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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,

Plaintiffs,

vs.

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

Defendants.

Case No.: 20-CIV-03660

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF LAB. CODE § 226(a);
(2) VIOLATION OF LAB. CODE §§ 2698 *ET*
*SEQ.***

DEMAND OVER \$25,000.00

Electronically
FILED

by Superior Court of California, County of San Mateo

ON 8/28/2020

By /s/ Wai Shan Lee
Deputy Clerk

1 On behalf of himself and other similarly situated current and former employees of Defendants,
2 and as a proxy for the State of California, Plaintiff, Charles Walton, submits this Class and
3 Representative Action Complaint against Defendant, Praxair Distribution, Inc., and Does 1 through 50
4 (collectively, “Defendants”).

5 INTRODUCTION

6 1. This class and representative action challenges systemic illegal employment practices
7 resulting in violations of the California Labor Code against individuals who worked for Defendants.
8 The Complaint seeks penalties and other relief for Defendants’ violations of Labor Code
9 section 226(a).¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees.
12 Defendants routinely fail to provide accurate, itemized wage statements to Plaintiff and other
13 employees who were paid overtime. Specifically, whenever employees were paid overtime wages,
14 Defendants issued wage statements that did not identify the overtime rate as 1.5 times the regular rate
15 of pay. Rather, the overtime rate appeared as the base hourly rate of pay or one-half of the hourly rate
16 of pay. In addition, whenever employees were paid overtime wages, Defendants issued wage
17 statements that failed to list the accurate total hours worked. Instead, when the hours shown on the
18 wage statements are added up, they do not appear to add up to the actual total hours worked.
19 Defendants thus violate Section 226(a) and owe applicable penalties to Plaintiff and other employees.

20 3. Plaintiff is informed and believes that Defendants have engaged in, among other things,
21 a system of willful violations of the Labor Code by creating and maintaining policies, practices, and
22 customs that knowingly deny its employees the above stated rights and benefits.

23 JURISDICTION AND VENUE

24 4. The Complaint seeks relief in excess of \$25,000.00. The Court has jurisdiction of
25 Defendants’ violations of Section 226(a).

28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

5. Venue is proper. Defendants are in San Mateo County. Plaintiff worked for Defendants in South San Francisco, California.

PARTIES

6. Plaintiff began working for Defendants in or about August of 2018. Throughout his employment as a driver, Plaintiff was paid on an hourly basis as a non-exempt employee. Whenever overtime wages were paid during his employment, Defendants consistently issued Plaintiff wage statements that identified the overtime rate as the base hourly rate of pay or one-half of the hourly rate of pay. In addition, whenever overtime wages were paid during his employment, Defendants also consistently issued Plaintiff wage statements that show hours that, when added up, do not appear to add up to the actual total hours worked. Plaintiff is a victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived him of the rights guaranteed by the Labor Code.

7. Plaintiff is informed and believes that Praxair Distribution, Inc. was and is a Delaware corporation. Plaintiff is informed and believes that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, or partnerships that are and were licensed to do business and actually doing business in the State of California. Based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to Section 226(a).

8. Plaintiff does not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

9. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

10. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

11. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

CLASS ACTION ALLEGATIONS

12. **Definition:** Pursuant to Code of Civil Procedure section 382. Plaintiff seeks class certification of all current and former non-exempt employees of Defendants in the State of California who were paid overtime wages at any time since April 6, 2019 (the “Class”).

13. **Numerosity and Ascertainability:** The members of the Class are so numerous that joinder of all members would be impractical, if not impossible. The identities of the members of the Class are readily ascertainable by review of Defendants' records, including payroll records. Plaintiff is informed and believes that Defendants violated Section 226(a) by failing to provide accurate, itemized wage statements that state all applicable hourly rates of pay and total hours worked whenever non-exempt employees in California are paid overtime wages.

14. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's attorneys are ready, willing, and able to fully and adequately represent Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and continue to litigate numerous wage-and-hour class actions currently pending in California state and federal courts.

15. **Common Question of Law and Fact:** There are predominant common questions of law and fact and a community of interest amongst the claims of Plaintiff and of the Class. Plaintiff is informed and believes that Defendants uniformly administer a corporate policy and practice of

1 routinely failing to provide accurate, itemized wage statements that state all applicable hourly rates of
2 pay and total hours worked whenever non-exempt employees in California are paid overtime wages.

3 16. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
4 in that Plaintiff suffered the alleged harms in a similar and typical manner as other members of the
5 Class suffered. As with other members of the Class, Plaintiff was paid on an hourly basis. Whenever
6 overtime wages were paid during his employment, Defendants consistently issued Plaintiff wage
7 statements that identified the overtime rate as the base hourly rate of pay or one-half of the hourly rate of
8 pay. In addition, whenever overtime wages were paid during his employment, Defendants also
9 consistently issued Plaintiff wage statements that show hours that, when added up, do not appear to add
10 up to the actual total hours worked. Plaintiff thus is a member of the Class and has suffered the alleged
11 violations of the Labor Code.

