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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]

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT;
[PROPOSED] FINAL JUDGMENT**

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

Complaint Filed: August 28, 2020

1 The motion for an Order Granting Final Approval of Class Action Settlement was submitted to
2 the Court on March 21, 2022, and a hearing was held on this matter before this Court on April 12, 2022.
3 Simon L. Yang of Diversity Law Group, P.C. appeared on behalf of Plaintiff, Charles Walton, and the
4 Class, and Shiva Davoudian of Littler Mendelson, P.C. appeared for Defendant, Praxair Distribution,
5 Inc. (now known as Linde Gas & Equipment Inc.).

6 The Court has considered the papers and evidence, including the Joint Stipulation of Class
7 Action and PAGA Settlement (“Agreement”) submitted by Plaintiff and Defendant, the arguments of
8 counsel, the separate motion for attorneys’ fees, costs, and class representative service award, and all
9 other matters presented to the Court regarding final approval of the settlement, approval of requested
10 allocations from the settlement fund, and entry of final judgment.

11 **I. Background**

12 On August 28, 2020, Plaintiff filed a complaint in the Superior Court of the State of California
13 for the County of San Mateo alleging claims as a class action and pursuant to the Labor Code Private
14 Attorneys General Act of 2004 (“PAGA”). Based on Defendant’s alleged failure to furnish employees
15 with accurate itemized wage statements, the Complaint alleges a class cause of action and a PAGA
16 cause of action. On October 8, 2020, Defendant answered.

17 **A. Class Members**

18 The Class is defined to include: all current or former non-exempt employees who worked for
19 Defendant, Praxair Distribution, Inc., in the State of California and were paid overtime wages at any
20 time from August 26, 2019, through August 5, 2021, for work performed through July 31, 2021, except
21 for individuals who released all relevant claims under the terms of the settlement in *Rita Garcia v.*
22 *Praxair Distribution, Inc., et al.*, United States District Court, Central District of California, Case No.
23 2:18-cv-08170-JAK (AFMx). Class Members have already been identified by Defendant; there are 562
24 Class Members. All Class Members are also aggrieved employees under PAGA.

25 **B. Operation of the Settlement**

26 Pursuant to the Court’s January 7, 2022 Preliminary Approval Order, the Court conditionally
27 certified the Class and granted preliminary approval to the settlement. The Preliminary Approval Order
28 also approved of the proposed forms of notice to the Class. The Court entered the Preliminary Approval

Order after review and consideration of all of the pleadings filed in connection herewith, and the oral presentations made by counsel at the hearing.

Pursuant to the Preliminary Approval Order, the Notice of Class Action Settlement (“Class Notice”) was sent to all 562 Class Members via first class mail. After remailing two returned notices, the Class Notice is deemed delivered to all Class Members.

II. Findings

This Court finds that the Agreement is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to any individuals. The Court finds that the Settlement was entered into in good faith pursuant to California Code of Civil Procedure section 877.6. The Court further finds that the Agreement is fair, adequate, and reasonable and that Plaintiff has satisfied the standards for final approval of a class action settlement under California law. Under the provisions of California Code of Civil Procedure section 382 and Rule 23 of the Federal Rules of Civil Procedure, as approved for use in *Vasquez v. Superior Court*, 4 Cal. 3d 800, 821 (1971), the trial court has discretion to certify a class where:

[Q]uestions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to the available methods for the fair and efficient adjudication of the controversy

FED. R. CIV. PROC. 23.

Certification of a settlement class is the appropriate judicial device under these circumstances.

Worthy cause appearing **IT IS HEREBY ORDERED AND ADJUDICATED** as follows:

1. For purposes of this Order, the Court adopts defined terms as set forth in the Agreement.
2. The Court has jurisdiction over the subject matter of the litigation, the Class Representative, Settlement Class Members, and Defendant.
3. The Court finds that the dissemination of the Class Notice to the Class Members by the appointed Administrator, Phoenix Settlement Administrators, constituted the best notice practicable under the circumstances to all Class Members, and fully met the requirements of California law and due process under the State and Federal Constitutions.

