

## CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

Subject to court approval, this Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Shamonique Lashawn Malone-Boyd (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendants NuCO2 Management LLC, NuCO2 Supply LLC, and Linde Inc. (hereinafter, “NuCO2” or “Defendants”). The Agreement refers to Plaintiff and NuCO2 collectively as “Parties” or as a “Party.”

### 1. DEFINITIONS.

1.1. “Action” means Plaintiff’s lawsuit alleging wage and hour violations against NuCO2 captioned *Shamonique Lashawn Malone-Boyd et al. v. NuCO2 Management LLC et al.*; Case No. 37-2023-00043224-CU-OE-CTL, pending in San Diego County Superior Court.

1.2. “Address Search” means the Administrator’s search for Covered Employees’ mailing addresses using all reasonably available sources, including but not limited to the National Change of Address database, skip traces, and direct contact by the Administrator.

1.3. “Administrator” means CPT Group, Inc.

1.4. “Administration Expenses” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its costs in accordance with the Administrator’s bid as approved by the Court. The Administration Expenses shall not exceed \$10,000 except for a showing of good cause and as approved by the Court.

1.5. “Attorneys’ Fees” mean the amounts allocated to Plaintiff’s Counsel for reimbursement of reasonable attorneys’ fees in connection with this Settlement in an amount not to exceed 33.33% of the Gross Settlement Amount.

1.6. “Class” or “Class Member(s)” means all individuals currently or formerly employed by NuCO2 in California as hourly paid employees during the Class Period.

1.7. “Class Counsel” or “Plaintiff’s Counsel” means Ferraro Vega Employment Lawyers, Inc.

1.8. “Class Period” means the period from April 9, 2019, through February 28, 2025. Pursuant to Paragraph 9, below, Defendants shall have the sole discretion to, alternatively, terminate the Class Period on a different date, and hence alter the date through which the Released Claims end.

1.9. “Class Notice” means the Notice of Class Action and PAGA Settlement, attached as **Attachment A** and including the Request for Exclusion, attached as **Attachment B**, to be mailed to Class Members and incorporated by reference into this Agreement.

1.10. “Class Response Deadline” means 45 days after the Administrator mails Notice to Class Members and shall be the last date on which Class Members may: (a) email or mail Requests for Exclusion from the Settlement, or (b) email or mail an Objection to the

Settlement. Class Members to whom the Class Notice is re-sent after being returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline expiry.

1.11. “Class Representative” or “Named Plaintiff” refers to Shamonique Lashawn Malone-Boyd.

1.12. “Class Workweek” means any week during which a Class Member worked for NuCO2 for at least one day during the Class Period.

1.13. “Class Workweek Estimate” means 22,645 Class Workweeks.

1.14. “Court” means the San Diego County Superior Court.

1.15. “Covered Employees” means all PAGA Members and all Class Members.

1.16. “Defense Counsel” means captioned counsel of record from the law firm of Littler Mendelson, P.C.

1.17. “Effective Date” means the date by when all of the following events have occurred: (i) this Agreement has been executed by Plaintiff, Defendants, Class Counsel (i.e., Plaintiff’s counsel), and Defendants’ Counsel; (ii) the Court entered a Preliminary Approval Order; (iii) the Class Notice has been sent to the Class Members, providing them notice and opportunity to object to the Settlement, and notice and opportunity to opt out of the Settlement; (iv) notice of this Settlement has been sent to the LWDA; (v) the Court has held a Final Approval Hearing and entered a Final Approval Order and Final Judgment; and (vi) the Judgment is final. The Judgment is final on the later of the following events: five (5) court days after the period for filing any appeal, writ, or other appellate proceeding opposing the Final Approval Order or Final Judgment has elapsed without any appeal, writ, or other appellate proceeding having been filed (i.e., 65 days from the date the Court enters Final Approval Order and Final Judgment); or, if any appeal, writ, or other appellate proceeding opposing the Final Approval Order or Final Judgment has been filed within that timeframe, then five (5) court days after any appeal, writ, or other appellate proceedings opposing the Settlement has finally and conclusively dismissed with no right to pursue further remedies or relief.

1.18. “Employee Data” means all Covered Employees’ identifying information in NuCO2’s possession including their names, last-known mailing addresses, dates of employment, Social Security numbers, and number of Class Workweeks and PAGA Pay Periods.

1.19. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.20. “Final Approval Hearing” means the Court’s hearing on the final motion for approval of the Settlement.

1.21. “Gross Settlement Amount” means Three Hundred and Fifty Thousand Dollars and Zero Cents (\$350,000.00), which is the total amount Defendants agree to pay under

the Settlement, subject to the terms and conditions of this Settlement. In no event shall Defendants be liable for the payment of any amounts exceeding the Gross Settlement Amount as a result of this Settlement unless Defendants, at their sole discretion, elect not to shorten the Class Period and agree to pay a pro-rata increased amount pursuant to the terms set forth in Paragraph 9 below.

1.22. “Individual Class Payments” means the Participating Class Member’s pro rata share of the Net Settlement Amount, calculated according to the number of Class Workweeks.

1.23. “Individual PAGA Payments” means the PAGA Members’ pro rata share of the Net PAGA Payment, calculated according to the number of PAGA Pay Periods.

1.24. “Individual Settlement Payments” means the Individual Class Payment and the Individual PAGA Payments.

1.25. “Judgment” means the judgment entered by the Court based upon the Final Approval of the Settlement.

1.26. “Litigation Costs” means the amount incurred by Plaintiff’s Counsel to prosecute the Action, according to proof and subject to Court approval, not to exceed \$30,000.00.

1.27. “LWDA” means the California Labor Workforce and Development Agency.

1.28. “LWDA Payment” means the 75% share of the PAGA Payment allocated to be paid to the LWDA under Labor Code section 2699, subd. (m).

1.29. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Service Payment, Attorneys’ Fees, Litigation Costs, the PAGA Payment (including the LWDA Payment), and the Administration Expenses.

1.30. “Net PAGA Payment” means the 25% share of the PAGA Payment allocated to be paid to the PAGA Employees under Labor Code section 2699, subd. (m).

