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Attorneys for Plaintiff, the Class, and Aggrieved Employees

**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]

**DECLARATION OF MAI TULYATHAN IN
SUPPORT OF PLAINTIFF’S MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

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 **DECLARATION OF MAI TULYATHAN**

2 I, Mai Tulyathan, declare as follows:

3 1. I am an attorney at law, duly licensed to practice before all Courts in the State of
4 California, and am with the law firm Diversity Law Group, counsel of record for Plaintiff David
5 Montoya ("Plaintiff"). I have personal knowledge of the facts set forth below and if called to
6 testify I could and would do so competently.

7 2. The proposed settlement meets the criteria for this Court to grant final approval of
8 this matter on a class-wide basis, as the settlement is fair, adequate, and reasonable.

9 3. The Settlement Agreement was the product of negotiation between highly able
10 and experienced attorneys on both sides who possessed the relevant data and extensive legal
11 research which they had carefully analyzed. Class Counsel engaged in extensive factual
12 investigation before settling. Specifically, Class Counsel reviewed data pertaining to the class,
13 number of pay periods at issue, hourly rates of pay, data and analysis pertaining to amount of
14 meal and rest period premium underpayments owed to class members, sample wage statements,
15 and information regarding Defendant's relevant policies and practices. The exchange of
16 informal discovery allowed Class Counsel to analyze liability and exposure.

17 4. The Parties then engaged in arm's length negotiations at mediation with a highly
18 experienced mediator, Daniel J. Turner, Esq., and continued negotiations post-mediation that
19 were facilitated by Mr. Turner. The Parties reached the settlement after accepting a mediator's
20 proposal.

21 5. I have spent significant time researching and pursuing the claims that have been
22 alleged in this action. Based on my independent investigations and evaluations, I am of the
23 opinion that the proposed settlement is fair, reasonable, and adequate, and is in the best interests
24 of the Class Members, in light of all known facts and circumstances, and the expenses and risks
25 inherent in litigation. The settlement was negotiated at arm's length and was facilitated by an
26 experienced and neutral mediator. Thus, this settlement should be granted final approval.

27 6. The Court preliminary approved this settlement on November 30, 2023, directing
28 distribution of the Class Notice and scheduling the hearing for final approval of the settlement

1 (the “Preliminary Approval Order”).

2 7. After Defendant transmitted the class list to the Settlement Administrator after
3 preliminary approval, the Parties discovered the decrease in class count to 472 due to
4 Defendant’s error. I met and conferred with Defendant regarding the decrease in class count.
5 According to Defendant, the 982 class count represents all non-exempt employees of Defendant,
6 and the 472 class count represents all non-exempt employees of Defendant who received a meal
7 and/or rest period premium payment during the settlement period. Thus, Defendant has
8 represented that the settlement should be premised on the 472 class count.

9 8. Given that the actual class membership count has decreased to 472, the average
10 individual settlement share has increased from approximately \$139.00 per participating Class
11 Member (the estimated amount at preliminary approval), to approximately \$317.17 per
12 participating Class Member. As a result, class members who do not opt out of the settlement
13 will actually recover a higher amount of individual settlement share.

14 9. The Class Notice provided Class Members with my office’s and the Settlement
15 Administrator’s contact information, where they could further seek information regarding the
16 settlement, leave questions for the Settlement Administrator, and update their address.

17 10. There were no objections to the amount of attorneys’ fees or litigation costs that
18 Plaintiff’s Counsel seeks in this case and for which Plaintiff asks the Court for final approval.

19 11. Any remaining monies from uncashed settlement checks will be distributed to the
20 *cy pres* beneficiary, Legal Aid At Work, a non-profit legal services organization that provides
21 legal services and policy advocacy for and on behalf of California low-income individuals and/or
22 low-wage earners. Plaintiff’s Counsel does not have any relationship with or connection or to
23 said organization.

24 12. I am one of the primary attorneys on this matter. My qualifications are as follows:
25 I received my J.D. from Loyola Law School in 2017. I received the First Honors Award in Legal
26 Research and Writing, First Honors Award in Appellate Advocacy, and First Honors Award in
27 Civil Litigation Practicum I for achieving the highest grade in those classes. During law school, I
28 was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District Court,

Central District of California, for the Honorable Christina A. Snyder, and a certified law clerk at the San Diego County District Attorney's Office, Collaborative Courts Division, and the Los Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created to investigate retaliation complaints. Upon graduation from law school, I was admitted to the California Bar in December 2017.

