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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 MONTROYA, 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
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

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I, Mai Tulyathan, declare as follows:

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

CASE SUMMARY

2. On September 14, 2021, Plaintiff submitted his written notice to the LWDA, alleging violations of Labor Code §§ 201-203, 226, 226.7, and 512, pursuant to the PAGA, Labor Code § 2699. The LWDA assigned this matter the case number LWDA-CM-844527-21. Attached as **Exhibit A** is a true and correct copy of the Plaintiff's September 14, 2021 PAGA notice and the LWDA's confirmation with case number.

3. On October 25, 2021, Plaintiff filed a class action complaint against Defendant in the San Mateo County Superior Court, alleging the following causes of action: (1) violation of Labor Code §§ 226.7 and 512; (2) violation of Labor Code § 226.7; (3) violation of Labor Code § 226(a); and (4) violation of Business & Professions Code § 17200, *et seq.* (the “Action”).

4. On December 7, 2021, Plaintiff filed a First Amended Complaint (“FAC”), adding a cause of action for violation of the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, predicated on the same Labor Code violations. The First Amended Complaint is the operative complaint.

5. On December 9, 2021, my office submitted a copy of the FAC to the LWDA via online submission. Attached as **Exhibit B** is a true and correct copy of the LWDA's confirmation of submission of the FAC.

6. Plaintiff's class and PAGA claims as pled in the FAC are predicated upon the following allegations. With respect to Plaintiff's meal and rest period claims, Plaintiff contends that Defendant failed to pay meal and rest period premium compensation at the correct regular rate of pay. In this regard, Plaintiff contends that Defendant failed to correctly calculate the regular rate of pay, based on a combination of all shift differentials and non-discretionary pay.

1 Thus, Plaintiff and other employees were underpaid meal and rest period premiums.

2 7. Plaintiff also alleges derivative wage statement claims under Labor Code §
3 226(a). Specifically, as a result of the meal and rest period premium regular rate claims, Plaintiff
4 asserts that the corresponding wage statements issued to Plaintiff and other employees failed to
5 identify the required information under Labor Code § 226(a). As a result of these alleged
6 violations, Plaintiff seeks unpaid wages, waiting time penalties, statutory penalties, and civil
7 penalties under the California Labor Code and PAGA, as well as attorneys' fees and costs.

8 **DISCOVERY AND MEDIATION**

9 8. After Plaintiff initiated the Action, the Parties met and conferred and agreed to
10 participate in private mediation. In connection with mediation, the Parties agreed to conduct
11 informal discovery to allow Plaintiff to assess the claims and liability, as well as analyze the
12 maximum exposure of damages and penalties.

13 9. For informal discovery, Defendant produced the number of putative class
14 members, number of pay periods at issue, number of wage statements at issue, hourly rates of
15 pay of putative class members, sample wage statements, and information regarding Defendant's
16 relevant policies and practices. Significantly, Defendant also provided data and analysis
17 pertaining to the amount of meal and rest period premium underpayments owed to class
18 members during the relevant time period.

19 10. Plaintiff subsequently analyzed said data to calculate the maximum class and
20 PAGA penalties available in this case.

21 11. On April 18, 2023, the Parties engaged in a full-day mediation with neutral Daniel
22 Turner, Esq. After thorough investigation and evaluation of the facts and claims and further
23 negotiations post-mediation facilitated by the mediator, the Parties and their counsel reached the
24 current settlement.

25 12. In resolution of Plaintiff's class and PAGA claims, the Parties entered into the
26 Joint Stipulation of Settlement and Release of Class Action and Representative PAGA Action
27 ("Stipulation" or "Settlement Agreement"), a true and correct copy of which is attached hereto as
28 **Exhibit C.**

13. The Parties recognize the risk, expense, and delay in continuing litigation with the class and PAGA claims, and believe the settlement to be fair, reasonable, and adequate.

14. Each side has apprised the other of their respective factual contentions, legal theories, and defenses, resulting in negotiations taking place between the Parties.

POTENTIAL PENALTIES AND DEFENSES

15. Plaintiff was able to estimate the potential class penalties based on class data provided by Defendant. Based on said data, Plaintiff estimated that Defendant would face potential liability of up to approximately \$2,467,506 for Plaintiff's class claims if Plaintiff succeeded at trial.

16. The following represents a breakdown of the estimated class-wide damages/penalties based on data and records provided by Defendant:

- Approximately \$2,449,056 in waiting time penalties for Plaintiff's meal and rest period premium regular rate claims¹ (calculated based on 485 former employees in the putative class and an average hourly rate of pay of \$21.06); and
- Approximately \$331,550 for Labor Code § 226(e) penalties resulting from deficient wage statements as a result of the underpaid wages (calculated based on approximately 3,500 pay periods at issue).

17. With respect to potential liability of Plaintiff's PAGA claims, Plaintiff estimated that Defendant could face civil penalties of up at least \$791,350 if Plaintiff were successful at trial on all claims. However, even assuming Plaintiff ultimately prevails on his PAGA claims, the Court still has discretion to reduce any PAGA penalties.

18. The total amount of class and PAGA penalties amount to approximately \$3.25 million without discounting for potentially losing on any of the causes of action. The Gross Settlement Amount is \$300,000.00, which is approximately **9.2%** of the estimated class and PAGA penalties.

¹ For Plaintiff's regular rate claims, the main claim and/or damages to be recovered are waiting time penalties under Labor Code § 203. The amount of underpaid meal and rest period premiums is typically minimal.

1 19. Although Plaintiff believes in the merits of the alleged claims and maintains that
2 there is no reason for reducing PAGA penalties, Plaintiff is aware that Defendant may raise
3 defenses to the claims and further with respect to the reduction of PAGA penalties and that it
4 could be persuasive to the Court. Thus, even if Plaintiff were to successfully prove his claims at
5 trial, there is a possibility that the Court may only award a small percentage of PAGA penalties,
6 as the Court has discretion to do so. The Gross Settlement Amount was premised with this risk
7 in mind, associated with the possibility of the Court significantly reducing Plaintiff's PAGA
8 penalties, along with other attendant risks, even if Plaintiff was to prevail at trial.

9 20. Defendant raised several defenses that presented risk as to liability and damages
10 on the claims. In this regard, Defendant argues that it appropriately paid the premium payments
11 for missed meal and rest periods. Defendant also argues that it corrected its practices as of the
12 end of January 2022 as to how it pays out meal and rest period premiums. Based on that, it is
13 Defendant's position that a portion of the employees that are part of the putative class pled in
14 Plaintiff's case are not even owed any underpaid premiums as Defendant has corrected its
15 practices.

16 21. Significantly, Defendant also argued that Plaintiff cannot establish that Defendant
17 "willfully" failed to pay wages at separation of employment, and thus Plaintiff cannot recover
18 waiting time penalties under Section 203. In *Naranjo v. Spectrum Security Services, Inc.*, __
19 Cal. Rptr. 3d __, 2023 WL 2261253 (Feb. 27, 2023), *review granted* 2023 WL 3745105 (May
20 31, 2023), the court upheld an employer's good faith defense to the plaintiff's claim for waiting
21 time penalties, pursuant to Labor Code § 203. The employer argued that it had a viable legal
22 defense, which precluded the imposition of waiting time penalties because its acts were not
23 "willful" within the meaning of the statute. *Naranjo* also permitted a good faith defense to rebut
24 the plaintiff's claim for penalties, pursuant to Labor Code § 226. Based on *Naranjo*, it is
25 Defendant's position that there is no "willful" violation here as prior to the *Ferra v. Loews*
26 *Hollywood Hotel, LLC* (2021) 11 Cal.5th 858 decision, California courts and the Labor
27 Commissioner had not interpreted that penalties paid for missed meal and rest breaks constitute
28 "wages" under Labor Code § 226.7, such that they must be paid at the "regular" rate of pay.

Defendant contends that it had a good faith belief that Plaintiff and other employees were not entitled to any additional premium pay. Should Defendants succeed on these arguments, class members would recover \$0 for waiting time penalties under Labor Code § 203 and statutory penalties under Labor Code § 226.

22. With respect to the wage statement claim, it is Defendant's position that its wage statements complied with the law, that there was no "knowing and intentional" violation on its part, and that employees did not suffer any "injury" as defined by Labor Code § 226(e). Thus, while Plaintiff believes that a class can be certified, there is a possibility that the Court will not grant class certification on Plaintiff's regular rate claim here.

23. Although Plaintiff believes that the Class can be certified, Plaintiff also believes in the fairness of the settlement that is based on factoring in the uncertainty and risks to Plaintiff involved in not prevailing on one or more of the causes of action or theories alleged in the operative FAC, the possibility of non-certification, and the potential for appeals.

THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

24. The Settlement Agreement provides for Three Hundred Thousand Dollars (\$300,000.00) as the Gross Settlement Amount. (*See* Stipulation at ¶ I.39.) The Net Settlement Amount, calculated after deduction of attorneys' fees (up to \$100,000.00), litigation costs (up to \$20,000.00), an incentive award to the Class Representative (up to \$10,000.00), allocation of the PAGA payment (\$20,000.00), and settlement administration costs (up to \$13,500.00), is estimated to be approximately **\$136,500.00**. (*Id.* at ¶¶ I.2, I.24, I.27, I.39, IV.2, IV.6.)

25. The current settlement is being settled on behalf of the following class: 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 Class Period (the "Class" or "Settlement Class"). (Stipulation at ¶ I.4.)

26. The Class Period means the period from October 25, 2017, through January 30, 2022, which reflects the date Defendant revised its payroll practices. (*Id.* at ¶ I.11.) In this regard, Defendant has represented that it has revised its payroll practices at the end of January 2022, to include shift differentials and non-discretionary incentives into the meal and rest period

1 premium regular rate of pay.

2 27. Pursuant to the Settlement Agreement, the Net Settlement Amount will be
3 apportioned among Participating Class Members on a *pro rata* basis, based on the number of pay
4 periods worked by each respective Participating Class Member during the Class Period, as
5 compared to the total number of pay periods worked by all Participating Class Members during
6 the Class Period. (*See* Stipulation at ¶ VII.2.)

7 28. Based thereon, on a raw average, each Class Member may potentially recover
8 approximately **\$139.00**. The amount actually paid to each Participating Class Member may
9 increase or decrease depending on the actual number of pay periods worked during the Class
10 Period and the number of opt-outs received.

11 29. Separate from the Individual Settlement Amount, Class Members who are also
12 part of the PAGA Settlement Group will receive an individual share of the PAGA Payment
13 Amount. The PAGA Settlement Group is defined as all non-exempt employees, who are or were
14 employed by Defendant and received a meal and/or rest period premium payment during any pay
15 period during the time period of December 7, 2020, through January 30, 2022 (the “PAGA
16 Period”). (Stipulation at ¶¶ I.5, I.26.) Twenty-five percent (25%) of the PAGA Payment
17 Amount, or \$5,000.00, will be distributed to PAGA Settlement Group Members, based on the
18 number of pay periods worked by each respective PAGA Settlement Group Member during the
19 PAGA Period, as compared to the total number of pay periods worked by all PAGA Settlement
20 Group members during the PAGA Period. (*Id.* at ¶¶ I.27, VII.2.)

21 30. Attached hereto as **Exhibit D** is a true and correct copy of the Notice of Proposed
22 Class Action Settlement (“Class Notice”) to be sent to Class Members.

23 31. The Settlement Agreement provides for the payment of the Settlement
24 Administrator for the administration of this current settlement. Plaintiff’s counsel obtained a
25 quote from Phoenix Settlement Administrators for a capped fee of \$13,500.00 to administer the
26 settlement. Attached hereto as **Exhibit E** is a true and correct copy of settlement administration
27 bid from Phoenix Settlement Administrators.

28 32. The terms of the Settlement Agreement provide that uncashed checks (upon the

1 expiration date) shall be distributed to the *cy pres* beneficiary—Legal Aid at Work, in
2 accordance with California Civil Procedure § 384. (*See* Stipulation ¶ VII.7.) Plaintiff’s counsel
3 does not have any relationship with or connection to said organization.

4 33. Pursuant to the Settlement Agreement, employer-side payroll taxes on the wage
5 portion of the Individual Settlement Amounts paid to Participating Class Members shall be paid
6 by Defendant separate from and in addition to the Gross Settlement Amount. (*See* Stipulation at
7 ¶¶ I.20, IV.4.)

8 34. Based on their own independent investigation and evaluation, the Parties and their
9 respective counsel are of the opinion that settlement for the consideration and on the terms set
10 forth in the Settlement Agreement is fair, reasonable, and adequate and is in the best interests of
11 the Class and Defendant in light of all known facts and circumstances and the expenses and risks
12 inherent in litigation.

13 **ATTORNEY EXPERIENCE**

14 35. From the inception of the case, Class Counsel have zealously represented the
15 interests of the Class. Class Counsel have engaged in discovery as well as significant meet and
16 confer discussions with opposing counsel to obtain informal data and documents and to discuss
17 the merits of the claims on behalf of the Class. This settlement was obtained for the benefit of
18 the Class, as opposed to the individual Class Representative.

19 36. Based on my review of all the documents and information, and based on my
20 experience in class action litigation, I believe this settlement to be fair, adequate, and reasonable.

21 37. I was retained based upon a contingency fee arrangement wherein Plaintiff’s
22 counsel agreed to advance all costs and receive no fee unless a recovery was accomplished.
23 Specifically, had Plaintiff failed to prevail in this case, counsel for Plaintiff would have spent a
24 significant amount of time, money, and other resources without any benefit or return. In
25 addition, had Plaintiff also failed to prevail in the present case, Defendant would have been able
26 to seek costs in connection with their defense of the case.

