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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MOUNTAIN HI, LLC, a Washington
Limited Liability Company, on behalf of
itself and all others similarly situated,

Plaintiff,

vs.

LINDE GAS & EQUIPMENT INC. d/b/a
PRAXAIR DISTRIBUTION, INC., a
Delaware corporation,

Defendant.

Case No.: 2:22-cv-1432

DEFENDANT’S NOTICE OF REMOVAL

King County Superior Court in the State
of Washington, Cause No. 22-2-14076-3
SEA

Pursuant to 28 U.S.C. § 1332, 1367, 1441, and 1446, Defendant Linde Gas & Equipment Inc. f/k/a Praxair Distribution, Inc. (“Defendant,” which is incorrectly identified as Defendant Linde Gas & Equipment Inc. d/b/a Praxair Distribution, Inc.) hereby removes the above-captioned action from the Superior Court of the State of Washington in and for the County of King, in which this case was filed, to the United States District Court for the Western District of Washington, Seattle Division. In support thereof, Defendant states as follows:

I. PROCEDURAL HISTORY

1. Plaintiff, Mountain Hi, LLC (“Plaintiff”), commenced this action on or about September 1, 2022 against Defendant by filing a Class Action Complaint (the “Complaint”) with the Clerk of the Superior of King County Washington (“State Court Action”). The State

1 Court Action has been assigned Case No. 22-2-14076-3 SEA. A true and correct copy of the
2 Plaintiff's Complaint is attached hereto as "Complaint."

3 2. Plaintiff effected service of process upon Defendant on September 9, 2022 by
4 delivering a copy of the Summons, Complaint, Order Setting Civil Case Schedule, Case
5 Assignment Area Designation and Case Information Cover Sheet, and Case Information Cover
6 Sheet and Area Designation to Defendant's registered agent. *See* Exhibit 1.

7
8 3. At the time of removal, Defendant has specially appeared in the State Court
9 Action through counsel but has not otherwise taken any action.

10 **II. THE PARTIES**

11 4. As alleged in its Complaint, Plaintiff is a producer and processor of cannabis
12 products having its principal place of business located at 19417 63rd Avenue NE, Arlington,
13 WA, 98223. Complaint at 2 ¶ 5. As stated in the Complaint's caption, Plaintiff is a Washington
14 Limited Liability Company. *Id.* at 1.

15 5. Defendant, through its counsel's investigation, has confirmed that Plaintiff is a
16 domestic limited liability company formed on October 14, 2014 under Washington law. For
17 purposes of federal diversity jurisdiction, Plaintiff as "[a] limited liability company 'is a citizen
18 of every state of which its owners/members are citizens,' not the state in which it was formed
19 or does business," and "the citizenship of all of the members must be pled." *NewGen, LLC v.*
20 *Safe Cig, LLC*, 840 F.3d 606, 612 (9th Cir. 2016) (quoting *Johnson v. Columbia Props.*
21 *Anchorage, LP*, 437 F.3d 894, 899 (9th Cir. 2006)).¹

24 ¹ *See also* LCR 101(f), Local Rules W.D. Wash. ("If the removal is based on diversity, the
25 notice of removal must also, to the extent possible, identify the citizenship of the parties, and,
26 if any of the parties is a limited liability corporation (LLC) ..., identify the citizenship of the
owners/partners/members of those entities to establish the court's jurisdiction.").

1 6. As a Washington LLC, Plaintiff is statutorily required to “deliver to the secretary
2 of state for filing an annual report that states: ... (e) The names of [its] governors,” RCW
3 23.95.255(2)(e), with the term “Governor” defined to mean either “(e) A manager of a manager-
4 managed limited liability company” or “(f) A member of a member-managed limited liability
5 company.” RCW 23.95.105(12)(e)-(f). The “members” of a Washington LLC own a
6 “transferable interest” in the entity that is deemed “personal property.” RCW 25.15.246(1). By
7 statutory definition, “transferable interest” means “a member’s or transferee’s right to receive
8 distributions of the limited liability company’s assets.” RCW 25.15.006(19).
9

10 7. Based on its counsel’s investigation, Defendant has determined that individuals
11 Benjamin Yale London, Daniel Tamburelli, and Martin Mogensen have at all times since the
12 filing of the Complaint been Plaintiff’s only “Governors,” with each of the three individuals
13 also being Members of the LLC and thus Plaintiff’s legal owners under Washington law.
14

15 8. Based on its counsel’s further investigation, Defendant has further determined
16 that Messieurs London, Tamburelli, and Mogensen are each permanent residents and domiciles
17 of the State of Washington, and thus hold Washington citizenship for diversity purposes.