1 4. The Court approves the settlement of the above-captioned action, as set forth in the
2 Agreement, as fair, adequate, and reasonable to the Parties and Class Members. The Parties are directed
3 to perform in accordance with the terms set forth in the Agreement.

4 5. Except as otherwise provided in the Agreement, the Parties are to bear their own costs
5 and attorneys' fees.

6 6. The Court hereby certifies the following Class for settlement purposes only: all current or
7 former non-exempt employees who worked for Defendant, Praxair Distribution, Inc., in the State of
8 California and were paid overtime wages at any time from August 26, 2019, through August 5, 2021, for
9 work performed through July 31, 2021, except for individuals who released all relevant claims under the
10 terms of the settlement in *Rita Garcia v. Praxair Distribution, Inc., et al.*, United States District Court,
11 Central District of California, Case No. 2:18-cv-08170-JAK (AFMx). All Class Members are PAGA
12 Employees.

13 7. With respect to the Class and for purposes of approving the settlement only and for no
14 other purpose, this Court finds and concludes that: (a) the members of the Class are ascertainable and so
15 numerous that joinder of all members is impracticable; (b) there are questions of law or fact common to
16 the Class, and there is a well-defined community of interest among members of the Class with respect to
17 the subject matter of the claims in the Action; (c) the claims of Class Representative are typical of the
18 claims of the members of the Class; (d) the Class Representative has fairly and adequately protected the
19 interests of the members of the Class; (e) a class action is superior to other available methods for an
20 efficient adjudication of this controversy; and (f) the counsel of record for the Class Representative, i.e.,
21 Class Counsel, are qualified to serve as counsel for Plaintiff in his individual and representative
22 capacities and for the Class.

23 8. Within fourteen (14) business days after the grant of Final Approval of the settlement and
24 entry of judgment, Defendant shall deposit the Gross Settlement Amount of \$550,000.00) with the
25 Administrator, pursuant to the terms of the Agreement.

26 9. From the Gross Settlement Amount, the Administrator shall pay:

- 27 a. to Class Counsel attorneys' fees in the amount \$183,333.33 and reimbursement of
28 costs in the amount of \$9,888.48;

- b. to Class Representative Charles Walton for his unique services to the Class, and as consideration for the execution of a general release, the amount of \$10,000.00;
- c. to the California Labor and Workforce Development Agency the amount of \$63,380.29 for its 75% share of PAGA Penalties; and
- d. to Phoenix Settlement Administrators the amount of \$8,750.00 for its fees and costs in administering the settlement.

10. The Court finds that these amounts are fair and reasonable. The Administrator is directed to make such payments in accordance with the terms of the Agreement.

11. The Court approves the Individual Settlement Payment amounts, which shall be distributed by the Administrator pursuant to the terms of the Agreement, after payment of those amounts set forth in Paragraph 9.

12. The Court hereby orders the parties to implement the terms of the Agreement, including distributing any uncashed settlement checks to Second Harvest.

13. All Class Members shall be bound by the releases provided in the Agreement. The Class Representative shall be bound by the additional general releases provided in the Agreement.

14. The Court hereby enters final judgment in this case in accordance with the terms of the Settlement, Preliminary Approval Order, the Order Granting Attorneys' Fees, Costs, and Class representative Service Award, and this Order. Without affecting the finality of the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction over the action and the Parties, including all Settlement Class Members, for purposes of enforcing and interpreting this Order and the Settlement.

15. Pursuant to Code of Civil Procedure section 668.5, judgment shall be entered as of the filing of this judgment. This judgment makes no finding of any violation of the Labor Code, liability, or other wrongdoing. None of the settlement or any of its terms, the order approving the settlement, or this judgment are an admission of any liability or finding of any violation of the Labor Code.

IT IS SO ORDERED.

DATED: April _____, 2022

THE HONORABLE NANCY L. FINEMAN