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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

CHARLES WALTON, as an individual and on
behalf of all others similarly situated, and as a
private attorney general,

Plaintiff,

vs.

PRAXAIR DISTRIBUTION, INC., a Delaware
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. 20-CIV-03660

[Assigned for all purposes to Department 4,
Hon. Nancy L. Fineman]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] FINAL JUDGMENT**

*[Filed concurrently with Declaration of Simon L.
Yang; Declaration of Jarrod Salinas; [Proposed]
Order and Final Judgment]*

Date: April 12, 2022
Time: 8:30 a.m.
Department: 4

Complaint Filed: August 28, 2020

TO THE COURT, DEFENDANT, AND ITS COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on April 12, 2022, at 8:30 a.m., or as soon thereafter as the matter may be heard in Department 4 of the above-entitled court located at 1050 Mission Road, South San Francisco, California 94080, Plaintiff, Charles Walton, will and hereby does move for an Order:

1. granting final approval of the class action settlement pursuant to the Joint Stipulation of Class Action and PAGA Settlement (“Agreement”);
2. approving the requested allocations (i) \$8,750.00 to Phoenix Settlement Administrators for costs of administering the settlement and (ii) \$63,380.29 to the Labor & Workforce Development Agency pursuant to Labor Code section 2699(i);
3. ordering distribution of the settlement funds pursuant to the terms of the Agreement; and
4. entering final judgment.

Without any opposition from Defendant, Praxair Distribution, Inc. (now known as Linde Gas & Equipment Inc.), the motion is made pursuant to Rule 3.769 of the California Rules of Court, which provides for the Court’s certification of a class action for settlement purposes. As supported by the positive response after notice to the class (with zero class members opting out of the class and zero class members submitting written objections to the settlement), the settlement is fair, reasonable, and adequate and thus should be granted final approval.

PLEASE TAKE FURTHER NOTICE that pursuant to the previously filed motion for attorneys’ fees, costs and class representative service award, Plaintiff also moves for an Order awarding payments of (i) \$10,000.00 to Plaintiff for his efforts on behalf of the class and State and for his individual release of claims and waiver of Civil Code section 1542, (ii) \$183,333.33 for Class Counsel’s attorneys’ fees, and (iii) \$9,888.48 for reimbursement of litigation costs.

The motion is based on this notice, accompanying memorandum of points and authorities, the Agreement, the concurrently filed Declarations of Simon L. Yang and Jarrod Salinas, the previously filed Declarations of Larry W. Lee, Simon L. Yang, William L. Marder, and Charles Walton in support of the motion for award of attorneys’ fees, costs, and class representative service award, all pleadings

1 and papers on file herein, and any further oral and documentary evidence as may be presented before or
2 at the hearing of this matter.

3 DATED: March 21, 2022

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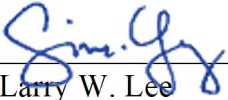
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5 By: 
6 Larry W. Lee
7 Simon L. Yang
8 Attorneys for Plaintiff
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SUMMARY OF MOTION

On behalf of other non-exempt employees paid overtime wages and as a proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004 (“PAGA”), Plaintiff, Charles Walton, sued Defendant, Praxair Distribution, Inc. (now known as Linde Gas & Equipment Inc.), for alleged wage statement violations. Plaintiff secured an excellent result for the Class that requires Defendant to pay \$550,000.00 for a classwide resolution.

The \$550,000.00 settlement results in a recovery of \$63,380.29 for the Labor & Workforce Development Agency (“LWDA”) pursuant to PAGA. It provides \$488.70, on average, to each Settlement Class Member, after allocating requested payments for attorneys’ fees and litigation costs, for Plaintiff’s efforts and individual release, for the LWDA payment, and for settlement administration costs.¹

Following the Court’s January 7, 2022 order preliminarily approving the settlement (the “Preliminary Approval”), a Notice of Class Action Settlement (“Class Notice”) explaining the settlement terms was sent to 562 Class Members. Declaration of Jarrod Salinas on Behalf of Phoenix Settlement Administrators (“Salinas Decl.”) ¶¶ 3-5. As the response to the Class Notice suggests, the settlement exceeds a fair, adequate, and reasonable result for the Class. The Administrator has received no requests for exclusion from the settlement. *Id.* ¶ 8. Nor has it received even a single objection to the settlement. *Id.* ¶ 9. There are no outstanding disputes. *Id.* ¶ 10. The Class participation rate thus is 100%, and the response to the Class Notice indicates that the Class favors final approval of the preliminarily approved terms of the settlement.