18 9. Defendant, which is alleged to be “one of the world’s largest distributors of
19 welding, industrial, medical, and specialty gas,” Complaint at 2 ¶ 6, is a stock corporation that
20 was incorporated under Delaware law with its corporate headquarters and principal place of
21 business located in Danbury, Connecticut. Under 28 U.S.C. § 1332(c)(1), Defendant is
22 considered a citizen of both Delaware and Connecticut.
23

24 **III. THE ACTION**

25 10. In its Complaint, Plaintiff seeks to certify a class consisting of “All cannabis
26 businesses operating in Washington that at any time since August 31, 2018, received benzene-

1 tainted butane gas from Defendant” that was used “in the processing of cannabis,” resulting in
2 “products that contained benzene at greater than two parts per million.” Complaint at 7 ¶ 58.

3 11. In support of its proposed class definition, Plaintiff alleges that it “uses butane
4 gas as a solvent to process cannabis products” ultimately intended for “recreational use” retail
5 sale to Washington consumers. *Id.* at 3 ¶¶ 15-16.

6 12. Between June 30, 2021 and September 1, 2021, Defendant made seven
7 wholesale deliveries of butane gas in “80-gallon tanks” to Plaintiff’s business location that
8 “Plaintiff used ... in its processing of cannabis.” *Id.* at 4 ¶¶ 27-31.

9 13. Having thereafter sent sample processed products for “outside third-party
10 independent testing” as required by state law, Plaintiff received multiple test result reports on
11 August 30, 2021 and September 1, 2021 that indicated benzene was present at “higher than
12 acceptable concentrations.” *Id.* at 5 ¶¶ 32-37.

13 14. Through further testing, Plaintiff allegedly determined that butane gas supplied
14 by Defendant contained excessive benzene, which in turn allegedly resulted in Plaintiff’s
15 cannabis products having benzene levels beyond what Washington law allows, *i.e.*, greater than
16 2 parts per million (PPM). *Id.* at 6, 7 ¶¶ 45-49, 54.

17 15. Plaintiff further alleges that due to the excessive benzene, it was required to
18 “provide refunds and other compensation to its producers” in an unstated amount. *Id.* at 7 ¶ 54.

19 20 16. Plaintiff believes that “scores if not hundreds of other cannabis businesses
21 operating in Washington” were similarly harmed, although it has not specifically identified any
22 other business that was allegedly injured under similar circumstances. *Id.* at 11 ¶ 76.

23 24 17. As part of Counts One and Two, Plaintiff alleges that Defendant engaged in
25 “unfair” and “deceptive” acts and practices that are actionable under the Washington Consumer
26 Protection Act, RCW 19.86, *et seq.*, thereby entitling Plaintiff and the defined putative class to

1 recover, *inter alia*, “actual damages”; “treble damages”; and “attorneys’ fees.” *Id.* at 11, 12 ¶¶
2 78, 91.

3 18. As part of Count Three, Plaintiff alleges that Defendant sold it and the putative
4 class defective butane gas, in violation of Washington Products Liability Act, RCW 7.72 *et*
5 *seq.*, thereby entitling Plaintiff and the defined putative class to recover, *inter alia*, “actual
6 damages”; “treble damages”; and “attorneys’ fees.” *Id.* at 14 ¶ 104.

7 **IV. THE UNSPECIFIED DAMAGES**

8 19. Plaintiff Complaint does not set forth the dollar amount prayed for, either for
9 itself or the larger putative class. However, Plaintiff sent a January 7, 2022 pre-suit settlement
10 demand to Defendant claiming economic injury as a result of “\$625,244 in marijuana product
11 damage,” which was comprised of uninsured claims from “outside clients” in the amount of
12 \$609,804 for “damaged marijuana product” that Plaintiff had processed and \$15,440 in damage
13 to Plaintiff’s “own product.” The demand further stated that “Benzene cannot be removed or
14 remediated in marijuana in any way that would allow the tainted product to be sold.”

15 20. In response to the demand, Defendant, through an attorney, made a May 6, 2022
16 email request for Plaintiff to “provide documentation supporting the claimed loss and/or
17 anything to show that [it] attempted to mitigate its claimed damage.” The same day, Plaintiff,
18 through an attorney, emailed copies of test reports showing benzene along with a spreadsheet
19 with a detailed calculation of Plaintiff’s claimed economic harm on a wholesale basis. Per the
20 spreadsheet, 58,536 grams of processed cannabis products with a wholesale value of between
21 \$7 and 20 per gram were allegedly contaminated. (The spreadsheet actually suggests Plaintiff’s
22 claimed economic damages exceed \$625,244, based on the fact 3,624 grams of listed product
23 had an “Unknown” wholesale price.) In terms of mitigation, Plaintiff’s attorney stated that
24
25
26

1 “Benzene is one of a few chemicals in this industry that you are not allowed to attempt to
2 remediate, and we are forced to quarantine and then destroy the product.”²