1.31. “Non-Participating Class Member” means any Class Member who submits a valid and timely Request for Exclusion from the Settlement.

1.32. “Operative Complaint” means the Second Amended Complaint, to filed by Plaintiff in the Action, pursuant to the Parties’ Stipulation, as set forth in Paragraph 3, below.

1.33. “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

1.34. “PAGA” means California’s Private Attorneys General Act of 2004, California Labor Code section 2698, et. seq.

1.35. “PAGA Period” means September 6, 2022, through February 28, 2025.

1.36. “PAGA Payment” means \$10,000.00, which is the amount provided in exchange for the release of the PAGA claims addressed in this Settlement, and which shall be paid from the Gross Settlement Amount, with 75% of the PAGA Payment constituting the LWDA Payment, with the remaining 25% constituting the Net PAGA Payment to be allocated and paid to PAGA Members.

1.37. “PAGA Counsel” or “Plaintiff’s Counsel” means Ferraro Vega Employment Lawyers, Inc.

1.38. “PAGA Letters” means the letters submitted on or about September 6, 2023 and the amended PAGA notice filed in February 2025, by Plaintiff’s Counsel to the LWDA, alleging various Labor code violations by Defendants.

1.39. “PAGA Members” means all individuals currently or formerly employed by NuCO2 in California as hourly, non-exempt employees during the PAGA Period.

1.40. “PAGA Notice” means Named Plaintiff’s letters to Defendants and the LWDA, including any amendments thereto, pursuant to Labor Code § 2699.3(a).

1.41. “PAGA Pay Period” means any pay period during which a PAGA Member worked for NuCO2 for at least one day during the PAGA Period.

1.42. “PAGA Representative” or “Named Plaintiff” refers to Shamonique Lashawn Malone-Boyd.

1.43. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.

1.44. “Preliminary Approval Hearing” means the Court’s hearing on the Motion for Preliminary Approval of the Settlement.

1.45. “Released Claims” means the claims being released in connection with this Settlement, as set forth in full in Paragraph 6, below.

1.46. “Released Parties” means: Defendants and any of their past, present, direct or indirect parents, subsidiaries, affiliates, holding companies, affiliated companies, partnerships, limited liability companies, as well as each of its or their past, present officers, directors, employees, partners, members, managers, customers, subcontractors, shareholders and agents, attorneys, insurers, reinsurers, and any individual or entity which could be jointly liable with Defendants.

1.47. “Request for Exclusion” means a Class Member’s submission of a signed written request to be excluded from the Class Settlement, including on the form provided with the Class Notice.

1.48. “Service Payment” means the payment to the Named Plaintiff for initiating and providing services in support of the Action in an amount up to \$10,000.00, subject to Court

approval, which also constitutes consideration for Plaintiff's individual settlement and general release of all claims, as set forth in this Agreement.

1.49. "Settlement" means the disposition of the Action effected by this Agreement and the Judgment.

## **2. RECITALS**

2.1. On or about September 6, 2023, Plaintiff's counsel submitted the PAGA Letter to the LWDA, alleging various Labor Code violations by Defendants.

2.2. On or about October 4, 2023, Plaintiff filed the Action in San Diego Superior Court, alleging eight causes of action for (1) failure to pay all overtime wages; (2) meal period violations; (3) rest period violations; (4) paid sick leave violations; (5) untimely payment of wages; (6) wage statement violations; (7) waiting time penalties; and (8) unfair competition. On or about November 4, 2023, Plaintiff filed her First Amended Complaint ("FAC"), wherein she added a ninth cause of action seeking civil penalties under the PAGA.

2.3. On December 12, 2024, the Parties attended a mediation with Mediator Steve Mehta to negotiate a resolution of all the alleged violations and claims asserted in the operative complaint in the Action.

2.4. The Parties, through counsel, negotiated the terms and conditions of the resolution of the Action and reached the following settlement ("Settlement") embodied in this Settlement after such mediation.

## **3. SECOND AMENDED COMPLAINT**

3.1. In connection with Plaintiff's filing the Motion for Preliminary Approval, the Parties shall concurrently file a Joint Stipulation For Leave to File Second Amended Complaint with a proposed order authorizing Plaintiff to file a Second Amended Complaint, which will become the Operative Complaint, and an Amended LWDA Letter, attached hereto as Exhibits C and D, respectively, to among other changes, include causes of action for failure to pay minimum wages, failure to pay regular wages, and failure to reimburse business expenses pursuant to Labor Code section 2800 and 2802, including PAGA penalties based on same. Defendants shall file an Answer to Plaintiff's Second Amended Complaint within thirty (30) days after Plaintiff serves a conformed copy of the Second Amended Complaint on Defendants, although Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative Complaint and deny any and all liability for the causes of action alleged therein. If the Court does not grant Preliminary and Final Approval of this Settlement, the Second Amended Complaint shall be stricken and the First Amended Complaint will again become the operative complaint in this Action. The filing of the Second Amended Complaint is without prejudice to and does not waive Defendants' defenses thereto. Plaintiff shall also give timely written notice to Defendants and the LWDA by sending an amended PAGA Notice containing the PAGA allegations in the Operative Complaint. If the Court denies the Plaintiff's filing of the Second Amended Complaint as stated in this Paragraph, Defendants may, but are not obligated to, elect to withdraw from the Settlement. If Defendants withdraw, the Settlement shall be void *ab initio*,

have no force or effect whatsoever, and neither Party shall have any further obligation to perform under this Agreement. To elect to withdraw, Defendants must notify Plaintiff's Counsel and the Court of its election to withdraw not later than ten (10) calendar days after the court's denial of leave to file the Second Amended Complaint.

#### **4. MONETARY TERMS.**

4.1. Gross Settlement Amount. Subject to Paragraph 9 below, NuCO2 promises to pay Three Hundred and Fifty Thousand Dollars and Zero cents (\$350,000.00), and no more, as the Gross Settlement Amount. NuCO2 has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the Effective Date. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Covered Employees to submit any claim or form as a condition of payment. The Gross Settlement Amount is non-reversionary.

