) PRELIMINARILY APPROVING
CLASS ACTION AND PAGA
SETTLEMENT;**
- 2) CONDITIONALLY CERTIFYING A
CLASS FOR SETTLEMENT
PURPOSES ONLY;**
- 3) DIRECTING DISTRIBUTION TO THE
CLASS OF THE SETTLEMENT
NOTICE AND EXPLANATION FORM;
AND**
- 4) SETTING A HEARING FOR FINAL
APPROVAL OF THE SETTLEMENT**

1 Having reviewed the Class and PAGA Settlement Agreement and Release of Claims (the
2 “Settlement Agreement” or “S.A.”), which is attached as Exhibit A to the Supplemental
3 Declaration of Brian Mankin in Support of Motion for Preliminary Approval of Class Action and
4 PAGA Settlement filed on June 10, 2024, between Plaintiff Carlos Flores (“Plaintiff”) and
5 Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries
6 Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic
7 Solutions, LLC (collectively, “Defendants”) (Plaintiff and Defendants shall collectively be
8 referred to as “Parties”), as well as the Memorandum of Points and Authorities in Support of the
9 Unopposed Motion for Preliminary Approval of Class Action Settlement, the documents
10 submitted in support of the motion, and all supporting legal authorities and documents, IT IS
11 HEREBY ORDERED:

12 1. The Court GRANTS preliminary approval of the Settlement based upon the terms
13 set forth in the Settlement Agreement and finds its terms to be within the range of reasonableness
14 of a settlement that ultimately could be granted final approval by the Court at a Final Approval
15 hearing. The settlement appears to be fair, adequate and reasonable to the Class. Based on a
16 review of the papers submitted by Plaintiff, the Court finds that the Settlement is the result of
17 arms-length negotiations conducted after the Parties adequately investigated and became familiar
18 with the strengths and weaknesses of the claims. The assistance of an experienced mediator in
19 the Settlement process supports the Court’s conclusion that the Settlement is non-collusive.

20 2. For settlement purposes only, the Court finds that the proposed Class is
21 ascertainable and that there is a sufficiently defined community of interest among the Class
22 Members in questions of law and fact. The Court certifies the following Class, for settlement
23 purposes only: All members of the ACD Class and Cryogenic Class, which are further defined
24 as follows in the Settlement Agreement:

25 a. “ACD Class” means all current and former nonexempt (hourly paid)
26 employees employed by Defendant ACD, LLC (which also does business in California as ACD
27 and Nikkiso ACD) in California during the ACD Class Period of January 1, 2020, through
28 January 16, 2024.

1
2 b. “Cryogenic Class” means current and former nonexempt (hourly paid)
3 employees employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries,
4 Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and
5 Integrated Cryogenic Solutions, LLC in California during the Cryogenic Class Period of October
6 25, 2018, through December 31, 2019.

7 3. Additionally, the “Aggrieved Employee(s)” is defined to include all current and
8 former nonexempt (hourly paid) employees employed by Defendant ACD, LLC (which also
9 does business in California as ACD and Nikkiso ACD) in California during the PAGA Period of
10 October 25, 2021, through January 16, 2024.

11 4. The class action settlement set forth in the Settlement Agreement between
12 Plaintiff and Defendants is preliminarily approved as it appears to be proper, to fall within the
13 range of a fair, reasonable, and adequate settlement, and to be presumptively valid, subject only
14 to any objections that may be raised at the Final Approval Hearing.

15 5. For settlement purposes only, the Court appoints Plaintiff Carlos Flores as Class
16 Representative, and Brian Mankin and Peter Carlson as Class Counsel.

17 6. The Court approves Phoenix Settlement Administrators to act as the Settlement
18 Administrator, who is directed to fulfill all of the duties and services set forth in the Settlement
19 Agreement, including but not limited to paragraphs 66 to 78. The Settlement Administrator shall
20 file a declaration concurrently with the Motion for Final Approval, authenticating a copy of
21 every Objection Form and Exclusion Form received by the Settlement Administrator.
22 Furthermore, in the event of a continuance of the hearing of the motion for final approval, the
23 Settlement Administrator must give notice of such continuance to any objecting party.