3 21. Under controlling precedent, Plaintiff’s pre-suit demand is properly considered
4 in determining the amount in controversy. *See Acad. of Country Music v. Cont’l Cas. Co.*, 991
5 F.3d 1059, 1069 (9th Cir. 2021) (“A settlement demand is ‘relevant evidence of the amount in
6 controversy if it appears to reflect a reasonable estimate of the plaintiff’s claim.’”) (quoting
7 *Cohn v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002)).
8

9 **V. THE BASIS FOR REMOVAL**

10 **A. Removal to This Court Based on Diversity of Citizenship is Proper.**

11 22. This is a civil action over which this Court has original jurisdiction pursuant to
12 28 U.S.C. §1332(a)(1), and is one which may be removed to this Court pursuant to 28 U.S.C.
13 §1441(b), because it is an action between citizens of different states.

14 23. Here, Plaintiff takes on the Washington citizenship of its three LLC Members
15 while Defendant, as a corporation, is a citizen of both Delaware, the place of incorporation, and
16 Connecticut, the place of its corporate headquarters. Accordingly, complete diversity of
17 citizenship exists between the parties.
18

19
20
21 ² Defendant has not attached the above-referenced correspondence because the general removal
22 statute, 28 U.S.C. § 1446(a), only requires that a notice of removal “contain[] a short and plain
23 statement of the grounds for removal,” specifically including “a plausible allegation that the
24 amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating*
25 *Co. v. Owens*, 574 U.S. 81, 89 (2014) (citing § 1446(a)). “Evidence establishing the amount is
26 required by § 1446(c)(2)(B) only when the plaintiff contests, or the court questions, the
defendant’s allegation.” *Id.*; *see also id.* at 84 (“When the plaintiff’s complaint does not state
the amount in controversy, the defendant’s notice of removal may do so.” (citing §
1446(c)(2)(A))). If the above allegations are challenged or questioned, Defendant will happily
submit copies of the parties’ pre-suit correspondence as evidence.

1 **B. The Amount in Controversy Requirement is Satisfied.**

2 24. Although it denies liability and disputes that Plaintiff is entitled to recover any
3 damages, Defendant asserts in good faith pursuant to LCR 101(a), Local Rules W.D. Wash.,
4 that it is more likely than not that the damages Plaintiff is seeking in its Complaint, despite
5 being unspecified, greatly exceed the \$75,000.00 jurisdictional threshold, for all the reasons set
6 forth above. Indeed, having documented over \$600,000 of alleged economic injury prior to suit
7 being filed, Plaintiff has demanded treble damages and attorney’s fees in its Complaint.
8

9 25. While the amount in controversy for the class as a whole and the putative class
10 members is unknown, this Court has original jurisdiction as to Plaintiff’s claim against
11 Defendant under 28 U.S.C. § 1332(a), thus giving the Court supplemental jurisdiction under 28
12 U.S.C. § 1367 over the unnamed class members’ respective claims since they arise out of “the
13 same Article III case or controversy.” *See Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545
14 U.S. 546, 549 (2005) (“We hold that, where the other elements of jurisdiction are present and
15 at least one named plaintiff in the action satisfies the amount-in-controversy requirement, §
16 1367 does authorize supplemental jurisdiction over the claims of other plaintiffs in the same
17 Article III case or controversy, even if those claims are for less than the jurisdictional amount
18 specified in the statute setting forth the requirements for diversity jurisdiction.”).

19 26. Accordingly, the amount in controversy exceeds the \$75,000.00 threshold
20 required to invoke this Court’s jurisdiction pursuant to 28 U.S.C. § 1332(a).
21

22 **C. Removal is Timely.**

23 27. This removal is timely pursuant to 28 U.S.C. § 1446(b)(1) because Defendant is
24 filing this Notice within thirty days of being served on September 9, 2022.
25
26

1 **D. Venue is Proper.**

2 28. Defendant is removing the action to the United States District Court for the
3 Western District of Washington, Seattle Division, as “the district and division embracing the
4 place where [it] is pending.” 28 U.S.C. § 1441(a); *see also Polizzi v. Cowles Magazines, Inc.*,
5 345 U.S. 663, 665-66 (1953) (“The venue of removed actions is governed by ... § 1441(a).”).

6 **E. Procedural Pleadings and Process.**

7 29. A true and correct copy of the operative Complaint on file in the State Court
8 Action is attached hereto as Complaint, pursuant to LCR 101(b)(1). A copy of all other process,
9 pleadings, and orders (to include all documents to be file under LCR 101(c), Local Rules W.D.
10 Wash.) are respectively attached hereto as Exhibits 1 through 5; and a certificate of service is
11 listing all counsel who have appeared in the State Court Action, and their contact information,
12 including publicly available email address pursuant to 28 U.S.C. § 1446(a) and LCR 101(b). A
13 completed Civil Cover Sheet is submitted.
14

15 **F. No Waiver and Reservations.**

16 30. By seeking removal, Defendant does not waive, and expressly reserves any and
17 all rights, defenses, affirmative defenses, or objections of any nature that it may have to
18 Plaintiff’s Complaint and the claims included therein.

