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

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

Plaintiff,

vs.

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

Defendants.

Case No.: 21-CIV-05746

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

**DECLARATION OF YAMI BURNS WITH
RESPECT TO NOTICE AND SETTLEMENT
ADMINISTRATION**

Date: April 11, 2024

Time: 9:00 A.M.

Dept.: 3

Complaint Filed: October 25, 2021

FAC Filed: December 7, 2021

Trial Date: Not Set

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DECLARATION OF YAMI BURNS

I, Yami Burns, declare as follows:

1. I am a Case Manager at Phoenix Settlement Administrators (“Phoenix”), the Court-appointed Class Action Settlement Administrator for *Montoya v. Draeger’s Super Markets* (the “Action”). I have personal knowledge of the facts stated herein and, if called upon to testify, I could and would testify competently to such facts.

2. Phoenix was selected by the Parties to provide notice of the Settlement and perform class administration duties in this Action. Pursuant to the Joint Stipulation of Settlement and Release of Class Action and Representative PAGA Action and the Amendment to Joint Stipulation of Settlement and Release of Class Action and Representative PAGA Action (together, the “Settlement Agreement” or “Settlement”) for this matter, Phoenix was responsible for: (i) preparing, translating, printing, and mailing the *Notice of Class Action Settlement* (“Notice”); (ii) responding to inquiries from Class Members; (iii) calculating the number of pay periods each Class Member worked during the period from October 25, 2017 to January 30, 2022 (“Class Period”) and the number of pay periods that each Aggrieved Employee worked during the time period from December 7, 2020 to January 30, 2022 (“PAGA Period”); (iv) determining the validity of letters indicating a request to be excluded from the Class Settlement (“Requests for Exclusion”), written objections to the Class Settlement (“Objections”), and/or dispute regarding the number of pay periods submitted by Class Members; (v) calculating the Net Settlement Amount and the Individual Settlement Shares to Class Members; (vi) calculating and issuing the Individual Settlement Payments and distributing them to Settlement Class Members and Individual PAGA Payments to PAGA Settlement Group Members; (vii) issuing the payment to Class Counsel for attorneys’ fees and costs, the Enhancement Payment to Plaintiff, and the employer/employee payroll taxes to the appropriate taxing authorities; and (viii) such other tasks as set forth in the Settlement Agreement or as the Parties mutually agree or as the Court orders.

1 3. On December 15, 2023, Phoenix received a data file from Defense Counsel that
2 contained names, last known mailing addresses, Social Security numbers, dates of employment, and
3 pay periods for each Class Member (“Class List”) during the Class Period. The final mailing list
4 contained four hundred seventy-two (472) individuals identified as Class Members.

5 4. On December 15, 2023, Phoenix conducted a National Change of Address
6 (“NCOA”) search in an attempt to update the class list of addresses as accurately as possible. A
7 search of this database provides updated addresses for any individual who has moved in the previous
8 four (4) years and notified the U.S. Postal Service of their change of address.

9 5. On January 1, 2024, Phoenix mailed the Notice in English and Spanish via U.S. first
10 class mail, to all four hundred seventy-two (472) Class Members on the Class List. A true and
11 correct copy of the mailed Notice is attached hereto as **Exhibit A**.

12 6. As of the date of this declaration, twenty-five (25) Notices have been returned to
13 Phoenix. None were returned with a forwarding address. For the twenty-five (25) Notices returned
14 from the Post Office without a forwarding address, Phoenix attempted to locate a current mailing
15 address using TransUnion TLOxp, one of the most comprehensive address databases available for
16 skip tracing. Of the twenty-five (25) Notices that were skip traced, twenty-two (22) updated
17 addresses were obtained and the Notice was promptly re-mailed to those Class Members via U.S.
18 first class mail.

19 7. As of the date of this declaration, three (3) Notices remain undeliverable.

20 8. As of the date of this declaration, Phoenix has received one (1) Request for Exclusion
21 from Class Members.

22 9. As of the date of this declaration, Phoenix has received zero (0) Notices of Objection
23 from Class Members.

24 10. As of the date of this declaration, Phoenix has received zero (0) Workweek disputes
25 from Class Members.

