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FILED

By Superior Court of California, County of San Mateo

ON 01/07/2022

By /s/ Tovar, Priscilla

Deputy Clerk

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CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

**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]

NF

**AMENDED ~~PROPOSED~~ ORDER
GRANTING MOTION FOR PRELIMINARY
APPROVAL**

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

Complaint Filed: August 28, 2020

1 Plaintiff's motion for an Order Granting Preliminary Approval of Class Action Settlement was
2 filed with the Court on October 18, 2021, and a hearing was held before this Court on December 7,
3 2021, continued to January 4, 2022, and taken under submission.

4 After considering the papers and evidence, arguments of counsel, and all other matters presented
5 to the Court, this Court **GRANTS** preliminary approval of the Settlement as set forth in the Joint
6 Stipulation and Settlement Agreement attached as Exhibit A to the Declaration of Simon L. Yang. At the
7 hearing on December 7, 2021, the Court asked for additional information before ruling on the motion.
8 Plaintiff filed a supplemental declaration of Simon L. Yang as well as a declaration from the proposed
9 claims administrator, Jodey Lawrence on behalf of Phoenix Settlement Administrators, both filed on
10 December 17, 2021. The supplemental declarations sufficiently respond to the issues raised by the
11 Court.

12 The Court finds the terms to be within the range of reasonableness of a settlement that ultimately
13 could be granted approval by this Court at the final fairness hearing. Plaintiff's counsel is experienced in
14 class litigation, the case was vigorously contested by Defendant and its experienced counsel, the
15 settlement was reached after a mediation with an experienced mediator, and Plaintiff's counsel, Simon
16 L. Yang, in his initial declaration provided some analysis of the strengths and weaknesses of the case.
17 The Parties note the uncertainties associated with litigation, Settlement Agreement at § 2.3, and this
18 Court agrees. The supplemental declaration of Mr. Yang provides further analysis of the law, including
19 potential trends, as applied to this case. The Court finds the settlement is in the ballpark of
20 reasonableness. *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 133. The Court finds
21 that LDWA received notice of the settlement.

22 Conditional approval of the settlement is appropriate because the proposed class is ascertainable
23 and sufficiently numerous. There are 542 class members identified by Defendant that exclude *Rita*
24 *Garcia v. Praxair Distribution, Inc., et al.*, United States District Court, Central District of California,
25 Case No. 2:18-cv-08170-JAK (AFMx) class members. The putative Class Members appear to share a
26 well-defined community of interest based upon the explanation of counsel of the claims, Plaintiff's
27 claims arising from the same employment practices as alleged to have been suffered by the other
28 putative class members. Based upon Plaintiff's representation, Plaintiff is an adequate class

1 representative as he understands his fiduciary duties and has participated in the litigation. Class
2 certification would be a superior way to resolve these issues rather than joinder of all 542 members of
3 the class. Mr. Yang's supplemental declaration explains the reason to exclude certain claims of the
4 *Garcia* plaintiffs.

5 1. Accordingly, for settlement purposes only, this Court grants conditional certification of
6 the following settlement class (the "Class"):

7 Any current or former non-exempt employee who worked for Praxair Distribution, Inc. in
8 the State of California and was paid overtime wages at any time during the Class Period,
9 except for individuals who released all relevant claims under the terms of the settlement
10 in *Rita Garcia v. Praxair Distribution, Inc., et al.*, United States District Court, Central
11 District of California, Case No. 2:18-cv-08170-JAK (AFMx)

12 2. For purposes of settlement, this Court designates named Plaintiff Charles Walton as Class
13 Representative, and Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C. and William L.
14 Marder of Polaris Law Group as Class Counsel.

15 3. This Court confirms Phoenix Settlement Administrators as the Settlement Administrator
16 for purposes of providing notice and administering the claims process, and the Court conditionally
17 approves payment not to exceed \$ 8,750 for its services. The declaration of Jodey Lawrence supports
18 this approval of Phoenix.

19 4. A final fairness hearing on the question of whether the Settlement should be finally
20 approved as fair, reasonable, and adequate as to the members of the Class is scheduled in Department 4
21 of this Court, located at 1050 Mission Road, South San Francisco, California 94063 on April 12, 2022 at
22 8:30 a.m. If this hearing date is inconvenient for the parties, they should contest the tentative and
23 provide an alternative date. The hearing will be via Zoom.