4.1.1. Employer Payroll Taxes: The Gross Settlement Amount does not include any employer payroll taxes owed on the Wage Portion of the Individual Class Payments, which shall be paid separately by NuCO2 as calculated by the Administrator.

4.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts approved by the Court:

4.2.1. To Named Plaintiff: The Service Payment, in addition to any Individual Settlement Payment that they may be entitled to receive as a Covered Employee. If the Court approves a Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Service Payment using IRS Form 1099. Named Plaintiff assumes full responsibility and liability for employee taxes owed on the Service Payment. An award of less than the requested amount for the Service Payment will not give rise to a basis to abrogate this Agreement and the Court has authority under this Agreement to reduce (or increase) the Service Payment, at its discretion at the Final Approval stage.

4.2.2. To Plaintiff's Counsel: Attorneys' Fees and Litigation Costs to Plaintiff's Counsel. Defendants will not oppose requests for these payments, provided the requests do not exceed the amounts set forth in this Agreement. If the Court approves Attorneys' Fees and/or Litigation Costs in an amount less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Attorneys' Fees and Litigation Costs using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Attorneys' Fees and Litigation Costs to Plaintiff's Counsel and holds NuCO2 harmless, and indemnifies NuCO2, from any dispute or controversy regarding any division or sharing of any of these Payments.

4.2.3. To the Administrator: Administration Expenses to the Administrator. To the extent the Administration Expenses are less or the Court approves payment less than the Administration Expenses set forth in this Agreement, the Administrator will allocate the remainder to the Net Settlement Amount.

4.2.4. To the LWDA: Subject to Court approval, the PAGA Payment will be allocated to cover any and all claims for civil penalties associated with the Released Claims that were, or could have been, brought in the Action under PAGA based on the factual allegations in the Operative Complaint and PAGA Notices; 75% of the PAGA Payment will be paid to the LWDA (i.e., the LWDA Payment) and the remaining 25% of the PAGA Payment (i.e., the Net PAGA Payment) will be distributed to PAGA Members as penalties in exchange for a full and final release of the PAGA claims. The Court has authority under this Agreement to increase (or reduce) the PAGA Payment up to and including at the Final Approval Hearing, and the Parties respectfully reserve the right to increase (or reduce) the PAGA Payment up to and including at the Final Approval stage, subject to the Court's Final Approval. If the Court approves a PAGA Payment of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4.2.5. To Each Participating Class Member/Tax Allocation: An Individual Class Payment calculated by: (a) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members during the Class Period; and (b) multiplying the result by each Participating Class Member's Class Workweeks. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis. Twenty Percent (20%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported by the Administrator on an IRS W-2 Form. The remaining eighty percent (80%) of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported by the Administrator on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

4.2.6. To Each PAGA Member/Tax Allocation: An Individual PAGA Payment calculated by: (a) dividing the Net PAGA Payment by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA Pay Periods. The Individual PAGA Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Covered Employees assume full responsibility and liability for any individual taxes owed on their Individual PAGA Payment.

## **5. SETTLEMENT FUNDING AND PAYMENTS.**

5.1. Delivery of Employee Data to Administrator. Not later than 14 days after the Court grants Preliminary Approval, NuCO2 will simultaneously deliver the Employee Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Covered Employees' privacy, the Administrator must maintain the Employee Data in confidence, use the Employee Data only for purposes of this Settlement, and restrict access to the Employee Data to Administrator employees who need access to the Employee Data to effect and perform under this Agreement. NuCO2 has a continuing duty to immediately notify Plaintiff's Counsel if it discovers

that the Employee Data omitted Covered Employees' identifying information and to provide corrected or updated Employee Data as soon as reasonably feasible. Without any extension of the foregoing deadline the Parties and their counsel must expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Employee Data.

5.2. Funding of Gross Settlement Amount. NuCO2 shall fully fund the Gross Settlement Amount and fund the amounts necessary to fully pay its share of payroll taxes by transmitting the funds to the Administrator no later than 14 days after the Effective Date.

5.3. Payments from the Gross Settlement Amount. Within 10 days after NuCO2 funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Settlement Payments, the Administration Expenses, the LWDA Payment, Attorneys' Fees, Litigation Costs, and Service Payment.

5.3.1. The Administrator will issue checks for the Individual Settlement Payments and send them to Covered Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all PAGA Members including Non-Participating Class Members who qualify as PAGA Members (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

5.3.2. The Administrator must conduct an Address Search for all other Covered Employees whose checks are returned undelivered without USPS forwarding addresses. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Address Search. The Administrator need not take further steps to deliver checks to Covered Employees whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Covered Employee whose original check was lost or misplaced, requested by the Covered Employee prior to the void date.

5.3.3. For any Covered Employee whose Individual Settlement Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds, in the name of the Covered Employee, to the State of California's Unclaimed Property Division.

5.3.4. The payment of Individual Settlement Payments shall not obligate NuCO2 to confer any additional benefits or make any additional payments to Covered Employee beyond those specified in this Agreement.

5.3.5. The Administrator will send checks for Individual PAGA Payments to all PAGA Members, who have no right to opt-out or otherwise exclude themselves from the settlement and release of PAGA claims set forth in this Settlement.

5.4. Payments to the Responsible Tax Authorities. The Administrator will pay the Participating Class Members' portion of normal payroll withholding taxes out of each person's Individual Class Payment. The Administrator shall also pay NuCO2's portion of payroll taxes as the current or former employer (including the employer's payment of applicable FICA, FUTA, and SUI contributions, etc.) to the appropriate local, state, and federal taxing authorities. The Administrator will calculate the amount of the Participating Class Members' and NuCO2's portion of payroll withholding taxes and forward those amounts to the appropriate taxing authorities.