24 7. The Court approves, as to form and content, the Class Notice, Exclusion Form,
25 Objection Form, and Dispute Form (attached hereto as Exhibits A, B, C, and D, respectively)
26 that the Class Members may use. The Court further finds the Class Notice, Exclusion Form,
27 Objection Form and Dispute Form fairly apprise the Class Members of the terms of the proposed
28 settlement and of their options in connection with the settlement.

1
2 8. Class Members who wish to request exclusion, object to the Settlement or dispute
3 Weeks Worked via the Exclusion Form and/or Objection Form and/or Dispute Form are directed
4 to mail the appropriate form above to the Settlement Administrator (and not to the Court) within
5 the time periods set forth in the Class Notice.

6 9. The Settlement Administrator is directed to mail the Notice, Request for
7 Exclusion Form, Objection Form, and Dispute Form by first class mail to the Class Members in
8 English in accordance with the Settlement Agreement and schedule set forth below.

9 10. The Court finds that the deadlines and method set forth in the Settlement
10 Agreement for the mailing of the Notice and related forms described herein meet the
11 requirements of due process, provide the best notice practicable under the circumstances,
12 constitute due and sufficient notice to all persons entitled to notice, and otherwise satisfy the
13 requirements of California law.

14 11. The Court directs the Administrator to perform address verification measures and
15 mail the Notice by first class mail to the Class Members (in English and Spanish) not later than
16 10 days after it receives the “Class Data” as defined in the Settlement Agreement and to
17 otherwise carry out the Settlement according to the terms of the Settlement Agreement and in
18 conformity with this Order. The Parties are also ordered to carry out the Settlement according to
19 the terms of the Settlement Agreement.

20 12. All Class Members shall be deemed to participate in the Settlement, although any
21 Class Member who wishes to comment on or object to the Settlement or who elects not to
22 participate in the Settlement has until forty-five (45) days after the mailing of the Class Notice to
23 submit an objection or Request to be Excluded, pursuant to the procedures set forth in the Notice.

24 13. The Court approves the handling of unclaimed funds set forth in the Settlement
25 Agreement, specifically that any unclaimed funds in the Administrator’s account as a result of a
26 failure to timely cash a settlement check shall be issued to the State Controller’s Office in the
27 name of the Class Member, as set forth in the Settlement Agreement.

14. The following dates shall govern for purposes of this settlement:

June 18, 2024	Preliminary Approval (PA) hearing
July 12, 2024 (24 days after PA)	Deadline for Administrator to complete first mailing of the Notice Packet to all Class Members.
August 26, 2024 (45 days after mailing)	Deadline for Class Members to submit Requests for Exclusion, Disputes and Objections to the settlement.
16 court days before Final Approval hearing	Deadline for Plaintiff to file and serve Motion for Final Approval and application for award of fees, costs and service payments.
9 court days before Final Approval hearing	Deadline for filing of any written opposition to Plaintiff's Motion for Final Approval, or filing response to an objection.
5 court days before final approval hearing	Deadline for filing of any written reply to opposition Motion for Final Approval
Date: October 28, 2024 Time: 8:30 a.m.	Final Approval Hearing

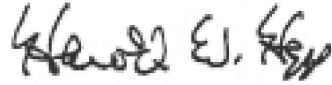
15. A final approval hearing shall be held in this Court on the date and time above to determine (1) whether the proposed settlement is fair, reasonable, and adequate and should be finally approved by the Court; (2) the amount of Attorneys' Fees and Costs Award to Class Counsel; and (3) the amount of the Service Payment to the Class Representative.

16. Neither this Order, the Settlement Agreement, nor any document referred to therein, nor any action taken to carry out the settlement embodied in the Settlement Agreement may be construed as, or may be used by Plaintiff or the Class Members in this Action as an admission by or against Defendants or any of the other Released Parties (as that term is defined in the Settlement Agreement) of any fault, wrongdoing or liability whatsoever.

17. The Court may, for good cause shown, extend any of the deadlines set forth in this Order. If any Class Member submits an objection to the settlement and the Final Approval Hearing is continued, either Class Counsel or the Settlement Administrator are directed to give notice of the new hearing date to the objecting party; and

1 18. In the event that the Settlement Agreement does not receive final approval or the
2 Effective Date of the Settlement does not occur, this Order shall be rendered null and void and
3 shall be vacated.