19 **G. Notice.**

20 31. Defendant will promptly file with the King County Superior Court Clerk, and
21 serve on Plaintiff, the Notice to the Clerk and to Adverse Parties of Removal to Federal Court
22 pursuant to 28 U.S.C. § 1446(d).
23

24 WHEREFORE, Defendant Linde Gas & Equipment Inc. f/k/a Praxair Distribution, Inc.
25 hereby removes this case from the Superior Court of the State of Washington, County of King,
26 and requests that this Court accept jurisdiction of this action, and that this action be placed upon

DEFENDANT’S NOTICE OF REMOVAL - 8

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
1700 7TH AVENUE, SUITE 2100
SEATTLE, WA 98101
(206) 709-5900 (MAIN)
(206) 709-5901 (FAX)

1 the docket of this Court for further proceedings, same as though this case had originally been
2 instituted in this Court.

3 DATED this 11th day of October, 2022.

4 WILSON, ELSER, MOSKOWITZ,
5 EDELMAN & DICKER LLP

6
7 By: /s/Ramona N. Hunter

8 Ramona N. Hunter
9 1700 7th Avenue, Suite 2100
10 Seattle, WA 98101
11 (206) 709-5900 (main)
12 (206) 709-5901 (fax)
13 ramona.hunter@wilsonelser.com

14 *Attorneys for Defendant Linde Gas &*
15 *Equipment Inc.*

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DEFENDANT'S NOTICE OF REMOVAL - 9

WILSON, ELSER, MOSKOWITZ,
EDELMAN & DICKER LLP
1700 7TH AVENUE, SUITE 2100
SEATTLE, WA 98101
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(206) 709-5901 (FAX)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Mountain Hi, LLC

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Todd J. Marshall, Terrell Marshall Law Group, PLLC, 936 N. 34th St., #300 Seattle, WA, 98103, Tel 206-816-6603

DEFENDANTS

Linde Gas & Equipment, Inc. d/b/a Praxair Distribution, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Ramona N. Hunter, Wilson Elser, et al., 1700 7th Ave., # 2100, Seattle, WA 98101, Tel 206-709-5900

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories and codes.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S. Code § 1332, 1367, 1441, 1446. Brief description of cause: Plaintiff's class action Complaint alleges product liability claims

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

October 11, 2022 /s/Ramona N. Hunter

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

FILED
2022 SEP 01 09:00 AM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 22-2-14076-3 SEA

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

MOUNTAIN HI, LLC, a Washington Limited
Liability Company, on behalf of itself and all
others similarly situated,

Plaintiff,

vs.

LINDE GAS & EQUIPMENT INC. d/b/a
PRAXAIR DISTRIBUTION, INC., a Delaware
corporation

Defendant.

NO.

CLASS ACTION COMPLAINT

Plaintiff Mountain Hi, LLC (“Plaintiff” or “Mountain Hi”), on behalf of itself and all others
similarly situated, alleges the following against Defendant Linde Gas Equipment Inc. d/b/a
Praxair Distribution, Inc. (“Linde” or “Defendant”). Plaintiff’s allegations are based upon
personal knowledge as to its own acts and experiences in this matter, the investigation of
counsel, and upon information and belief as to all other matters.

I. INTRODUCTION

1. This action challenges Defendant’s unfair and deceptive business practices in
relation to the sale of butane gas that contained impermissibly high amounts of benzene, a
harmful chemical used as a starting material in the butane gas Defendant supplies. Defendant
supplies butane gas to Plaintiff and other businesses that use the gas in the processing of
cannabis.

1 2. Plaintiff, on behalf of itself and the Class set forth below, seeks to recover
2 damages and obtain injunctive relief under the Washington Consumer Protection Act (CPA) and
3 Washington Products Liability Act (WPLA) to remedy Defendant’s unfair and deceptive business
4 practices and violations of law.

5 **II. JURISDICTION AND VENUE**

6 3. Defendant is within the jurisdiction of this Court. Defendant is registered to do
7 business and does conduct business in Washington State by supplying private entities with
8 specialty gases, including butane, in Washington. Defendant has obtained the benefits of the
9 laws of Washington and is subject to the jurisdiction of this Court.

10 4. Venue is proper in King County. Defendant transacts business in King County and
11 therefore resides in King County. RCW 4.12.020(3); RCW 4.12.025(1) & (3).

12 **III. PARTIES**

13 5. Plaintiff Mountain Hi, LLC is a producer and processor of cannabis products that
14 operates as a Washington corporation with its principal place of business at 19417 63rd Avenue
15 NE, Arlington, Washington.