24 5. At the final fairness hearing, this Court will consider: (a) whether the Settlement should
25 be approved as fair, reasonable, and adequate for the Class; (b) whether a judgment granting approval of
26 the Settlement should be entered; and (c) whether Plaintiff's application for an award of attorneys' fees,
27 reimbursement of litigation expenses, and class representative enhancement award should be granted.
28

1 6. Counsel for all parties shall file memoranda, declarations, or other statements and
2 materials in support of their request for final approval by no later than 14 days following the deadline for
3 Class Members to object to the Settlement or request exclusion from the Class.

4 7. Class Counsel shall file a motion for an award of attorneys' fees, reimbursement of
5 litigation expenses, and class representative service awards by no later than 14 days before the deadline
6 for Class Members to object to the Settlement or request exclusion from the Class. The Court will not
7 conditionally approve the proposed Class Representative Award or the proposed attorney fees and
8 award. Plaintiff's counsel is to submit evidence supporting each of these requests. For the Class
9 Representative Award, counsel shall submit evidence detailing the specific work that Plaintiff performed
10 during the litigation, including whether he sat for a deposition or responded to written discovery, the
11 number of hours he spent on the litigation. Some of this information has already been provided for the
12 Class Representative, but the Court, for efficiency sake, requests that the information be provided again.
13 For the attorneys' fees award, counsel shall provide sufficient evidence so that the Court can perform a
14 lodestar cross-check, including either billing records or a comparable evidence, including which
15 attorneys or support staff worked on each task, support for the hourly rate as reasonable in San Mateo
16 County, and evidence supporting an award of a multiplier. For the costs, they shall be sufficiently
17 identified so that the Court can determine its reasonableness.

18 8. This Court approves the form and content of the Notice of Class Action Settlement
19 ("Notice"), which is attached as Exhibit A to the Settlement Agreement.

20 9. The Court approves the procedures and deadlines selected for mailing and distribution of
21 the Notice as set forth in Settlement Agreement.

22 10. This Court further approves the procedures and deadlines for Class Members to
23 participate in, opt out of, or object to the Settlement, as set forth in the Settlement Agreement.

24 11. The procedures and requirements for filing objections in connection with the fairness
25 hearing are intended to ensure the efficient administration of justice and the orderly presentation of any
26 Class Member's objection to the Settlement Agreement, in accordance with the due process rights of all
27 Class Members.

1 12. Pending the fairness hearing, all proceedings in this action, other than proceedings
2 necessary to carry out or enforce the terms and conditions of the Settlement Agreement and this Order,
3 are stayed.

4 13. The Court approves the selection of Second Harvest, a food bank as the cy pres recipient
5 in case there are any unclaimed funds. The Court finds that a food bank is an appropriate cy pres
6 recipient for this type of case.

7 14. Counsel for the parties are hereby authorized to use all reasonable procedures in
8 connection with the administration of the Settlement that are not materially inconsistent with either this
9 Order or the terms of the Settlement Agreement.

10 15. The fairness hearing date and time and the related prior deadlines set forth above may,
11 from time to time and without further notice to the Settlement Class (except those who have filed timely
12 and valid objections), be continued or adjourned by Order of this Court. Electronically

13 **IT IS SO ORDERED.**

SIGNED

By /s/ Fineman, Nancy

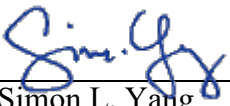
14 DATED: _____, 2022

01/06/2022

THE HONORABLE NANCY L. FINEMAN

1 Respectfully submitted on January 5, 2022, by:

2 DIVERSITY LAW GROUP, P.C.

3
4 By:  _____

5 Simon L. Yang

6 Attorneys for Plaintiff
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STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

On January 6, 2022, I served the following document(s) described as: **AMENDED [PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL** on the interested parties in this action as follows:

William L. Marder
bill@polarislawgroup.com
Polaris Law Group LLP
501 San Benito Street, Suite 200
Hollister, California 95023
Attorneys for Plaintiff, the Class, and
Aggrieved Employees

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

CHAPTER

PROOF OF SERVICE