Plaintiff’s Motion for Preliminary Approval of Class Action Settlement summarized the history of the litigation. Rather than repeat the history, the following summary highlights previously discussed reasons the settlement should be approved for the benefit of the Class:

- The settlement obtained a non-reversionary \$550,000.00 settlement payment from Defendant.
- Class Members did not need to submit claim forms to participate in the settlement but are being paid automatically.

¹ Upon submission of this motion to the Court, Plaintiff will submit a copy to the LWDA. Declaration of Simon L. Yang ¶ 13.

- The settlement provides each Settlement Class Member a substantial amount of money—each Settlement Class Member, on average (and after all requested deductions for fees, costs, etc.), will receive nearly \$488.70. Salinas Decl. ¶ 11.
- The allocation reflects that payment of claims will be paid to Settlement Class Members in proportion to the number of relevant wage statements each Settlement Class Member received.
- Plaintiff conducted significant investigation to fully evaluate this case, including exchanges of information by Plaintiff and Defendant, consideration of and advocacy against Defendant’s various defenses, and review of class data and case law.
- As discussed above, there have been no written objections or requests for exclusion from the settlement; the response to the Class Notice—resulting in a 100% Class participation rate—supports final approval. Salinas Decl. ¶¶ 8, 9.

In sum, at the preliminary approval stage the Court’s initial finding was that the settlement appeared to be fair, adequate, and reasonable. The absence of any written objections or opt outs further confirms the Court’s initial finding. The Court should thus grant final approval.

DISCUSSION

I. The Settlement Should Be Granted Final Approval for the Benefit of the Class.

A. Class Members Were Provided Proper Notice.

The notice procedures required by the Preliminary Approval have been followed and satisfy all due process rights of Class Members. The Preliminary Approval contemplated that the Class Notice be sent to all Class Members by first class mail, as specified in the Agreement. The Preliminary Approval also appointed Phoenix Settlement Administrators as the Administrator.

As the Administrator summarizes, notice was provided to Class Members in accordance with the Preliminary Approval. *See* Salinas Decl. On January 17, 2022, the Administrator received a Class Member mailing list from Defendant’s counsel that included 562 Class Members. Salinas Decl. ¶ 3. On January 19, 2022, after the Administrator conducted a National Change of Address (NCOA) search to update any Class Member addresses. *Id.* ¶ 4. On January 20, 2022, each of the persons identified on the mailing list were sent the Class Notice via first class mail. *Id.* ¶ 5. Two Class Notices were returned as undeliverable, and as part of the administration process, the Administrator performed a skip-trace using

1 the TransUnion TLOxp, one of the most comprehensive address databases available for skip tracing. *Id.*
2 ¶ 6. Updated addresses were obtained for both of the returned Class Notices and re-mailed to the Class
3 Members at their updated addresses. *Id.*

4 The notice to Class Members constitutes the “best notice practicable” in this case, as necessary to
5 protect the due process rights of Class Members. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797,
6 811-12 (1985) (explaining provision of “best notice practicable” with description of the litigation and
7 explanation of opt-out rights satisfies due process); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75
8 (1974) (explaining individual notice must be sent to class members who can be identified through
9 reasonable means); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)
10 (explaining best notice practicable is that which is “reasonably calculated, under all the circumstances,
11 to apprise interested parties of the pendency of the action and afford them an opportunity to present their
12 objections”).