16 6. Defendant, Linde Gas & Equipment Inc. d/b/a Praxair Distribution, Inc is a
17 Delaware corporation with its headquarters in Danbury, Connecticut and in doing business in
18 King County, Washington. Linde is a one of the world’s largest distributors of welding,
19 industrial, medical, and specialty gas companies.

20 **IV. SERVICE ON ATTORNEY GENERAL**

21 7. Counsel for Plaintiff have caused a copy of this initial pleading to be served on
22 the Attorney General of Washington in accordance with RCW 19.86.095

23 **V. FACTUAL ALLEGATIONS**

24 **Product Supply Agreement**

25 8. Defendant sold instrument-grade butane gas to Plaintiff.

26 9. Defendant had previously sold other products to Plaintiff.

27

1 10. Defendant was knowledgeable about Plaintiff's business and the requirements
2 of its cannabis processing.

3 11. Defendant was knowledgeable about Plaintiff's cannabis products and that they
4 would be distributed and sold to consumers in the State of Washington.

5 12. Upon information and belief, Defendant sells instrument-grade butane gas to
6 other companies and business entities in the State of Washington.

7 13. Upon information and belief, Defendant purchases butane gas from unknown
8 suppliers or manufacturers that operate in the stream of commerce.

9 14. Defendant then brands and markets the butane gas it sells under the trade or
10 brand name Praxair.

11 15. Plaintiff uses butane gas as part of the processing of cannabis to create products
12 that it distributes and sells in the stream of commerce to citizens of the State of Washington.

13 16. Plaintiff uses butane gas as a solvent to process cannabis products designed for
14 recreational use.

15 17. Benzene is a starting chemical that is used in the supply, distribution, and
16 manufacture of Defendant's butane gas.

17 18. Benzene is a known carcinogen that has recently appeared in recalls of aerosols
18 nationwide and discovered in numerous cannabis products in Washington.

19 **Product Testing**

20 19. The State of Washington mandates that Plaintiff test samples of all its cannabis
21 products before they are distributed and sold to consumers in the marketplace. WAC 314-55-
22 109.

23 20. Washington regulations state that cannabis products such as those distributed
24 and sold by Mountain Hi contain less than 2 ppm of benzene. WAC 314-55-109(4)(b)(iv)

25 21. Washington regulations required Plaintiff to submit samples of all its cannabis
26 products to a testing company before those products are distributed and sold to consumers.

27

1 WAC 314-55-102 *et seq.*

2 22. In August and September 2021, Plaintiff had a contract with Confidence Analytics
3 to perform the required products testing. Confidence Analytics is certified cannabis analytics
4 and research company located in Redmond, Washington.

5 23. Generally, once butane gas is used in the processing of cannabis, it takes 2-6
6 weeks for the resulting product to be ready to submit to Confidence Analytics for testing.

7 24. Once the sample is received for testing, Confidence Analytics generally takes 2-3
8 business days to provide results to Plaintiff.

9 25. Confidence Analytics tests for the presence of chemicals and residual solvents in
10 the cannabis products to make sure the products meet the State of Washington standards for
11 acceptable amounts of the chemicals and residual solvents.

12 26. Benzene is one of the chemicals tested for by Confidence Analytics.

13 **Defendant's Deliveries of Butane Gas**

14 27. Defendant delivered butane gas to Plaintiff starting on or about June 30, 2021.

15 28. On June 30, 2021, Defendant delivered two 80-gallon tanks of butane gas to
16 Plaintiff's facility located in Arlington, WA.

17 29. Defendant made subsequent deliveries of butane gas to Plaintiff on the following
18 dates: July 6, 2021 (5 tanks); July 15, 2021 (9 tanks); August 2, 2021 (6 tanks); August 11, 2021
19 (10 tanks); August 25 (3 tanks); and September 1, 2021 (8 tanks).

20 30. Plaintiff used the butane gas delivered by Defendant in its processing of
21 cannabis.

22 31. Defendant's delivery of butane gas on August 11, 2021, was used by Plaintiff in
23 the processing of cannabis over the subsequent 2-3 weeks.

24 **Testing of Plaintiff's Cannabis Products**

25 32. As required by Washington law, Plaintiff submitted samples of all of the
26 cannabis products it processes to its outside third-party independent testing agency,
27

1 Confidence Analytics.

2 33. Beginning on August 30, 2021, Confidence Analytics received from Plaintiff
3 numerous different cannabis products for testing.

4 34. Confidence Analytics performed its customary and normal testing procedure and
5 protocol on the products on August 30, 2021, and on all subsequent testing dates.

6 35. Beginning on September 1, 2021, Confidence Analytics testing revealed the
7 existence of higher than acceptable concentrations of the hazardous chemical benzene in the
8 cannabis products. (See attached Exhibit A, Confidence Analytics Certificates of Analysis).