13. I am currently an associate at the law firm Diversity Law Group, P.C., an employment law firm that has handled numerous wage and hour class and individual actions, on both plaintiff and defense sides. The firm currently has cases in numerous state courts, including the Santa Clara Superior Court, Los Angeles Superior Court, Orange County Superior Court, San Diego County Superior Court, Monterey County Superior Court, as well as the United States District Courts for the Central, Northern, Southern, and Eastern Districts of California.

14. I am currently handling and/or have handled numerous wage and hour class action and PAGA lawsuits.

15. In 2018, I argued before the California Court of Appeal, Second Appellate District, in the case of *Lee v. California Commerce Club, Inc.* (California Court of Appeal Case Number B276171, LASC Case Number BC596924), and *Perez v. Standard Drywall, Inc.* (California Court of Appeal Case Number A146819, Alameda Sup. Ct. No. RG15761142). In that same year, I also assisted the firm in successfully obtaining class certification and partial summary judgment by the United States District Court, Northern District of California in the case of *Magadia v. Wal-Mart Associates, Inc.* (Case Number 17-CV-00062-LHK). I third chaired the bench trial in that same case in December 2018.

16. I have also been certified and/or approved as class counsel in numerous other wage/hour class actions. Most recently, I was certified as class counsel in the cases *Garcia v. Wal-Mart Associates, Inc., et al.* (S.D. Cal., Case Number 3:18-cv-00500-L-MDD), *Richert v. Samaritan, LLC, et al.* (Santa Clara County Superior Court, Case Number 17CV314186), *Song v.*

1 *THC – Orange County, Inc.* (C.D. Cal., Case No. 8-17-cv-965-JLS (DFM)), *Hernandez v. Wells*
2 *Fargo Bank National Ass’n, et al* (Santa Clara County Superior Court, Case No. 16-CV-299319),
3 and *Sims v. QG Printing II, LLC, et al.* (C.D. Cal., Case No. ED CV 20-1632-DMG (KKx)), as
4 part of the courts’ orders granting class certification pursuant to Fed. R. Civ. P. 23 and California
5 Code of Civil Procedure § 382.

6 17. Moreover, I was granted final approval as class counsel in *Lao v. H & M Hennes*
7 *& Mauritz, L.P.* (N.D. Cal., Case No. 5:16:cv-333 EJD), *Abarca v. El Estero Car Wash, Inc. et*
8 *al* (Monterey County Superior Court, Case No. 18CV003398), *Valles v. Community Hospital of*
9 *the Monterey Peninsula* (Monterey County Superior Court, Case No. 17CV003452), *Hernandez*
10 *v. Wells Fargo Bank National Ass’n, et al* (C.D. Cal., Case No. 16-CV-299319); *Baker v.*
11 *California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No.
12 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Monterey County
13 Superior Court, Case No. 19CV004512).

14 18. To date, I have incurred approximately 122.7 hours in connection with the
15 litigation of this lawsuit. Attached hereto as **Exhibit A** is a chart summarizing the amount of
16 work I have incurred to date on this matter.

17 19. I also anticipate spending an additional 15 hours through the final approval of this
18 settlement, including attending the final approval hearing, handling any issues that may arise
19 with the settlement administrator and class members, handling calls from class members, and
20 further conferring with settlement administrator class members regarding the case post-final
21 approval.

22 20. The total lodestar for my hours will be approximately **\$82,620**, based on the
23 above total hours of 137.7 at an hourly rate of \$600.00 per hour. I have been approved at an
24 hourly rate of \$500.00 per hour by various Courts, in a number of matters, including, but not
25 limited to, *Rachel Smith v. NMSO, Inc.*, Alameda County Superior Court, Case No.
26 RG18907075, *Harris v. 24 Seven, LLC*, Los Angeles County Superior Court, Case No.
27 BC720144, *Mendoza v. Planned Parenthood Mar Monte, Inc.*, Santa Clara County Superior
28 Court, Case No. 18CV329544. As of January 1, 2023, my hourly rate increased to \$600.00 per

1 hour. I have been approved at the hourly rate of \$600.00 in *Moen v. Genentech, Inc.* (San Diego
2 Superior Court Case No. 37-2021-00008619-CU-OE-CTL), *Murray v. Granite Wellness Centers*
3 *et al.* (Nevada County Superior Court Case No. CU20-084680), *Norman v. B & H Global*
4 *Marketing, LLC* (Sacramento County Superior Court Case No. 34-2022-00314707), *Osman-*
5 *Bravard v. Placer Title Company* (Nevada County Superior Court Case No. CU21-085315), and
6 *Cabalo v. Jones Lang LaSalle Americas, Inc.* (San Diego County Superior Court Case No. 37-
7 2020-00044322-CU-OE-CTL).

