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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
PLAINTIFF'S MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

Date: November 16, 2023

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's ("Plaintiff") application for an Order Granting Preliminary
2 Approval of Class Action Settlement was filed with the Court on October 18, 2023, and a
3 hearing was held before this Court on November 16, 2023. Appearances for Plaintiff and
4 Defendant Draeger's Super Markets ("Defendant") were noted on the record.

5 The Court has considered the Joint Stipulation of Settlement and Release of Class Action
6 and Representative PAGA Action ("Stipulation") and all other papers filed in this action.

7 NOW THEREFORE, IT IS HEREBY ORDERED:

8 1. This Court grants preliminary approval of the settlement between Plaintiff and
9 Defendant filed herewith. The Stipulation appears to be fair, adequate, and reasonable to the
10 Class;

11 2. The Class Representative and Defendant (hereafter, "Settling Parties"), through
12 their counsel of record in the Litigation, have reached an agreement to settle all claims in the
13 Litigation on behalf of the Class (as defined below and in the Stipulation) as a whole;

14 3. The Court hereby conditionally certifies the following Class for settlement
15 purposes only:

16 All non-exempt employees, who are or were employed by
17 Defendant Draeger's Super Markets ("Defendant") and received a
18 meal and/or rest period premium payment during any pay period
19 during the period from October 25, 2017, through January 30,
20 2022 (the "Class Period").

21 4. Should for whatever reason the Stipulation not become Final, the fact that the
22 parties were willing to stipulate to certification of a class as part of the Stipulation shall have no
23 bearing on, or be admissible in connection with, the Litigation or the issue of whether a class
24 should be certified in a non-settlement context.

25 5. The Court appoints and designates: (a) Plaintiff David Montoya as the Class
26 Representative and (b) Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law
27 Group, P.C., and William L. Marder of Polaris Law Group as Class Counsel for the Class. Class
28 Counsel is authorized to act on behalf of the Class with respect to all acts or consents required
by, or which may be given, pursuant to the Stipulation, and such other acts reasonably necessary

1 to finalize the Stipulation and its terms. Any Class Member may enter an appearance through his
2 or her own counsel at such Class Member's own expense. Any Class Member who does not
3 enter an appearance or appear on his or her own behalf will be represented by Class Counsel.

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

17 7. A Final Approval Hearing on the question of whether the proposed Stipulation,
18 the allocation of payments to Participating Class Members and PAGA Settlement Group
19 members, attorneys' fees and costs to Class Counsel, payment to the Labor Workforce &
20 Development Agency, and the Class Representative Incentive Award should be finally approved
21 as fair, reasonable and adequate as to the members of the Class is hereby set for
22 _____ at _____ in this Court.

23 8. The Court hereby approves, as to form and content, the Notice of Proposed Class
24 Action Settlement ("Class Notice") to be sent to Class Members, which is attached as **Exhibit 1**
25 to the Stipulation. The Court finds that distribution of the Class Notice to Class Members
26 substantially in the manner and form set forth in the Stipulation and this Order meets the
27 requirements of due process and shall constitute due and sufficient notice to all parties entitled
28 thereto.

1 9. The Court appoints and designates Phoenix Settlement Administrators as the
2 Settlement Administrator. The Court hereby directs the Settlement Administrator to provide the
3 approved Class Notice to Class Members using the procedures set forth in the Stipulation.

4 10. Any Class Member may choose to opt out of and be excluded from the settlement
5 as provided in the Stipulation and Class Notice and by following the instructions for requesting
6 exclusion. Any person who timely and properly opts out of the settlement will not be bound by
7 the Stipulation (with the exception of the Released PAGA Claims from which there is no opt out)
8 or have any right to object, appeal, or comment thereon. Any Request for Exclusion must be in
9 writing and signed by each such Class Member opting out and must otherwise comply with the
10 requirements delineated in the Class Notice. Class Members who have not timely submitted a
11 valid Request for Exclusion by the Response Deadline shall be bound by all determinations of
12 the Court, the Stipulation, and Judgment.

13 11. Any Class Member may object to the Stipulation or express his or her views
14 regarding the Stipulation and may present evidence and file briefs or other papers that may be
15 proper and relevant to the issues to be heard and determined by the Court as provided in the
16 Class Notice.

17 12. The Motion for Final Approval shall be filed by the Class Representative no later
18 than sixteen (16) court days before the Final Approval Hearing.

19 13. The Court reserves the right to adjourn or continue the date of the Final Approval
20 Hearing and all dates provided for in the Stipulation without further notice to the Class and
21 retains jurisdiction to consider all further applications arising out of or connected with the
22 Stipulation.

23 IT IS SO ORDERED.

24 DATED: _____

HONORABLE SUSAN L. GREENBERG
SUPERIOR COURT OF CALIFORNIA