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

DAVID MONTOYA, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

DRAEGER’S SUPER MARKETS, a
California corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 21-CIV-05746

[Assigned for all purposes to the Honorable Susan
L. Greenberg, Department 3]

**[PROPOSED] ORDER GRANTING FINAL
APPROVAL OF CLASS ACTION
SETTLEMENT AND JUDGMENT**

Date: April 11, 2024

Time: 9:00 A.M.

Dept.: 3

Complaint Filed: October 25, 2021

FAC Filed: December 7, 2021

Trial Date: Not Set

1 Plaintiff David Montoya (“Plaintiff”) and Defendant Draeger’s Super Markets
2 (“Defendant”) (together, the “Parties”) have entered into the Joint Stipulation of Settlement and
3 Release of Class Action and Representative PAGA Action and the Amendment to Joint
4 Stipulation of Settlement and Release of Class Action and Representative PAGA Action
5 (together, the “Stipulation” or “Settlement Agreement”) to settle the above-captioned class action
6 subject to the Court’s approval (the “Settlement”).

7 This matter is now before the Court on Plaintiff’s Motion for Final Approval of the Class
8 Action Settlement, including approval of the Class Representative enhancement payment and
9 Class Counsel’s application for a fee and expense award. The Court has read, heard, and
10 considered all the pleadings and documents submitted, and the presentations made in connection
11 with the Motion which came on for hearing on April 11, 2024.

12 **I. BACKGROUND**

13 On January 5, 2021, Plaintiff submitted his written notice to the California Labor &
14 Workforce Development Agency (“LWDA”), alleging wage and hour violations of the Labor
15 Code, pursuant to the PAGA, Labor Code § 2698, *et seq.* On October 25, 2021, Plaintiff, on
16 behalf of himself and other similarly situated employees, filed a class action complaint against
17 Defendant in the San Mateo County Superior Court. On December 7, 2021, Plaintiff filed the
18 operative First Amended Complaint. The First Amended Complaint asserted claims for: (1)
19 violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of
20 Labor Code § 226(a); (4) violation of Business & Professions Code § 17200, *et seq.*; and (5)
21 violation of Labor Code § 2698, *et seq.* Plaintiff seeks damages, penalties, attorneys’ fees and
22 costs.

23 **A. Class Members**

24 The “Class Members” are defined as “all non-exempt employees, who are or were
25 employed by Defendant Draeger’s Super Markets (“Defendant”) and received a meal and/or rest
26 period premium payment during any pay period during the period from October 25, 2017,
27 through January 30, 2022 (the “Class Period”).” The Class consists of 472 individuals.

1 **B. Operation of the Settlement.**

2 Pursuant to the Court’s Amended Order Granting Plaintiff’s Motion for Preliminary
3 Approval of Class Action Settlement (“Preliminary Approval Order”), this Court conditionally
4 certified the Class and granted preliminary approval to the Settlement. The Preliminary
5 Approval Order also approved of the proposed Class Notice and notice plan. The Court entered
6 the Preliminary Approval Order after review and consideration of all of the pleadings filed in
7 connection herewith, and the oral presentations made by counsel at the hearing.

8 In compliance with the Preliminary Approval Order, the Class Notice was sent to all
9 Class Members via first class mail. Follow-up mailings were sent to 22 individuals after skip
10 tracing, and 3 Class Notices remain undeliverable. The notice process was timely completed.

11 **II. FINDING**

12 This Court finds that the Settlement appears to be the product of serious, informed, non-
13 collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential
14 treatment to any individuals. The Court further finds that the Settlement is fair, reasonable, and
15 adequate and that Plaintiff has satisfied the standards for final approval of a class action
16 settlement under California law. Under the provisions of California *Code of Civil Procedure*
17 section 382 and Federal Rule of Civil Procedure 23, as approved for use by the California state
18 court in *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821, the trial court has discretion to
19 certify a class where:

20 [Q]uestions of law or fact common to the members of the class
21 predominate over any questions affecting only individual members,
22 and that a class action is superior to the available methods for the
23 fair and efficient adjudication of the controversy...Fed. R. Civ.
 Proc. 23.

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

25 **III. ORDER**

26 Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**
27 **AS FOLLOWS:**

- 28 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the

Settlement Agreement filed in this case.

2. The Court has jurisdiction over the subject matter of the litigation, the Class Representative, the other Members of the Class, and Defendant.

3. The Court finds that the dissemination of the Class Notice, as disseminated to the Class Members by the appointed Settlement Administrator, constituted the best notice practicable under the circumstances to all persons within the definition of the Class, and fully met the requirements of California law and due process under the United States Constitution.

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

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

6. The Court hereby certifies the following Class for settlement purposes only: All non-exempt employees, who are or were employed by Defendant and received a meal and/or rest period premium payment during any pay period during the period from October 25, 2017, through January 30, 2022.

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

8. Defendant shall fund \$300,000.00 of the Gross Settlement Amount pursuant to

1 the terms of the Settlement Agreement.

2 9. The Court approves the individual settlement amounts and individual PAGA
3 settlement payments, which shall be distributed by the Settlement Administrator pursuant to the
4 terms of the Settlement Agreement.

5 10. Defendant shall pay (a) to Class Counsel attorneys' fees in the amount of
6 \$100,000.00 and reimbursement of costs in the amount of \$7,112.50; (b) an enhancement award
7 to the Class Representative to reimburse him for his unique services and for execution of a
8 general release, in the amount of \$10,000.00; (c) the sum of \$15,000.00 to be paid to the
9 California Workforce and Development Agency and \$5,000.00 to be paid to the PAGA
10 Settlement Group, for PAGA penalties; and (d) \$13,500.00 to the Settlement Administrator,
11 Phoenix Settlement Administrators, for its fees and costs relating to the settlement administration
12 process. The Court finds that these amounts are fair and reasonable. The Settlement
13 Administrator is directed to make such payments from the Gross Settlement Amount and in
14 accordance with the terms of the Settlement Agreement.

15 **IV. JUDGMENT**

16 11. The Court hereby enters final judgment in this case in accordance with the terms
17 of the Settlement, Preliminary Approval Order, and this Order. Without affecting the finality of
18 the Settlement or Judgment entered, this Court shall retain exclusive and continuing jurisdiction
19 over the action and the Parties, including all Settlement Class Members, for purposes of
20 enforcing and interpreting this Order and the Settlement.

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

6 **IT IS SO ORDERED AND ADJUGED.**

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9 DATED: _____

10 HONORABLE SUSAN L. GREENBERG
11 SUPERIOR COURT OF CALIFORNIA
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