26 11. The Response Deadline was March 5, 2024.
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1 12. Given the single opt-out received, there are four hundred seventy-one (471)
2 participating Class Members in the Settlement, representing 99.79% of the Class.

3 13. The Net Settlement Amount of \$149,387.50 available to pay Settlement Class
4 Members was determined by subtracting the requested Class Counsel attorneys' fees (\$100,000.00),
5 and Class Counsel costs (\$7,112.50), requested Enhancement Payment to Plaintiff Montoya
6 (\$10,000.00), the PAGA Amount (\$20,000.00), and the requested Settlement Administration Costs
7 (\$13,500.00) from the Gross Settlement Amount (\$300,000.00).

8 14. Based upon the calculations stipulated in the Settlement, the highest Individual
9 Settlement Share to be paid is approximately \$2,643.11, the lowest Individual Settlement Share to
10 be paid is approximately \$20.81, while the average Individual Settlement Share to be paid is
11 approximately \$317.17. Settlement Class Members will be issued payment of their Individual
12 Settlement Shares subject to reduction for the employee's share of taxes and withholdings with
13 respect to the wages portion of the Individual Settlement Share (the net payment is their "Individual
14 Settlement Payment").

15 15. Additionally, \$20,000.00 of the Gross Settlement Amount has been allocated toward
16 penalties under the Private Attorneys General Act ("PAGA Amount"), of which 75%, or
17 \$15,000.00, shall be paid to the Labor and Workforce Development Agency ("LWDA"), and 25%,
18 or \$5,000.00, shall be paid to PAGA Settlement Group Members, defined under the Settlement as
19 all non-exempt employees, who are or were employed by Defendant and received a meal and/or
20 rest period premium payment during any pay period during the PAGA Period. There are three
21 hundred and six (306) PAGA Settlement Group Members who worked a total of two thousand four
22 hundred thirty-four (2,434) pay periods during the PAGA Period. The highest Individual PAGA
23 Payment to be paid is approximately \$102.71, and the average Individual PAGA Payment to be paid
24 is approximately \$16.34.

25 16. Pursuant to the Settlement, Defendant will fund the employer-side taxes separate
26 from and in addition to the Gross Settlement Amount.

17. Phoenix's costs associated with the administration of this matter are \$13,500.00. This includes all costs incurred to date, as well as estimated costs involved in completing the settlement distribution. A true and correct copy of the invoice from Phoenix is attached hereto as **Exhibit B**.

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

Executed this 6th day of March 2024, at Orange, California.

Yami Burns
YAMI BURNS

Exhibit A

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 \$493.19**

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 26.

- 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") (referred to herein as "Class Members" or "Settlement Class Members"). This lawsuit also involves Private Attorneys General Act ("PAGA") claims brought on behalf of: 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 December 7, 2020, through January 30, 2022 (the "PAGA Period") (referred to herein as "PAGA Settlement Group Members"). The Parties have reached a settlement of the class and PAGA claims in this lawsuit.
- You are receiving this Notice because the records reflect that you may be a Class Member and/or a PAGA Settlement Group 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 class and PAGA 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 3. 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 not exclude you from the settlement.

**Your options are explained in this notice.
To opt out or object, you must act by March 5, 2024.**

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 26.

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 \$493.19 and your estimated payment amount from the PAGA penalties is \$34.92.

6. What if I disagree with the 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:

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773
Facsimile: (949) 209-2503
montoya-v-draegers-super-markets.phoenixcases.com

You must submit such information by March 5, 2024. 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, Phoenix Settlement Administrators, at the following address by March 5, 2024.

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Telephone: (800) 523-5773

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 March 5, 2024.

If your Request for Exclusion is postmarked after March 5, 2024, 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 March 5, 2024. 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 March 5, 2024. 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.
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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, on April 11, 2024, at 9:00 a.m. (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 (800) 523-5773. 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: (800) 523-5773 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.

David Montoya contra Draeger's Super Markets
Tribunal Superior del Estado de California, Condado de San Mateo
Caso n°: 21-CIV-05746

Si usted es un empleado actual o anterior de Draeger's Super Markets ("Draeger's" o "Demandado"), una Demanda colectiva puede afectar a sus derechos y usted puede tener derecho a beneficios en virtud del Acuerdo.