4
5 Date: 06/26/2024



6 Honorable Harold Hopp

EXHIBIT “A”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Flores v. Cryogenic, ACD, Nikkiso America, and others

(Riverside Superior Court, Case No. CVRI2204626)

***The Riverside Superior Court authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (the “Action”) filed by Plaintiff Carlos Flores (“Plaintiff” or “Class Representative”) against Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC (collectively, “Defendants”) for alleged violations of the California Labor Code. (As used in this Notice, Plaintiff and Defendants shall collectively be referred to as the “Parties”).

The Action was filed by Plaintiff and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of two distinct groups of Defendants’ employees in California:

(1) The “Cryogenic Class” which is defined as all current and former nonexempt (hourly paid) employees employed by Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC in California from October 25, 2018, through December 31, 2019 (the “Cryogenic Class Period”).

(2) The “ACD Class” which is defined as all current and former nonexempt (hourly paid) employees employed by Defendant ACD, LLC, in California from January 1, 2020, through January 16, 2024 (the “ACD Class Period”).

Additionally, Plaintiff’s Action seeks payment of penalties under the California Private Attorneys General Act (“PAGA”) for all current and former nonexempt (hourly paid) employees employed by Defendant ACD, LLC, in California from the “PAGA Period” of October 25, 2021, through January 16, 2024 (the “Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments to Aggrieved Employees and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendants’ records, and the Parties’ current assumptions, your Individual Class and PAGA Payments are shown in the charts below, along with the applicable data points from which these estimates are derived.

[CLASS MEMBER NAME] [ID/CONTROL NUMBER]

Two Parts	Weeks Worked	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Please note that the actual amount you receive may be different from the above and will depend on several factors. (If no amount is stated for your Individual PAGA Payment then, according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) Also, while the range of recovery will differ for Class Members, it is estimated that the average payment will be \$**XX**, the high payment will be \$**XX**, and the low payment will be \$**XX**. If you believe that you worked more weeks during the periods discussed above, you can submit a challenge by **DATE**, 2024 (“**Response Deadline**”). See **Section 4** of this Notice.

In granting preliminarily approval of the proposed Settlement and approving this Notice, the Court has determined

only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendant during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do not wish to participate in the settlement of the Class Claims, you may "opt-out" of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion Form by [REDACTED], 2024 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection Form stating why you object to the settlement by [REDACTED], 2024 (see Section 7 for more details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit the enclosed Dispute Form with any supporting evidence to the Phoenix Settlement Administrators (the "Settlement Administrator"), a third party that is responsible for sending this Notice) (see Section 4 for more details on how to submit a Dispute Form). Defendants' records will be presumed correct, but you may provide evidence to the Settlement Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT'S NOT REQUIRED	
DATE: DATE, 2024 TIME: 8:30 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don't have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court's virtual appearance platform. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failing to pay minimum and overtime wages, failure to provide meal and rest breaks and pay meal and rest period premiums, failure to reimburse business expenses, failure to timely pay wages each period and upon separation of

employment, and failure to provide accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (“PAGA”).

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

Both Parties are represented by attorneys in the Action. See **Section 9** below for their contact information.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator in an effort to resolve the Action by negotiating to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”), Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Defendant Will Pay \$460,000 as the “Settlement Amount.” Defendant has agreed to pay a total Settlement Amount of \$460,000, and will deposit the Settlement Amount into an account controlled by Settlement Administrator. The Settlement Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement Amount approximately 15 days after the Judgment entered by the Court becomes final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.

2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

A. Up to one-third of the Settlement Amount (\$153,333.33) to Class Counsel for attorneys' fees and up to \$25,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

B. \$9,000 to the Settlement Administrator for services administering the Settlement.

C. Up to \$30,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their share of Weeks Worked during the PAGA Period.

D. Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the remainder (the “Net Settlement Amount”) by making Individual Class Payments to Participating Class Members based on their pro rata share of total Weeks Worked during the Class

Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of one-third of each Individual Class Payment to taxable wages (“Wage Portion”) and two-thirds to penalties and interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owe on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name. If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the Settlement, not later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

7. The Proposed Settlement Will be Void If the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendant have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendant.