27 38. I am one of the primary attorneys on this matter. My qualifications are as
28 follows: I received my J.D. from Loyola Law School in 2017. I received the First Honors Award

1 in Legal Research and Writing, First Honors Award in Appellate Advocacy, and First Honors
2 Award in Civil Litigation Practicum I for achieving the highest grade in those classes. During
3 law school, I was a Staff Editor for Loyola Law Review. I was also an extern at the U.S. District
4 Court, Central District of California, for the Honorable Christina A. Snyder, and a certified law
5 clerk at the San Diego County District Attorney's Office, Collaborative Courts Division, and the
6 Los Angeles County District Attorney's Office, Consumer Protection and Environmental Crimes
7 Division. In 2016, I participated in Loyola Law School's Scott Moot Court Competition, where I
8 placed Top 16 and was awarded the Top Ten Brief Award. In 2017, I participated in the
9 Employment Rights Clinic, an extension of the Division of Labor Standards Enforcement created
10 to investigate retaliation complaints. Upon graduation from law school, I was admitted to the
11 California Bar in December 2017.

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

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

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

28 42. I have also been certified and/or approved as class counsel in numerous other

1 wage/hour class actions. Most recently, I was certified as class counsel in the cases *Garcia v.*
2 *Wal-Mart Associates, Inc., et al.* (S.D. Cal., Case Number 3:18-cv-00500-L-MDD), *Richert v.*
3 *Samaritan, LLC, et al.* (Santa Clara County Superior Court, Case Number 17CV314186), *Song v.*
4 *THC – Orange County, Inc.* (C.D. Cal., Case No. 8-17-cv-965-JLS (DFM)), *Hernandez v. Wells*
5 *Fargo Bank National Ass’n, et al* (Santa Clara County Superior Court, Case No. 16-CV-299319),
6 and *Sims v. QG Printing II, LLC, et al.* (C.D. Cal., Case No. ED CV 20-1632-DMG (KKx)), as
7 part of the courts’ orders granting class certification pursuant to Fed. R. Civ. P. 23 and California
8 Code of Civil Procedure § 382.

9 43. Moreover, I was granted final approval as class counsel in *Lao v. H & M Hennes*
10 *& Mauritz, L.P.* (N.D. Cal., Case No. 5:16:cv-333 EJD), *Abarca v. El Estero Car Wash, Inc. et*
11 *al* (Monterey County Superior Court, Case No. 18CV003398), *Valles v. Community Hospital of*
12 *the Monterey Peninsula* (Monterey County Superior Court, Case No. 17CV003452), *Hernandez*
13 *v. Wells Fargo Bank National Ass’n, et al* (C.D. Cal., Case No. 16-CV-299319); *Baker v.*
14 *California Forensic Medical Group, Inc., et al.*, Judicial Council Coordination Proceeding No.
15 4999 (Lead Case No. 17CV003723); *Mendez v. Falcon Trading Company* (Monterey County
16 Superior Court, Case No. 19CV004512).

17 44. I will adequately represent the Class Members in this action. Plaintiff’s counsel
18 has and will zealously represent Plaintiff and the Class and pursue this lawsuit to its conclusion.
19 I have no conflicts with the Class and will adequately represent the Class.

20 **NOTICE TO THE LWDA**

21 45. Concurrent with the filing of this motion, on October 18, 2023, my office
22 provided notice of the motion and the settlement to the LWDA. Attached hereto as **Exhibit F** is a
23 true and correct copy of the submission confirmation.

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

26 Executed on this 18th day of October 2023, at Los Angeles, California.

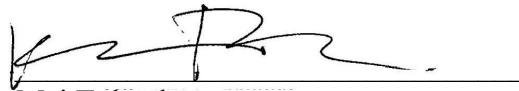
27 
28 Mai Tulyathan

EXHIBIT A

DAVID MONTOYA

c/o DIVERSITY LAW GROUP, P.C.
515 S. FIGUEROA STREET, SUITE 1250
LOS ANGELES, CALIFORNIA 90071
TELEPHONE (213) 488-6555
FACSIMILE (213) 488-6554

September 14, 2021

VIA ONLINE FILING

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: *Montoya v. Draeger's Supermarkets, Inc.*

To Whom It May Concern:

This correspondence shall constitute written notice under Labor Code § 2699.3 of claims against Draeger's Supermarkets, Inc. (the "Company"). I allege that the Company:

1. Violated Labor Code §§ 226.7 and 512 by failing to pay me and other similarly situated aggrieved employees our meal and rest period premium pay for missed meal and rest periods at our regular rates of pay as required by these provisions. Specifically, Labor Code § 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's **regular rate** of compensation for each workday that the meal or rest or recovery period is not provided." Throughout our employment with the Company, non-exempt employees and I earned non-discretionary remuneration. As these items are non-discretionary forms of remuneration, they should have been included in the regular rate of pay for purposes of paying me and other employees our meal and rest period premium pay. However, whenever the Company paid me and other employees our meal and rest period premium pay during work weeks in which we earned this non-discretionary remuneration, the meal and rest period premium was always paid at our base rate of pay. Further, the Company also violated Labor Code §§ 201-203 by failing to pay other aggrieved employees and me all of the wages owed upon separation of employment due to the unpaid missed meal and rest period premiums, and Labor Code § 226 by failing to accurately identifying the accurate rate of pay, and gross and net wages earned.

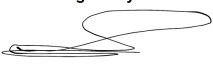
The address for the Company is:

Draeger's Supermarkets, Inc.
291 Utah Ave.
South San Francisco, CA 94080

Please contact my attorney, Larry W. Lee, if you have any questions regarding this matter.

Sincerely,

September 14, 2021
Page 2

DocuSigned by:

AB9ED286CEC8416...
David Montoya

cc: Draeger's Supermarkets, Inc. (by certified mail)

Mariana Becerra

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, September 14, 2021 11:33 AM
To: Mariana Becerra
Subject: Thank you for submission of your PAGA Case.

9/14/2021

LWDA Case No. LWDA-CM-844527-21
Law Firm : Diversity Law Group
Plaintiff Name : David Montoya
Employer: Draeger's Supermarkets, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT B

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Olympia Pena](#)
Subject: Thank you for your Court Complaint Submission.
Date: Thursday, December 9, 2021 8:41:18 AM

12/09/2021 08:41:09 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT C

Larry W. Lee (State Bar No. 228175)
 Max W. Gavron (State Bar No. 291697)
 Mai Tulyathan (State Bar No. 316704)
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Attorney for Defendant
 Draeger's Super Markets

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN MATEO

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

Plaintiff,

v.

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]

COMPLEX CIVIL

**JOINT STIPULATION OF
 SETTLEMENT AND RELEASE OF
 CLASS ACTION AND REPRESENTATIVE
 PAGA ACTION**

Hearing Date: October 26, 2023
 [Motion for Preliminary Approval of Class
 Action Settlement]
 Time: 9:00 A.M.
 Dept.: 3

Complaint Filed: October 25, 2021
 FAC Filed: December 7, 2021
 Trial Date: None Set

This Joint Stipulation of Settlement and Release of Class Action and Representative PAGA Action ("Stipulation") is made and entered into by Plaintiff David Montoya ("Montoya"), individually and as a representative of the Settlement Class, as defined below, and Draeger's Super Markets ("Defendant") (Plaintiff and Defendant are collectively referred to herein as "the Parties"). This Stipulation is subject to the approval of the Court, pursuant to California Rules of Court, Rule 3.769(c), (d) and (e), and is made for the sole purpose of attempting to consummate settlement of the Action on a class-wide basis subject to the following terms and conditions. As detailed below, in the event the Court does not enter an order granting final approval of the Class Settlement, as defined below, or the conditions precedent are not met for any reason, this Stipulation is void and of no force or effect whatsoever.

I. DEFINITIONS

As used in this Stipulation, the following terms shall have the meanings specified below. To the extent terms or phrases used in this Stipulation are not specifically defined below, but are defined elsewhere in this Stipulation, they are incorporated by reference into this definition section.

1. Action. "Action" shall mean the following civil action: *David Montoya v. Draeger's Super Markets*, San Mateo County Superior Court, Case No. 21-CIV-05746, filed on October 25, 2021.

2. Administrative Expenses. "Administrative Expenses" shall include all costs and expenses associated with and paid to the third-party Settlement Administrator, which are anticipated not to exceed \$13,500.00.

3. Claims. "Claims" shall mean the claims asserted in the operative First Amended Complaint filed on December 7, 2021, wherein Plaintiff alleges causes of action against Defendant for: (1) Violation of Labor Code §§ 226.7 and 512 related to meal periods ; (2) Violation of Labor Code § 226.7 related to rest periods ; (3) Violation of Labor Code § 226(a); (4) Violation of California's Business & Professions Code §§ 17200 *et seq.* (the Unfair Competition Law); and (5) Civil penalties under the Private Attorneys General Act, Labor Code §§ 2698, *et seq.* ("PAGA").

4. Class or Settlement Class. "Class" or "Settlement Class" shall mean all non-exempt

1 employees, who are or were employed by Defendant Draeger's Super Markets ("Defendant") and
2 received a meal and/or rest period premium payment during any pay period during the Class Period.
3 Defendant has represented that there are no more than 982 Class Members in the Settlement Class
4 during the Class Period. As part of this agreement, Defendant stipulates to certification of the Class
5 for settlement purposes only.

6 **5. PAGA Settlement Group.** "PAGA Settlement Group" shall mean all non-exempt
7 employees, who are or were employed by Defendant and received a meal and/or rest period premium
8 payment during any pay period during the PAGA Period.

9 **6. Class Counsel.** "Class Counsel" shall mean Larry W. Lee, Max W. Gavron, and Mai
10 Tulyathan of the Diversity Law Group, P.C., and William L. Marder of the Polaris Law Group.

11 **7. Class Attorneys' Fees and Expenses.** "Class Attorneys' Fees and Expenses" shall
12 mean Class Counsel's attorney's fees and expenses as set forth in Section IV, Paragraph 6.

13 **8. Class Member or Settlement Class Member.** "Class Member" or "Settlement
14 Class Member" shall mean any person who is a member of the Settlement Class, or, if such person is
15 incompetent or deceased, the person's legal guardian, executor, heir or successor-in-interest.

16 **9. Class Notice.** "Class Notice" shall mean the Notice of Proposed Class Action
17 Settlement, as set forth in the form of **Exhibit 1** attached hereto, or as otherwise approved by the
18 Court, which is to be mailed to Class Members.

19 **10. Participating Class Members.** "Participating Class Members" shall mean any and
20 all Class Members who do not validly and/or timely Opt-Out of the Class Settlement.

21 **11. Class Period.** "Class Period" shall mean the period from October 25, 2017, through
22 January 30, 2022.

23 **12. Class Representative.** "Class Representative" shall mean Plaintiff David Montoya.

24 **13. Class Settlement.** "Class Settlement" shall mean the settlement embodied in this
25 Stipulation, which is subject to Court approval.

26 **14. Complaint.** "Complaint" shall mean the operative First Amended Complaint filed in
27 San Mateo County Superior Court on December 7, 2021, Case No. 21-CIV-05746.
28

1 **15. Court.** "Court" shall mean the Superior Court of San Mateo County, California.

2 **16. Defendant.** "Defendant" shall mean Draeger's Super Markets.

3 **17. Defense Counsel.** "Defense Counsel" shall mean Paul V. Simpson and Sean R.
4 Broderick of Simpson, Garrity, Innes & Jacuzzi, P.C., 601 Gateway Boulevard, Suite 950, South San
5 Francisco, California 94080.

6 **18. Effective Date.** "Effective Date" shall mean the later of: (a) the Court's final
7 approval of the settlement if no objections by or on behalf of Class Members have been filed and not
8 withdrawn; (b) the time for appeal has expired if an objection has been filed and no appeal has been
9 filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

10 **19. Employee's Taxes and Required Withholding.** "Employee's Taxes and Required
11 Withholding" shall mean the employee's share of any and all applicable federal, state or local
12 payroll taxes, including those collected under authority of the Federal Insurance Contributions Act
13 ("FICA"), FUTA and/or SUTA on the portion of any Class Participant's Individual Settlement
14 Amount that constitutes wages as set forth in section IV, paragraph 4. The Employee's Taxes and
15 Requirement Withholdings will be withheld from and paid out of the Net Settlement Amount.

16 **20. Employer's Taxes.** "Employer's Taxes" shall mean and refer to Defendant's share
17 of payroll taxes (e.g., UI, ETT, Social Security and Medicare taxes) that is owed on the portion of
18 any Class Participant's Individual Settlement Amount that constitutes wages as set forth in section
19 IV, paragraph 4. The Employer's Taxes shall be separately paid by Defendant and in addition to the
20 Gross Settlement Amount or Net Settlement Amount.

21 **21. Final Approval and Fairness Hearing.** "Final Approval and Fairness Hearing"
22 shall mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class
23 Settlement.

24 **22. Hearing on Preliminary Approval.** "Hearing on Preliminary Approval" shall mean
25 the hearing held on the motion for preliminary approval of the Class Settlement.

26 **23. Individual Settlement Amount.** "Individual Settlement Amount" shall mean the
27 amount, which is ultimately distributed to each Participating Class Member, net of any Employee's
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1 Taxes and Required Withholdings.