9 36. As an example, Plaintiff submitted a sample of the Paradise Circus cannabis
10 product to Confidence Analytics on August 30, 2021.

11 37. Confidence analytics tested the Paradise Circus sample on September 1, 2021.
12 This test found the presence of benzene at 4.7 ppm, which exceeded the required acceptable
13 amount of 2ppm.

14 38. Confidence Analytics' initial test results did not identify the source of the
15 excessive levels of hazardous benzene.

16 39. After receiving these test results from Confidence Analytics on and after
17 September 1, 2021, Plaintiff did not know that cause of the higher than acceptable
18 concentrations of benzene in the cannabis products.

19 40. After receiving these initial test results from Confidence Analytics, Plaintiff
20 decided to confirm the accuracy of the results by submitting samples of the cannabis products
21 to a separate outside third-party independent testing agency, Testing Technologies, Inc.,
22 located in Poulsbo, WA.

23 41. On September 10, 2021, Plaintiff initially sent a sample of the cannabis product
24 Triple Chocolate Chip to Testing Technologies, Inc. (See attached Exhibit B).

25 42. Testing Technologies conducted testing on the Triple Chocolate Chip product
26 that showed 3.1 ppm of benzene, which exceeded the acceptable limit of 2.0 ppm.

27

1 43. Subsequently, Plaintiff sent an additional 18 cannabis products to Testing
2 Technologies for product testing.

3 44. All 19 of the Testing Technologies' test results showed excessive amounts of
4 benzene in the cannabis products. (See attached Exhibit C).

5 45. Additionally, after receiving these initial test results from Confidence Analytics,
6 Plaintiff submitted specific samples of Defendant's butane gas to Confidence Analytics for
7 testing.

8 46. Confidence Analytics received the sample of Defendant's butane gas on
9 September 16, 2021, and performed testing the same day.

10 47. Confidence Analytics' testing of Defendant's butane gas on September 16, 2021
11 found benzene at a concentration of 130 ppm. (See attached Exhibit D).

12 48. The September 16 test result showing 130 ppm of benzene in Defendant's
13 butane gas greatly exceeded the acceptable concentration of instrument-grade butane gas.

14 49. Thus, Plaintiff learned for the first time on September 16, 2021, that Defendant's
15 butane gas contained higher than acceptable levels of benzene.

16 **Defendant's Contaminated Butane Gas**

17 50. Defendant's delivery of instrument-grade butane gas to Plaintiff beginning on
18 August 11, 2021, and continuing up to and including September 1, 2021, contained higher than
19 acceptable levels of benzene, a known cancer-causing chemical product.

20 51. In August 2021 and previously, Defendant was cleaning its butane gas tanks on a
21 quarterly basis.

22 52. Defendant's standard operating procedure called for Defendant to only clean its
23 butane gas tanks on a quarterly basis.

24 53. The failure to properly clean its butane gas tanks more frequently than quarterly
25 contributed, in part, to cause the excessive accumulation of benzene in Defendant's butane gas
26 supplied to Plaintiff and Class members.

27

1 59. Numerosity. The Class is so numerous that joinder of all members of the Class is
2 impracticable. Upon information and belief, there are more than scores if not hundreds of
3 cannabis processing businesses that were supplied Defendant's contaminated butane gas.

4 60. Commonality. There exist questions of law and fact common to Plaintiff and the
5 proposed Class, including but not limited to:

- 6 a. Whether Defendant has supplied butane gas with excessive and
7 hazardous amounts of benzene;
- 8 b. Whether Defendant has failed to disclose the hazardous and toxic levels
9 of benzene in its butane gas,
- 10 c. Whether Defendant's acts practices are unfair under the CPA;
- 11 d. Whether Defendant's acts practices are deceptive under the CPA;
- 12 e. Whether Defendant's unfair or deceptive acts or practices occur in trade
13 or commerce;
- 14 f. Whether Defendant's unfair or deceptive acts or practices affect the
15 public interest;
- 16 g. Whether Defendants unfair or deceptive acts or practices caused injury
17 to the business or property of Plaintiff and Class members;
- 18 h. Whether Defendant supplied a defective product in violation of the
19 WPLA;
- 20 i. The nature and extent of Class-wide injury and the measure of
21 compensation for such injury; and
- 22 j. The nature and extent of appropriate injunctive relief.

23 61. Typicality. Plaintiff's claims are typical of the claims of the Class. They arise out
24 of the same common course of conduct by Defendant and are based on the same legal and
25 remedial theories. Class members were all unlawfully supplied with hazardous butane gas that
26 contained excessive amounts of benzene.