**6. RELEASE OF CLAIMS.** Effective on the date when NuCO2 fully funds the Gross Settlement Amount and all associated employer payroll taxes owed on the Wage Portion of the Individual Class Payments, the following releases of claims will take effect:

6.1. Named Plaintiff's General Release. Named Plaintiff's respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint or ascertained during the Action; and (b) any other claims, debts, liabilities, demands, damages, obligations, actions and causes of actions, of any nature whatsoever, whether known or unknown, or suspected or unsuspected, arising out of or in connection with their employment with NuCO2, the separation of such employment, or any other act, omission or event occurring between the Parties at any time prior to the date the Named Plaintiff executes this Agreement. This General Release includes, without limitation: (1) all claims for violation of any federal, state or local statute, ordinance or regulation relating to employment benefits, leaves of absence, or discrimination, harassment, retaliation, or whistleblowing in employment, specifically including, without limitation, the California Fair Employment and Housing Act, the California Family Rights Act, Title VII of the Civil Rights Act of 1964, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, the Genetic Information Nondiscrimination Act, the Americans with Disabilities Act, and the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the Securities Act, the Immigration Reform and Control Act the Worker Adjustment and Retraining Notification Act of 1988, the California Worker Adjustment and Retraining Notification Act, the Uniformed Service Employment and Reemployment Rights Act, and any regulation of any administrative agency or governmental authority relating to employment benefits or discrimination or harassment or retaliation in employment; (2) all claims for failure to pay minimum or overtime wages, failure to timely pay wages, failure to pay wages upon termination, failure to provide accurate itemized wage statements, failure to maintain accurate records, failure to reimburse business expenses, failure to provide meal periods or rest breaks, failure to provide paid sick leave, failure to post notice of paydays and time and place of payment, and any claim for violations of the California Labor Code, California's Business and Professions Code § 17200 et seq., and the applicable California Industrial Welfare Commission Wage Order; (3) any non-statutory tort or contractual claim, including all claims for breach of oral, implied or written contract, breach of implied covenant of good faith and fair dealing, negligent or intentional infliction of emotional distress, and conversion; (4) all claims for wrongful termination of employment; (5) all claims for wages, penalties and/or benefits; and (6) all claims for attorneys' fees and costs. Named Plaintiff's General Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits,

unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time. Named Plaintiff acknowledge that they may discover facts or law different from, or in addition to, the facts or law that Plaintiff now know or believe to be true but agree, nonetheless, that Named Plaintiff's General Release shall be and remain effective in all respects, notwithstanding such different or additional facts or their discovery of them.

6.1.1. Named Plaintiff's Section 1542 Waiver. For purposes of Named Plaintiff's General Release, Named Plaintiff expressly waives and relinquish the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

**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.**

6.2. Release of Claims by Participating Class Members and PAGA Members: Upon final approval by the Court, the State of California, all Participating Class Members, all PAGA Members, and all persons purporting to act on behalf of Class Members' and PAGA Members' behalf or purporting to assert a claim under or through them, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all claims and/or causes of action pled or which could have been pled arising, in whole or in part, from the facts and/or allegations contained in the Operative Complaint and PAGA Letters against the Released Parties, that arose during the Class Period and PAGA Period, including the following: The Claims set forth in the Operative Complaint and PAGA Letters, including, but not limited to failure to pay wages (including minimum wages, regular wages, overtime wages, reporting time wages), meal period violations, rest period violations, paid sick leave, untimely payment of wages, wage statement violations, waiting time penalties, unfair competition, failure to reimburse business expenses and civil penalties under the PAGA and those claims predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA Letters sent to the LWDA by Named Plaintiff in or prior to the Action, as well as any claims that could have been pled which arise from the same or similar facts alleged in the Operative Complaint and PAGA Letters concerning Named Plaintiff or the putative class and/or PAGA Members, and claims for interest, penalties (including PAGA penalties), claims pursuant to the California Labor Code and California Industrial Welfare Commission Wage Orders, including but not limited to, alleged violations of Labor Code sections 200, 201, 202, 203, 204, 210, 218, 218.6, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.6, 248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1198, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, Business and Professions Code section 17200, *et seq.* and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq.*; or which could have been alleged under the same or similar facts, allegations and/or claims pled in the Action and PAGA Letters. 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 outside of the Operative Complaint, PAGA Letters or outside the Class or PAGA Period.

6.2.1.1 Any claims for injunctive relief, declaratory relief, restitution, alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Action;

6.2.1.2 Any and all other claims under California common law, the federal law, and the California Business and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations and/or claims pled in the Action and PAGA Letter based on the alleged Labor Code violations.

6.2.2. In light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the settlement of class claims, shall still receive an individual PAGA payment and release all claims for penalties pursuant to the PAGA during the PAGA Period.

## **7. MOTION FOR SETTLEMENT APPROVAL.**

7.1. Preliminary Approval. Not later than 16 court days before the Preliminary Approval Hearing, Named Plaintiff shall move for an order conditionally certifying the Class for settlement purposes only, granting Preliminary Approval of the Settlement, including approval of the settlement of PAGA claims, setting a date for the Final Approval Hearing, and approving the Class Notice. Plaintiff's counsel will provide Defense counsel with a draft of the motion for approval of the Settlement for edit or comment no later than seven (7) calendar days before filing the motion and will consider in good faith any comments or edits made before filing the motion. Defendants shall accept service of the Motion (or any other motions, stipulations, declarations, proposed orders, exhibits, or other documents filed in connection with this Settlement) via electronic service at the email addresses set forth in this Agreement or, if an electronic service agreement is already in place, at the email addresses in the Parties' electronic service agreement.

7.2. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Settlement or forthcoming motions or joint stipulations for approval, Plaintiff's Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties to resolve the disagreement. If the Court does not grant settlement approval or conditions any approval or review on any material change to this Agreement, Plaintiff's Counsel and Defense Counsel will expeditiously work together in good faith on behalf of the Parties to modify the Agreement and satisfy the Court's concerns. Should the Court decline to approve all material aspects of the Settlement, the Settlement will be null and void, and the Parties will have no further obligations under it.

## **8. SETTLEMENT ADMINISTRATION.**

8.1. Selection of Administrator. The Parties have jointly selected the Administrator to administer this Settlement. The Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number to calculate payroll tax withholdings and report to state and federal tax authorities.