Usted no ha sido Demandado. Un tribunal autorizó esta notificación. No se trata de una solicitud de un abogado.

LEA ATENTAMENTE ESTE AVISO. CONTIENE INFORMACIÓN IMPORTANTE SOBRE SUS DERECHOS.

SU PAGO TOTAL ESTIMADO DE ESTE ACUERDO DE DEMANDA COLECTIVA ES DE \$493.19.

Según los registros de Draeger's, el número total de períodos de pago que usted trabajó para Draeger's en California como empleado no exento y recibió una prima por período de comida o descanso, entre el 25 de octubre de 2017 y el 30 de enero de 2022, es 26.

- Esta Demanda involucra a una Clase definida como: Todos los empleados no exentos, que son o fueron empleados de Draeger's y recibieron un pago de prima por período de comida y/o descanso durante cualquier período de pago durante el período del 25 de octubre de 2017, hasta el 30 de enero de 2022 (el "Período de la Clase") (referidos aquí como "Miembros de la Clase" o "Miembros de la Clase del Acuerdo"). Esta Demanda también involucra reclamaciones de la Ley General de Abogados Privados ("PAGA", por sus siglas en inglés) presentadas en nombre de: Todos los empleados no exentos, que son o fueron empleados de Draeger's y recibieron un pago de prima por período de comida y/o descanso durante cualquier período de pago durante el período comprendido entre el 7 de diciembre de 2020 y el 30 de enero de 2022 (el "Período PAGA") (en adelante denominados "Miembros de la Clase del Acuerdo PAGA"). Las Partes han llegado a un Acuerdo sobre las Demandas colectivas y PAGA en este juicio.
- Está recibiendo este Aviso porque los registros reflejan que usted puede ser un Miembro de la Clase y/o un Miembro de la Clase del Acuerdo PAGA.
- En esta Demanda, el Demandante David Montoya ("Demandante") alega que Draeger's no pagó a los empleados las multas por el período de comida a la tarifa salarial regular correcta, en violación de las §§ 226.7 y 512 del Código Laboral; no pagó las multas por períodos de descanso a la tarifa salarial regular correcta, en violación de la § 226.7 del Código Laboral; no proporcionó declaraciones salariales detalladas precisas en violación de la § 226(a) del Código Laboral; e incurrió en prácticas comerciales desleales en violación del Código Laboral de California, la UCL y las Órdenes Salariales aplicables de la IWC. Basándose en estas alegaciones y reclamaciones, el Demandante pretende recuperar los daños y perjuicios, las sanciones legales, las sanciones civiles, los honorarios de abogados y las costas en su nombre y en el de otros empleados afectados por estas violaciones.
- Draeger's niega las acusaciones de la Demanda o que haya incurrido en alguna irregularidad. Draeger's afirma que cumplió con todos los requisitos legales pero que está resolviendo esta acción para evitar el riesgo y los costes de nuevos procedimientos legales.
- Las Partes han llegado a un Acuerdo para resolver las reclamaciones colectivas y PAGA en la Demanda. El Tribunal ha aprobado de forma preliminar que el Demandante represente a la Clase del Acuerdo. Sin embargo, el Tribunal no ha hecho ninguna conclusión con respecto a los méritos de las reclamaciones del Demandante o las defensas de Draeger en esta Demanda.
- Draeger's no le penalizará ni tomará represalias contra usted por participar en este Acuerdo. Si usted es actualmente empleado de Draeger's, este Acuerdo no afectará su empleo de ninguna manera. Los empleados actuales de Draeger's que decidan participar en el Acuerdo no tendrán que dimitir y podrán seguir trabajando para Draeger's.
- Dispone de varias opciones, que se explican en el cuadro siguiente:

OPCIÓN #1: NO HACER NADA	No es necesario que realice ninguna acción si desea recibir el pago de su Acuerdo. Si elige esta opción y el Acuerdo es aprobado por el Tribunal, se le enviará automáticamente por correo un cheque por su parte del Acuerdo a la dirección que conste en los archivos del Administrador del Acuerdo. A cambio del cheque del Acuerdo, usted liberará o renunciará a cualquier derecho a Demandar al Demandado por las mismas reclamaciones legales que forman parte de esta Demanda (consulte la página 5 para obtener una explicación de las reclamaciones a las que está renunciando). Si se muda, deberá notificar su nueva dirección al administrador del Acuerdo.
OPCIÓN #2: EXCLUIRSE DE LA DEMANDA COLECTIVA	Si solicita ser excluido del Acuerdo de Demanda colectiva, <u>no recibirá su parte del Acuerdo.</u> Si solicita ser excluido, no recibirá su parte de las ganancias del Acuerdo, pero conservará cualquier derecho que pueda tener a entablar su propia Demanda por separado contra el Demandado por las mismas reclamaciones legales de esta Demanda que se liberan en este Acuerdo. No puede pedir que le excluyan <u>y</u> aun así recibir el pago del Acuerdo. Independientemente de si solicita ser excluido de la parte del Acuerdo correspondiente a la Demanda colectiva, recibirá una parte del Acuerdo PAGA y se considerará que ha renunciado a las reclamaciones PAGA a las que se hace referencia en este aviso.

OPCIÓN #3: OBJETAR EL ACUERDO	Si no está de Acuerdo con el Acuerdo, puede objetarlo siguiendo las instrucciones que se describen a continuación en la página 3. El Tribunal puede o no estar de Acuerdo con su objeción. Si el Tribunal no está de Acuerdo con su objeción, seguirá estando obligado por los términos del Acuerdo y recibirá el pago de este. Objetar el Acuerdo no le excluirá del mismo.
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Sus opciones se explican en este aviso.

Para excluirse u oponerse, debe actuar antes del 5 de marzo de 2024.

1. ¿Por qué he recibido este aviso?

Se ha alcanzado un Acuerdo propuesto en una Demanda colectiva que se interpuso en nombre de los empleados no exentos de Draeger en el Estado de California. Usted ha recibido este aviso porque los registros de Draeger indican que usted es Miembro de la Clase del Acuerdo.

2. ¿De qué trata esta Demanda?

Esta Demanda fue presentada el 25 de octubre de 2021, en nombre de individuos que están empleados o han estado empleados por Draeger's como empleados no exentos en el Estado de California. La Demanda operativa alega reclamaciones colectivas y representativas de la Ley General de Abogados Privados ("PAGA") contra Draeger's por no pagar las penalizaciones de primas por períodos de comida y descanso a la tasa regular de pago cuando se pagaron remuneraciones no discrecionales, como diferenciales por turno, durante la misma semana laboral. La Demanda también alega reclamaciones por no haber proporcionado declaraciones salariales detalladas y precisas como resultado de los impagos de las primas por períodos de comida y descanso. Basándose en estas alegaciones y reclamaciones, el Demandante pretende recuperar daños y perjuicios, sanciones legales, sanciones civiles, honorarios de abogados y costes en su nombre y en el de otros empleados afectados por estas violaciones. Draeger's niega estas alegaciones.

3. ¿Ha decidido el Tribunal quién tiene razón?

No. El Tribunal no ha tomado ninguna decisión sobre el fondo de las alegaciones del Demandante o las defensas de Draeger.

4. ¿Por qué se resolvió este caso?

Las Partes llegaron a un Acuerdo para evitar el riesgo, los inconvenientes y los gastos de un litigio ulterior. El Demandante y sus abogados creen que el Acuerdo propuesto es justo, adecuado y en el mejor interés de los Miembros de la Clase a los que se aplica, dado el resultado de su investigación, y el consumo de tiempo y recursos necesarios en relación con nuevos litigios. Aunque Draeger's disputa las reclamaciones del Demandante y afirma que ha cumplido con todas sus obligaciones legales hacia sus empleados, Draeger's también ha llegado a la conclusión de que más litigios serían caros y desviarían el tiempo de la dirección y de los empleados.

5. ¿Cuáles son los términos del Acuerdo y cuánto recibiré?

