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Attorneys for Plaintiff and Proposed Class

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]

**DECLARATION OF SIMON L. YANG IN
SUPPORT OF PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES, COSTS, AND CLASS
REPRESENTATIVE SERVICE AWARD**

*[Filed concurrently with Notice of Motion and
Motion for Attorneys' Fees, Costs, and Class
Representative Service Award; Memorandum of
Points and Authorities; Declaration of Larry W.
Lee; Declaration of William L. Marder;
Declaration of Charles Walton; [Proposed]
Order]*

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

Complaint Filed: August 28, 2020

1 I, Simon L. Yang, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and, with the law firm
3 Diversity Law Group, P.C., am one of the attorneys of record for Plaintiff, Charles Walton. I make this
4 declaration on the basis of my own personal knowledge, except as to those matters stated on information
5 and belief and, as to those matters, I believe them to be true. If called as a witness, I could testify
6 competently as to the facts stated in this declaration.

7 2. On August 26, 2020, Plaintiff notified Defendant and the LWDA of alleged violations of
8 Labor Code section 226(a). On August 28, Plaintiff initiated this class and representative PAGA action.
9 On behalf of current and former non-exempt employees in California who were paid overtime wages,
10 and as a proxy for the State of California, the Complaint alleges that Defendant violates Section 226(a)
11 in at least two ways. *First*, the Complaint alleges that whenever overtime wages are paid Defendant
12 issues wage statements that do not itemize and show the applicable overtime rate of pay of 1.5 times the
13 regular rate and instead show the base hourly rate of pay or 0.5 times the base rate. *Second*, the
14 Complaint alleges that whenever overtime wages are paid Defendant issues wage statements that do not
15 itemize and show the accurate total hours worked and that the hours shown on the wage statements do
16 not sum up to the total hours worked by an employee.

17 3. From the outset of the litigation, the Parties thoroughly investigated the facts relating to
18 the claims alleged in the Complaint and engaged in a thorough study of the legal principles applicable
19 those claims as well as the defenses Defendant asserted. To wit, on October 6, 2020, counsel for the
20 Parties discussed Plaintiff's claims. Upon the conclusion of the call, Plaintiff immediately provided
21 sample wage statements to counsel for Defendant. On October 7, Defendant's counsel sent Plaintiff's
22 counsel a wage statement unlike the ones Plaintiff received during employment. Plaintiff assisted in
23 providing additional wage statements to show that he was not furnished wage statements like the ones
24 provided by Defendant's counsel.

25 4. Plaintiff served formal discovery, and Defendant provided additional information related
26 to defenses that Defendant alleged would apply to Plaintiff's claims, including information relating to a
27 pending class action in *Rita Garcia v. Praxair Distribution, Inc., et al.*, United States District Court,
28

1 Central District of California, Case No. 2:18-cv-08170-JAK (AFMx). Throughout the litigation, Plaintiff
2 continued to provide information and documents.

3 5. In March of 2020, after approximately six months of litigation, Defendant agreed to
4 schedule a mediation. Plaintiff was not required to respond to any formal written discovery, and no
5 depositions were conducted. The Parties balanced Plaintiff's allegations and Defendant's defenses based
6 on the *Garcia* class action settlement to determine a potential settlement class would include three
7 groups of employees: (i) non-exempt drivers; (ii) non-exempt non-drivers hired on or after July 17,
8 2020; and (iii) *Garcia* class members (i.e., non-exempt non-drivers) who remained employed on or after
9 January 11, 2021. Defendant then provided the relevant numbers of individuals and wage statements for
10 each group, among other things. On June 17, 2021, the Parties commenced settlement negotiations
11 through a well-respected mediator, Michael J. Loeb. Following the mediation, the Parties were
12 ultimately able to agree to the settlement terms in the Joint Stipulation of Class Action and PAGA
13 Settlement ("Agreement").

14 6. Although I am confident that litigation of the claims would result in a classwide judgment
15 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
16 certification could be denied, liability could not be established at trial, or the applicable law could
17 change. I believe the settlement for each Class Member is fair, reasonable, and adequate, given the
18 inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. The
19 settlement is the result of extensive arms' length negotiations between the Parties and their counsel.

20 7. On January 20, 2022, a Notice of Class Action Settlement ("Class Notice") explaining
21 the settlement terms was sent to 562 Class Members. The Class Notice provided Class Members through
22 March 7, 2022, to submit any responses. It described the settlement, explained that Plaintiff would be
23 seeking attorneys' fees and class representative service award in the amounts requested in Plaintiff's
24 motion, that Plaintiff would be seeking reimbursement of litigation costs in an amount exceeding the
25 amount requested in Plaintiff's motion, and provided both the Administrator and my office's contact
26 information for Class Members to seek information regarding the settlement. On February 18, 2021, the
27 Administrator provided an update on the response to the Class Notice. I am informed and believe that
28 there have been no objections to the settlement, the requested amounts for attorneys' fees and class

1 representative service award, or up to \$15,000 in costs. I also am informed and believe that no Class
2 Members have opted out of the settlement and that there are no outstanding disputes. Attached as
3 **Exhibit A** is a true and correct copy of the Administrator’s February 18, 2022 report.