2 **24. Net Settlement Amount.** “Net Settlement Amount” shall mean that portion of the
3 Gross Settlement Amount that remains after the following deductions are made: (a) all costs of
4 settlement administration performed by the Settlement Administrator; (b) Class Attorneys’ Fees and
5 Expenses; (c) the PAGA Payment Amount; and (d) Plaintiff’s Incentive Award.

6 **25. Opt-Out(s).** “Opt-Out(s)” shall mean any and all persons who timely and validly
7 request exclusion from the Class Settlement in accordance with the terms of the Class Notice and no
8 later than the Response Deadline.

9 **26. PAGA Period.** “PAGA Period” shall mean the period from December 7, 2020
10 through January 30, 2022.

11 **27. PAGA Payment Amount.** “PAGA Payment Amount” means the amount allocated
12 from the Gross Settlement Amount towards resolving claims against Defendant under the Private
13 Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.*, which is \$20,000.00. The
14 PAGA Payment is to be approved by the Court pursuant to Labor Code section 2699 and is to be
15 distributed as follows: seventy-five percent (75%) (i.e., \$15,000.00) to the LWDA and twenty-five
16 percent (25%) (i.e., \$5,000.00) to the PAGA Settlement Group. Class Counsel shall give timely
17 notice of the Class Settlement to the LWDA under Labor Code section 2699(1)(2) as part of the
18 preliminary approval motion.

19 **28. Parties.** “Parties” shall mean Plaintiff and Defendant.

20 **29. Plaintiff.** “Plaintiff” shall mean the named Plaintiff David Montoya.

21 **30. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date
22 upon which the Court grants preliminary approval of this Stipulation.

23 **31. Qualifying Pay Periods.** “Qualifying Pay Periods” means the pay periods that a
24 Class Member and/or Aggrieved Employee worked for Defendant as a non-exempt employee during
25 the Class Period and/or the PAGA Period and received a meal or rest period premium.

26 **32. Released Claims.** “Released Claims” shall mean all claims that accrued during the
27 Class Period and were alleged in the operative First Amended Complaint, as well as all claims that
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1 could have been pled arising out of the same operative facts, including: (1) Failure to pay missed
2 meal period penalties at the correct rate of pay in violation of Labor Code §§ 226.7 and 512; (2)
3 Failure to pay missed rest period penalties at the correct rate of pay in violation of Labor Code §
4 226.7; (3) Failure to furnish accurate itemized wage statements in violation of Labor Code § 226(a);
5 (4) Violation of California's Business & Professions Code §§ 17200 *et seq.* (the Unfair Competition
6 Law); and (5) Civil penalties under PAGA based on the same Labor Code violations.

7 It is understood and agreed that this Stipulation will not release any person, party or entity
8 from claims, if any, by Class Members for workers' compensation, unemployment, or disability
9 benefits of any nature, nor does it release any claims, actions, or causes of action which may be
10 possessed by Settlement Class Members under state or federal discrimination statutes, including,
11 without limitation, the Cal. Fair Employment and Housing Act, the Cal. Gov't Code §§ 12940, *et*
12 *seq.*; the Unruh Civil Rights Act, the Cal. Civil Code § 51, *et seq.*; the California Constitution; Title
13 VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000, *et seq.*; the Americans with Disabilities Act,
14 as amended, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, as
15 amended, 29 U.S.C. § 1001 *et seq.*; and all of their implementing regulations and interpretive
16 guidelines.

17 **33. Released PAGA Claims.** "Released PAGA Claims" shall mean all claims that
18 accrued during the PAGA Period and were alleged in the PAGA notice, as well as all claims that
19 could have been pled arising out of the same operative facts, for civil penalties under the California
20 Private Attorneys' General Act predicated on violations of Labor Code §§ 201-203, 226, 226.7 and
21 512.

22 **34. Released Parties.** "Released Parties" shall mean Draeger's Super Markets, and all
23 of its subsidiaries, affiliates, shareholders, members, officers, directors, agents, predecessors,
24 successors, and assigns.

25 **35. Response Deadline.** "Response Deadline" shall mean the date thirty (30) days
26 following the date on which the Settlement Administrator first mails Class Notice to the Settlement
27 Class Members.
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1 **36. Incentive Award.** “Incentive Award” shall mean any additional monetary payment
2 provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this
3 Action and for executing a general release under Section 1542.

4 **37. Settlement.** “Settlement” shall mean the settlement between the Parties, which is
5 memorialized in this Stipulation and subject to approval by the Court.

6 **38. Settlement Administrator.** “Settlement Administrator” shall mean Phoenix
7 Settlement Administrators which the Parties have agreed will be responsible for administration of
8 the Settlement and related matters.

9 **39. Gross Settlement Amount.** “Gross Settlement Amount” (“GSA”) is the agreed
10 upon non-reversionary settlement amount totaling \$300,000.00 to be paid by Defendant in full
11 settlement of the Released Claims asserted in this case, including the: (i) Individual Settlement
12 Payments to the Class Representative and Settlement Class Members; (ii) Employee’s Taxes and
13 Required Withholdings; (iii) Class Counsel’s Attorneys’ Fees; (iv) Class Counsel’s Litigation Costs
14 and Expenses; (v) Incentive Award/Enhancement Payment to the Class Representative; (vi) PAGA
15 Payment; and (vii) the Administrative Expenses. Defendant shall separately pay its share of the
16 Employer’s Taxes in addition to the Gross Settlement Amount.

17 **40. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and
18 Release of Class Action, including any attached exhibits.

19 **II. FACTUAL AND PROCEDURAL BACKGROUND OF ACTION**

20 **1. Plaintiff’s Claims.** On behalf of the Settlement Class, Plaintiff alleged the following
21 causes of action: (1) Failure to pay missed meal period penalties at the correct rate of pay, in
22 violation of Labor Code §§ 226.7 and 512; (2) Failure to pay missed rest period penalties at the
23 correct rate of pay, in violation of Labor Code § 226.7; (3) Failure to furnish accurate itemized
24 wage statements in violation of Labor Code § 226(a); (4) Violation of California’s Business &
25 Professions Code §§ 17200 *et seq.* (the Unfair Competition Law); and (5) Civil penalties under
26 PAGA based on the same Labor Code violations and allegations.

27 **2. Discovery, Investigation, Motion Practice and Research.** Class Counsel has
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1 conducted significant informal discovery during the prosecution of the Action. This discovery,
2 investigation, and prosecution has included, among other things, (a) over a dozen telephonic
3 conferences with Plaintiff; (b) inspection and analysis of hundreds of pages of documents and other
4 information produced by Plaintiff and Defendant; (c) analysis and calculations based on payroll data
5 related to all aggrieved employees and class members as provided by Defendant; (d) an analysis of
6 the legal positions taken by Defendant; (d) investigation into the viability of class treatment of the
7 claims asserted in the Action; (e) analysis of potential class-wide damages, including information
8 sufficient to understand Defendant's potential defenses to Plaintiff's claims; (f) research of the
9 applicable law with respect to the claims asserted in the Complaint and the potential defenses
10 thereto; and (g) assembling and analyzing of data for calculating damages.

11 Plaintiff's counsel and the Class Representative have vigorously prosecuted this case, and
12 Defendant has vigorously contested it. The Parties have engaged in sufficient investigation and
13 discovery to assess the relative merits of the claims of the Class Representative and of Defendant's
14 defenses to them.

15 **3. Allegations of the Class Representative and Benefits of Class Settlement.** The
16 extensive document and data exchange in this matter, as well as discussions between counsel, have
17 been adequate to give the Class Representative and Class Counsel a sound understanding of the
18 merits of their positions and to evaluate the worth of the claims of the Settlement Class. The
19 informal discovery conducted in this Action and the information exchanged by the Parties through
20 pre-mediation discussions and a thorough evaluation of the legal claims and defenses, are sufficient
21 to reliably assess the merits of the Parties' respective positions and to compromise the issues on a
22 fair and equitable basis.

23 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and
24 contentions asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and
25 acknowledge the expense and delay of continued lengthy proceedings necessary to prosecute the
26 Action against Defendant through trial and through appeals. Class Counsel has taken into account
27 the uncertain outcome of the litigation, the risk of continued litigation in complex actions such as
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1 this, as well as the difficulties and delays inherent in such litigation, and the potential difficulty of
2 obtaining certification of the Action as well as trying the claims of the class. Class Counsel is
3 mindful of the potential problems of proof under, and possible defenses to, the claims alleged in the
4 Action.

5 Class Counsel believes that the Settlement set forth in this Stipulation confers substantial
6 benefits upon Plaintiff and the Settlement Class Members and that an independent review of this
7 Stipulation by the Court in the approval process will confirm this conclusion. Based on their own
8 independent investigation and evaluation, Class Counsel has determined that the Settlement set forth
9 in the Stipulation is in the best interests of Plaintiff and the Settlement Class Members.

10 **4. Defendant's Denials of Wrongdoing and Liability.** Defendant has denied and
11 continues to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the
12 Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability
13 against it arising out of any of the conduct, statements, acts or omissions alleged in the Action.
14 Defendant contends that it complied in good faith with applicable California wage and hour laws and
15 has dealt legally and fairly with Plaintiff and Settlement Class Members. Defendant further denies
16 that, for any purpose other than settling this Action, these claims are appropriate for class or
17 representative treatment. Nonetheless, Defendant has concluded that further proceedings in the
18 Action would be protracted and expensive and that it is desirable that the Action be fully and finally
19 settled in the manner and upon the terms and conditions set forth in this Stipulation in order to
20 dispose of burdensome and protracted litigation, to permit the operation of Defendant's business
21 without further expensive litigation and the distraction and diversion of its personnel with respect to
22 matters at issue in the Action. Defendant has also taken into account the uncertainty and risks
23 inherent in any litigation, especially in complex cases such as the Action. Defendant has, therefore,
24 determined that it is desirable and beneficial to it that the Action be settled in the manner and upon
25 the terms and conditions set forth in this Stipulation.

26 **5. Intent of the Class Settlement.** The Class Settlement set forth herein intends to
27 achieve the following: (1) entry of an order approving the Class Settlement; (2) entry of judgment of
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1 the Action; (3) discharge of Released Parties from liability for any and all of the Released Claims;
2 and (4) discharge of Plaintiff from liability for any and all claims arising out of the Action.

3 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
4 **COUNSEL**

5 **1. The Settlement Class.** For the purposes of this Stipulation and the Class Settlement
6 of this Action only, the Parties stipulate to conditional class certification of the Settlement Class.
7 Defendant's counsel believes this conditional certification is appropriate because the Released
8 Claims are being compromised without needing to establish the elements of those claims on which
9 liability turns.

10 **2. Appointment of Class Counsel.** For purposes of this Stipulation and subject to the
11 Court's approval, the Parties hereby stipulate to the appointment of Class Counsel as counsel for the
12 Class and the effectuation of the Class Settlement pursuant to this Stipulation.

13 **IV. CLASS SETTLEMENT CONSIDERATION**

14 **1. Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement
15 Amount of \$300,000.00. There shall be no reversion to Defendant. Defendants shall pay the Gross
16 Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken
17 by Defendant shall constitute adequate consideration for the Class Settlement and will be made in
18 full and final settlement of: (a) the Released Claims and Released PAGA Claims; (b) Class
19 Attorneys' Fees and Expenses; (c) Administrative Expenses; (d) Incentive Award/Enhancement
20 Payment to the Class Representative; (e) PAGA Payment; and (f) any other obligation of Defendant
21 under this Stipulation (other than the Employer's Taxes on the portion of the Net Settlement Amount
22 allocated to the payment of wages). After the court issues an order preliminarily approving this Class
23 Settlement, the Settlement Administrator will distribute the Class Notice to the Settlement Class
24 Members, which shall describe the terms of the Class Settlement and procedures to opt out, object or
25 participate in the Class Settlement. Settlement Class Members shall be given the opportunity to
26 challenge their pay periods worked information.

27 **2. Incentive Award for Plaintiff.** Plaintiff may petition the Court to approve an
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1 Incentive Award in an amount up to \$10,000.00 for Plaintiff's efforts on behalf of the Settlement
2 Class in this Action, including assisting in the investigation and consulting with Class Counsel and
3 providing crucial documents to Class Counsel, and for executing a general release under Section
4 1542. Defendant shall not oppose any request by Plaintiff for an Incentive Award in such an amount.
5 Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross Settlement
6 Amount and shall be in addition to any distribution to which he may otherwise be entitled as a Class
7 Participant. The Incentive Award shall not be considered wages, and the Settlement Administrator
8 shall issue Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be responsible for the
9 payment of any and all taxes with respect to his Incentive Award and shall hold Defendant harmless
10 from any and all liability with regard thereto.

11 **3. Payment to Class Participants.** Each Class Participant shall be eligible to receive
12 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based
13 on the *pro rata* number of Qualifying Pay Periods worked by Settlement Class Members during the
14 Class Period as a proportion of all Qualifying Pay Periods worked by all Settlement Class Members.

15 The Individual Settlement Amount for each Settlement Class Member shall be calculated in
16 accordance with section VII, paragraph 2. Each Class Participant, including Plaintiff, shall be
17 responsible for the payment of the Employee's Taxes and Required Withholding with respect to his
18 or her Individual Settlement Amount and shall hold Defendant harmless from any and all liability
19 with regard thereto.

20 **4. Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes
21 and Required Withholding for the Individual Settlement Amounts for Class Participants (including
22 any payments to the Class Representative but exclusive of his Incentive Award), the Parties agree
23 that 5% of each Individual Settlement Amount shall constitute wages (and each Class Participant
24 will be issued an IRS Form W-2 for such payment to him or her), and 95% of each Individual
25 Settlement Amount shall constitute penalties, (and each Class Participant will be issued an IRS Form
26 1099 for such payment to him or her).