El Demandante y el Demandado han acordado llegar a un Acuerdo sobre las reclamaciones subyacentes en esta Demanda a cambio de una Cantidad Bruta de Acuerdo de \$300,000.00. Esta cantidad incluye: (1) pagos individuales del Acuerdo a todos los Miembros Participantes de la Clase; (2) un Premio de Incentivo de hasta \$10,000 al Demandante, por emprender los esfuerzos y procesar esta Demanda en nombre de la Clase, y por ejecutar una exoneración de todas las reclamaciones derivadas de su empleo con el Demandado; (3) hasta \$100,000.00 en honorarios de abogados, y hasta \$20,000.0000 en costos y gastos de litigio incurridos en relación con esta Demanda; (4) un Acuerdo de \$20,000.00 por reclamaciones bajo la Ley General de Abogados Privados del Código Laboral de 2004 ("PAGA"), incluyendo un pago de \$15,000.00 a la Agencia para el Desarrollo del Trabajo y la Fuerza Laboral de California ("LWDA") en relación con la PAGA; y (5) los honorarios y gastos del Administrador del Acuerdo que no excedan los \$13,500.00, en relación con la administración de este Acuerdo. Después de deducir los pagos anteriores, se asignará un total estimado de aproximadamente \$136,500.00 a los Miembros de la Clase que no opten por excluirse de la Clase del Acuerdo ("Monto Neto del Acuerdo").

Estas cantidades indicadas pueden cambiar y están sujetas a la aprobación del Tribunal.

El Importe del Acuerdo Individual de cada Miembro de la Clase se determinará de la siguiente manera:

- El Monto Neto del Acuerdo se prorrateará entre los Miembros de la Demanda Colectiva en función de la cantidad de períodos de pago en los que cada Miembro de la Demanda Colectiva trabajó y recibió una prima por período de comida o descanso durante el Período de la Demanda Colectiva y/o el Período PAGA ("Período de Pago Calificado"). El Período de Pago Calificado de cada Miembro de la Clase se dividirá por el total de Períodos de Pago Calificados de todos los Miembros de la Clase, y luego se multiplicará por el Monto Neto del Acuerdo, para llegar al Monto Individual del Acuerdo del Miembro de la Clase.

Todas las cantidades del Acuerdo individual serán tratadas de la siguiente manera: El 5% como pago de salarios (sujetos a retención de impuestos sobre el empleo y que deberán declararse en los Formularios W-2 del IRS, y el 95% como penalizaciones (no sujetos a retención de impuestos sobre el empleo y que deberán declararse en los Formularios 1099 del IRS).

Además, las personas que también son Miembros de la Clase de Acuerdo PAGA tienen derecho a recibir una parte del Acuerdo de las sanciones PAGA. Las Partes han acordado que \$20,000.00 se asignarán al Acuerdo de reclamaciones bajo la Ley General de Abogados Privados del Código Laboral ("PAGA"), que incluye un pago de \$15,000.00 a la Agencia de Desarrollo Laboral y de la Fuerza de Trabajo de California ("LWDA"). Los \$5,000.00 restantes se distribuirán a la Clase de Acuerdo PAGA. La "Clase del Acuerdo PAGA" está compuesta por empleados no exentos que son o fueron empleados del Demandado y recibieron un pago por período de comida y/o descanso durante el período comprendido entre el 7 de diciembre de 2020 y el 30 de enero de 2022 ("Período PAGA"). La parte de cada Miembro de la Clase del Acuerdo PAGA del Pago PAGA se determinará por el número de Períodos de Pago Calificantes que él o ella trabajó dentro del Período PAGA en comparación con el total de Períodos de Pago Calificantes trabajados por todos los Miembros de

la Clase del Acuerdo PAGA dentro del Período PAGA.

Todos los pagos a los Miembros de la Clase de Acuerdo PAGA se tratarán de la siguiente manera: 100% como penalizaciones (no sujetas a retención de impuestos sobre el empleo y que deberán declararse en los Formularios 1099 del IRS).

Según los registros de Draeger, el número de Períodos de Pago Calificados que usted trabajó durante el Período de la Clase y/o el Período PAGA es 26.

Si no está de Acuerdo con la información anterior relativa a su número de períodos de pago aplicables y desea que alguien examine el asunto, siga el procedimiento que se indica a continuación. Basándose en la información anterior, su Cantidad estimada de Pago Individual del Acuerdo Colectivo es \$493.19 y su cantidad estimada de pago de las sanciones PAGA es \$34.92.