8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund under U.S. Treasury Regulation section 468B-1.

8.4. Notice to Class Members.

8.4.1. No later than 3 business days after receipt of the Employee Data, the Administrator shall notify Plaintiff's Counsel that the list has been received and state the number of Covered Employees and Class Workweeks and PAGA Pay Periods in the Employee Data.

8.4.2. Using best efforts to perform as soon as possible, and no later than 14 days after receiving the Employee Data, the Administrator will send to all Class Members identified in the Employee Data, via first-class United States Postal Service ("USPS") mail, the Class Notice substantially in the form attached to this Agreement as Attachment A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment payable to the Class Member, and the number of Class Workweeks used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Covered Employees' addresses using the National Change of Address database.

8.4.3. Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct an Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.

8.4.4. The deadlines for Class Members' written objections, challenges to Class Workweeks and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the time otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

8.4.5. If the Administrator, NuCO2 or Plaintiff's Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Employee Data and should have received Class Notice, the Parties will expeditiously meet and confer in a good-faith effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

## 8.5. Requests for Exclusion (Opt-Outs).

8.5.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or their representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

8.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

8.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Release of Claims by Participating Class Members, set forth in Paragraph 6 of this Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

8.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment, nor shall they have the right to object to the class action components of the Settlement. Because future PAGA claims covered by the release in this Settlement are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are PAGA Members are deemed to release the claims identified in the Release of Claims by PAGA Members, as set forth in Paragraph 6 of this Agreement and are eligible for an Individual PAGA Payment.

8.6. Challenges to Calculation of Class Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Workweeks contained in the Class Notice are correct so long as they are consistent with the Employee Data. The Administrator's determination of each Class Member's allocation of Class Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all

challenges to the calculation of Class Workweeks to Defense Counsel and Plaintiff's Counsel and the Administrator's determination of the challenges.

8.7. Objections to Settlement.

8.7.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Attorneys' Fees, Litigation Costs and/or Service Payment.

8.7.2. Participating Class Members may send written objections to the Administrator, by email or mail. Alternatively, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

8.7.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

8.8. Administrator Duties. The Administrator has a duty and is authorized to perform and observe all tasks necessary to effectuate and administer the Settlement in a manner consistent with the terms of this Agreement.

8.8.1. Website, Email Address and Toll-Free Number. The Administrator will establish, maintain, and use a website, email address and toll-free number to post information of interest to Class Members and PAGA Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also monitor the email address and a toll-free telephone number established for this Settlement to receive Class Member and PAGA Member calls, faxes and emails.

8.8.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 5 days after the Response Deadline, the Administrator shall email a list to Plaintiff's Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid).

8.8.3. Weekly Reports. The Administrator must, on a weekly or biweekly basis, provide written reports to Plaintiff's Counsel and Defense Counsel that tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Workweeks received

and/or resolved, and checks mailed for Individual Class Payments. The Weekly Reports must provide the Administrator's assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

8.8.4. Class Workweek Challenges. The Administrator has the authority to address and make final decisions, consistent with the terms of this Agreement, on all Class Member challenges over the calculation of Class Workweeks. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.

8.8.5. Administrator's Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Plaintiff's Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Covered Employees, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Plaintiff's Counsel is responsible for filing the Administrator's declaration(s) in Court.

8.8.6. Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Plaintiff's Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, if applicable and if requested by either Party, the Administrator will prepare, and submit to Plaintiff's Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement.

**9. ESCALATION CLAUSE.** Based on its records, NuCO2 has provided the Class Workweek Estimate. In the event the total Class Workweeks being released as part of this Settlement exceeds the Class Workweek Estimate by more than 10%, the Parties agree that the Gross Settlement Amount shall be increased proportionately. However, Defendants shall have the sole discretion to, alternatively, shorten the Class Period end date (and hence the date through which the release of Class Members run) on the date the number of workweeks released by Class Members reaches 24,909.5 workweeks.

**10. EMPLOYEE ESTIMATE.** Based on the records evaluated, there are an estimated 180 Class Members and 131 PAGA Members from April 9, 2019, through November 12, 2024.

**11. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Defendants may, but are not obligated to, elect to withdraw from the Settlement. If Defendants withdraw, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and neither Party shall have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred to that point. To elect to withdraw, Defendants must notify Plaintiff's Counsel and the Court of their

election to withdraw not later than ten (10) calendar days after the expiration of the additional 14 days (beyond the Response Deadline expiration) provided to Class Members to whom the Class Notice was re-sent.

**12. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the Final Approval Hearing, Named Plaintiff will file in Court and serve on Defendants a Motion for Final Approval of the Settlement that includes a Proposed Final Approval Order and a Proposed Judgment, which shall specifically state and include a request for approval of the PAGA settlement under Labor Code § 2699, subd. (s). Plaintiff's Counsel will provide drafts of the Motion for Final Approval of the Settlement, Proposed Final Approval Order and Proposed Judgment to Defense Counsel seven (7) calendar days before filing the motion and will consider in good faith any comments or edits made before filing the motion. NuCO2 shall accept service of the Motion for Final Approval (or any other motions, stipulations, declarations, proposed orders, exhibits, or other documents filed in connection with this Settlement) via electronic service at the email addresses set forth in this Agreement or, if an electronic service agreement is already in place, at the email addresses in the Parties' electronic service agreement.

12.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court prior to the Final Approval Hearing, or as otherwise provided by the Court.

12.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement, the Parties will expeditiously work together through counsel in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Service Payment, Attorneys' Fees, Litigation Costs and/or Administration Expenses shall not constitute a material modification to the Agreement within the meaning of this Paragraph.

12.3. Continuing Jurisdiction of the Court. The Parties agree, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

12.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, except for the Service Payment, Attorneys' Fees, Litigation Costs and/or Administration Expenses set forth in this Settlement, the Parties, their respective counsel, and all Covered Employees, excluding opt outs, as applicable and provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount, unless the Parties mutually agree otherwise in writing.

12.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment.