27 The Parties agree that the individual PAGA payments to PAGA Settlement Group Members
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1 shall be allocated 100% as 1099 payments for penalties.

2 Prior to final distribution, the Settlement Administrator shall calculate the total Employee's
3 Taxes and Required Withholding due as a result of the wage portion of Class Participants'
4 anticipated Individual Settlement Amounts and such actual amount will be deducted from the Net
5 Settlement Amount. Additionally, prior to the funding of the Gross Settlement Sum and final
6 distribution, the Settlement Administrator shall calculate the total Employer's Taxes due on the wage
7 portion of the Class Participants' Individual Settlement Amounts and issue instructions to Defendant
8 to separately fund these tax obligations/withholdings. The Parties understand that Plaintiff and the
9 Class Participants who receive any payment pursuant to this Stipulation shall be solely responsible
10 for any and all other individual tax obligations associated with this Class Settlement.

11 **5. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any
12 amounts paid under the Class Settlement will modify any previously credited hours, days, or weeks
13 of service under any employee benefit plan, policy or bonus program sponsored by Defendant. Such
14 amounts will not form the basis for additional contributions to, benefits under, or any other monetary
15 entitlement under Defendant's sponsored benefit plans, policies or bonus programs. The payments
16 made under the terms of this Stipulation shall not be applied retroactively, currently, or on a going
17 forward basis, as salary, earnings, wages, or any other form of compensation for the purposes of any
18 of Defendant's benefit plan, policy or bonus program. Defendant retains the right to modify the
19 language of its benefits plans, policies and bonus programs to effect this intent and to make clear that
20 any amounts paid pursuant to this Stipulation are not for "weeks worked," "weeks paid," "weeks of
21 service," or any similar measuring term as defined by applicable plans, policies and bonus programs
22 for purpose of eligibility, vesting, benefit accrual, or any other purpose, and that additional
23 contributions or benefits are not required by this Stipulation. Defendant does not consider the Class
24 Settlement payments "compensation" for purposes of determining eligibility for, or benefit accrual
25 within, any benefit plans, policies, or bonus programs, or any other plan sponsored by Defendant.

26 **6. Class Attorneys' Fees and Expenses.** As part of the motion for final approval of
27 the Class Settlement, Class Counsel may submit an application for an award of Class Attorneys'
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1 Fees and Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*,
2 \$100,000.00, and the award of litigation costs and expenses of up to an additional \$20,000.00.
3 Defendant agrees not to object to any such fee, cost or expense application in those amounts. As a
4 condition of this Class Settlement, Class Counsel has agreed to pursue fees only in the manner
5 reflected by this Section. Any Class Attorneys' Fees and Expenses awarded by the Court shall be
6 paid from the Gross Settlement Amount in arriving at the Net Settlement Amount and shall not
7 constitute payment to any Settlement Class Members. If Class Counsel voluntarily reduces the
8 request for Class Attorneys' Fees or Expenses or the Court's award of Class Attorneys' Fees or
9 Expenses is less than set forth above, the Net Settlement Amount shall be recalculated to reflect the
10 actual Class Attorneys' Fees and Expenses awarded.

11 The Class Attorneys' Fees and Expenses approved by the Court shall encompass: (a) all work
12 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
13 represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and
14 costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to
15 be performed and costs and expenses, if any, incurred in connection with administering the Class
16 Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be
17 based on the Catalyst Theory and/or Common Fund Doctrine.

18 **V. CLAIMS ADMINISTRATION COSTS AND EXPENSES**

19 **1. The Settlement Administrator's Costs and Expenses.** All costs and expenses due
20 to the Settlement Administrator in connection with its administration of the Class Settlement,
21 including, but not limited to, providing, translating, and disseminating the Class Notice, locating
22 Settlement Class Members and any re-mailing of notices, processing Opt-Out requests and
23 objections, distributing the portion of the PAGA Payment payable to the LWDA, and calculating,
24 administering and distributing Individual Settlement Amounts to the Participating Class Members
25 and PAGA Settlement Group Members and related tax forms, shall be paid from the Gross
26 Settlement Amount, and shall not exceed \$13,500.00.

27 **2. Establishment of a Qualified Settlement Fund After Final Approval.** No later
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1 than seven (7) days after the Effective Date, the Settlement Administrator shall establish a qualified
2 settlement fund, account, or trust pursuant to applicable state and federal rules and regulations to
3 hold the Gross Settlement Amount and distribute payments therefrom.

4 **3. Payment by Defendant.** Within fourteen (14) days after the Effective Date,
5 Defendant shall deposit the Gross Settlement Amount of \$300,000.00, and any employer's taxes
6 due, with the Settlement Administrator via secure wire transfer or by other secure means to pay: (1)
7 the Class Attorneys' Fees and Expenses, as approved by the Court; (2) the Incentive Award, as
8 approved by the Court, (3) the Administrative Expenses, not to exceed \$13,500.00; (4) the PAGA
9 Payment Amount, 75 percent of which is to be paid to the LWDA pursuant to Cal. Labor Code
10 2699(i); (5) the aggregate of all Individual Settlement Amounts of Class Participants; and (6) the
11 Employer's Taxes and Required Withholding associated with the Individual Settlement Amounts.
12 Defendant shall separately pay their share of Employer Taxes to the Settlement Administrator prior
13 to the distribution of the Individual Settlement Amounts to Class Participants. In no event shall
14 Defendant be obligated to pay or deposit with the Settlement Administrator more than \$300,000.00
15 plus its Employer Taxes. The Settlement Administrator shall report to the Parties whether it received
16 the entire Gross Settlement Amount in a timely manner and the total amount received along with
17 Employer Taxes within three (3) business days.

18 **4. Distribution Process and Court Intervention if Gross Settlement Amount is**
19 **Untimely or Incomplete.** If Defendant fails to remit the entire Gross Settlement Amount to the
20 Settlement Administrator in full on the date it is due or within three business days after the due date,
21 then the Settlement Administrator shall refrain from distributing any part of the Gross Settlement
22 Amount until the Parties provide the Settlement Administrator with further instructions.

23 **VI. NOTICE TO CLASS MEMBERS AND SETTLEMENT ADMINISTRATION**
24 **PROCESS**

25 **1. The Settlement Administrator.** The Settlement Administrator will be responsible
26 for mailing the Class Notice (**Exhibit 1**) to Settlement Class Members, handling inquiries from
27 Settlement Class Members concerning the Class Notice, determination of Individual Settlement
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1 Amounts, maintaining the settlement funds in an appropriate interest bearing account, preparing,
2 administrating and distributing Individual Settlement Amounts to Participating Class Members and
3 PAGA Settlement Group Members, issuing a final report and performing such other duties as the
4 Parties may direct.

5 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
6 Defense Counsel summary information updating them as to the number of validated and timely
7 objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and
8 Defense Counsel via e-mail date-stamped copies of the original Opt-Outs and objections no later
9 than seven days after their receipt. The Settlement Administrator will provide Class Counsel with
10 proof of mailing of the Class Notice, without listing individual Class Member names which the
11 Settlement Administrator will file with the Court at the time Class Counsel files its motion in support
12 of the Court's Final Approval and Fairness Hearing. No later than seven days prior to the Final
13 Approval and Fairness Hearing, the Settlement Administrator will compile and deliver to Class
14 Counsel and Defense Counsel a report with summary information regarding (a) the total amount of
15 final Individual Settlement Amounts of each Class Participant (b) the number of Class Participants to
16 receive such payments, and (c) the final number of Opt-Outs and objections.

17 Administrative Expenses are not anticipated to exceed \$13,500.00. Prior to the calculation
18 and distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate
19 the total Administrative Expenses through the conclusion of their services and such actual amount
20 will be deducted from the Gross Settlement Amount prior to the final calculation of the Individual
21 Settlement Amounts.

22 **2. Notice to Settlement Class Members.** Notice shall be provided to Settlement Class
23 Members in the following manner: Within 14 days after the Preliminary Approval Date, Defendant
24 shall provide the Settlement Administrator with an updated list of Class Members containing names,
25 social security numbers, dates of employment, last-known addresses and phone numbers, and the
26 number of pay periods in which the Class Member received a meal or rest period premium during
27 the Class Period and/or PAGA Period (the "Database"). The Database shall be marked "Confidential"
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1 –Settlement Administrator’s Eyes Only.” Class Counsel shall not receive a copy of this list.

2 Within 7 days after receipt of the Database, the Settlement Administrator shall determine the
3 number of Qualifying Pay Periods for each Settlement Class Member, populate the Settlement Class
4 for each accordingly, and send each Settlement Class Member the Class Notice via first-class,
5 United States mail. The Class Notice shall also contain an easily understood statement alerting the
6 Class Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class
7 Member is releasing and waiving all Released Claims against the Released Parties.

8 The Class Notice will inform Settlement Class Members of his/her estimated share of the
9 settlement and the number of Qualifying Pay Periods pay periods they worked during the Class
10 Period and/or PAGA Period. Class Members may dispute the data provided by Defendant (their pay
11 period count) by submitting information and/or documentation to the Settlement Administrator no
12 later than the Response Deadline. The Settlement Administrator will jointly work with Plaintiff and
13 Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the pay
14 periods to be credited, the Settlement Administrator shall make the final decision based on the
15 information presented by the Settlement Class Member and Defendant, and that determination shall
16 be binding.

17 **3. Opt-Out Procedure.** Settlement Class Members who do not validly or timely
18 submit a “Request for Exclusion” to be excluded of the Class Settlement will be deemed to
19 participate in the Class Settlement and shall become a Participating Class Member without having to
20 submit a claim form or take any other action. In order to be excluded from the Class Settlement, the
21 Settlement Class Member must submit a letter to the Settlement Administrator requesting to be
22 excluded from the Settlement by the Response Deadline (“Request for Exclusion”). For a Request
23 for Exclusion be valid, it must (1) state the Settlement Class Member’s name, address, and telephone
24 number, (2) be signed by the Settlement Class Member, and (3) contain language by the Settlement
25 Class Member requested to be excluded from the Settlement. The Request for Exclusion need not be
26 in any particular format as long as it communicates a clear desire by the Settlement Class Member to
27 not be included in the Settlement. Any Request for Exclusion that is not postmarked by the Response
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1 Deadline will be invalid. In the event that, prior to the Response Deadline, any Class Notice mailed
2 to a Settlement Class Member is returned as having been undelivered by the U.S. Postal Service, the
3 Settlement Administrator shall perform a skip trace search and seek an address correction for such
4 Settlement Class Member(s), and a second Class Notice will be sent to any new or different address
5 obtained. Such Settlement Class Member(s) shall have an additional 14 days in which to seek
6 exclusion.

7 It will be presumed that, if an envelope containing the Class Notice has not been returned
8 within 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 10
9 days prior to the Final Approval and Fairness Hearing, the Settlement Administrator shall provide
10 Class Counsel and Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with
11 regard to the mailing of the Class Notice and its attempts to locate Class Members. The declaration
12 shall specify the number of Settlement Class Members to whom Class Notices were sent and the
13 number of Settlement Class Members to whom Class Notices were not delivered, as well as
14 information relating to the number of Opt-Outs and objectors. Class Counsel shall file this
15 declaration with the Court along with the Final Approval Motion.

16 Those Settlement Class Members who do not validly or timely Opt-Out will be bound by the
17 Release of Released Claims set forth in Section I, Paragraph 32 of this Stipulation.

18 PAGA Settlement Group Members do not have a right to opt out of the PAGA portion of the
19 Settlement. PAGA Settlement Group Members will be bound by the Settlement, if approved, as to
20 the Released PAGA Claims regardless of whether they submit a Request for Exclusion.

21 No Party will encourage any Settlement Class Member to opt out of or object to the
22 Settlement.

23 **4. Objections.** The Class Notice shall inform the Settlement Class Members of their
24 right to object to the Class Settlement. Any Participating Class Member who wishes to object to
25 the Class Settlement must submit a written objection to the Settlement Administrator no later than
26 the Response Deadline. To be valid, the written objection must include (1) the objector's full
27 name, address, and telephone number, (2) the case name and number, and (3) the basis of the
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1 objection, including the reasons why the objector believes that the Court should find that the
2 proposed Class Settlement is not in the best interest of the Settlement Class and the reasons why
3 the Class Settlement should not be approved, including any legal and factual arguments supporting
4 the objection. The objector may include supporting papers, including briefs and documentation,
5 for which the objection is based, to the extent there is any. If an objector also wishes to appear at
6 the Final Approval and Fairness Hearing, in person or through an attorney, he or she *must also* file
7 a notice of intention to appear at the same time as the objection is filed. The written objection must
8 be submitted to the Settlement Administrator, who will promptly serve copies of any objection or
9 notice of intention to appear on Class Counsel and Defense Counsel. Unless otherwise ordered by
10 the Court, Settlement Class Members shall not be entitled to appear and or object at the Final
11 Approval Hearing unless they have submitted a timely written objection and notice of intention to
12 appear pursuant to this Section. Settlement Class Members who have properly and timely
13 submitted objections may appear at the Final Approval Hearing, either in person or through a
14 lawyer retained at their own expense. Settlement Class Members who fail to make objections in
15 the manner specified above shall be deemed to have waived any objections and shall be foreclosed
16 from making any objections to the Settlement. Settlement Class Members shall be permitted to
17 withdraw their objections in writing by submitting a withdrawal statement to the Settlement
18 Administrator.