6. ¿Qué ocurre si no estoy de Acuerdo con la información o el número de periodos de paga indicados anteriormente?

Si cree que la información del aviso es incorrecta con respecto al número de Períodos de Pago Calificados, puede proporcionar documentación o explicaciones al Administrador del Acuerdo para demostrar lo contrario. Puede escribir una carta exponiendo el número de períodos de pago que cree que trabajó como empleado no exento en California y recibió primas por períodos de comida y/o descanso durante el Período de la Demanda Colectiva que cree que son correctos. Puede adjuntar cualquier información y/o documentación relevante en apoyo de esta. Debe enviar su carta por correo o fax a

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Teléfono: (800) 523-5773
Fax: (949) 209-2503

Deberá presentar dicha información antes del 5 de marzo de 2024. El Asesor Legal de la Clase y el Administrador del Acuerdo trabajarán juntos de buena fe y harán todo lo posible para resolver rápidamente la disputa basándose en los registros disponibles. El Administrador del Acuerdo revisará toda la información, material y documentos con el Demandante y el Demandado, y tomará una decisión final con respecto a la disputa. La determinación del Administrador del Acuerdo sobre el número de Períodos de Pago Calificados será vinculante.

7. ¿Qué tengo que hacer para recibir una parte del Acuerdo?

Si desea recibir su parte del Acuerdo según los términos de este Acuerdo, **no tiene que hacer nada**. Sin embargo, es aconsejable que confirme su dirección postal actual con el Administrador del Acuerdo para asegurarse de que recibe su parte del Acuerdo. Si se muda, deberá notificar su nueva dirección al Administrador del Acuerdo. Estará cubierto por la exoneración resumida en la Sección 8, más abajo.

8. ¿A qué derechos estoy renunciando?

Si el Tribunal concede la aprobación definitiva del Acuerdo, se le enviará automáticamente por correo un cheque del Acuerdo por su parte del importe del Acuerdo. Además, se considerará que ha exonerado o renunciado a las “Reclamaciones Exoneradas”, tal y como se definen a continuación:

Todas las reclamaciones que se acumularon durante el Periodo de la Demanda Colectiva y que se alegaron en la Primera Demanda Modificada operativa, así como todas las reclamaciones que podrían haberse alegado derivadas de los mismos hechos operativos, incluyendo: (1) la falta de pago de las penalizaciones por periodos de comida omitidos a la tasa correcta de pago en violación de las §§ 226.7 y 512 del Código Laboral; (2) falta de pago de las sanciones por períodos de descanso no disfrutados a la tarifa salarial correcta en violación de la § 226.7 del Código Laboral; (3) falta de presentación de declaraciones salariales detalladas y precisas en violación de la § 226(a) del Código Laboral; (4) violación de la §§ 17200 y siguientes del Código de Negocios y Profesiones de California (la Ley de Competencia Desleal); y (5) sanciones civiles en virtud de PAGA basadas en las mismas violaciones del Código Laboral.

Además, independientemente de que presente o no una Solicitud de Exclusión, se considerará que ha exonerado o renunciado a las “Reclamaciones Exoneradas PAGA”, tal y como se definen a continuación:

Todas las reclamaciones que se acumularon durante el Periodo PAGA y se alegaron en la notificación PAGA, así como todas las reclamaciones que podrían haberse alegado derivadas de los mismos hechos operativos, por sanciones civiles en virtud de la Ley General de Abogados Privados de California basadas en violaciones de las §§ 201-203, 226, 226.7 y 512 del Código Laboral.

No hay derecho a optar por la exención de estas reclamaciones PAGA.

9. ¿Qué ocurre si no deseo participar?

Cualquier persona que no desee participar en el Acuerdo puede excluirse rellenando, firmando y enviando por correo una carta indicando que no desea participar en el Acuerdo al administrador del Acuerdo, Phoenix Settlement Administrators, a la siguiente dirección antes del 5 de marzo de 2024.