If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Covered Employees), this Agreement shall be null and void. The Parties shall agree to expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this Paragraph, as long as the Gross Settlement Amount remains unchanged.

**13. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.

**14. ADDITIONAL PROVISIONS.**

14.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by the Parties that any of the allegations or the defenses in the Operative Complaint have merit or that there is any liability for any claims asserted or that any claims may proceed on a class, collective, or representative basis. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment pursuant to this Agreement, Defendants reserve the right to contest any potential future certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest NuCO2's defenses. The Settlement, this Agreement, and the Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

14.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, NuCO2 and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency; (6) or to respond to putative class members who inquire about the Settlement. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, any with third party regarding this Agreement or

the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This Paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

14.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Covered Employee to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Plaintiff’s Counsel’s ability to communicate with Covered Employees in accordance with Plaintiff’s Counsel’s ethical obligations owed to Covered Employees.

14.4. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

14.5. Attorney Authorization. Plaintiff’s Counsel and Defense Counsel separately warrant and represent that they are authorized by the Parties, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

14.6. Cooperation. The Parties and their counsel will cooperate and use their best efforts, in good faith, to implement the Settlement by modifying the Settlement Agreement, submitting supplemental evidence, and supplementing points and authorities as requested by the Court, among other things. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

14.7. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

14.8. No Tax Advice. Neither the Parties, Plaintiff’s Counsel, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

14.9. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or Plaintiff’s Counsel and Defense Counsel, as their legal representatives.

14.10. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

14.11. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without regard to conflict of law principles.

14.12. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

14.13. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

14.14. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Plaintiff's counsel represents it has destroyed, all paper and electronic versions of Class Data received from Defendants in connection with the mediation and no longer has access to such information as of the date of this Agreement.

14.15. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

14.16. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

14.17. Notice. All notices or other communications between the Parties required in connection with this Agreement shall be in writing and shall be deemed to have been duly given as of the 3<sup>rd</sup> business day after mailing by U.S. Mail or the same day if sent by email, addressed as follows:

To Plaintiff:

***Ferraro Vega Employment Lawyers, Inc.***

Attn: Nicholas J. Ferraro

3333 Camino del Rio South, Suite 300

San Diego, CA 92108 USA

[nick@ferrarovega.com](mailto:nick@ferrarovega.com) / [classactions@ferrarovega.com](mailto:classactions@ferrarovega.com)

[www.ferrarovega.com](http://www.ferrarovega.com)

To Defendant:

***Little Mendelson, P.C.***

Attn: Shiva Shirazi Davoudian

[sdavoudian@littler.com](mailto:sdavoudian@littler.com)

Alan H. Emurian

[aemurian@littler.com](mailto:aemurian@littler.com)

2049 Century Park East, 5th Floor

Los Angeles, California 90067.3107

14.18. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign, SignRequest, Adobe Sign, etc.), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

14.19. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

**SIGNATURES**

*I have read this Agreement and agree to its terms.*

***Plaintiff Shamonique Lashawn Malone-Boyd***

Date: Feb 25, 2025

*Shamonique Lashawn Malone Boyd*

\_\_\_\_\_  
Shamonique Lashawn Malone-Boyd

***Defendant NuCO2 Management LLC***

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Defendant NuCO2 Supply LLC***

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

***Defendant Linde Inc.***

Date: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SIGNATURES**

*I have read this Agreement and agree to its terms.*

***Plaintiff Shamonique Lashawn Malone-Boyd***

Date: \_\_\_\_\_

\_\_\_\_\_  
Shamonique Lashawn Malone-Boyd

***Defendant NuCO2 Management LLC***

Date: 2/24/2025

Susan Stevenson

Name: Susan Stevenson

Title: President, NuCO2 Inc., its Sole Member

***Defendant NuCO2 Supply LLC***

Date: 2/25/2025

Susan Stevenson

Name: Susan Stevenson

Title: President, NuCO2 Inc., its Sole Member

***Defendant Linde Inc.***

Date: 2/24/25

Natalie J. Henry

Name: Natalie J. Henry

Title: Vice President, Human Resources

***Attorneys for Defendants NuCO2 Management LLC;  
NuCO2 Supply LLC; and Linde Inc.***

Date: February 24, 2025



Name: Shiva Shirazi Davoudian, Esq.,

Littler Mendelson, P.C.

***Attorneys for Plaintiff Shamonique Lashawn Malone-Boyd***

Date: Feb 25, 2025



Name: Nicholas Ferraro

Ferraro Vega Employment Lawyers, Inc.

# **Attachment A**

## **Notice of Class Action Settlement**

# NOTICE OF CLASS ACTION AND PAGA SETTLEMENT

*Shamonique Lashawn Malone-Boyd et al. v. NuCO2 Management LLC et al.*

Superior Court of the State of California for the County of San Diego

Case No. 37-2023-00043224-CU-OE-CTL

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*This notice is to the following individuals in connection with a pending class action and PAGA settlement:*

You are part of the Settlement, and a Class Member, if you are currently or formerly employed by NuCO2 in California as hourly paid employees during the Class Period of April 9, 2019, through February 28, 2025 (“Class Member”).

You are also part of the Settlement, and a PAGA Member, if you are currently or formerly employed by NuCO2 in California as hourly, non-exempt employees during the PAGA Period of September 6, 2022, through February 28, 2025 (“PAGA Member”).

---

*Read this notice carefully. Your legal rights could be affected whether you act or not.*

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The Superior Court of the State of California for the County of San Diego (the “Court”) has preliminarily approved this class and representative action lawsuit filed by Shamonique Lashawn Malone-Boyd (“Class Representative”) against NuCO2 Management LLC, NuCO2 Supply LLC, and Linde Inc. (“NuCO2” or “Defendants”) for alleged wage and hour violations (the “Lawsuit”).

The Lawsuit is based on the following legal causes of action: (1) failure to pay all wages owed ( including minimum wages, regular wages and reporting time wages) (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) paid sick leave violations, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) failure to reimburse business expenses, (10) unfair competition, (11) civil penalties under the private attorneys general act (Labor Code §§ 2698 *et seq.*). NuCO2 denies all claims and maintains it has fully complied with the law.