13 Here, Class Members were provided with a mailing regarding the settlement that explained the
14 settlement and allowed Class Members to seek information, ask questions, seek additional forms, and
15 either object or opt out, if so desired. Further, the Class Notice provided Class Members with the Class
16 Counsel’s contact information, where they could further seek information regarding the class settlement,
17 leave questions for the Administrator, and update their address. As such, proper notice has been given to
18 the Class Members. As absent Class Members have been given the opportunity to participate fully in the
19 claims, exclusion, and the approval process, the Court may proceed to determine the fairness and
20 adequacy of the settlement and grant final approval.

21 **B. Certification for Settlement Purposes Is Proper.**

22 In order to proceed as a class, there are two requirements which must be met—ascertainability
23 and community of interest. *See Daar v. Yellow Cab Co.*, 67 Cal. 2d. 695, 704 (1967); *Vasquez v.*
24 *Superior Court*, 4 Cal. 3d 800, 809 (1971) (explaining two basic requirements which must exist to
25 sustain a class action: “[t]he first is existence of an ascertainable class, and the second is a well-defined
26 community of interest in the questions of law and fact involved”). “The community of interest
27 requirement embodies three factors: (1) predominant common questions of law or fact; (2) class
28

representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.” *Richmond v. Dart Industries*, 29 Cal. 3d. 462, 470 (1981).

1. The Class Is Ascertainable.

Whether a class is “ascertainable” within the meaning of Code of Civil Procedure section 382 “is determined by examining the (1) class definition, (2) size of the class, and (3) means available for identifying the class members.” *Reyes v. San Diego County Bd. of Supervisors*, 196 Cal. App. 3d 1263, 1271 (1987). For purposes of ascertainability, the issue for the class definition concerns whether there exists sufficient means for identifying class members at the remedial stage. *Id.* at 1274-75.

Here, a Class Member is defined as: all current or former non-exempt employees who worked for Defendant, Praxair Distribution, Inc., in the State of California and were paid overtime wages at any time from August 26, 2019, through August 5, 2021, for work performed through July 31, 2021, except for individuals who released all relevant claims under the terms of the settlement in *Rita Garcia v. Praxair Distribution, Inc., et al.*, United States District Court, Central District of California, Case No. 2:18-cv-08170-JAK (AFMx). Agreement § 1.5. Class Members have already been identified by Defendant; there are 562 Class Members. Salinas Decl. ¶ 3. This is far more than the minimum required to certify a class.

2. There Is a Community of Interest.

The “community of interest” requirement embodies three separate factors: (1) predominant common questions of law or fact; (2) class representatives whose claims are typical of the class; and (3) class representatives who can adequately represent the class. *Richmond*, 29 Cal. 3d at 470; *Reese v. Wal-Mart Stores, Inc.*, 73 Cal. App. 4th 1225, 1234 (1999).

a. Common questions of law and fact predominate.

“The ultimate question in every case of this type [i.e., class actions] is whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous and substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.” *Lockheed Martin Corp. v. Superior Court*, 29 Cal. 4th 1096, 1104-05 (2003).

1 Here, Plaintiff alleges that Defendant violated Section 226(a) in several ways, as a matter of
2 corporate policy, practice, or procedure.² *First*, Section 226(a)(9) requires employers to furnish wage
3 statements that itemize and show “all applicable hourly rates in effect during the pay period.” The
4 Plaintiff alleges that whenever overtime wages are paid Defendant issues wage statements that do not
5 itemize and show the applicable overtime rate of pay of 1.5 times the regular rate. Rather, the wage
6 statements show the base hourly rate of pay or 0.5 times the base rate. Compl. ¶ 23. *Second*, Section
7 226(a)(2) requires employers to furnish wage statements that itemize and show the “total hours worked
8 by the employee.” Plaintiff also alleges that whenever overtime wages are paid Defendant issues wage
9 statements that do not itemize and show the accurate total hours worked. Moreover, the hours shown on
10 the wage statements do not sum up to the total hours worked by an employee. *Id.*

11 Based on the narrow, alleged claims, there are few, if any, disputed facts. Common questions of
12 law predominate. Where the employer’s conduct is uniformly directed at a class of employees, as it is
13 here, the class wide impact of the Defendant’s policies satisfies the commonality requirement. *See*
14 *Stephens v. Montgomery Ward & Co.*, 193 Cal. App. 3d 411, 421 (1987).