19 **VII. CLASS SETTLEMENT FUNDING AND DISTRIBUTION**

20 **1. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
21 Members are settled for the Gross Settlement Amount of \$300,000.00, which will be allocated as
22 follows:

- 23 a. The Administrative Expenses, not to exceed \$13,500.00;
- 24 b. The Class Attorneys' Fees and Expenses not to exceed 1/3 of the GSA (i.e.,
25 \$100,000.00) in fees and expenses not to exceed \$20,000.00;
- 26 c. The Incentive Award to the Class Representative, not to exceed \$10,000.00
- 27 d. PAGA Payment of \$20,000.00, of which \$15,000.00 shall be paid to the LWDA.
- 28

1 e. For purposes of calculating the estimated Individual Settlement Amounts, the
2 Settlement Administrator shall calculate the estimated Net Settlement Amount based on the
3 estimated values in Section 1(a-d) prior to sending Notice to the Settlement Class Members. Prior to
4 final distribution, the Settlement Administrator shall calculate the final Net Settlement Amount
5 based on the actual values in Section 1 (a-d).

6 **2. Calculation of the Individual Settlement Amounts.** Individual Settlement
7 Amounts to be paid to Class Participants shall be paid from the Net Settlement Amount. The portion
8 of the Net Settlement Amount payable to each Class Participant will be calculated as follows:

9 Each Class Member's share of the Net Settlement Amount will be determined by dividing
10 their total Qualifying Pay Periods worked within the Class Period by the total Qualifying Pay
11 Periods worked by all Class Members for the Class Period. That fraction will then be multiplied by
12 the Net Settlement Amount to arrive at the Class Member's individual share of the Net Settlement
13 Amount (i.e., his or her Individual Settlement Amount).

14 Each PAGA Settlement Group Member's share of the 25% portion of the PAGA Payment
15 Amount will be similarly determined by dividing their total Qualifying Pay Periods worked within
16 the PAGA Period by the total Qualifying Pay Periods worked by all Aggrieved Employees within
17 the PAGA Period. That fraction will then be multiplied by the 25% portion of the PAGA Payment
18 Amount allocated to the PAGA Settlement Group Member to arrive at each PAGA Settlement
19 Group Member's individual share (i.e., his or her individual share of the PAGA Payment).

20 The Settlement Administrator shall deduct all Employee's Taxes and Required Withholding
21 attributable to wages to arrive at the Individual Settlement Amount for each Class Member.
22 Defendant will provide the Settlement Administrator with any information reasonably necessary to
23 perform the calculation of number of pay periods for each Settlement Class Member and PAGA
24 Settlement Group Member, and any other reasonably required information the Settlement
25 Administrator requests to perform the calculations required under this Settlement Agreement.
26 Defendant shall have no responsibility for deciding the validity of the Individual Settlement
27 Amounts or any other payments made pursuant to this Stipulation, shall have no involvement in or
28

1 responsibility for the determination or payment of Employee's Taxes and Required Withholding,
2 and shall have no liability for any errors made with respect to such Employee's Taxes and Required
3 Withholding. Although the Settlement Administrator will calculate and pay the standard
4 Employee's Taxes and Required Withholding on the portion of the Individual Settlement Amounts
5 constituting wages on their behalf, Plaintiff and Participating Class Members represent and
6 understand that they shall be solely responsible for any and all tax obligation associated with their
7 respective Individual Settlement Amounts and Plaintiff's Incentive Award.

8 **3. Time for Payment of Attorneys' Fees and Expenses to Class Counsel.** The
9 Settlement Administrator shall distribute to Class Counsel any attorneys' fees and expenses
10 approved by the Court to Class Counsel no later than 10 days after the Effective Date.

11 **4. Time for Payment of Incentive Award to Class Representative.** The Settlement
12 Administrator shall distribute to Plaintiff the Incentive Award approved by the Court no later than 10
13 days after the Effective Date.

14 **5. Time for Payment of PAGA Payment to the LWDA.** The Settlement
15 Administrator shall distribute to the LWDA the portion of the PAGA Payment due to it and
16 approved by the Court no later than 10 days after the Effective Date.

17 **6. Time for Payment of Taxes and Required Withholding and Individual**
18 **Settlement Amounts.** The Settlement Administrator shall make every effort to pay the Employee's
19 Taxes and Required Withholding associated with each Participating Class Member's Individual
20 Settlement Amount and mail the Individual Settlement Amount to each Participating Class Member,
21 by first-class U.S. mail, to the last-known address no later than 10 days after the Effective Date. If
22 the Settlement Administrator is not able to do so within the time period set forth above, it shall so
23 inform Class Counsel and Defense Counsel and provide an approximate date by which the
24 Employee's Taxes and Required Withholding shall be paid and the Individual Settlement Amounts
25 will be mailed. Under no circumstances shall the Settlement Administrator distribute checks to
26 Participating Class Members until all Individual Settlement Amounts have been considered,
27 calculated, and accounted for, and the all of the remaining monetary obligations have been
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1 calculated and accounted for. In the event that any Participating Class Member is deceased, payment
2 shall be made payable to the estate of that Settlement Class Member and delivered to the executor or
3 administrator of that estate, unless the Settlement Administrator has received an affidavit or
4 declaration pursuant to Cal. Probate Code § 13101, in which case payment shall be made to the
5 affiant(s) or declarant(s).

6 **7. Non-Cashed Settlement Checks.** Any funds associated with checks that have not
7 been cashed within 180 days, will become void and the Individual Settlement Amount associated
8 with the in-cashed check will be distributed to the following cy pres beneficiary: Legal Aid At
9 Work, pursuant to Code Civ. Proc. section 384.

10 **VIII. NULLIFICATION OF THIS STIPULATION**

11 **1. Non-Approval of the Stipulation.** If (a) the Court should for any reason fail to
12 approve this Stipulation in the form agreed to by the Parties, or (b) the Court should for any reason
13 fail to enter a judgment with prejudice of the Action, or (c) the approval of the Class Settlement and
14 judgment is reversed, modified or declared or rendered void, then the Class Settlement and
15 conditional class certification shall be considered null and void, and neither the Class Settlement,
16 conditional class certification, nor any of the related negotiations or proceedings, shall be of any
17 force or effect, and all Parties to the Class Settlement shall stand in the same position, without
18 prejudice, as if the Class Settlement had been neither entered into nor filed with the Court.
19 Notwithstanding the foregoing, the Parties shall attempt in good faith to cure any perceived defects
20 in the Stipulation to facilitate approval.

21 **2. Parties' Rights to Void Class Settlement.** If 10% or more members of the
22 Settlement Class opt out of the Settlement by submitting valid and time Requests for Exclusion,
23 Defendant shall have the right (but not the obligation) to void this Class Settlement before final
24 approval, by providing written notice to Class Counsel at least 20 business days prior to the final
25 approval hearing, provided that the Settlement Administrator has provided the Parties with the
26 number and percentage of valid and timely Requests for Exclusion. If Defendant exercises this
27 option, Defendant shall pay all costs of settlement administration incurred up to that date.
28

1 **3. Invalidation.** Before declaring any provision of this Agreement invalid, the Court
2 shall first attempt to construe the provision as valid to the fullest extent possible consistent with
3 applicable precedents so as to define all provisions of this Agreement valid and enforceable. Any
4 invalid, illegal, or unenforceable provision determined by the Court shall in no way affect any other
5 provision if counsel for the Parties mutually agree in writing to proceed as if the provision had never
6 been included in this Agreement.

7 **4. Stay Upon Appeal.** In the event of a timely appeal from the approval of the Class
8 Settlement and judgment, the judgment shall be stayed, and Defendant shall not be obligated to fund
9 the Gross Settlement Amount or take any other actions required by this Stipulation until all appeal
10 rights have been exhausted by operation of law.

11 **IX. MOTION FOR COURT APPROVAL**

12 **1. Preliminary Approval.** Class Counsel will submit this Stipulation to the Court
13 along with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to
14 present the Class Settlement to the Court for preliminary approval in a timely fashion. The Court's
15 preliminary approval of the Class Settlement shall be embodied in an order substantially in the form
16 attached hereto as **Exhibit 2**. If the Court declines to approve the Settlement, or approves it
17 conditional on modifications to the settlement terms, the Parties shall work in good faith to modify
18 the settlement terms to obtain approval.

19 **2. Final Approval.** The Final Approval and Fairness Hearing shall be held before the
20 Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the
21 final order certifying the Class for settlement purposes only and approving the Class Settlement as
22 being fair, reasonable and adequate to the Class Participants within the meaning of California Rules
23 of Court, Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent
24 with the terms of the Class Settlement and California Rule of Court 3.769(h). Class Counsel and
25 Defense Counsel shall submit to the Court such pleadings and/or evidence as may be required for the
26 Court's determination. The Settlement Administrator shall provide a declaration to the Parties to be
27 submitted to the Court for final approval, detailing the dissemination of class notice and any
28

1 remaining, number of objections, opt-outs, and disputes, and the Individual Settlement Amounts to
2 be paid to Participating Class Members.

3 **3. Certification of Completion.** Upon completion of administration of the Settlement,
4 the Settlement Administrator shall provide a written declaration under oath to certify such
5 completion to the Court and counsel for the Parties.

6 **X. RELEASES AND WAIVERS**

7 **1. Release of Claims by Settlement Class.** Upon the date on which Defendant fully
8 funds the Gross Settlement Amount, each Participating Class Member, and Plaintiff, each releases
9 the Released Parties, and each of them, of and from any and all Released Claims during the Class
10 Period.

11 It is the desire of the Parties and the Settlement Class Members to fully, finally, and forever
12 settle, compromise, and discharge the Released Claims.

13 Each Participating Class Member will be bound to the release of Released Claims as a result
14 of the Class Settlement and to the terms of the final judgment and the satisfaction of such judgment.

15 **2. Release of Claims by Plaintiff.** Plaintiff, on behalf of himself and his heirs,
16 executors, administrators, and representatives, shall and does hereby forever release, discharge and
17 agree to hold harmless the Released Parties from any and all charges, complaints, claims, liabilities,
18 obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights,
19 demands, costs, losses, debts and expenses (including attorneys' fees and costs), known or unknown,
20 at law or in equity, which he may now have or may have after the signing of this Stipulation, arising
21 out of or in any way connected with his employment with Defendant including, the Released Claims
22 and Released PAGA Claims, claims that were asserted or could have been asserted in the Complaint,
23 and any and all transactions, occurrences, or matters between the Parties occurring prior to the date
24 this Stipulation is fully executed. Without limiting the generality of the foregoing, this release shall
25 include, but not be limited to, any and all claims under the (a) Americans With Disabilities Act, as
26 amended; (b) Title VII of the Civil Rights Act of 1964, as amended; (c) the Civil Rights Act of 1991;
27 (d) 42 U.S.C. § 1981, as amended; (e) the Age Discrimination in Employment Act, as amended; (f)
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1 the Fair Labor Standards Act, as amended; (g) the Equal Pay Act; (h) the Employee Retirement
2 Income Security Act, as amended; (i) the Consolidated Omnibus Budget Reconciliation Act; (j) the
3 Rehabilitation Act of 1973; (k) the Family and Medical Leave Act; (l) the Civil Rights Act of 1966;
4 (m) the California Fair Employment and Housing Act; (n) the California Constitution; (o) the
5 California Labor Code; (p) the California Government Code; (q) the California Civil Code; and (r)
6 any and all other federal, state and local statutes, ordinances, regulations, rules and other laws, and
7 any and all claims based on constitutional, statutory, common law or regulatory grounds as well as
8 any other claims based on theories of wrongful or constructive discharge, breach of contract or
9 implied contract, fraud, misrepresentation, promissory estoppel or intentional and/or negligent
10 infliction of emotional distress, or damages under any other federal, state or local statutes,
11 ordinances, regulations, rules or laws. This release is for any and all relief, no matter how
12 denominated, including, but not limited to, back pay, front pay, vacation pay, bonuses, compensatory
13 damages, tortious damages, liquidated damages, punitive damages, damages for pain and suffering,
14 and attorneys' fees and costs, and Plaintiff hereby forever releases, discharges and agrees to hold
15 harmless Defendant and the Released Parties from any and all claims for attorneys' fees and costs
16 arising out of the matters released in this Stipulation.

17 Plaintiff specifically acknowledge that he is aware of and familiar with the provisions of
18 Section 1542, which provides as follows:

19 **A general release does not extend to claims which the creditor does not know or**
20 **suspect to exist in his or her favor at the time of executing the release, which if known**
21 **by him or her must have materially affected his or her settlement with the debtor.**

22 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and
23 benefits he may have under Section 1542 as well as any other statutes or common law principles of a
24 similar effect. Plaintiff may hereafter discover facts in addition to or different from those which he
25 now knows or believes to be true with respect to the subject matter of all the claims referenced
26 herein, but stipulates and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully,
27 finally and forever settle and release any and all claims against the Released Parties, known or
28

1 unknown, suspected or unsuspected, contingent or non-contingent, that were asserted or could have
2 been asserted upon any theory of law or equity without regard to the subsequent discovery of
3 existence of such different or additional facts.