8. Settlement Administrator. The Court has appointed a neutral company, Phoenix Settlement Administrators (the “Settlement Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Settlement Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Settlement Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and Defendants have fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Cryogenic Class Period, the ACD Class Period, and the PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective representatives, agents, heirs, and assigns, release the Released Parties (which includes Defendants and their officers, directors, employees and agents) from all claims stated in the operative Complaint and those based solely upon the facts in the Complaint, including: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay final wages, (7) failure to provide accurate itemized wage statements, and (8) unfair and unlawful competition (the “Released Class Claims”). The operative release period for the Cryogenic Class is October 25, 2018, through December 31, 2019. The operative release period for the ACD Class is January 1, 2020, through January 16, 2024. Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment

and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the periods discussed above.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendants have paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff on behalf of himself, the State of California and the LWDA shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties based on the facts stated in the relevant LWDA notice letter and only to the extent that they are alleged in the operative Complaint, including all PAGA claims seeking civil penalties premised upon: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide meal periods, (4) failure to provide rest breaks, (5) failure to reimburse business expenses, (6) failure to timely pay wages each period, (7) failure to timely pay wages upon separation of employment, (8) failure to provide accurate itemized wage statements, and (9) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 et seq. based on the facts or claims alleged in the LWDA notice letters and Complaint. The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Cryogenic Class Period and ACD Class Period (the "Combined Class Period"), and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Combined Class Period.

2. Individual PAGA Payments. The Settlement Administrator will calculate Individual PAGA Payments by (a) dividing \$7,500 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked and/or Share Points. The number of weeks you worked during the Combined Class Period and PAGA Period, as recorded in Defendants' records, are stated in the tables on page 2 of this Notice. You have until **DATE** ("Response Deadline") to dispute the number of Workweeks credited to you by mailing the enclosed Dispute Form to the Settlement Administrator on or before **[INSERT DATE 45 Days After Mailing]**. Section 9 of this Notice has the Administrator's contact information.

You need to support your dispute by sending copies of pay stubs or other records. The Settlement Administrator will accept Defendants' calculation of weeks worked based on Defendant's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Settlement Administrator will resolve challenges based on your submission and on input from Class Counsel and Defendants' Counsel. The Settlement Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Settlement Administrator will send, by U.S. mail, a single check to every Participating Class Member (which includes every Class Member who doesn't opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Settlement Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

Your check will be sent to the same address as this Notice. If you change your address, notify the Settlement Administrator as soon as possible. Section 9 of this Notice has the Settlement Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

You will be treated as a Participating Class Member, participating fully in the Settlement, unless you opt-out of the

Settlement, not later than the Response Deadline. To opt-out, you must complete, sign, and mail the accompanying Request for Exclusion Form to the Settlement Administrator, postmarked on or before the Response Deadline (as a reminder, **the “Response Deadline” is DATE, 2024**). Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Claims remain eligible to receive an Individual PAGA Payment.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, on the enclosed Objection Form and include any and all evidence and supporting papers. The Objection Form and any accompanying evidence and papers must be sent to the Settlement Administrator at the address listed in Section 9 on the Objection Form, **postmarked** on or before the Response Deadline. If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

8. WHEN IS THE FINAL APPROVAL HEARING?

On **DATE**, 2024, the Court will hold a public hearing in Department 1 of the Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel's applications for attorneys' fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff's request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the enclosed Request for Exclusion Form, Dispute Form, or Objection Form, or the Settlement itself, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice and request for Exclusion, Objection, and Dispute Forms be sent to you in the mail. If you wish to communicate directly with Class or Defense Counsel, you may contact them at the information below. You may also seek advice and guidance from your own private attorney at your own expense if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Supplemental Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on June 10, 2024 and available to be inspected at any time during regular business hours at the Clerk's Office, Superior Court for the State of California, County of Riverside, 4050 Main St, Riverside, CA 92501. You may also review the pleadings, records, and other papers on file in this lawsuit at the Clerk's Office or online at <https://epublic-access.riverside.courts.ca.gov/public-portal/>. To access the case file, click on "Case Number Search," then create a free online account, then type in the case number (CVRI2204626) where requested, and click "Search." You may also email Class Counsel and request a copy of the Settlement Agreement.

DO NOT TELEPHONE THE COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT

The contact information for Class Counsel and the Settlement Administrator are below:

Class Counsel	Settlement Administrator
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Peter Carlson, Esq. <i>peter@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444	Name Mailing Address Telephone Number

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Settlement Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Settlement Administrator if you move or otherwise change your mailing address.