4 8. I am one of the primary attorneys on this matter. My qualifications are as follows: After
5 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
6 2004 with concentrations in Management and Human Resources, I continued studying labor and
7 employment issues by enrolling in post-graduate education at the School of Labor and Employment
8 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
9 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
10 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
11 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

12 9. Upon graduating from law school in 2008, I practiced labor and employment law at
13 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My
14 practice focused on wage and hour class, collective, and representative actions, with a particular
15 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
16 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
17 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
18 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
19 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
20 not more than six hours), and *Ruelas v. Costco Wholesale Corp.*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8,
21 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also
22 able to obtain experience litigating representative claims or wage and hour matters through trial and
23 appeal. *E.g., Velazquez v. Costco Wholesale Corp.*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015)
24 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
25 pay wages); *Ward v. Costco Wholesale Corp.*, 552 Fed. App’x 631 (9th Cir. Jan. 9, 2014) (affirming
26 bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective
27 action with involving deductions from final paychecks). I also litigated class certification on numerous
28

1 matters. *E.g., Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (obtaining
2 denial of class certification on behalf of retail employees alleging bag check claims).

3 10. Based on my experience in wage and hour class, collective, and representative actions, I
4 have been interviewed and quoted in articles published in the Northern California Record about
5 legislative efforts to reform PAGA. I also have published articles on myriad topics relevant to wage and
6 hour class and representative action litigation, including for example articles on California kin care
7 requirements in *Employee Relations Law Journal* (Vol. 36, No. 2), the extraterritorial application of
8 California employment laws in *The Recorder* (134RD Year No. 28), and California meal and rest break
9 laws in *California Transportation News*, a publication of the California Construction Trucking
10 Association.

11 11. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
12 which also focuses on employment law. I have handled a number of wage and hour class and
13 representative actions and continue litigating such matters in numerous Superior Courts and District
14 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully
15 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
16 obtained class certification, and no court has ever found me to be inadequate class counsel.

17 12. My co-counsel and I will adequately represent the Class Members in this action.
18 Plaintiff's Counsel have and will zealously represent Plaintiff and the Class and pursue this lawsuit to its
19 conclusion.

20 13. My current billing rate is \$700.00 per hour, which is less than my billing rate would have
21 been had I remained at my prior firm. In January of 2019, clients were billed and paid my rate of \$630
22 per hour. In January of 2020, clients were billed and paid my rate of \$670 per hour. Had I remained at
23 my prior firm, I am informed and believe that my billing rate would have increased in January of 2021
24 to approximately \$710 per hour and in January of 2022 to approximately \$750 per hour.

25 14. I have incurred a total of 114.1 hours to date in litigating this matter. Attached as **Exhibit**
26 **B** is a summary of my hours and tasks on this matter. I also anticipate spending at least 5.0 additional
27 hours on this matter in connection with the final approval motion, hearing, and post-approval matters.
28

1 The total lodestar for my hours will be approximately \$83,370.00 based on an hourly rate of \$700.00 per
2 hour.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct. Executed this 21st day of February 2022, at Pasadena, California.

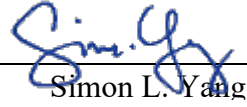
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6 
Simon L. Yang

Exhibit A



Class Size:	562
Class Period:	8/26/19 - 7/31/21
Claims Deadline:	N/A
Opt-Out Deadline:	3/7/2022
Final Approval Hearing:	4/12/2022

Report Date:
Friday, February 18, 2022

Weekly Report
For
Charles Walton v. Praxair Distribution, Inc.

MAILINGS

Notice Mailing Date:	1/20/2022	Total Notices Mailed:	562
Notices Returned:	2	Notices Requested:	0
Notices Traced:	2	Notices Retailed:	0
Notices Forwarded:	0	Notices Returned 2nd Time:	0
		Notices Undeliverable:	2

OPT-OUTS

Opt-Outs Received:	0	Dispute:	0
Deficient:	0	Invalid:	0
% of Class Submitted Opt-Out:	0 %	Late:	0
		Objections:	0

Thank you for choosing Phoenix Settlement Administrators (PSA) to work with you on this matter.
Please feel free to contact us at 800-523-5773 with any questions.

*Phoenix Settlement Administrators
P.O. Box 7208, Orange, CA 92863
Phone: 800-523-5773 Fax: 949-209-2503
www.phoenixclassaction.com*

Exhibit B

Time and Task Summary
for Walton v. Praxair Distribution, Inc
Simon L. Yang

Description of Work	Hours
Review plaintiff's wage statements and other documents	0.4
Draft and revise complaint	1.8
Review answer to complaint	1.1
Draft case management statements and review defendant's case management statements	1.2
Prepare and respond to various correspondence with defendant, co-counsel, and	5.8
Calls with defendant, co-counsel, and administrator	2.2
Review court's notice of assignment, case management orders, order re peremptory challenge, notice of reassignment, procedures, and scheduling orders	1.4
Research on recent decisions addressing PAGA remedies for 226(a) violations	3.3
Research on 226(a) obligations and provision of multiple formats of wage statements	2.5
Research on additional relevant legal issues, including application of Emergency Rule 9 to statutes of limitation	2.1
Prepare strategy for evidence to support class certification	3.2
Prepare correspondence and briefing on applicable class and PAGA remedies	3.8
Prepare and respond to various correspondence with plaintiff, defendant, co-counsel, and administrator	4.8
Review settlement documents from prior class action against defendant	2.6
Draft and revise discovery requests	2.4
Draft PMK deposition outline	3.9
Review defendant's responses to discovery	2.2
Review defendant's production of documents and information for mediation	7.8
Analyze, prepare, and revise exposure model for mediation	6.7
Draft and revise mediation brief	10.8
Prepare for and attend mediation	10.0
Review and revise settlement documents, including memorandum of understanding, joint stipulation of class action settlement, class notice	9.8
Draft and revise preliminary approval documents, including motion, declarations, and proposed order	9.1
Draft and revise supplemental declaration for preliminary approval	2.2
Draft and revise motion for attorneys' fees, costs, and class representative service award	6.8
Draft final approval documents [WIP]	6.2
TOTAL	114.1