NuCO2’s records reflect you worked **[[Individual Workweeks]]** workweeks during the Class Period of April 9, 2019, through February 28, 2025. NuCO2’s records also reflect you worked **[[PAGA Pay Periods]]**. Based on this information, your Individual Class Payment and Individual PAGA Payment is estimated to be \$**[[Individual Class Payment + Individual PAGA Payment]]** (less any applicable state and federal withholdings). The actual amount you may receive will likely be different and will depend on multiple factors, such as how many other individuals decide to opt out.

## YOUR OPTIONS

|                   |                                                                                                                                                                                                                                                                                                                                                                   |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DO NOTHING</b> | You do not have to do anything in response to this notice. If you do nothing, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement and release your claims in exchange for compensation.               |
| <b>OPT OUT</b>    | You may opt out of the Settlement by submitting a Request for Exclusion form. If you opt out, you may not object to the Settlement, you will not receive an Individual Class Payment, and you shall not be bound by the release provisions in the settlement.                                                                                                     |
| <b>OBJECT</b>     | You may object to the Settlement by submitting a written objection. If the Court grants final approval of the settlement despite your objection, you will remain eligible to automatically receive an Individual Class Payment if the Court grants final approval of the settlement. In such case, you will be bound by the release provisions in the settlement. |

The Court's final approval hearing is scheduled to take place on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 63 of the San Diego Superior Court, located at 330 W Broadway, San Diego, CA 92101. You do not have to attend but you do have the right to appear. ***For more information, please carefully read this notice.***

## 1. WHAT IS THE ACTION ABOUT?

The Class Representative is former employee of NuCO2. The Class Representative alleged NuCO2 violated California labor and employment laws as follows: (1) failure to pay all wages owed (including minimum wages, regular wages and reporting time wages), (2) failure to pay all overtime wages, (3) meal period violations, (4) rest period violations, (5) paid sick leave violations, (6) untimely payment of wages, (7) wage statement violations, (8) waiting time penalties, (9) failure to reimburse business expenses, (10) unfair competition, (11) civil penalties under the private attorneys general act (Labor Code §§ 2698 *et seq.*).

Plaintiff is represented by [Ferraro Vega Employment Lawyers](#) ("Class Counsel.")

NuCO2 denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

## 2. WHAT ARE THE PROPOSED SETTLEMENT TERMS?

At the Final Approval Hearing, the Class Representative, through Class Counsel, will ask the Court to approve a Gross Settlement Amount of \$350,000.00 and authorize the following payments from that amount: Service Payment to the Class Representative (\$10,000.00), Attorneys' Fees in the amount of \$116,655.00, representing 33.33% of the Gross Settlement Amount, Litigation Costs (not to exceed \$30,000.00), the LWDA's 75% portion of the PAGA Payment (\$7,500.00), and

Administration Expenses (not to exceed \$10,000.00) to be paid to the third-party settlement administrator.

After the above deductions in amounts approved by the Court, the Administrator will calculate and distribute Individual Class Payments to Participating Class Members based on their Class Workweeks. 20% of each Individual Class Payment shall constitute taxable wages (“Wage Portion”) and 80% shall constitute interest and penalties (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. NuCO2 will separately pay employer payroll taxes it owes on the Wage Portion. The Administrator will report the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

You will be treated as a Participating Class Member, participating fully in the settlement, unless you submit a signed Request for Exclusion by **[[Response Deadline]]** THE “Response Deadline.”

After the Judgment is final and NuCO2 has fully funded the settlement and separately paid all employer payroll taxes, Participating Class Members and PAGA Members will be legally barred from asserting any of the claims released under the settlement, as follows:

Upon final approval by the Court, the State of California, all Participating Class Members, all PAGA Members, and all persons purporting to act on behalf of Class Members’ and PAGA Members’ behalf or purporting to assert a claim under or through them, shall be deemed to have fully, finally, and forever released, settled, compromised, relinquished and discharged any and all of the Released Parties of and from any and all claims and/or causes of action pled or which could have been pled arising, in whole or in part, from the facts and/or allegations contained in the Operative Complaint and PAGA Letters against the Released Parties, that arose during the Class Period and PAGA Period, including the following: The Claims set forth in the Operative Complaint and PAGA Letters, including, but not limited to failure to pay wages (including minimum wages, regular wages, overtime wages, reporting time wages), meal period violations, rest period violations, paid sick leave, untimely payment of wages, wage statement violations, waiting time penalties, unfair competition, failure to reimburse business expenses and civil penalties under the PAGA and those claims predicated on the same or similar facts and/or claims alleged in the Action and/or any PAGA Letters sent to the LWDA by Named Plaintiff in or prior to the Action, as well as any claims that could have been pled which arise from the same or similar facts alleged in the Operative Complaint and PAGA Letters concerning Named Plaintiff or the putative class and/or PAGA Members, and claims for interest, penalties (including PAGA penalties), claims pursuant to the California Labor Code and California Industrial Welfare Commission Wage Orders, including but not limited to, alleged violations of Labor Code sections 200, 201, 202, 203, 204, 210, 218, 218.6, 226, 226.3, 226.7, 246, 246.5, 247, 247.5, 248, 248.1, 248.2, 248.6, 248.7, 256, 510, 512, 516, 558, 558.1, 1174, 1174.5, 1182.12, 1198, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2698 *et seq.*, 2800, 2802, Business and Professions Code section 17200, *et seq.* and applicable IWC Wage Orders, and California Code of Regulations, Title 8, section 11000 *et seq.*; or which could have been alleged under the same or similar facts, allegations

and/or claims pled in the Action and PAGA Letters. 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 outside of the Operative Complaint, PAGA Letters or outside the Class or PAGA Period.

This Release also includes any claims for injunctive relief, declaratory relief, restitution, alleged or which could have been alleged under the facts, allegations and/or claims pleaded in the complaints filed as part of the Action, including any and all other claims under California common law, the federal law, and the California Business and Professions Code alleged in or that could have been alleged under the same or similar facts, allegations and/or claims pled in the Action and PAGA Letter based on the alleged Labor Code violations.