12 17. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
13 in establishing minimum working conditions and requirements in California. These labor standards
14 protect employees from onerous terms and conditions of employment or exploitation by employers who
15 have superior economic and bargaining power.

16 18. The nature of this action and the format of laws available to Plaintiff and members of the
17 Class make the class action format a particularly efficient and appropriate procedure to redress the
18 wrongs alleged herein. If each employee were required to file an individual lawsuit, the corporate
19 Defendants would necessarily gain an unconscionable advantage since they would be able to exploit
20 and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and
21 legal resources. Requiring each member of the Class to pursue an individual remedy would also
22 discourage the assertion of lawful claims by employees who would be disinclined to file an action
23 against their former or current employer for real and justifiable fear of retaliation and permanent
24 damage to their careers at their current or subsequent employment.

25 19. The prosecution of separate actions by individual members of the Class, even if
26 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect to
27 individual members of the Class that would establish potentially incompatible standards of conduct for
28 Defendants, or (b) adjudications with respect to individual members of the Class that would, as a

1 practical matter, be dispositive of, or substantially impair or impede the ability to protect, the interests
2 of other members of the Class not parties to the adjudications. Further, the claims of the individual
3 members of the Class are not sufficiently large to warrant vigorous individual prosecution considering
4 the concomitant costs and expenses.

5 20. Defendants' pattern, practice, and uniform administration of corporate policy in
6 violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will
7 establish the rights of Plaintiff and the Class under Section 226, the applicable IWC Wage Order, and
8 Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and
9 costs of suit.

10 **FIRST CAUSE OF ACTION**

11 **Violation of Labor Code § 226(a)**

12 **(By Plaintiff and the Class Against All Defendants)**

13 21. The preceding paragraphs are re-alleged and incorporated by this reference.

14 22. Section 226(a) requires employers to provide itemized wage statements to its employees
15 that show accurate information, including without limitation, all applicable hourly rates in effect during
16 the pay period and the total hours worked. Whenever Defendants pay overtime wages to Plaintiff and the
17 Class, Defendants fail to provide accurate itemized wage statements to Plaintiff and the Class in
18 violation of Section 226(a).

19 23. As a matter of policy and practice, Defendants routinely fail to provide accurate,
20 itemized wage statements that state all applicable hourly rates of pay and the total hours worked to
21 Plaintiff and the Class. Specifically, whenever Defendants paid overtime wages, Defendants issued
22 wage statements that did not identify the overtime rate as 1.5 times the regular rate of pay. Rather, the
23 overtime rate appeared as the base hourly rate of pay or one-half of the hourly rate of pay. In addition,
24 whenever Defendants paid overtime wages, Defendants issued wage statements that failed to list the
25 accurate total hours worked. Instead, when the hours shown on the wage statements are added up, they
26 do not appear to add up to the actual total hours worked. Defendants thus violate Section 226(a) and
27 owe applicable penalties to Plaintiff and other employees.

1 24. Such a pattern, practice, and uniform administration of corporate policy is unlawful
2 under Section 226 and entitles Plaintiff and the Class to recover applicable penalties, attorneys' fees,
3 and costs of suit.

4 **SECOND CAUSE OF ACTION**

5 **Violation of Labor Code §§ 2698 *Et Seq.***

6 **(By Plaintiff and Aggrieved Employees Against All Defendants)**

7 25. The preceding paragraphs are re-alleged and incorporated by this reference.

8 26. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
9 *et seq.* ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this
10 capacity, Plaintiff seeks penalties for Defendants' violations of Sections 226(a) committed since April
11 6, 2019, against all aggrieved employees.

12 27. As stated herein, Defendants violate Sections 226(a) by routinely failing to provide
13 accurate, itemized wage statements that state all applicable hourly rates of pay and total hours worked
14 whenever non-exempt employees in California are paid overtime wages. Under Section 2699(c),
15 Plaintiff is an "aggrieved employee," as one or more of the alleged violations was committed against
16 Plaintiff as an employee of Defendants.

17 28. On or about August 26, 2020, Plaintiff sent written notice to the Labor & Workforce
18 Development Agency ("LWDA") of specific facts and theories for Defendants' violations of Sections
19 226(a). Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of
20 the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to
21 investigate the allegations in the written notice.

22 29. As such, pursuant to Section 2699(a) and (f), Plaintiff seeks recovery of all applicable
23 civil penalties for Defendants' violations of Sections 226(a) against all aggrieved employees for the
24 alleged period.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit
27 is brought against Defendants, jointly and severally, as follows:

28 1. For an order certifying the proposed Class;

2. For an order appointing Plaintiff as the representative of the Class;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for penalties pursuant to Section 226, and for costs and attorneys' fees;
5. Upon the Second Cause of Action for penalties according to proof pursuant to Sections 226.3 and 2698 *et seq.*, and for costs and attorneys' fees;
6. Upon each cause of action for attorneys' fees and costs as provided by Sections 226 and 2699, and Code of Civil Procedure section 1021.5; and
7. For such other and further relief that the Court may deem just and proper.

DATED: August 28, 2020

DIVERSITY LAW GROUP, P.C.

By: 
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Attorneys for Plaintiff