15 **b. Plaintiff’s claims are typical of the class claims.**

16 The purported class representative’s claim must be “typical” but not necessarily identical to the
17 claims of other class members; it is sufficient that the representative is similarly situated so that he or
18 she will have the motive to litigate on behalf of the class. *Classen v. Weller*, 145 Cal. App. 3d 27, 45
19 (1983). Courts look to whether class members have similar injuries, “whether the action is based on
20 conduct which is not unique to the named Plaintiff,” and whether other class members were injured by
21 the same conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). The purpose of the
22 typicality requirement “is to assure that the interest of the named representative aligns with the interests
23 of the class.” *Id.* at 508.

24 As discussed above, Plaintiff alleges that Defendant, as a matter of their corporate policy,
25 practice, or procedure violated Section 226(a) by failing to furnish employees with wage statements that
26 itemize and show all applicable hourly rates in effect during the pay period and the total hours worked.
27

28 ² Except as otherwise noted, all “Section” references are to the Labor Code.

1 As with other members of the Class, Plaintiff was provided wage statements that do not itemize and
2 show all applicable hourly rates in effect during the pay period or the total hours worked. Declaration of
3 Simon L. Yang (“Yang Decl.”) ¶ 3; Declaration of Charles Walton in Support of Motion for Attorneys’
4 Fees, Costs, and Class Representative Service Award (“Walton Decl.”) ¶ 2.

5 In sum, Plaintiff was subjected to the same policies and practices as other Class Members, and
6 his claims are typical to those of Class Members. The claims alleged here are an exemplar of claims
7 satisfying the typicality requirement.

8 **c. Plaintiff adequately represents the Class.**

9 The class representative, through qualified counsel, must be capable of “vigorously and
10 tenaciously” protecting the interests of the class members. *Simons v. Horowitz*, 151 Cal. App. 3d 834,
11 846 (1984). Here, Plaintiff does not have any interests adverse to the class, nor have any such issues
12 been raised or presented. Walton Decl. ¶ 6. Plaintiff has taken all necessary steps to represent the
13 interests of the Class, including by providing information and documents to Class Counsel, making
14 himself available to discuss the claims, providing additional wage statements that he was issued while
15 the lawsuit was pending, and answering any questions. *Id.* ¶¶ 4-5. For such reasons, Plaintiff has
16 adequately represented the Class Members and will continue to do so.

17 **C. The Settlement Is More Than Fair, Adequate, and Reasonable—and Achieves an**
18 **Excellent Result for the Class.**

19 Pursuant to Code of Civil Procedure section 382 and Rule 3.769 of the California Rules of Court,
20 a court’s inquiry on a motion for final approval of a class action settlement is whether the settlement is
21 “fair, adequate, and reasonable.” *Officers for Justice v. Civil Serv. Comm’n*, 688 F.2d 615, 625 (9th Cir.
22 1982). A settlement is fair, adequate, and reasonable, and therefore merits final approval, when “the
23 interests of the class are better served by the settlement than by further litigation.” See Manual for
24 Complex Litigation (Fourth) § 21.6 (2004) (“MCL”) at 309. The law favors settlement, particularly in
25 class actions and other complex cases, where substantial resources can be conserved by avoiding the
26 time, cost, and rigors of formal litigation. 4 Alba Conte & Herbert B. Newberg, *Newberg on Class*
27 *Actions*, § 11.41 (4th ed. 2002); *see also Chemical Bank v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.
28 1992); *Van Bronkhorst v. Safeco Corp.*, 529 F.2d 943, 950 (9th Cir. 1976).