### **3. HOW IS MY INDIVIDUAL CLASS PAYMENT AND PAGA PAYMENT CALCULATED?**

The number of Class Workweeks you worked during the Class Period are stated on the first page of this Class Notice. The Administrator will calculate your Individual Class Payment by: (1) dividing the Net Settlement Amount by the total number of Class Workweeks worked by all Participating Class Members, and then (2) multiplying the result by the number of Class Workweeks worked by each respective Participating Class Member. In other words, you will receive a proportional recovery based on your length of employment in relation to other Class Members.

The number of PAGA Pay Periods you worked during the PAGA Period are stated on the first page of this Class Notice. The Administrator will calculate your Individual PAGA Payment by: (a) dividing the Net PAGA Payment by the total number of PAGA Pay Periods worked by all PAGA Members during the PAGA Period; and (b) multiplying the result by each PAGA Members' PAGA Pay Periods. The Individual PAGA Payments are not subject to wage withholdings and will be reported on IRS 1099 Forms. Covered Employees assume full responsibility and liability for any individual taxes owed on their Individual PAGA Payment.

### **4. HOW CAN I CORRECT THE NUMBER OF CLASS WORKWEEKS OR PAGA PAY PERIODS?**

You have until the Response Deadline to correct or challenge the number of Class Workweeks PT PAGA Pay Periods. You can submit your challenge by signing and sending a letter to the Administrator via mail or email to the Administrator at the following address:

Administrator:

CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
Fax: (949) 419-3446  
(833) 816-0845  
<https://www.cptgroup.com/case-inquiry>

The Administrator will accept NuCO2's calculation of Class Workweeks 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.

## **5. HOW WILL I GET PAID?**

The Administrator will send, by U.S. mail, a single check to every Participating Class Member and PAGA Members following the Effective Date of this Settlement. Your check will be sent to the same address as this notice. If you change your address, notify the Administrator as soon as possible.

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

Complete the attached Request for Exclusion form and mail or email it to the Administrator before the Response Deadline. If you opt-out, you will not receive an Individual Class Payment and you will not be bound by the Release of class claims.

However, in light of the binding nature of a PAGA judgment on non-party employees pursuant to *Arias v. Superior Ct. (Dairy)*, 46 Cal. 4th 969 (2009), PAGA Members who exclude themselves from the settlement of class claims, shall still receive an individual PAGA payment and release all claims for penalties pursuant to the PAGA during the PAGA Period.

## **7. HOW DO I OBJECT TO THE SETTLEMENT?**

Only Participating Class Members have the right to object to the Settlement by submitting a written objection to the Administrator before the Response Deadline. To object, please provide a written statement to the Administrator advising what you object to, why you object, and any facts that support your objection. Please sign the objection and identify the Action and include your name, current address, telephone number, and your approximate dates of employment.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection.

## **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

You may, but are not required to, attend the Final Approval Hearing on **[[Final Approval Hearing Date]]** at **[[Final Approval Hearing Time]]** in Dept. 63 of the San Diego County Superior Court,

located at 330 W Broadway, San Diego, CA 92101. At the hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to the LWDA, Class Counsel, the Class Representative, and the Administrator. The Court will invite comment from objectors, Class Counsel, and Defense Counsel before making a decision.

It is possible the Court will reschedule the Final Approval Hearing. Please review the Court's online docket or contact the Administrator or Class Counsel to verify the date and time of the Final Approval Hearing if you believe it may have been continued or otherwise changed.

## **9. HOW CAN I GET MORE INFORMATION?**

The Agreement sets forth everything NuCO2 and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment, or any other Settlement documents is to go to the following website [\[\[website\]\]](#). You can also telephone or send an email to Class Counsel at the address below:

### Class Counsel

Nicholas J. Ferraro (State Bar No. 306528)

Lauren N. Vega (State Bar No. 306525)

Ferraro Vega Employment Lawyers, Inc.

3333 Camino del Rio South, Suite 300

San Diego, California 92108

(619) 693-7727 telephone

[classactions@ferrarovega.com](mailto:classactions@ferrarovega.com)

[ferrarovega.com](http://ferrarovega.com)

## **10. WHAT IF I LOSE MY SETTLEMENT CHECK OR FAIL TO CASH IT?**

If you lose or misplace your settlement check, the Administrator will replace it if you request a replacement before the void date on the face of the original check. If your check is already void or you have otherwise failed to cash it, it will be provided to the State of California's Unclaimed Property Division in your name. For more information, please review how to process a claim for your funds with the State of California, [https://www.sco.ca.gov/upd\\_form\\_claim.html](https://www.sco.ca.gov/upd_form_claim.html).

## **DO NOT CONTACT THE COURT OR THE COURT CLERK TO OBTAIN INFORMATION ABOUT THE SETTLEMENT**

# **Attachment B**

## **Request for Exclusion Form**

## **Request for Exclusion Form**

*Shamonique Lashawn Malone-Boyd et al. v. NuCO2 Management LLC et al.*  
Superior Court of the State of California for the County of San Diego  
Case No. 37-2023-00043224-CU-OE-CTL

By signing and returning this form, I confirm that I do not want to be included in the Settlement or receive a settlement check in the class action lawsuit referenced above.

I understand that by opting out, I am giving up my right to receive any payments in this Settlement. To “opt out,” this form must be postmarked no later than **[[Response Deadline]]** and mailed via U.S. Mail to the following address:

CPT Group, Inc.  
50 Corporate Park  
Irvine, CA 92606  
Fax: (949) 419-3446  
(833) 816-0845

<https://www.cptgroup.com/case-inquiry>

I confirm I have reviewed the Notice of Class Action Settlement. I have decided to be excluded from the class and **not** participate in the proposed settlement or receive an individual settlement check I am otherwise entitled to receive.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Last Four Digits of SSN)

\_\_\_\_\_  
(Type or print name and former name(s))

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Address)

Click or tap here to enter text.