4 **3. Release of PAGA Claims by PAGA Settlement Group.** Upon the date on which
5 Defendant fully funds the Gross Settlement Amount, the PAGA Settlement Group shall be
6 deemed to each release the Released Parties, and each of them, of and from any and all Released
7 PAGA Claims arising during the PAGA Period. It is the desire of the Parties to fully, finally, and
8 forever settle, compromise, and discharge the Released PAGA Claims. Each of the PAGA
9 Settlement Group members will be bound by the release of Released PAGA Claims as a result of
10 the Settlement and to the terms of the final judgment and the satisfaction of such judgment. The
11 PAGA Settlement Group members shall have no right or ability to opt out of the portion of this
12 Settlement Agreement releasing Released PAGA Claims. Nothing in this Agreement shall be
13 construed to require PAGA Settlement Group members to waive or release rights which may not
14 be waived or released as a matter of applicable law.

15
16 **XI. DUTIES OF THE PARTIES**

17 **1. Mutual Full Cooperation.** The Parties agree to cooperate fully with one another to
18 accomplish and implement the terms of this Stipulation. Such cooperation shall include, but not be
19 limited to, execution of such other documents and the taking of such other actions as may reasonably
20 be necessary to fulfill the terms of this Class Settlement. The Parties shall use their best efforts,
21 including all efforts contemplated by this Stipulation and any other efforts that may become
22 necessary by court order or otherwise, to effectuate this Stipulation and the terms set forth herein. As
23 soon as practicable after execution of this Stipulation, Class Counsel, with the cooperation of
24 Defendant and Defense Counsel, shall take all necessary and reasonable steps to secure the Court's
25 final approval of this Stipulation.

26 **2. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by
27 all of the terms of the Class Settlement in good faith and to support the Class Settlement fully and to
28 use their best efforts to defend this Class Settlement from any legal challenge, whether by appeal or

1 collateral attack.

2 **3. Duties Prior to Court Approval.** Class Counsel shall promptly submit this
3 Stipulation to the Court for preliminary approval and determination by the Court as to its fairness,
4 adequacy, and reasonableness. Promptly upon execution of this Stipulation, Class Counsel shall
5 apply to the Court for the entry of a preliminary order substantially in the form filed concurrently
6 herewith as **Exhibit 2**, scheduling a hearing on the question of whether the proposed Class
7 Settlement should be approved as fair, reasonable, and adequate as to the Settlement Class Members,
8 approving as to form and content the proposed Class Notice attached hereto as **Exhibit 1**, and
9 directing the mailing of the Class Notice to Settlement Class Members. While Defendant can reserve
10 its right to object to facts or assertions made in the moving papers, Defense Counsel shall file a
11 notice of non-opposition to the granting of the motion for preliminary approval or join in the motion.

12 **XII. MISCELLANEOUS PROVISIONS**

13 **1. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
14 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
15 terms of this Stipulation may turn out to be other than or different from the facts now known by each
16 party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore
17 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that
18 this Stipulation shall be in all respects effective and binding despite such difference.

19 **2. No Prior Assignments.** The Parties represent, covenant, and warrant that they have
20 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
21 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
22 or right herein released and discharged except as set forth herein.

23 **3. Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be
24 an admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other
25 Party, or any other person, and the Parties specifically disclaim any liability, culpability, negligence,
26 or wrongdoing toward the each other or any other person. Each of the Parties has entered into this
27 Stipulation with the intention to avoid further disputes and litigation with the attendant
28

1 inconvenience, expenses, and contingencies. Nothing herein shall constitute any admission by
2 Defendant of wrongdoing or liability, or of the truth of any factual allegations in the Action. Nothing
3 herein shall constitute any admission by Defendant regarding the merits of the Claims in this Action,
4 including but not limited to claims for unpaid wages under California and/or federal law. Nothing
5 herein shall constitute an admission by Defendant that the Action was properly brought as a class or
6 representative action other than for settlement purposes. To the contrary, Defendant has denied and
7 continues to deny each and every material factual allegation and all Claims. To this end, the Class
8 Settlement of the Action, the negotiation and execution of this Stipulation, and all acts performed or
9 documents executed pursuant to or in furtherance of this Stipulation or the Class Settlement are not,
10 shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or
11 liability on the part of Defendant or of the truth of any of the factual allegations in the Complaint in
12 the Action; and are not, shall not be deemed to be, and may not be used as, an admission or evidence
13 of any fault or omission on the part of Defendant in any civil, criminal or administrative proceeding
14 in any court, administrative agency or other tribunal.

15 **4. Media or Press.** Plaintiff and Defendant, and their respective counsel, recognize,
16 and accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the
17 Class Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all
18 matters relating to the litigation of the Action, including discovery proceedings therein, and evidence
19 obtained during the course of the Action, shall not be discussed with or presented to the media or
20 press.

21 **5. Non-Retaliation.** Defendant understands and acknowledge that it has a legal
22 obligation not to retaliate against any Settlement Class Member who elects to participate in the Class
23 Settlement or elects to Opt-Out of the Class Settlement. Defendant will refer any inquiries regarding
24 this Class Settlement to the Settlement Administrator or Class Counsel and will not discourage
25 Settlement Class Members who are employees, directly or indirectly, from making claims, opting
26 out or objecting to the Class Settlement.

27 **6. Construction.** The Parties hereto agree that the terms and conditions of this
28

1 Stipulation are the result of lengthy, intensive, arms-length non-collusive negotiations between the
2 Parties and that this Stipulation is not to be construed in favor of or against any party by reason of
3 the extent to which any party or its counsel participated in the drafting of this Stipulation.

4 **7. Governing Law.** This Stipulation is intended to and shall be governed by the laws
5 of the State of California, without regard to conflict of law principles, in all respects, including
6 execution, interpretation, performance, and enforcement.

7 **8. Notices.** Except for Settlement Class Member notices required to be made by the
8 Settlement Administrator, any and all notices or other communications required or permitted under
9 this Stipulation shall be in writing and shall be sufficiently given if delivered in person to the party
10 or their counsel by U.S. certified mail, postage prepaid, e-mail, facsimile, or overnight delivery
11 addressed to the address of the party appearing in this Stipulation.

12 **9. Captions and Interpretations.** Section titles or captions contained herein are
13 inserted as a matter of convenience and for reference only and in no way define, limit, extend, or
14 describe the scope of this Stipulation or any provision thereof.

15 **10. Modification.** This Stipulation may not be changed, altered, or modified, except in
16 writing signed by counsel for the Parties and approved by the Court. This Stipulation may not be
17 discharged except by performance in accordance with its terms or by a writing signed by counsel for
18 the Parties.

19 **11. Integration Clause.** This Stipulation contains the entire agreement between the
20 Parties relating to the Class Settlement of the Action and the transactions contemplated thereby, and
21 all prior or contemporaneous agreements, understandings, representations, and statements, whether
22 oral or written, and whether by a party or such party's legal counsel, are hereby superseded. No
23 rights under this Stipulation may be waived except in writing as provided above.

24 **12. Successors and Assigns.** This Stipulation shall be binding upon and inure to the
25 benefit of the Parties and Participating Class Members and their respective present and former heirs,
26 trustees, executors, administrators, representatives, officers, directors, shareholders, agents,
27 employees, insurers, attorneys, accountants, auditors, advisors, consultants, pension and welfare
28

benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint ventures, predecessors, successors, and assigns.

13. Corporate Signatories. Any person executing this Stipulation or any such related document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and promises, for the benefit of all Parties hereto, that such person has been duly authorized by such corporation or partnership to execute this Stipulation or any such related document.

14. Execution in Counterparts. This Stipulation shall become effective upon its execution by all of the undersigned. The Parties may execute this Stipulation in counterparts, including via facsimile or electronically via DocuSign, pdf, or electronic scan, and execution of said counterparts shall have the same force and effect as if all Settling Parties had signed the same instrument.

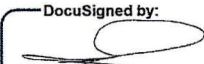
15. Attorneys' Fees, Costs and Expenses. Except as otherwise specifically provided for herein, each party shall bear his or its own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other party to this Stipulation.

16. Action to Enforce Agreement. The Parties will jointly request that the Court retain jurisdiction pursuant to California Code of Civil Procedure section 664.6 to retain jurisdiction to oversee and enforce the terms of this Settlement. In any suit or court action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover his or its attorneys' fees and costs.

IN WITNESS WHEREOF, the Parties and their counsel have executed this Stipulation on the date below their signatures or the signature of their representatives. The date of the Stipulation shall be the date of the latest signature.

David Montoya

Draeger's Super Markets

DocuSigned by:

 AB9ED286CEC8416...

Dated: 6/7/2023

Printed: _____

Title: _____

1 benefit plans, fiduciaries, parent companies, subsidiaries, affiliates, related companies, joint
2 ventures, predecessors, successors, and assigns.

3 **13. Corporate Signatories.** Any person executing this Stipulation or any such related
4 document on behalf of a corporate signatory or on behalf of a partnership hereby warrants and
5 promises, for the benefit of all Parties hereto, that such person has been duly authorized by such
6 corporation or partnership to execute this Stipulation or any such related document.

7 **14. Execution in Counterparts.** This Stipulation shall become effective upon its
8 execution by all of the undersigned. The Parties may execute this Stipulation in counterparts,
9 including via facsimile or electronically via DocuSign, pdf, or electronic scan, and execution of said
10 counterparts shall have the same force and effect as if all Settling Parties had signed the same
11 instrument.

12 **15. Attorneys' Fees, Costs and Expenses.** Except as otherwise specifically provided
13 for herein, each party shall bear his or its own attorneys' fees, costs and expenses, taxable or
14 otherwise, incurred by them in or arising out of the Action and shall not seek reimbursement thereof
15 from any other party to this Stipulation.

16 **16. Action to Enforce Agreement.** The Parties will jointly request that the Court retain
17 jurisdiction pursuant to California Code of Civil Procedure section 664.6 to retain jurisdiction to
18 oversee and enforce the terms of this Settlement. In any suit or court action to enforce the terms of
19 this Agreement, the prevailing party shall be entitled to recover his or its attorneys' fees and costs.

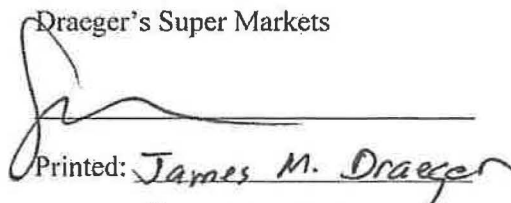
20 **IN WITNESS WHEREOF,** the Parties and their counsel have executed this Stipulation on
21 the date below their signatures or the signature of their representatives. The date of the Stipulation
22 shall be the date of the latest signature.

23
24 David Montoya

25 _____
26

27 Dated: _____
28

Dräger's Super Markets



Printed: James M. Draeger

Title: President

Dated: _____

APPROVED AS TO FORM AND CONTENT

Dated: June 7, 2023

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff,
the Class, and Aggrieved Employees

Dated: June 1, 2023

POLARIS LAW GROUP

By: 

William L. Marder
Attorneys for Plaintiff,
the Class, and Aggrieved Employees

Dated: June __, 2023

SIMPSON, GARRITY, INNES & JACUZZI
A Professional Corporation

By: _____

PAUL V. SIMPSON
SEAN R. BRODERICK
Attorneys for Defendant
Draeger's Super Markets

Dated: 6/7/23

APPROVED AS TO FORM AND CONTENT

Dated: June __, 2023

DIVERSITY LAW GROUP, P.C.

By: _____

Larry W. Lee
Max W. Gavron
Mai Tulyathan
Attorneys for Plaintiff,
the Class, and Aggrieved Employees

Dated: June __, 2023

POLARIS LAW GROUP

By: _____

William L. Marder
Attorneys for Plaintiff,
the Class, and Aggrieved Employees

Dated: June 7, 2023

SIMPSON, GARRITY, INNES & JACUZZI
A Professional Corporation

By: _____

PAUL V. SIMPSON
SEAN R. BRODERICK
Attorneys for Defendant
Draeger's Super Markets

EXHIBIT 1

[CLASS MEMBER NAME]

David Montoya v. Draeger's Super Markets

**Superior Court of the State of California, County of San Mateo
Case No.: 21-CIV-05746**

If you are a current or former employee of Draeger's Super Markets ("Draeger's" or "Defendant"), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

YOUR ESTIMATED TOTAL SETTLEMENT PAYMENT FROM THIS CLASS

ACTION SETTLEMENT IS \$ [REDACTED].

According to Draeger's records, the total number of pay periods that you worked for Draeger's in California as a non-exempt employee and received a meal or rest period premium, between October 25, 2017, through January 30, 2022, is [REDACTED].

- This lawsuit involves a class defined as: All non-exempt employees, who are or were employed by Draeger's and received a meal and/or rest period premium payment during any pay period during the period of October 25, 2017, through January 30, 2022 (the "Class Period").
- You are receiving this Notice because the records reflect that you may be a class member.
- In this lawsuit, Plaintiff David Montoya ("Plaintiff") alleges that Draeger's failed to pay employees meal period penalties at the correct regular rate of pay, in violation of Labor Code §§ 226.7 and 512; failed to pay rest period penalties at the correct regular rate of pay, in violation of Labor Code § 226.7; failed to provide accurate itemized wage statements, in violation of Labor Code § 226(a); and engaged in unfair business practices in violation of the California Labor Code, the UCL, and the applicable IWC Wage Orders. Based on these allegations and claims, Plaintiff seeks to recover damages, statutory penalties, civil penalties, attorneys' fees, and costs on behalf of himself and other employees affected by these violations.
- Draeger's denies the allegations in the lawsuit or that it has engaged in any wrongdoing. Draeger's asserts that it complied with all legal requirements, but is resolving this action to avoid the risk and costs of further legal proceedings.