1 Although the Court possesses “broad discretion” in determining that a proposed class action
2 settlement is fair, “[t]he court’s inquiry ‘must be limited to the extent necessary to reach a reasoned
3 judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the
4 negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all
5 concerned.’ *Amaro v. Anaheim Arena Mgmt., LLC*, 69 Cal. App. 5th 521 (2021) (quoting *Officers for
6 Justice*, 688 F.2d at 625). Accordingly, the Court should give due regard to what is otherwise a “private
7 consensual agreement” between the parties. *Id.*; *see also* MCL § 21.6 at 309 (“The judicial role in
8 reviewing a proposed settlement is critical, but limited to approving the proposed settlement,
9 disapproving it, or imposing conditions on it. The judge cannot rewrite the agreement”).

10 Likewise, the approval of a class action settlement will only be reversed for a clear abuse of
11 discretion. *See Dunk v. Ford Motor Co.*, 48 Cal. App. 4th 1794, 1801 (1996). As the Court of Appeal
12 has explained:

13 It cannot be overemphasized that neither the trial court in approving the settlement nor this Court
14 in reviewing that approval have the right or duty to reach any ultimate conclusions on the issues
15 of fact and law which underlie the merits of the dispute. It is well settled that in the judicial
16 consideration of proposed settlements, ‘the [trial] judge does not try out or attempt to decide the
17 merits of the controversy,’ [citation] and the appellate court ‘need not and should not reach any
18 dispositive conclusions on the admittedly unsettled legal issue.

17 *7-Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1146 (2000)
18 (citations and quotations omitted).

19 **1. The applicable standard presumes the settlement is fair.**

20 In the present circumstances, courts are to begin their analysis of a settlement with a presumption
21 that it is fair and worthy of approval:

22 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-length
23 bargaining; (2) investigation and discovery are sufficient to allow counsel and the court to act
24 intelligently; (3) counsel is experienced in similar litigation; and (4) the percentage of objectors
is small.

25 *Dunk*, 48 Cal. App. 4th at 1802; *7-Eleven Owners for Fair Franchising*, 85 Cal. App. 4th at 1146;
26 *accord Ellis v. Naval Air Rework Facility*, 87 F.R.D. 15, 18 (N.D. Cal. 1980) .

27 Here, the settlement warrants a presumption of fairness. *First*, as previously noted in the
28 Preliminary Approval, the settlement was negotiated at arms’ length, with the use of an experienced

mediator, Michael J. Loeb. Yang Decl. ¶ 5. *Second*, Class Counsel reviewed class data and thoroughly investigated the facts relating to the claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable to the claims Plaintiff alleged and defenses Defendant asserted. *Id.* *Third*, Class Counsel is highly experienced in this type of litigation. As shown in the supporting declarations, Class Counsel has significant experience in class actions and employment wage and hour matters. *Id.* ¶¶ 8-12; Declaration of Larry W. Lee in Support of Motion for Attorneys’ Fees, Costs, and Class Representative Service Award (“Lee Decl.”) ¶¶ 5-8; Declaration of William L. Marder in Support of Motion for Attorneys’ Fees, Costs, and Class Representative Service Award (“Marder Decl.”) ¶¶ 4-11. *Fourth*, the percentage of objectors is small, as there are none. Salinas Decl. ¶ 9.

2. The negotiation of the settlement, agreed upon terms, and response by the Class show the settlement is fair, adequate, and reasonable.

Without repeating all of the points previously outlined in the Motion for Preliminary Approval of Class Action Settlement, the following facts highlight reasons that the settlement is fair, adequate, and reasonable. The Agreement was the product of negotiation between able and experienced attorneys on both sides with the assistance of a mediator. Yang Decl. ¶¶ 3-6.

