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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN MATEO**

10 CHARLES WALTON, as an individual and on
11 behalf of all others similarly situated, and as a
private attorney general,

12 Plaintiff,

13 vs.

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

16 Defendants.
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Case No. 20-CIV-03660

[Assigned for all purposes to Department 4,
Hon. Nancy L. Fineman]

**[PROPOSED] ORDER GRANTING
MOTION FOR PRELIMINARY APPROVAL**

*[Filed concurrently with Notice of Motion and
Motion for Preliminary Approval; Memorandum
of Points and Authorities; Declaration of Larry
W. Lee; Declaration of Simon L. Yang;
Declaration of William L. Marder; Declaration of
Charles Walton]*

Date: December 7, 2021
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. Simon L. Yang of Diversity Law Group, P.C. appeared on behalf of Plaintiff and the Class, and
4 Shiva Davoudian of Littler Mendelson, P.C., appeared for Defendant.

5 After considering the papers and evidence, arguments of counsel, and all other matters presented
6 to the Court, and having taken the matter under submission, **IT IS HEREBY ORDERED** as follows:

7 1. The Court grants preliminary approval of the Joint Stipulation of Class Action and PAGA
8 Settlement ("Agreement") submitted by Plaintiff and Defendant. The Agreement appears to be fair,
9 adequate, and reasonable to the Class.

10 2. The Parties, through their counsel of record, have reached an agreement to settle all
11 claims alleged by Plaintiff on behalf of the Class (as defined below and in the Agreement) and as a
12 proxy for the State of California pursuant to the Labor Code Private Attorneys General Act of 2004
13 ("PAGA"). The Court conditionally certifies the following Class for settlement purposes only: all
14 current or former non-exempt employees who worked for Defendant, Praxair Distribution, Inc., in the
15 State of California and were paid overtime wages at any time from August 26, 2019, through August 5,
16 2021, for work performed through July 31, 2021, except for individuals who released all relevant claims
17 under the terms of the settlement in *Rita Garcia v. Praxair Distribution, Inc., et al.*, United States
18 District Court, Central District of California, Case No. 2:18-cv-08170-JAK (AFMx).

19 3. Should for whatever reason final approval is not granted, the fact that the Parties were
20 willing to stipulate to certification of a class as part of the settlement shall have no bearing on the issue
21 of whether a class should be certified in a non-settlement context.

22 4. The Court appoints and designates: (a) Plaintiff, Charles Walton, as the Class
23 Representative, and (b) Larry W. Lee and Simon L. Yang of Diversity Law Group, P.C., and William L.
24 Marder of Polaris Law Group as Class Counsel for the Class. Class Counsel is authorized to act on
25 behalf of the Class with respect to all acts or consents required by, or which may be given, pursuant to
26 the Agreement, and such other acts reasonably necessary to finalize the Agreement and its terms. Any
27 Class Member may enter an appearance through his or her own counsel at such Class Member's own
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1 expense. Any Class Member who does not enter an appearance or appear on his or her own behalf will
2 be represented by Class Counsel.

3 5. The Court hereby approves the terms and conditions provided for in the Agreement. The
4 Court finds that on a preliminary basis the Agreement falls within the range of reasonableness of a
5 settlement and appears to be presumptively valid, subject to any objections that may be raised at the
6 final fairness hearing and subject to final approval by the Court. It appears to the Court on a preliminary
7 basis that the settlement is fair, adequate, and reasonable as to all potential Class Members when
8 balanced against the uncertain outcome of further litigation relating to liability and damages issues. It
9 also appears that investigation, research, and court proceedings have been conducted so that counsel for
10 the Parties are able to reasonably evaluate their respective positions. It appears to the Court that
11 settlement at this time will avoid substantial additional costs by all Parties, as well as avoid the delay
12 and risks that would be presented by the further prosecution of the action. It also appears that settlement
13 has been reached as a result of intensive, serious, and non-collusive arms-length negotiations.

14 6. A final fairness hearing on the question of whether the proposed Agreement, the
15 allocation of payments to Class Members, attorneys' fees and costs to Class Counsel, the payment to the
16 Labor & Workforce Development Agency, and the Class Representative Award should be finally
17 approved as fair, reasonable, and adequate as to the members of the Class is set for
18 _____, 2022, at _____ in this Court.

19 7. The Court hereby approves, as to form and content, the Notice of Class Action Settlement
20 ("Class Notice"), which is attached as Exhibit A to the Agreement. The Court finds that distribution of
21 the Class Notice to Class Members substantially in the manner and form set forth in the Agreement and
22 this Order meets the requirements of due process and shall constitute due and sufficient notice to all
23 parties entitled thereto.

24 8. The Court appoints and designates Phoenix Settlement Administrators as the
25 Administrator. The Court hereby directs the Administrator to provide the approved Class Notice to Class
26 Members using the procedures set forth in the Agreement.

27 9. Any Class Member may choose to opt out of and be excluded from the settlement as
28 provided in the Agreement and Class Notice and by following the instructions for requesting exclusion.

1 Any person who timely and properly opts out of the settlement will not be bound by the Agreement or
2 have any right to object, appeal, or comment thereon. Any request for exclusion must be in writing and
3 signed by each such Class Member opting out and must otherwise comply with the requirements
4 delineated in the Class Notice. Class Members who have not requested exclusion by submitting a valid
5 and timely request for exclusion shall be bound by all determinations of the Court, the Agreement, and
6 Judgment.

7 10. Any Class Member may object to the Agreement or express his or her views regarding
8 the Agreement. Any Class Member may present evidence and file briefs or other papers relevant to the
9 issues to be heard and determined by the Court as provided in the Class Notice.

10 11. A Motion for Final Approval shall be filed by the Class Representative no later than
11 sixteen (16) court days before the final fairness hearing.

12 12. The Court reserves the right to adjourn or continue the date of the final fairness hearing
13 and all dates provided for in the Agreement without further notice to the Class. The Court retains
14 jurisdiction to consider all further applications arising out of or connected with the Agreement.

15 **IT IS SO ORDERED.**

16 DATED: _____, 2021

THE HONORABLE NANCY L. FINEMAN

1 Respectfully submitted on October 18, 2021, by:

2 DIVERSITY LAW GROUP, P.C.

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4 By: _____

5 Simon L. Yang
6 Attorneys for Plaintiff
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