1 62. Adequacy of Representation. Plaintiff is an appropriate representative party for
2 the Class and will fairly and adequately protect the interests of the Class. Plaintiff understands
3 and is willing to undertake the responsibilities of acting in a representative capacity on behalf of
4 the proposed Class and has no interests that directly conflict with interests of the Class. Plaintiff
5 has retained competent and capable attorneys who are experienced trial lawyers with
6 significant experience in complex and class action litigation, including consumer class actions.
7 Plaintiff and his counsel are committed to prosecuting this action vigorously on behalf of the
8 Class and have the financial resources to do so.

9 63. Predominance. Defendant has engaged in a practice of supplying hazardous
10 butane gas that contains excessive amounts of the harmful chemical butane. Defendant has
11 also engaged in a practice of failing to disclose the hazardous and toxic levels of benzene in its
12 butane gas. These practices have similarly impacted all members of the Class. Because
13 Defendant's liability hinges on the legality of these practices, the common issues arising from
14 this conduct predominate over any individual issues. Adjudication of these common issues in a
15 single action has important and desirable advantages of judicial economy.

16 64. Superiority. Plaintiff and members of the Class have suffered harm and damages
17 as a result of Defendant's unlawful and wrongful conduct. Absent a class action, however, most
18 Class members likely would find the cost of litigating their claims prohibitive because the
19 monetary value of each Class member's damaged cannabis products is low relative to the cost
20 of litigation. Class treatment is superior to multiple individual suits or piecemeal litigation
21 because it conserves judicial resources, promotes consistency and efficiency of adjudication,
22 provides a forum for small claimants, and deters illegal activities. There will be no significant
23 difficulty in the management of this case as a class action.

24 65. Injunctive Relief. Defendant's conduct is uniform toward all members of the
25 Class. Defendant has acted or refused to act on grounds that apply generally to the Class, so
26
27

1 that final injunctive relief or declaratory relief is appropriate with respect to the Class as a
2 whole.

3 **VII. CAUSES OF ACTION**

4 **FIRST CAUSE OF ACTION**

5 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86 ET**
6 **SEQ.—UNFAIR BUSINESS PRACTICES**

7 66. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
8 herein.

9 67. Plaintiff and Class members are “persons” within the meaning of the Washington
10 Consumer Protection Act, RCW 19.86.010(1).

11 68. Defendant is a “person” within the meaning of the Washington Consumer
12 Protection Act, RCW 19.86.010(1).

13 69. Defendant conducts “trade” and “commerce” within the meaning of the
14 Washington Consumer Protection Act, RCW 19.86.010(2).

15 70. The conduct described above and throughout this complaint is unfair within the
16 meaning of the Washington Consumer Protection Act, RCW 19.86.010, et seq.

17 71. Washington law requires that any cannabis sample and corresponding product
18 from which the sample was deducted fails quality assurance testing if the amount of benzene in
19 the product exceeds 2 ppm. WAC 314-55-109(4)(b)(iv).

20 72. Defendant has engaged in unfair acts or practices in the conduct of its business
21 by engaging in a pattern or practice of supplying butane gas that is contaminated with benzene
22 that exceeds the acceptable amount under Washington law.

23 73. Defendant has further engaged in unfair acts or practices by failing to disclose to
24 Plaintiff and Class members that Defendant’s butane gas is contaminated with benzene that
25 exceeds the acceptable amount permitted under Washington law.

26 74. Defendant’s common course of conduct is unfair because Defendant’s acts or
27 practices: (1) have caused substantial financial injury to Plaintiff and Class members; (2) are not

1 outweighed by any countervailing benefits to consumers or competitors; and (3) are not
2 reasonably avoidable by consumers.

3 75. Defendant's common course of selling butane gas with excessive and hazardous
4 levels of the harmful chemical benzene is illegal, immoral, unethical, and unscrupulous.

5 76. Defendant's unfair acts or practices impact the public interest because they have
6 injured Plaintiff and scores if not hundreds of other cannabis businesses operating in
7 Washington and have the capacity to injure more.

8 77. As a direct and proximate result of Defendants' unfair acts or practices, Plaintiff
9 and Class members suffered injury in fact to their business or property.

10 78. Plaintiff and Class members are therefore entitled to legal relief against
11 Defendants, including recovery of actual damages, treble damages, attorneys' fees, costs of
12 suit, and such further relief as the Court may deem proper.

13 79. Plaintiff and Class members are also entitled to injunctive relief in the form of an
14 order prohibiting Defendant from engaging in the alleged misconduct and such other equitable
15 relief as the Court deems appropriate.

16 **SECOND CAUSE OF ACTION**

17 **VIOLATION OF THE WASHINGTON CONSUMER PROTECTION ACT, RCW 19.86**
18 **ET SEQ.—DECEPTIVE BUSINESS PRACTICES**

19 80. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth
20 herein.

21 81. Plaintiff and Class members are "persons" within the meaning of the Washington
22 Consumer Protection Act, RCW 19.86.010(1).