The settlement—requiring Defendant to pay \$550,000.00, almost \$1,000 per Class Member, based on focused claims alleging violations of Section 226(a), and thus requiring similarly limited Class Member releases, also tied to violations of Section 226(a)—is an exceptional win for the Class. Specifically, Plaintiff estimated that Defendant faced potential liability for approximately \$4,819,300 in penalties. Yang Decl. ¶ 6. Defendant contended that \$825,800 in Section 226(e) penalties would be subject to additional defenses requiring proof of injuries resulting from knowing and intentional violations. *Id.* Defendant also contended that the remaining potential liability of \$3,993,500, which Plaintiff calculated under Section 226.3, would be subject to discretionary reductions. *Id.* Moreover, recent case law—for example, *Gunther v. Alaska Airlines, Inc.*, 72 Cal. App. 5th 334 (2021)—has provided Defendant a reasonable basis to support arguments that the correct maximum potential PAGA penalty would be \$1,597,400 only under Section 2699(f). In negotiating the penalty that actually would be awarded by the Court under PAGA, Plaintiff and Defendant recognize that for the claims asserted in this matter, Defendant has reasonable grounds to argue that where the Legislature has specifically

1 considered penalizing Section 226(a) violations (in the Section 226(e) context), the awarded penalty
2 should be no more than the penalty under Section 226(e)—and that Plaintiff has reasonable grounds to
3 argue that the awarded penalty would be no less than the penalty under Section 226(e). On that basis,
4 even when including an undiscounted \$825,800 in penalties under Section 226(e) and an additional
5 \$825,800 in penalties under PAGA, the \$550,000 settlement obtains approximately one-third of the
6 potential recovery on behalf of the Class.

7 As discussed above, this is an excellent result, especially when considering that the Complaint
8 alleged focused claims resulting in a likewise limited Settlement Class Member release. While the
9 Parties disagree on the application of the law to the facts, each Party recognize that, if taken to trial, the
10 other Party would at least have reasonable arguments, such that the Gross Settlement Amount to which
11 the Parties ultimately agreed at mediation was reasonable. Yang Decl. ¶ 6.

12 The Court previously reviewed the terms of the Agreement and on January 7, 2022, granted
13 Preliminary Approval as the terms appeared to be fair, adequate, and reasonable. The response to the
14 Class Notice now suggests that the preliminarily approved settlement warrants final approval. Again,
15 zero Class Members opted out, and zero Class Members submitted a written objection to the settlement.
16 Salinas Decl. ¶¶ 8-9. Based on the absence of any objection after notice, the Court may appropriately
17 infer that the class action settlement is fair, adequate, and reasonable. *See Class Plaintiff v. City of*
18 *Seattle*, 955 F.2d 1268, 1291 (9th Cir. 1992).

19 **D. Avoiding the Risks of Litigation Benefits the Class and Favors Final Approval.**

20 Plaintiff believes that a class would be certified. But Plaintiff also believes in the fairness of the
21 settlement when reasonably considering the uncertainty and risks to the Class and potential for not
22 prevailing on one or more of theories alleged in the Complaint, the possibility of non-certification, and
23 the potential for appeals.

24 To wit, Defendant has maintained that there is no liability as to some Class Members.
25 Specifically, the Parties balanced Plaintiff's allegations and Defendant's defenses based on the *Garcia*
26 class action settlement to determine a potential settlement class would include three groups of
27 employees: (i) non-exempt drivers; (ii) non-exempt non-drivers hired on or after July 17, 2020; and (iii)
28 *Garcia* class members (i.e., non-exempt non-drivers) who remained employed on or after January 11,

2021. Yang Decl. ¶¶ 4-6. As discussed above, Defendant also argued defenses to class certification and that individualized issues predominate in this case, including whether Plaintiff and the Class can prove that injuries resulted from any technical violations of Section 226(a). In addition to its defenses on the merits, Defendant also disagrees with Plaintiff about the applicable penalties under PAGA and the equities weighing in favor of or against any discretionary reductions in PAGA penalties. Based on both defenses to class certification, and the merits and the equities involved in the Court’s assessment of a penalty, Defendant maintains that it is not liable to the Class for the allegations made by or for the amounts demanded by Plaintiff.