8 21. My office has incurred costs in the amount of \$7,112.50. The costs are all
9 litigation related costs, including filing and service fees, Court fees, postage fees, and costs
10 associated with mediation. Attached hereto as **Exhibit B** is copy of the costs incurred in
11 connection with this lawsuit.

12 **NOTICE TO THE LWDA**

13 22. Plaintiff uploaded the notice of motion and motion for preliminary approval along
14 with the settlement documents to the LWDA with the filing of the preliminary approval motion.

15 23. Concurrent with the filing of this Motion, Plaintiff uploaded this motion and
16 proposed order to the LWDA's website. A true and correct copy of the LWDA confirmation is
17 attached hereto as **Exhibit C**.

18 24. No objections to the settlement by the LWDA were received by Plaintiff's
19 counsel.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 Executed on this 11th day of March 2024, at Los Angeles, California.

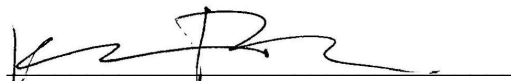
23 
24 Mai Tulyathan

EXHIBIT A

David Montoya v. Draeger's Super Markets
Kwanporn "Mai" Tulyathan Time and Task Chart

Hours	Description of Work
6.5	Factual investigation, review of file and client documents, review PAGA letter, confer with co-counsel and client regarding the case upon assignment to case.
5.6	Draft complaint; further review and revise complaint
1.0	Review Case Management Order and various court notices
1.2	Draft first amended complaint
5.0	Meet and confer with opposing counsel for case management conferences, draft, review and revise several joint statements and updated statements in connection therewith
7.4	Meet and confer with opposing counsel regarding theories of the case; review Defendant's data and analysis of premium pay to class members
2.5	Meet and confer with opposing counsel regarding mediation; draft and prepare informal discovery request in connection with mediation
10.7	Review and analyze production of informal discovery for mediation, including class payroll data and spreadsheets; conduct exposure analysis
1.6	Further meet and confer correspondences with opposing counsel regarding class data for mediation
0.1	Review notice of reassignment
8.2	Draft mediation brief; conduct legal research in connection with same; revise and revise brief
8.5	Attend mediation
4.0	Post-mediation discussions with mediator; review mediator's proposal; meet and confer with co-counsel and client re same
13.4	Draft, review and revise long-form settlement agreement; confer with opposing counsel regarding terms therein; confer with client regarding same; further review and revise same
4.8	Review and revise class notice to be sent to class members; confer with opposing counsel regarding same
0.2	Confer with settlement administrator regarding admin process and expenses
14.2	Draft motion for preliminary approval of settlement, proposed order, and supporting documents; further revise same
0.2	Meet and confer with opposing counsel regarding hearing dates

2.0	Review the Court's tentative ruling regarding preliminary approval of settlement; meet and confer with opposing counsel re same; prepare for and attend preliminary approval hearing
4.7	Draft amendment to settlement; revise settlement documents per the Court's ruling; meet and confer with opposing counsel re same
3.9	Draft supplemental brief in support of preliminary approval
0.1	Review Court's tentative ruling granting preliminary approval
2.2	Confer with settlement administrator regarding settlement approval and timeline and distribution of class notice; review preliminary calculations
1.2	Review weekly mailing reports from settlement administrator; confer with settlement administrator regarding final approval
0.5	Review and revise settlement administrator declaration regarding notice dissemination
0.3	Meet and confer with opposing counsel regarding final approval hearing
12.7	Draft motion for preliminary approval of settlement, proposed order, and supporting documents; further revise same
122.7	TOTAL HOURS

EXHIBIT B

3/5/2024
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DIVERSITY LAW GROUP
Slip Listing

Page 1

Selection Criteria

Slip Classification Open
Client (hand select) Include: Montoya, David v. Draeger's
Slip.Transaction Ty 2 - 2