23 82. Defendants are "persons" within the meaning of the Washington Consumer
24 Protection Act, RCW 19.86.010(1).

25 83. Defendants conduct "trade" and "commerce" within the meaning of the
26 Washington Consumer Protection Act, RCW 19.86.010(2).

1 84. The conduct described above and throughout this complaint is deceptive within
2 the meaning of the Washington Consumer Protection Act, RCW 19.86.010, et seq.

3 85. Washington law provides that any cannabis sample and corresponding product
4 from which the sample was deducted will fail quality assurance testing if the amount of
5 benzene in the product exceeds 2 ppm. WAC 314-55-109(4)(b)(iv).

6 86. Defendant has engaged in deceptive acts or practices in the conduct of its
7 business by supplying defective butane gas for the purposes of manufacturing cannabis
8 products that contains excessive amounts of benzene.

9 87. Defendant has further engaged in deceptive acts or practices by failing to
10 disclose to Plaintiff and Class members that Defendant's butane gas is contaminated with
11 benzene that exceeds the acceptable amount permitted under Washington law.

12 88. Defendant's common course of conduct is deceptive because Defendants' acts
13 or practices are capable of deceiving a substantial portion of the public.

14 89. Defendant's deceptive acts or practices impact the public interest because they
15 have injured Plaintiff and scores if not hundreds of cannabis businesses operating in
16 Washington and have the capacity to injure more, as Defendant continues to supply defective
17 butane gas to cannabis businesses that contains excessive amounts of benzene.

18 90. As a direct and proximate result of Defendants' deceptive acts or practices,
19 Plaintiff and Class members suffered injury in fact to their business or property.

20 91. Plaintiff and Class members are therefore entitled to legal relief against
21 Defendant, including recovery of actual damages, treble damages, attorneys' fees, costs of suit,
22 and such further relief as the Court may deem proper.

23 92. Plaintiff and Class members are also entitled to injunctive relief in the form of an
24 order prohibiting Defendants from engaging in the alleged misconduct and such other equitable
25 relief as the Court deems appropriate.

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THIRD CAUSE OF ACTION

VIOLATION OF THE WASHINGTON PRODUCTS LIABILITY ACT, RCW 7.72 ET SEQ

93. Plaintiff re-alleges and incorporates the preceding paragraphs as if fully set forth herein.

94. Defendant is a “product seller” as defined by RCW 7.72.010(1).

95. Defendant was negligent as it failed to properly clean the tanks that it used to supply butane gas to Plaintiff and other Class Members.

96. Defendant’s failure to properly clean the butane gas tanks it used caused benzene to contaminate the butane gas and lead to excessively high amounts of benzene in the butane gas supplied by Defendant.

97. Defendant is liable as the product seller as the product was marketed under a trade name or brand name of the product seller in violation of RCW 7.72.040(2)(e).

98. Defendant marketed the butane gas under the trade name or brand name of Praxair.

99. Defendant is liable for defects in the construction of the product as the product (1) was not reasonably safe when it left Defendant’s control; (2) the product deviated in its design specifications as it contained an excessive amounts of an undisclosed known carcinogen chemical; and (3) the presence of the chemical was a deviation from the required instrument-grade butane gas in violation of RCW 7.72.030(2).

100. Defendant’s butane gas contained benzene when it left the Defendant’s control, which was not a reasonably safe condition.

101. Defendant’s butane gas delivered to Plaintiff contained significantly higher concentrations of benzene, a known carcinogen, that was permitted under Washington law.

102. Defendant’s delivery of butane gas did not meet instrument-grade requirements for the amount of benzene in the gas.

1 103. Defendant's violations of the WPLA were the proximate cause of damage to
2 cannabis that Plaintiff and other Class Members processed using the contaminated butane gas.

3 104. Plaintiff and Class Members are entitled to relief including recovery of actual
4 damages, treble damages, attorneys' fees, costs of suit, and such further relief as the Court may
5 deem proper.

6 **VII. PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays that the proposed Class be certified under Washington Civil
8 Rule 23 and judgment be entered against Defendant:

9 A. For injunctive and declaratory relief:

10 1. Declaring Defendant's unfair and deceptive acts and practices described
11 in this complaint to be unlawful, and

12 2. Prohibiting Defendant from selling defective butane gas that is
13 contaminated with the chemical benzene;

14 B. For an award to Plaintiff and Class members of actual damages;

15 C. For an award to Plaintiff and Class members of exemplary damages;

16 D. For an award to Plaintiff's counsel of costs and attorneys' fees; and

17 E. For such other and further relief as may be just and equitable.

18 RESPECTFULLY SUBMITTED AND DATED this 31st day of August, 2022.

19 TERRELL MARSHALL LAW GROUP PLLC

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Praxair Sold Benzene-Contaminated Butane Gas to Washington Cannabis Businesses, Lawsuit Alleges](#)