- The Parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminarily approved Plaintiff to represent the settlement class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims or Draeger's defenses in this lawsuit.
- You will not be penalized or retaliated against by Draeger's for participating in this settlement. If you are currently employed by Draeger's, this settlement will not affect your employment in any way. Current employees of Draeger's who choose to participate in the settlement will not be required to resign and can continue to work for Draeger's.
- You have several options available to you, which are explained in the chart below:

OPTION #1: DO NOTHING	You need not take any action if you wish to receive your settlement payment. If you choose this option and the settlement is approved by the Court, you will automatically be mailed a check for your share of the Settlement at the address on file with the Settlement Administrator. In exchange for the settlement check, you will release or give up any rights to sue Defendant for the same legal claims that are part of this lawsuit (see page 5 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
OPTION #2: EXCLUDE YOURSELF FROM THE CLASS ACTION	If you ask to be excluded from the class action settlement, you will <u>not</u> receive a share of the Settlement. If you ask to be excluded, you will not receive your share of the settlement proceeds, but you keep any rights you may have to bring your own separate lawsuit against Defendant for the same legal claims in this lawsuit that are released in this settlement. You cannot ask to be excluded and still get a settlement payment. Regardless of whether you ask to be excluded from the Class Action portion of the settlement, you will receive a share of the PAGA settlement and be deemed to have released the PAGA claims referenced in this notice.
OPTION #3: OBJECT TO THE SETTLEMENT	If you do not agree with the Settlement, you may object to the Settlement according to the instructions described below on page 6. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by XXXXX.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Draeger's non-exempt employees in the State of California. You have received this notice because Draeger's records indicate that you are a member of the settlement class.

2. What is this lawsuit about?

This lawsuit was filed on October 25, 2021, on behalf of individuals who are employed or have been employed by Draeger's as non-exempt employees in the State of California. The operative complaint alleges class and representative Private Attorneys General Act ("PAGA") claims against Draeger's for failing to pay meal and rest period premium penalties at the regular rate of pay when non-discretionary remuneration, such as shift differentials, were paid during the same workweek. The complaint also alleges claims for failure to provide accurate itemized wage statements as a result of the meal and rest period premium underpayments. Based on these allegations and claims, Plaintiff seeks to recover damages, statutory penalties, civil penalties, attorneys' fees, and costs on behalf of himself and other employees affected by these violations. Draeger's denies these allegations.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Draeger's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate, and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although Draeger's disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Draeger's has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

Plaintiff and Defendant have agreed to settle the underlying claims in this lawsuit in exchange for a Gross Settlement Amount of \$300,000.00. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) an Incentive Award of up to \$10,000 to Plaintiff, for undertaking the efforts and prosecuting this lawsuit on behalf of the class, and for executing a release of all claims arising out of his employment with Defendant; (3) up to \$100,000.00 in attorneys' fees, and up to \$20,000.00 in litigation costs and expenses incurred in connection with this lawsuit; (4) a \$20,000.00 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$15,000.00 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA; and (5) Settlement

Administrator's fees and expenses not to exceed \$13,500.00, in connection with administering this settlement. After deducting the above payments, an estimated total of approximately \$136,500.00 will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Amount").

These amounts listed above may change and are subject to Court approval.

Each class member's Individual Settlement Amount shall be determined as follows:

- The Net Settlement Amount will be apportioned among Class Members based on the number of pay periods each Class Member worked and received a meal or rest period premium during the Class Period and/or PAGA Period ("Qualifying Pay Period"). Each Class Member's Qualifying Pay Period will be divided by the total Qualifying Pay Periods for all Class Members, and then multiplied by the Net Settlement Amount, to arrive at the Class Member's Individual Settlement Amount.

All Individual Settlement Amounts will be treated as follows: 5% as payment for wages (subject to withholding of employment taxes and to be reported on IRS Forms W-2, and 95% as penalties (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

In addition, individuals who are also members of the PAGA Settlement Group are entitled to receive a portion of the settlement of PAGA penalties. The Parties have agreed that \$20,000.00 shall be allocated to the settlement of claims under the Labor Code Private Attorneys General Act ("PAGA"), which is inclusive of a \$15,000.00 payment to the California Labor and Workforce Development Agency ("LWDA"). The remaining \$5,000.00 shall be distributed to the PAGA Settlement Group. The "PAGA Settlement Group" is comprised of non-exempt employees who are or were employed by Defendant and received a meal and/or rest period payment during the period from December 7, 2020, through January 30, 2022 ("PAGA Period"). Each PAGA Settlement Group Member's share of the PAGA Payment will be determined by the number of Qualifying Pay Periods he or she worked within the PAGA Period as compared to the total Qualifying Pay Periods worked by all PAGA Settlement Group Members within the PAGA Period.

All payments to PAGA Settlement Group members will be treated as follows: 100% as penalties (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

According to Draeger's records, the number of Qualifying Pay Periods you worked during the Class Period and/or PAGA Period is [REDACTED].

If you disagree with the above information regarding your number of applicable pay periods and would like someone to look into the matter, please follow the procedure below. Based on the above information, your estimated Individual Settlement Amount from the class settlement is [REDACTED] [and your estimated payment amount from the PAGA penalties is [REDACTED]].

6. What if I disagree with information or the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of Qualifying Pay Periods, you can provide documentation or explanation to the Settlement Administrator to show

contrary information. You can write a letter setting forth the number of pay periods that you believe you worked as a non-exempt employee in California and received meal and/or rest period premiums during the Class Period that you believe are correct. You may attach any relevant information and/or documentation in support thereof. You must mail or fax your letter to:

[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]

You must submit such information by **XXXX**. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. The Settlement Administrator shall review all information, material, and documents with Plaintiff and Defendant, and make a final decision regarding the dispute. The Settlement Administrator's determination of the number of Qualifying Pay Periods will be binding.

7. What do I have to do to receive a share of the settlement?

If you would like to receive your settlement share under the terms of this settlement, **you do not have to do anything**. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

If the Court grants final approval of the settlement, you will automatically be mailed a settlement check for your share of the settlement amount. In addition, you will be deemed to have released or waived the "Released Claims" as defined below:

All claims that accrued during the Class Period and were alleged in the operative First Amended Complaint, as well as all claims that could have been pled arising out of the same operative facts, including: (1) failure to pay missed meal period penalties at the correct rate of pay in violation of Labor Code §§ 226.7 and 512; (2) failure to pay missed rest period penalties at the correct rate of pay in violation of Labor Code § 226.7; (3) failure to furnish accurate itemized wage statements in violation of Labor Code § 226(a); (4) violation of California's Business & Professions Code §§ 17200 *et seq.* (the Unfair Competition Law); and (5) civil penalties under PAGA based on the same Labor Code violations.

In addition, regardless of whether you submit a Request for Exclusion, you will be deemed to have released or waived the "Released PAGA Claims" as defined below:

All claims that accrued during the PAGA Period and were alleged in the PAGA notice, as well as all claims that could have been pled arising out of the same operative facts, for civil penalties under the California Private Attorneys' General Act predicated on violations of Labor Code §§ 201-203, 226, 226.7 and 512.

There is no right to opt out of the release of these PAGA claims.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude themselves (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by XXXX.

[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]

Your letter must include (1) your name, address, and telephone number; (2) a statement indicating that you wish to be excluded from the settlement; and (3) your signature. Your letter must be postmarked on or before XXX.

If your Request for Exclusion is postmarked after XXX, it will be rejected as untimely, and you will be a Participating Class Member and be bound by the settlement terms and Released Claims. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue Draeger’s separately about the claims made in this lawsuit.

If you are also a member of the PAGA Settlement Group, you will receive a pro rata share of the PAGA settlement amount and you will be deemed to have released the Released PAGA Claims regardless of whether you request exclusion from the class settlement.

10. What if I have an objection?

A class member may object to the settlement in writing. Written objections and all supporting briefs or other materials (if any) must be submitted to the Settlement Administrator by mail no later than XXXX. The Court will decide on the objections at the Final Approval and Fairness Hearing. If your objection is overruled at the Final Approval and Fairness Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment.

For written objections to be valid, it must contain (1) your name, address, and telephone number; (2) the case name and number (*Montoya v. Draeger’s Super Markets*, Case No. 21-CIV-05746); and (3) a written statement specifying the basis of or reason for your objection. You may include copies of any papers, briefs, or documents upon which the objection is based. The written objection must be postmarked on or before XXX. The postmark date shall be the exclusive means for determining that a written objection is timely and valid. Settlement Class Members are permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator.

If an objector wishes to appear at the Final Approval and Fairness Hearing in person or through an attorney, he or she must also file a notice of intention to appear at the same time the written objection is submitted.

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile

William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department 3 of the San Mateo County Superior Court, located at 400 County Center, Redwood City, California 94063 at [REDACTED], at XXX (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's incentive award, and the costs of settlement administration. At the Final Approval and Fairness Hearing, the Court will rule on any objections submitted, as well as hear arguments for and against the proposed settlement. The hearing may be continued without further notice to you.

13. How can I receive more information?

This Notice is a summary of the basic terms of the settlement. For further information, you may telephone the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR INFORMATION]. You may also review the settlement agreement, which is on file with the Clerk of the San Mateo Superior Court, 400 County Center, Redwood City, California 94063.

ALL INQUIRIES REGARDING THIS SETTLEMENT SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR: [INSERT SETTLEMENT ADMIN INFO] or **PLAINTIFF'S ATTORNEYS:** Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214.

Please do not telephone the Court, the Office of the Clerk, or Draeger's counsel for information regarding this settlement.

EXHIBIT D

[CLASS MEMBER NAME]

David Montoya v. Draeger's Super Markets

Superior Court of the State of California, County of San Mateo
Case No.: 21-CIV-05746

If you are a current or former employee of Draeger's Super Markets ("Draeger's" or "Defendant"), a class action lawsuit may affect your rights and you may be entitled to benefits under the settlement.

You are not being sued. A court authorized this notice. This is not a solicitation from a lawyer.

**PLEASE READ THIS NOTICE CAREFULLY. IT CONTAINS IMPORTANT
INFORMATION ABOUT YOUR RIGHTS.**

YOUR ESTIMATED TOTAL SETTLEMENT PAYMENT FROM THIS CLASS

ACTION SETTLEMENT IS \$ [REDACTED].

According to Draeger's records, the total number of pay periods that you worked for Draeger's in California as a non-exempt employee and received a meal or rest period premium, between October 25, 2017, through January 30, 2022, is [REDACTED].

- This lawsuit involves a class defined as: All non-exempt employees, who are or were employed by Draeger's and received a meal and/or rest period premium payment during any pay period during the period of October 25, 2017, through January 30, 2022 (the "Class Period").
- You are receiving this Notice because the records reflect that you may be a class member.
- In this lawsuit, Plaintiff David Montoya ("Plaintiff") alleges that Draeger's failed to pay employees meal period penalties at the correct regular rate of pay, in violation of Labor Code §§ 226.7 and 512; failed to pay rest period penalties at the correct regular rate of pay, in violation of Labor Code § 226.7; failed to provide accurate itemized wage statements, in violation of Labor Code § 226(a); and engaged in unfair business practices in violation of the California Labor Code, the UCL, and the applicable IWC Wage Orders. Based on these allegations and claims, Plaintiff seeks to recover damages, statutory penalties, civil penalties, attorneys' fees, and costs on behalf of himself and other employees affected by these violations.
- Draeger's denies the allegations in the lawsuit or that it has engaged in any wrongdoing. Draeger's asserts that it complied with all legal requirements, but is resolving this action to avoid the risk and costs of further legal proceedings.

- The Parties have reached an agreement to resolve the claims in the lawsuit. The Court has preliminarily approved Plaintiff to represent the settlement class. However, the Court has not made any findings with respect to the merits of Plaintiff's claims or Draeger's defenses in this lawsuit.
- You will not be penalized or retaliated against by Draeger's for participating in this settlement. If you are currently employed by Draeger's, this settlement will not affect your employment in any way. Current employees of Draeger's who choose to participate in the settlement will not be required to resign and can continue to work for Draeger's.
- You have several options available to you, which are explained in the chart below:

OPTION #1: DO NOTHING	You need not take any action if you wish to receive your settlement payment. If you choose this option and the settlement is approved by the Court, you will automatically be mailed a check for your share of the Settlement at the address on file with the Settlement Administrator. In exchange for the settlement check, you will release or give up any rights to sue Defendant for the same legal claims that are part of this lawsuit (see page 5 for an explanation of the claims you are giving up). If you move, you must notify the Settlement Administrator of your new address.
OPTION #2: EXCLUDE YOURSELF FROM THE CLASS ACTION	If you ask to be excluded from the class action settlement, you will <u>not</u> receive a share of the Settlement. If you ask to be excluded, you will not receive your share of the settlement proceeds, but you keep any rights you may have to bring your own separate lawsuit against Defendant for the same legal claims in this lawsuit that are released in this settlement. You cannot ask to be excluded and still get a settlement payment. Regardless of whether you ask to be excluded from the Class Action portion of the settlement, you will receive a share of the PAGA settlement and be deemed to have released the PAGA claims referenced in this notice.
OPTION #3: OBJECT TO THE SETTLEMENT	If you do not agree with the Settlement, you may object to the Settlement according to the instructions described below on page 6. The Court may or may not agree with your objection. If the Court does not agree with your objection, you will still be bound by the terms of the settlement and will receive a settlement payment. Objecting to the settlement will <u>not</u> exclude you from the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by XXXXX.**

1. Why did I get this notice?

A proposed settlement has been reached in a class action lawsuit that was brought on behalf of Draeger's non-exempt employees in the State of California. You have received this notice because Draeger's records indicate that you are a member of the settlement class.