Rate Info - identifies rate source and level

Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
68938	EXP	Mariana Becerra	1	75.00	75.00
9/14/2021		Court fees			
WIP		Montoya, David v. Draeger's			
LWDA					
69276	EXP	Olympia	2	0.25	0.50
9/30/2021		Photocopies			
WIP		Montoya, David v. Draeger's			
Photocopies					
69277	EXP	Olympia	1	6.96	6.96
9/30/2021		Postage			
WIP		Montoya, David v. Draeger's			
Postage					
69469	EXP	Christine S. Lee	1	1488.85	1488.85
10/25/2021		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Complaint					
69617	EXP	Christine S. Lee	1	143.25	143.25
10/27/2021		Atty Service			
WIP		Montoya, David v. Draeger's			
Attorney Service - Complaint Service					
69927	EXP	Olympia	1	115.25	115.25
11/1/2021		Atty Service			
WIP		Montoya, David v. Draeger's			
Attorney Service - Service of Complaint					
69552	EXP	Christine S. Lee	1	3.62	3.62
11/4/2021		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - POS of Summons					
69700	EXP	Olympia	1	3.62	3.62
11/9/2021		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Notice of Assignment & CMC					

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DIVERSITY LAW GROUP
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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
69748	EXP	Olympia	1	3.62	3.62
11/16/2021		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Notice of Rescheduled CMC & CMO No. 1					
70026	EXP	Olympia	29	0.25	7.25
11/30/2021		Photocopies			
WIP		Montoya, David v. Draeger's			
Photocopies					
70027	EXP	Olympia	1	2.49	2.49
11/30/2021		Postage			
WIP		Montoya, David v. Draeger's			
Postage					
69879	EXP	Olympia	1	3.62	3.62
12/7/2021		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - FAC					
70370	EXP	Olympia	1	1.36	1.36
12/31/2021		Postage			
WIP		Montoya, David v. Draeger's			
Postage					
70369	EXP	Olympia	16	0.25	4.00
12/31/2021		Photocopies			
WIP		Montoya, David v. Draeger's			
Photocopies					
70263	EXP	Christine S. Lee	1	3.62	3.62
1/6/2022		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Joint CMS					
70859	EXP	Olympia	5	0.25	1.25
1/31/2022		Photocopies			
WIP		Montoya, David v. Draeger's			
Photocopies					
70860	EXP	Olympia	1	0.53	0.53
1/31/2022		Postage			
WIP		Montoya, David v. Draeger's			
Postage					
70672	EXP	Valeria Tril	1	3.62	3.62
2/11/2022		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Notice of Email Service List					

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DIVERSITY LAW GROUP
Slip Listing

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Slip ID		Timekeeper	Units	Rate	Slip Value
Dates and Time		Activity	DNB Time	Rate Info	
Posting Status		Client	Est. Time	Bill Status	
Description		Reference	Variance		
72184	EXP	Erika Mejia	1	3.62	3.62
6/13/2022		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Joint CMS					
73127	EXP	Erika Mejia	1	3.62	3.62
9/28/2022		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Joint CMS					
74752	EXP	Olympia	1	4625.00	4625.00
3/27/2023		Arbitrators			
WIP		Montoya, David v. Draeger's			
Judicate West Mediation					
74802	EXP	Olympia	1	0.60	0.60
3/31/2023		Postage			
WIP		Montoya, David v. Draeger's			
Postage					
74897	EXP	Erika Mejia	1	3.62	3.62
4/12/2023		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Joint CMS					
74980	EXP	Olympia	1	3.62	3.62
4/27/2023		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Notice of Ruling					
76406	EXP	Erika Mejia	1	96.77	96.77
10/18/2023		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - MPA					
76410	EXP	Olympia	1	3.62	3.62
10/19/2023		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Prop Order re MPA					
76846	EXP	Erika Mejia	1	3.62	3.62
11/22/2023		Court fees			
WIP		Montoya, David v. Draeger's			
Odyssey - Supp Brief					
77656	EXP	Mai Tulyathan	1	500.00	500.00
3/5/2024		Court fees			
WIP		Montoya, David v. Draeger's			
MFA/Post-Final Approval Est Fees					

3/5/2024
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DIVERSITY LAW GROUP
Slip Listing

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Slip ID	Timekeeper	Units	Rate	Slip Value
Dates and Time	Activity	DNB Time	Rate Info	
Posting Status	Client	Est. Time	Bill Status	
Description	Reference	Variance		
Grand Total				
	Billable	0.00		7112.50
	Unbillable	0.00		0.00
	Total	0.00		7112.50

EXHIBIT C