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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
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

*[Filed concurrently with Notice of Motion and
Motion for Final Approval of Class Action
Settlement; 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

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. Plaintiff was provided wage statements that do not itemize and show
25 all applicable hourly rates in effect during the pay period or the total hours worked.

26 4. Plaintiff served formal discovery, and Defendant provided additional information related
27 to defenses that Defendant alleged would apply to Plaintiff's claims, including information relating to a
28 pending class action 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). Throughout the litigation, Plaintiff continued to provide information and documents.

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

6. The settlement is based on alleged violations of Section 226(a) and results in similarly limited Class Member releases, also tied to violations of Section 226(a). In negotiating the settlement, Plaintiff estimated that Defendant faced potential liability for approximately \$4,819,300 in penalties. 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. 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. Recent case law 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 considered penalizing Section 226(a) violations (in the Section 226(e) context), the awarded penalty should be no more than the penalty under Section 226(e)—and that Plaintiff has reasonable grounds to argue that the awarded penalty would be no less than the penalty under Section 226(e). On that basis, even when including an undiscounted \$825,800 in penalties under Section 226(e) and an additional \$825,800 in penalties under

1 PAGA, the \$550,000 settlement obtains approximately one-third of the potential recovery on behalf of
2 the Class. Although I am confident that litigation of the claims would result in a classwide judgment
3 against Defendant, I recognize the inherent risks in litigation, including the specific risks that class
4 certification could be denied, liability could not be established at trial, or the applicable law could
5 change. I believe the settlement for each Class Member is fair, reasonable, and adequate, given the
6 inherent risks of litigation, as well as the potential for appeals and the costs of pursuing litigation. The
7 settlement is the result of extensive arms' length negotiations between the Parties and their counsel.

8 7. On January 20, 2022, a Notice of Class Action Settlement ("Class Notice") explaining
9 the settlement terms was sent to 562 Class Members. The Class Notice provided Class Members through
10 March 7, 2022, to submit any responses. It described the settlement, explained that Plaintiff would be
11 seeking attorneys' fees and class representative service award in the amounts requested in Plaintiff's
12 motion, that Plaintiff would be seeking reimbursement of litigation costs in an amount exceeding the
13 amount requested in Plaintiff's motion, and provided both the Administrator and my office's contact
14 information for Class Members to seek information regarding the settlement. Based on the concurrently
15 filed Declaration of Jarrod Salinas from Phoenix Settlement Administrators, I am informed and believe
16 that there have been no objections to the settlement, the requested amounts for attorneys' fees and class
17 representative service award, or up to \$15,000 in costs. I also am informed and believe that no Class
18 Members have opted out of the settlement and that there are no outstanding disputes.

19 8. I am one of the primary attorneys on this matter. My qualifications are as follows: After
20 completing my undergraduate education at The Wharton School at the University of Pennsylvania in
21 2004 with concentrations in Management and Human Resources, I continued studying labor and
22 employment issues by enrolling in post-graduate education at the School of Labor and Employment
23 Relations at the University of Illinois. I determined before enrolling in law school that I wanted to
24 practice labor and employment law in California. I thus received my J.D. from UCLA School of Law in
25 2008. During law school, I spent the summer of 2006 with the National Labor Relations Board, Region
26 21, and the summer of 2007 with the law firm of Seyfarth Shaw LLP in 2007.

27 9. Upon graduating from law school in 2008, I practiced labor and employment law at
28 Seyfarth Shaw LLP, a well-regarded labor and employment firm. I was elevated to partner in 2019. My

1 practice focused on wage and hour class, collective, and representative actions, with a particular
2 emphasis on matters involving the Labor Code Private Attorneys General Act of 2004 (“PAGA”).
3 During my time with Seyfarth Shaw LLP, I was a primary attorney on numerous wage and hour class,
4 collective, and representative actions that resulted in published opinions, including for example, *Ehret v.*
5 *WinCo Foods, LLC*, 26 Cal. App. 6th 1 (2018) (affirming summary judgment in PAGA action based on
6 absence of meal period violations in light of collectively bargained waiver of meal periods on shifts of
7 not more than six hours), and *Ruelas v. Costco Wholesale Corp.*, 67 F. Supp. 3d 1137 (C.D. Cal. Sept. 8,
8 2014) (obtaining dismissal of wage statement allegations in PAGA representative action). I was also
9 able to obtain experience litigating representative claims or wage and hour matters through trial and
10 appeal. *E.g.*, *Velazquez v. Costco Wholesale Corp.*, 603 Fed. App’x 584 (9th Cir. Mar. 25, 2015)
11 (reversing award of waiting-time penalties based on lack of evidence supporting any willful failure to
12 pay wages); *Ward v. Costco Wholesale Corp.*, 552 Fed. App’x 631 (9th Cir. Jan. 9, 2014) (affirming
13 bench-trial judgment in favor of defendant against named plaintiff and 18 opt-in plaintiffs in collective
14 action with involving deductions from final paychecks). I also litigated class certification on numerous
15 matters. *E.g.*, *Martinez v. Guess?, Inc.*, Los Angeles Superior Court Case No. BC 498326 (obtaining
16 denial of class certification on behalf of retail employees alleging bag check claims).

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

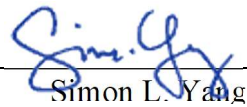
25 11. In 2020 I left Seyfarth Shaw LLP and joined my current firm, Diversity Law Group, P.C.,
26 which also focuses on employment law. I have handled a number of wage and hour class and
27 representative actions and continue litigating such matters in numerous Superior Courts and District
28 Courts. From matters with both Seyfarth Shaw LLP and Diversity Law Group, P.C., I have successfully

1 mediated the resolution of dozens of wage and hour class, collective, and representative actions. I have
2 obtained class certification, and no court has ever found me to be inadequate class counsel.

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

6 13. The LWDA assigned this matter the case number LWDA-CM-804018-20. In compliance
7 with Labor Code section 2699(l)(1) and (4), on September 2, 2020, my office submitted a copy of the
8 complaint in this matter to the LWDA via online submission from the LWDA's website. On October 18,
9 2021, Plaintiff moved for preliminary approval of the settlement in this matter. In compliance with
10 Labor Code section 2699(l)(2) and (4), on October 18, 2021, my office also submitted a copy of the
11 motion papers to the LWDA via online submission from the LWDA's website. In connection with the
12 filing of this motion for final approval of the settlement, my office's regular practice would be—and I
13 have instructed my office—to also submit a copy of the motion papers to the LWDA via online
14 submission from the LWDA's website.

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

17
18 
Simon L. Yang