EXHIBIT “B”

REQUEST FOR EXCLUSION FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU WANT TO PARTICIPATE IN THE SETTLEMENT AND RECEIVE A SETTLEMENT CHECK? (check the box that applies)

☐

YES: STOP HERE -- DO NOT RETURN THIS FORM. NO FURTHER ACTION IS NEEDED TO PARTICIPATE IN THE SETTLEMENT.

☐

NO: SIGN, DATE AND RETURN THIS FORM TO EXCLUDE YOURSELF FROM THE SETTLEMENT.

By signing below, I am excluding myself from the Settlement:

I do NOT want to participate in the settlement in *Flores v. Nikkiso America, Inc.* (Riverside Superior Court Case No. CVRI2204626). I understand by excluding myself from the settlement that I will not receive any money from the settlement other than an Individual PAGA Payment if I qualify as an Aggrieved Employee (see first page of the Court Approved Notice of Class Action Settlement).

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

Settlement Administrator:

Name

Mailing Address

Telephone Number

EXHIBIT “C”

OBJECTION FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

DO YOU OBJECT TO THE SETTLEMENT? (check the box that applies)

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM

The Court will consider your objection at the Final Approval Hearing if you submit a timely and valid written statement of objection. Any objection should describe the nature of and basis for the objection, and any other information that you would like the Court to consider.

I OBJECT to the Settlement in the case of *Flores v. Nikkiso America, Inc.* on the following grounds (if additional space is necessary, please include additional sheets of paper):

Signed on _____, 2024

[NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT OBJECTION DEADLINE]:

Settlement Administrator:

Name
Mailing Address
Telephone Number

EXHIBIT “D”

DISPUTE FORM

Flores v. Cryogenic, ACD, Nikkiso America, and others
(Riverside Superior Court, Case No. CVRI2204626)

Please verify and/or complete any missing identifying information:

[NAME]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

The following charts are based on the records of Defendants Nikkiso America, Inc., ACD, LLC, Cryogenic Industries, Inc., Cryogenic Industries Service Companies, LLC, Cryoquip, LLC, Cosmodyne, LLC, and Integrated Cryogenic Solutions, LLC, (“Defendants”) and reflect:

- (1) The number of weeks that you worked for Defendants in California from October 25, 2018, through December 31, 2019. In other words, this data point provides the number of weeks with which you are credited as working as a “Cryogenic Class” member (as that term is defined in the Notice which was sent to you at the same time as this form).
- (2) The number of weeks that you worked for Defendant ACD, LLC, in California from January 1, 2020, through January 16, 2024. In other words, this data point provides the number of weeks with which you are credited as working as an “ACD Class” member (as that term is defined in the Notice which was sent to you at the same time as this form).
- (3) The number of weeks that you worked for Defendant ACD, LLC, in California from October 25, 2021, through January 16, 2024. In other words, this data point provides the number of weeks with which you are credited as working as an “Aggrieved Employee” (as that term is defined in the Notice which was sent to you at the same time as this form).

<i>Data Points for Calculations of Individual Class Payment</i>	
Weeks Worked as Cryogenic Class member from 10/25/2018 to 12/31/2019	INSERT
Weeks Worked as ACD Class member from 1/1/2020 to 1/16/2024	INSERT

<i>Data Points for Calculations of Individual PAGA Payment</i>	
Weeks Worked as “Aggrieved Employee” from 10/25/2021 to 1/16/2024	INSERT

DO YOU DISAGREE WITH THE INFORMATION ABOVE AND WANT THE PARTIES AND ADMINISTRATOR TO INVESTIGATE FURTHER?

☐

NO: STOP HERE -- DO NOT RETURN THIS FORM.

☐

YES: COMPLETE THE REVERSE SIDE AND RETURN THIS FORM.

Please state why you believe that you should be credited with more Weeks Worked than shown in the chart and attach copies (not originals) of supporting documentation. The Parties and Settlement Administrator will consider your challenge and make a determination as to these issues.