Phoenix Settlement Administrators
P.O. Box 7208
Orange, CA 92863
Teléfono: (800) 523-5773

Su carta debe incluir (1) su nombre, dirección y número de teléfono; (2) una declaración indicando que desea ser excluido del Acuerdo; y (3) su firma. Su carta debe llevar matasellos del 5 de marzo de 2024 o anterior.

Si su Solicitud de Exclusión lleva matasellos con fecha posterior al 5 de marzo de 2024, será rechazada por extemporánea y usted será un Miembro Participante de la Clase y quedará vinculado por los términos del Acuerdo y las Reclamaciones Exoneradas. Cualquier persona que presente una Solicitud de Exclusión válida y a tiempo no será considerada Miembro Participante de la Clase y no recibirá ningún pago como parte de este Acuerdo. Dichas personas conservarán cualquier derecho a Demandar a Draeger por separado en relación con las reclamaciones presentadas en esta Demanda.

Si también es Miembro de la Clase del Acuerdo PAGA, recibirá una parte prorrateada del importe del Acuerdo PAGA y se considerará que ha renunciado a las Reclamaciones PAGA Exoneradas, independientemente de si solicita la exclusión del Acuerdo colectivo.

10. ¿Qué pasa si tengo una objeción?

Un Miembro de la Clase puede objetar al Acuerdo por escrito. Las objeciones por escrito y todos los escritos de apoyo u otros materiales (si los hubiere) deberán presentarse al Administrador del Acuerdo por correo a más tardar el 5 de marzo de 2024. El Tribunal decidirá sobre las objeciones en la Audiencia de Aprobación Definitiva y Equidad. Si su objeción es desestimada en la Audiencia de Aprobación Definitiva y Equidad, seguirá estando obligado por los términos de este Acuerdo y recibirá el pago de este.

Para que las objeciones escritas sean válidas, deben contener (1) su nombre, dirección y número de teléfono; (2) el nombre y número del caso (*Montoya contra Draeger's Super Markets*, Caso No. 21-CIV-05746); y (3) una declaración escrita especificando la base o razón de su objeción. Puede incluir copias de todos los papeles, escritos o documentos en los que se base la objeción. La objeción escrita deberá llevar matasellos del 5 de marzo de 2024 o anterior. La fecha del matasello será el medio exclusivo para determinar que una objeción escrita es oportuna y válida. Se permite a los Miembros de la Clase del Acuerdo retirar sus objeciones por escrito presentando una declaración de retirada al Administrador del Acuerdo.

Si un objetor desea comparecer en la Audiencia de Aprobación Definitiva y Equidad en persona o a través de un abogado, también deberá presentar una notificación de intención de comparecer al mismo tiempo que se presenta la objeción por escrito.

11. ¿Necesito un abogado? ¿Quiénes son los abogados en este caso?

No es necesario que contrate a su propio abogado porque el abogado de la Clase de Demandantes trabaja en su nombre. Sin embargo, si desea tener su propio abogado, es libre de contratarlo a su costa.

Los siguientes son los Abogados de la Clase:

Larry W. Lee (Abogado del Estado No. 228175)

Max W. Gavron (Abogado del Estado No. 291697)

Mai Tulyathan (Abogado del Estado No. 316704)

DIVERSITY LAW GROUP, P.C.

515 S. Figueroa St., Suite 1250

Los Angeles, CA 90071

(213) 488-6555

(213) 488-6554 Fax

William L. Marder (Abogado del Estado No. 170131)

Polaris Law Group

501 San Benito Street, Suite 200

Hollister, CA 95023

(831) 531-4214

(831) 634-0333 Fax

12. ¿Qué sucede a continuación en el caso?

El Acuerdo sólo ha sido aprobado de forma preliminar. El Tribunal celebrará una vista en el Departamento 3 del Tribunal Superior del Condado de San Mateo, ubicado en 400 County Center, Redwood City, California 94063, el 11 de abril de 2024, a las 9:00 a.m. (hora del Pacífico), para determinar si el Acuerdo debe ser aprobado definitivamente como justo, razonable y adecuado. También se solicitará al Tribunal que apruebe la solicitud de los Abogados de la Clase de honorarios y costas, la indemnización de incentivo del Demandante y los costes de administración del Acuerdo. En la Audiencia de Aprobación Definitiva y Equidad, el Tribunal se pronunciará sobre cualquier objeción presentada, así como escuchará los argumentos a favor y en contra del Acuerdo propuesto. La audiencia podrá continuar sin previo aviso.