In sum, Plaintiff recognizes that there is always a risk that the court will not grant certification of the class and that the class will not be entitled to any recovery. Based on the foregoing, there was a substantial risk that Plaintiff would not have obtained the total recovery alleged, and reasonable grounds for uncertainty based on disputed legal issues and the possibility of appeals that would have necessitated significant expenditure of time and expenses. Avoiding the risks and uncertainties of further litigation benefits the Class and supports granting final approval.

1. The immediacy and certainty of recovery favor final approval.

To assess the fairness, adequacy, and reasonableness of a class action settlement, courts weigh the immediacy and certainty of substantial settlement proceeds against the risks inherent in continued litigation. *E.g., In re General Motors Corp.*, 55 F.3d 768, 806 (3d Cir. 1995) (comparing the “present value of the damages plaintiffs would likely recover if successful ... to the amount of the proposed settlement”) (internal citations omitted); *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975); *Boyd v. Bechtel Corp.*, 485 F. Supp. 610, 616-17 (N.D. Cal. 1979). Another factor considered by courts in approving a settlement is the complexity, expense, and likely duration of the litigation. *See Officers for Justice*, 688 F.2d at 625; *Girsh*, 521 F.2d at 157. In applying this factor, the Court must weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial. *Young v. Katz*, 447 F.2d 431, 433-34 (5th Cir. 1971).

Here, the settlement affords the Class prompt, fair relief while avoiding significant legal battles that otherwise could delay or even preclude the Class from obtaining any recovery at all. While Class Counsel believe the class claims are meritorious and can be successfully litigated, they are experienced

1 and fully understand the inherent risks and uncertainty involved with such matters as the resolution of
2 class certification, the outcome of a potential trial, and the outcome of any appeals that would follow
3 should the Class prevail at trial. Class Counsel has also assessed the same risks in connection with the
4 current settlement. Because the settlement provides immediate and substantial relief, without the
5 attendant risks and delay of continued litigation Class Counsel believes that the settlement warrants the
6 Court’s final approval.

7 As there is a risk that the Class Members would be left without a remedy and that courts across
8 the State would have to address the issues presented in a piecemeal, costly, and time-consuming manner
9 (if at all ever addressed), the settlement is consistent with the “overriding public interest in settling and
10 quieting litigation” that is “particularly true in class action suits.” *See Van Bronkhorst*, 529 F.2d at 950
11 (footnote omitted); *see also* 4 Newberg on Class Actions, at § 11.41.

12 **2. Costs and other risks inherent in litigation favor final approval.**

13 Absent a classwide resolution, some claims likely would not be brought. This lawsuit thus
14 achieves a true benefit for the Class—one that they might not otherwise receive or even seek as
15 individuals. Moreover, as referenced above, if Plaintiff pursued this case without settlement and failed to
16 prevail, Plaintiff would have been potentially responsible for Defendant’s costs. The same is true for any
17 Class Member; should any individual bring individual claims against Defendant on the same causes of
18 action, the individual would each face the uncertainty of prevailing and the possibility of paying costs to
19 Defendant. Here, given that a fair and reasonable settlement has been reached, none of the Class
20 Members will be required to assume the risk of having to pay for Defendant’s litigation costs.

21 The risks of this case were weighed by Class Counsel and should be considered a significant
22 factor by the Court in its determination of final approval. Class Counsel obtained a very substantial
23 settlement for the Class that resulted in a fair recovery, which at the same time provides for finality and
24 no risk of costs by the Class Members or the Class Representatives.

25 **3. The opinion of experienced counsel favors final approval.**

26 Class Counsel supports the settlement as fair, reasonable, and adequate, and in the best interest of
27 the Class Members as a whole. Yang Decl. ¶¶ 4-7; Lee Decl. ¶ 5. Similarly, counsel for Defendant is in
28 favor of this settlement. *See* Defendant’s Statement of Non-Opposition. The endorsement of qualified

1 and well-informed counsel of a settlement as fair, reasonable, and adequate is entitled to significant
2 weight in determining final approval. *See Officers for Justice*, 688 F.2d at 625; *Ellis*, 87 F.R.D. at 18;
3 *Boyd*, 485 F. Supp. at 617; *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998).