Signed on _____, 2024 [NAME]

MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL, POSTMARKED NO LATER THAN [INSERT DEADLINE]:

<u>Settlement Administrator:</u>
Name Mailing Address Telephone Number

EXHIBIT “C”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00514 Flores v Nikkiso
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Carlos Flores</u> <u>14000-00514 Flores v Nikkiso</u>									
10-24-2022	Approved		Billable	E108 Postage	Chiarito, Tracie	11.69	0.00	1.00	11.69
Receipt from UPS for client to send docs to office									
10-24-2022	Approved		Billable	E101 Copying	Chiarito, Tracie	0.20	0.00	26.00	5.20
26 copies @ .20 each - letters to company									
10-24-2022	Approved		Billable	E108 Postage	Chiarito, Tracie	9.35	0.00	1.00	9.35
Postage for October 2022									
10-24-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87
Onelgal Order #19163389 - submit complaint for filing									
10-24-2022	Approved		Billable	E112 Court fees	Chiarito, Tracie	75.00	0.00	1.00	75.00
Fees to LWDA for submitting PAGA letter									
10-25-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	1,509.56	0.00	1.00	1,509.56
Onelgal Order #19170255 - file complaint									
10-31-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	161.15	0.00	1.00	161.15
Bosco Inv #7862379Serve: Nikkiso America, Inc., a Delaware Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Counsel; Notice of Department Assignment; ADR Court: Riverside County Superior Court - Central District Completed on: 10/26/2022									
11-02-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
Onelgal Order #19221020 - file POS									
11-10-2022	Approved		Billable	E108 Postage	Chiarito, Tracie	9.35	0.00	1.00	9.35
Postage for November 2022									
11-22-2022	Approved		Billable	E108 Postage	Chiarito, Tracie	53.22	0.00	1.00	53.22
Postage for November 2022									
11-22-2022	Approved		Billable	E101 Copying	Chiarito, Tracie	0.20	0.00	98.00	19.60
98 copies @ .20 each - Amended LWDA letters to companies									
11-23-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
Onelgal Order #19346124 - file FAC									
12-27-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	12.87	0.00	1.00	12.87

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00514 Flores v Nikkiso
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Carlos Flores</u> <u>14000-00514 Flores v Nikkiso</u>									
Onelgal Order #19516458 - submit (6) Notice and Acknowledgments									
12-28-2022	Approved		Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
Onelgal Order #19533845 - file (6) Notice and Acknowledgment of Receipts									
01-04-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	16.78	0.00	1.00	16.78
Onelgal Order #19566746 - file Case Management Statement									
01-31-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	17.24	0.00	1.00	17.24
Onelgal Order #19738615 - file Stip and Order re SAC									
02-10-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	17.24	0.00	1.00	17.24
Onelgal Order #19813096 - file Second Amended Complaint									
03-02-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	17.24	0.00	1.00	17.24
Onelgal Order #19932940 - file Joint Statement									
04-18-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	17.24	0.00	1.00	17.24
Onelgal Order #20241553 - file Joint Statement									
04-19-2023	Approved		Billable	E125 Mediation fees	Chiarito, Tracie	10,450.00	0.00	1.00	10,450.00
Signature Resolution Inv #44596 for 1/16/24 mediation with Eve Wagner, Esq.									
06-23-2023	Approved		Billable	Attorney Service	Chiarito, Tracie	17.24	0.00	1.00	17.24
Onelgal Order #20661431 - file Joint Statement									
01-17-2024	Approved		Billable	E119 Experts	Chiarito, Tracie	10,080.00	0.00	1.00	10,080.00
Berger Consulting Group Inv #10381									
02-06-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22174450 - file Notice of Settlement									
02-09-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22209654 - file Amendment to Complaint									
03-08-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00514 Flores v Nikkiso
(Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Carlos Flores</u> <u>14000-00514 Flores v Nikkiso</u>									
Onelgal Order #22408548 - file Joint Statement									
04-09-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #22624833 - file Joint Statement									
05-28-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	81.07	0.00	1.00	81.07
Onelgal Order #22985159 - file MPA									
06-13-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #23083946 - file Declarations iso MPA (3)									
06-26-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	19.30	0.00	1.00	19.30
Onelgal Order #23147301 - resubmit PA order									
10-04-2024	Approved		Billable	Attorney Service	Chiarito, Tracie	150.00	0.00	1.00	150.00
Estimated cost to file Motion for Final Approval and supporting documents									

Project Total 22,910.05
Client Total 22,910.05
Grand Total 22,910.05

EXHIBIT “D”