13. ¿Cómo puedo recibir más información?

Este Aviso es un resumen de los términos básicos del Acuerdo. Para más información, puede llamar por teléfono al Administrador del Acuerdo al (800) 523-5773, También puede revisar el Acuerdo de conciliación, que se encuentra archivado en la Secretaría del Tribunal Superior de San Mateo, 400 County Center, Redwood City, California 94063.

TODAS LAS CONSULTAS RELATIVAS A ESTE ACUERDO DEBERÁN HACERSE AL ADMINISTRADOR DEL ACUERDO: (800) 523-5773 o A LOS ABOGADOS DEL DEMANDANTE: Larry W. Lee, Max W. Gavron y Mai Tulyathan de Diversity Law Group, P.C., 515 S. Figueroa Street, Suite 1250, Los Angeles, CA 90071, Teléfono: (213) 488-6555; y William L. Marder de Polaris Law Group, 501 San Benito Street, Suite 200, Hollister, CA 95023, Teléfono: (831) 531-4214.

Por favor, no llame por teléfono al Tribunal, a la Secretaría o al abogado de Draeger para obtener información sobre este Acuerdo.

Exhibit B



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Class Members	471
Opt Out Rate	0%
Opt Outs Received	0
Total Class Claimants	471
Subtotal Admin Only	\$13,566.33

TOTAL COSTS	\$13,500.00
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March 6, 2024

Case: Montoya v. Draeger's Super Markets

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

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	5	\$500.00
Programming Database & Setup	\$100.00	4	\$400.00
Toll Free Setup*	\$140.00	3	\$420.00
Call Center & Long Distance	\$2.00	47	\$94.20
NCOA (USPS)	\$0.15	471	\$70.65
Total			\$1,484.85

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

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$125.00	5	\$625.00
Data Merge & Duplication Scrub	\$0.35	471	\$164.85
Notice Packet & Opt-Out Form	\$1.25	471	\$588.75
Estimated Postage (up to 1 oz.)	\$0.87	471	\$409.77
Language Translation	\$1,000.00	1	\$1,000.00
Static Website	\$1.00	200	\$200.00
Total			\$2,788.37

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$55.00	5	\$275.00
Skip Tracing Undeliverables	\$2.00	40	\$80.00
Remail Notice Packets	\$1.25	41	\$51.25
Estimated Postage	\$0.87	41	\$35.67
Programing Undeliverables	\$55.00	3	\$165.00
Total			\$606.92

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$135.00	5	\$675.00
Non Opt-Out Processing	\$200.00	3	\$600.00
Case Associate	\$55.00	3	\$165.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	1	\$10.00
Case Manager	\$85.00	4	\$340.00
Total			\$1,790.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks			
Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$125.00	5	\$625.00
Disbursement Review	\$125.00	5	\$625.00
Programming Manager	\$95.00	3	\$285.00
QSF Fees, Bank Account & EIN	\$100.00	5	\$500.00
Check Run Setup & Printing	\$125.00	3	\$375.00
Mail Class Checks, W2 and 1099 *	\$1.25	471	\$588.75
Estimated Postage Checks, W2 and 1099	\$0.64	471	\$301.44
Total			\$3,300.19

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

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$135.00	3	\$405.00
Remail Undeliverable Checks (Postage Included)	\$1.50	194	\$291.00
Case Associate	\$55.00	4	\$220.00
Reconcile Uncashed Checks	\$85.00	3	\$255.00
Conclusion Reports	\$115.00	2	\$230.00
Case Manager Conclusion	\$85.00	3	\$255.00
Final Reporting & Declarations	\$115.00	2	\$230.00
Uncashed Check Notice Postcard (Postage Included)	\$1.50	40	\$60.00
Uncashed Check QSF Tax Filing	\$150.00	3	\$450.00
IRS & QSF Annual Tax Reporting * (State Tax Reporting Included)	\$1,200.00	1	\$1,200.00
Total			\$3,596.00

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

Total: \$13,566.33