4 **4. No consideration weighs against final approval.**

5 The mediated resolution of this action resulted in a settlement for the benefit of the Class. No
6 applicable consideration weighs against final approval. That in itself favors final approval.

7 **II. The Requested Administration Costs Should Be Approved.**

8 Pursuant to the terms of the Agreement, the fees and costs of the Administrator, Phoenix
9 Settlement Administrators, are to be paid out of the settlement fund. The administration costs incurred
10 amount to a total of \$8,750.00. Salinas Decl. ¶ 12. The Administrator diligently performed all requested
11 tasks to ensure due process for Class Members while controlling and minimizing costs. The
12 administration costs should thus be approved.

13 **III. The Requested Attorneys' Fees, Costs, and Service Award Should Be Approved.**

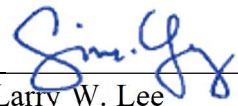
14 The Court should also award the payments requested in the previously filed motion for attorneys'
15 fees, costs, and class representative service award. Pursuant to the Court's Preliminary Approval, that
16 motion was filed in advance of the expiration of the Class Member response period for Class Members.
17 Even after the motion for attorneys' fees, costs, and class representative service award was filed, no
18 Class Members objected or opted out of the settlement. Salinas Decl. ¶¶ 8, 9.

19 **CONCLUSION**

20 Defendant will not be opposing the motion for final approval. Upon notice of the settlement, no
21 Class Member submitted a written objection to the settlement. Each Class Member elected to be a
22 Settlement Class Member and on average will each receive almost \$500.00 upon final approval. For the
23 benefit of the settlement class, Plaintiff respectfully requests that the Court grant final approval and also
24 grant the separately noticed motion for attorneys' fees, costs, and service award.

25 DATED: March 22, 2022

DIVERSITY LAW GROUP, P.C.

26
27 By:  _____

Larry W. Lee

Simon L. Yang

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On March 21, 2022, I served the following document(s) described as:

- 11 **1. PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL**
12 **OF CLASS ACTION SETTLEMENT; MEMORANDUM OF POINTS AND**
13 **AUTHORITIES IN SUPPORT [PROPOSED] ORDER GRANTING MOTION**
14 **FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; [PROPOSED]**
15 **FINAL JUDGMENT**
- 16 **2. DECLARATION OF SIMON L. YANG IN SUPPORT OF PLAINTIFF'S**
17 **MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT**
- 18 **3. [PROPOSED] ORDER GRANTING MOTION FOR FINAL APPROVAL OF**
19 **CLASS ACTION SETTLEMENT; [PROPOSED] FINAL JUDGMENT**
- 20 **4. DECLARATION OF JARROD SALINAS ON BEHALF OF PHOENIX**
21 **SETTLEMENT ADMINISTRATORS**

22 on the interested parties in this action as follows:

23 Carlos Jimenez
24 [cajimenez@littler.com](mailto:cjimenez@littler.com)
25 Littler Mendelson, P.C.
26 633 West 5th Street, 63rd Floor
27 Los Angeles, California 90071
28 *Attorney for Defendant Praxair Distribution*
Inc.

Shiva Shirazi Davoudian
sdavoudian@littler.com
Krystal Saleh
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Littler Mendelson, P.C.
2049 Century Park East, 5th Floor
Los Angeles, California 90067
Attorney for Defendant Praxair Distribution
Inc.

San Mateo Superior Court
complexcivil@sanmateo.org

BY ELECTRONIC SERVICE: I caused the above-entitled document(s) to
be served through the Odyssey eFileCA E-Filing System at the website
www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for
the above-entitled case. The service transmission was reported as complete and a copy of the

1 filing receipt/confirmation will be filed, deposited, or maintained with the original document(s)
2 in this office.

3 I declare under penalty of perjury under the laws of the State of California that the
4 above is true and correct. Executed on March 21, 2022, at Los Angeles, California.

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7 Erika Mejia
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