2. What is this lawsuit about?

This lawsuit was filed on October 25, 2021, on behalf of individuals who are employed or have been employed by Draeger's as non-exempt employees in the State of California. The operative complaint alleges class and representative Private Attorneys General Act ("PAGA") claims against Draeger's for failing to pay meal and rest period premium penalties at the regular rate of pay when non-discretionary remuneration, such as shift differentials, were paid during the same workweek. The complaint also alleges claims for failure to provide accurate itemized wage statements as a result of the meal and rest period premium underpayments. Based on these allegations and claims, Plaintiff seeks to recover damages, statutory penalties, civil penalties, attorneys' fees, and costs on behalf of himself and other employees affected by these violations. Draeger's denies these allegations.

3. Has the Court decided who is right?

No. The Court has made no decision regarding the merits of Plaintiff's allegations or Draeger's defenses.

4. Why did this case settle?

The Parties reached a settlement in order to avoid the risk, inconvenience, and expense of further litigation. Plaintiff and his attorneys believe the proposed settlement is fair, adequate, and in the best interest of the class members to whom it applies given the outcome of their investigation, and the consumption of time and resources required in connection with further litigation. Although Draeger's disputes Plaintiff's claims and asserts that it has complied with all of its legal obligations toward its employees, Draeger's has also concluded that further litigation would be expensive and would divert management and employee time.

5. What are the terms of the settlement and how much will I receive?

Plaintiff and Defendant have agreed to settle the underlying claims in this lawsuit in exchange for a Gross Settlement Amount of \$300,000.00. This amount is inclusive of: (1) individual settlement payments to all Participating Class Members; (2) an Incentive Award of up to \$10,000 to Plaintiff, for undertaking the efforts and prosecuting this lawsuit on behalf of the class, and for executing a release of all claims arising out of his employment with Defendant; (3) up to \$100,000.00 in attorneys' fees, and up to \$20,000.00 in litigation costs and expenses incurred in connection with this lawsuit; (4) a \$20,000.00 settlement of claims under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), inclusive of a \$15,000.00 payment to the California Labor and Workforce Development Agency ("LWDA") in connection with the PAGA; and (5) Settlement

Administrator's fees and expenses not to exceed \$13,500.00, in connection with administering this settlement. After deducting the above payments, an estimated total of approximately \$136,500.00 will be allocated to Class Members who do not opt out of the Settlement Class ("Net Settlement Amount").

These amounts listed above may change and are subject to Court approval.

Each class member's Individual Settlement Amount shall be determined as follows:

- The Net Settlement Amount will be apportioned among Class Members based on the number of pay periods each Class Member worked and received a meal or rest period premium during the Class Period and/or PAGA Period ("Qualifying Pay Period"). Each Class Member's Qualifying Pay Period will be divided by the total Qualifying Pay Periods for all Class Members, and then multiplied by the Net Settlement Amount, to arrive at the Class Member's Individual Settlement Amount.

All Individual Settlement Amounts will be treated as follows: 5% as payment for wages (subject to withholding of employment taxes and to be reported on IRS Forms W-2, and 95% as penalties (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

In addition, individuals who are also members of the PAGA Settlement Group are entitled to receive a portion of the settlement of PAGA penalties. The Parties have agreed that \$20,000.00 shall be allocated to the settlement of claims under the Labor Code Private Attorneys General Act ("PAGA"), which is inclusive of a \$15,000.00 payment to the California Labor and Workforce Development Agency ("LWDA"). The remaining \$5,000.00 shall be distributed to the PAGA Settlement Group. The "PAGA Settlement Group" is comprised of non-exempt employees who are or were employed by Defendant and received a meal and/or rest period payment during the period from December 7, 2020, through January 30, 2022 ("PAGA Period"). Each PAGA Settlement Group Member's share of the PAGA Payment will be determined by the number of Qualifying Pay Periods he or she worked within the PAGA Period as compared to the total Qualifying Pay Periods worked by all PAGA Settlement Group Members within the PAGA Period.

All payments to PAGA Settlement Group members will be treated as follows: 100% as penalties (not subject to withholding of employment taxes and to be reported on IRS Forms 1099).

According to Draeger's records, the number of Qualifying Pay Periods you worked during the Class Period and/or PAGA Period is [REDACTED].

If you disagree with the above information regarding your number of applicable pay periods and would like someone to look into the matter, please follow the procedure below. Based on the above information, your estimated Individual Settlement Amount from the class settlement is [REDACTED] [and your estimated payment amount from the PAGA penalties is [REDACTED]].

6. What if I disagree with information or the number of pay periods shown above?

If you believe the information in the notice is incorrect regarding the number of Qualifying Pay Periods, you can provide documentation or explanation to the Settlement Administrator to show

contrary information. You can write a letter setting forth the number of pay periods that you believe you worked as a non-exempt employee in California and received meal and/or rest period premiums during the Class Period that you believe are correct. You may attach any relevant information and/or documentation in support thereof. You must mail or fax your letter to:

[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]

You must submit such information by XXXX. Class Counsel and the Settlement Administrator will work together in good faith and do their best to promptly resolve the dispute based on available records. The Settlement Administrator shall review all information, material, and documents with Plaintiff and Defendant, and make a final decision regarding the dispute. The Settlement Administrator's determination of the number of Qualifying Pay Periods will be binding.

7. What do I have to do to receive a share of the settlement?

If you would like to receive your settlement share under the terms of this settlement, **you do not have to do anything**. However, it is advisable to confirm your current mailing address with the Settlement Administrator in order to ensure you receive your settlement share. If you move, you must notify the Settlement Administrator of your new address. You will be covered by the release summarized in Section 8, below.

8. What rights am I giving up?

If the Court grants final approval of the settlement, you will automatically be mailed a settlement check for your share of the settlement amount. In addition, you will be deemed to have released or waived the "Released Claims" as defined below:

All claims that accrued during the Class Period and were alleged in the operative First Amended Complaint, as well as all claims that could have been pled arising out of the same operative facts, including: (1) failure to pay missed meal period penalties at the correct rate of pay in violation of Labor Code §§ 226.7 and 512; (2) failure to pay missed rest period penalties at the correct rate of pay in violation of Labor Code § 226.7; (3) failure to furnish accurate itemized wage statements in violation of Labor Code § 226(a); (4) violation of California's Business & Professions Code §§ 17200 *et seq.* (the Unfair Competition Law); and (5) civil penalties under PAGA based on the same Labor Code violations.

In addition, regardless of whether you submit a Request for Exclusion, you will be deemed to have released or waived the "Released PAGA Claims" as defined below:

All claims that accrued during the PAGA Period and were alleged in the PAGA notice, as well as all claims that could have been pled arising out of the same operative facts, for civil penalties under the California Private Attorneys' General Act predicated on violations of Labor Code §§ 201-203, 226, 226.7 and 512.

There is no right to opt out of the release of these PAGA claims.

9. What if I do not wish to be involved?

Anyone not wishing to participate in the settlement may exclude themselves (“opt out”) by completing, signing, and mailing a letter indicating that they do not want to participate in the settlement to the Settlement Administrator, [insert name of administrator], at the following address by XXXX.

[INSERT SETTLEMENT ADMINISTRATOR INFORMATION]

Your letter must include (1) your name, address, and telephone number; (2) a statement indicating that you wish to be excluded from the settlement; and (3) your signature. Your letter must be postmarked on or before XXX.

If your Request for Exclusion is postmarked after XXX, it will be rejected as untimely, and you will be a Participating Class Member and be bound by the settlement terms and Released Claims. Anyone who submits a timely and valid Request for Exclusion shall not be deemed a Participating Class Member and will not receive any payment as part of this settlement. Such individuals will keep any right to sue Draeger’s separately about the claims made in this lawsuit.

If you are also a member of the PAGA Settlement Group, you will receive a pro rata share of the PAGA settlement amount and you will be deemed to have released the Released PAGA Claims regardless of whether you request exclusion from the class settlement.

10. What if I have an objection?

A class member may object to the settlement in writing. Written objections and all supporting briefs or other materials (if any) must be submitted to the Settlement Administrator by mail no later than XXXX. The Court will decide on the objections at the Final Approval and Fairness Hearing. If your objection is overruled at the Final Approval and Fairness Hearing, you will still be bound by the terms of this settlement and will receive a settlement payment.

For written objections to be valid, it must contain (1) your name, address, and telephone number; (2) the case name and number (*Montoya v. Draeger’s Super Markets*, Case No. 21-CIV-05746); and (3) a written statement specifying the basis of or reason for your objection. You may include copies of any papers, briefs, or documents upon which the objection is based. The written objection must be postmarked on or before XXX. The postmark date shall be the exclusive means for determining that a written objection is timely and valid. Settlement Class Members are permitted to withdraw their objections in writing by submitting a withdrawal statement to the Settlement Administrator.

If an objector wishes to appear at the Final Approval and Fairness Hearing in person or through an attorney, he or she must also file a notice of intention to appear at the same time the written objection is submitted.

11. Do I need a lawyer? Who are the lawyers in this case?

You do not need to hire your own lawyer because Class Counsel is working on your behalf. However, if you want your own lawyer, you are free to hire one at your own expense.

The below are Class Counsel:

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Mai Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa St., Suite 1250
Los Angeles, CA 90071
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William L. Marder (State Bar No. 170131)
Polaris Law Group
501 San Benito Street, Suite 200
Hollister, CA 95023
(831) 531-4214
(831) 634-0333 facsimile

12. What happens next in the case?

The Settlement has only been preliminarily approved. The Court will hold a hearing in Department 3 of the San Mateo County Superior Court, located at 400 County Center, Redwood City, California 94063 at [REDACTED], at XXX (Pacific Time), to determine whether the settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for attorneys' fees and costs, Plaintiff's incentive award, and the costs of settlement administration. At the Final Approval and Fairness Hearing, the Court will rule on any objections submitted, as well as hear arguments for and against the proposed settlement. The hearing may be continued without further notice to you.

13. How can I receive more information?

This Notice is a summary of the basic terms of the settlement. For further information, you may telephone the Settlement Administrator at [INSERT SETTLEMENT ADMINISTRATOR INFORMATION]. You may also review the settlement agreement, which is on file with the Clerk of the San Mateo Superior Court, 400 County Center, Redwood City, California 94063.

ALL INQUIRIES REGARDING THIS SETTLEMENT SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR: [INSERT SETTLEMENT ADMIN INFO] or **PLAINTIFF'S ATTORNEYS:** Larry W. Lee, Max W. Gavron, and Mai Tulyathan of Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Phone: (213) 488-6555; and William L. Marder of Polaris Law Group, 501 San Benito Street, Suite 200, Hollister, CA 95023, Phone: (831) 531-4214.

Please do not telephone the Court, the Office of the Clerk, or Draeger's counsel for information regarding this settlement.

EXHIBIT E



CASE ASSUMPTIONS

Class Members	982
Opt Out Rate	1%
Opt Outs Received	10
Total Class Claimants	972
Subtotal Admin Only	\$13,500.00

Not-to-Exceed Total \$13,500.00

For 982 Members

Pricing Good for Scope of Estimate Only

May 24, 2023

Case: Montoya v. Draeger's Opt-Out Administration wTranslation

Phoenix Contact: Jodey Lawrence

Contact Number: 949.566.1455

Email: Jodey@phoenixclassaction.com

Requesting Attorney: Mai Tulyathan

Firm: Diversity Law Group, APC

Contact Number: (213) 488-6555

Email: ktulyathan@diversitylaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly.

Estimate is based on **982** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	3	\$300.00
Programming Database & Setup	\$100.00	3	\$300.00
Toll Free Setup*	\$143.30	1	\$143.30
Call Center & Long Distance	\$2.00	16	\$32.00
NCOA (USPS)	\$275.00	1	\$275.00
Total			\$1,050.30

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Reporting

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	3	\$300.00
Data Merge & Duplication Scrub	\$0.35	982	\$343.70
Notice Packet & Opt-Out Form	\$1.25	982	\$1,227.50
Estimated Postage (up to 2 oz.)*	\$0.87	982	\$854.34
Static Website	\$200.00	1	\$200.00
Language Translation	\$1,000.00	1	\$1,000.00
Total			\$3,925.54

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



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CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	3	\$165.00
Skip Tracing Undeliverables	\$2.00	98	\$196.40
Remail Notice Packets	\$1.25	98	\$122.75
Estimated Postage	\$0.87	98	\$85.43
Programming Undeliverables	\$55.00	3	\$165.00
Total			\$734.58

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	3	\$405.00
Non Opt-Out Processing	\$200.00	1	\$200.00
Case Associate	\$55.00	3	\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	25	\$245.50
Case Manager	\$85.00	2	\$170.00
Total			\$1,185.50

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	3	\$300.00
Disbursement Review	\$125.00	1	\$125.00
Programming Manager	\$95.00	2	\$190.00
QSF Bank Account & EIN	\$100.00	3	\$300.00
Check Run Setup & Printing	\$125.00	4	\$500.00
Mail Class Checks *	\$1.25	972	\$1,215.23
Estimated Postage	\$0.64	972	\$622.20
Total			\$3,252.42

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



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CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$135.00	4	\$540.00
Remail Undeliverable Checks (Postage Included)	\$1.50	194	\$291.65
Case Associate	\$55.00	3	\$165.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$100.00	2	\$200.00
Case Manager Conclusion	\$85.00	2	\$170.00
Final Reporting & Declarations	\$115.00	2	\$230.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$1,500.00	1	\$1,500.00
Total			\$3,351.65

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$13,500.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT F