

Larry W. Lee (State Bar No. 228175)
Max W. Gavron (State Bar No. 291697)
Kwanporn "Mai" Tulyathan (State Bar No. 316704)
DIVERSITY LAW GROUP, P.C.
515 S. Figueroa Street, Suite 1250
Los Angeles, CA 90071
(213) 488-6555
(213) 488-6554 facsimile
lwlee@diversitylaw.com
mgavron@diversitylaw.com
ktulyathan@diversitylaw.com

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
bill@polarislawgroup.com

Attorneys for Plaintiff, the Class, and Aggrieved Employees

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

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

Plaintiff,

vs.

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

Defendants.

Case No.: 21-CIV-05746

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

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

Date: April 11, 2024
Time: 9:00 A.M.
Dept.: 3

Complaint Filed: October 25, 2021
FAC Filed: December 7, 2021
Trial Date: Not Set

Electronically
FILED

By Superior Court of California, County of San Mateo
ON 04/18/2024

By /s/ Correa, Haley
Deputy Clerk

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RECEIVED

4/11/2024

CLERK OF THE SUPERIOR COURT
SAN MATEO COUNTY

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

7 This matter is now before the Court on Plaintiff’s Motion for Final Approval of the Class
8 Action Settlement, including approval of the Class Representative enhancement payment and
9 Class Counsel’s application for a fee and expense award. The Court has read, heard, and
10 considered all the pleadings and documents submitted, and the presentations made in connection
11 with the Motion which came on for hearing on April 11, 2024. In advance of the hearing the
12 Court issued a tentative ruling, which is attached hereto as **Exhibit A**. Following oral argument,
13 the Court modified its tentative ruling to award \$5,000 as a service enhancement to the named
14 Plaintiff David Montoya, and adopted its tentative ruling in all other respects.

15 **I. BACKGROUND**

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

26 **A. Class Members**

27 The “Class Members” are defined as “all non-exempt employees, who are or were
28 employed by Defendant Draeger’s Super Markets (“Defendant”) and received a meal and/or rest

1 period premium payment during any pay period during the period from October 25, 2017,
2 through January 30, 2022 (the “Class Period”).” The Class consists of 472 individuals.

3 **B. Operation of the Settlement.**

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

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

13 **II. FINDING**

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

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

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

27 **III. ORDER**

28 Based on the foregoing, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED**

1 **AS FOLLOWS:**

2 1. The Court, for purposes of this Order, adopts all defined terms as set forth in the
3 Settlement Agreement filed in this case.

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

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

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

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

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

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

the Class.

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

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

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

IV. JUDGMENT

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

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

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

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9 DATED: 04/15/2024 _____

Electronically
SIGNED
By /s/ Greenberg, Susan

HONORABLE SUSAN L. GREENBERG
SUPERIOR COURT OF CALIFORNIA

EXHIBIT A

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN MATEO

COMPLEX Law and Motion Calendar

Judge: HONORABLE SUSAN GREENBERG
Department 3
400 County Center, Redwood City
Courtroom 2B

Thursday, April 11, 2024- AM

IF YOU INTEND TO APPEAR ON ANY CASE ON THIS CALENDAR YOU MUST DO THE FOLLOWING:

1. EMAIL Dept3@Sanmateocourt.org BEFORE 4:00 P.M. CONTEMPORANEOUSLY COPIED TO ALL PARTIES OR THEIR COUNSEL OF RECORD. IF BY EMAIL, IT MUST INCLUDE THE NAME OF THE CASE, THE CASE NUMBER, AND THE NAME OF THE PARTY CONTESTING THE TENTATIVE RULING, OR
 2. YOU MUST CALL (650) 261-5103 BEFORE 4:00 P.M. AND FOLLOW THE INSTRUCTIONS ON THE MESSAGE.
- AND
3. You must give notice before 4:00 P.M. to all parties of your intent to appear pursuant to California Rules of Court 3.1308(a)(1).

Failure to do item 1, or both 2 and 3 will result in no oral presentation.

At this time, personal appearances are allowed but not required. Parties may appear by Zoom, advance authorization is not required for remote appearances

Zoom Video/Computer Audio Information COURTROOM 2B:

<https://sanmateocourt.zoomgov.com/>

Meeting ID: 161 828 3335

Password: 711017

Zoom Phone-Only Information Please note: You must join by dialing in from a telephone; credentials will not work from a tablet or PC

Dial in: +1 (669)-254-5252

(Meeting ID and passwords are the same as above)

TO ASSIST THE COURT REPORTER, the parties are ORDERED to: (1) state their name each time they speak and only speak when directed by the Court; (2) not to interrupt the Court or anyone else; (3) speak slowly and clearly; (4) use a dedicated land line if at all possible, rather than a cell phone; (5) if a cell phone is absolutely necessary, the parties must be stationary and not driving or moving; (6) no speaker phones under any circumstances; (7) provide the name and citation of any case cites; and (8) spell all names, even common names.

Case	Title / Nature of Case
9:00	
21-CIV-05746	DAVID MONTOYA VS. DRAEGER'S SUPER MARKETS
DAVID MONTOYA	LARRY W. LEE
DRAEGER'S SUPER MARKETS	PAUL V. SIMPSON

MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

TENTATIVE RULING:

Before the court is plaintiff Daniel Montoya’s (hereafter plaintiff’s) unopposed motion for an order of final approval: (1) approving the proposed settlement and release of class action and representative claims brought pursuant to the Private Attorneys General Act of 2004 (Lab. Code, § 2698 et seq.) (hereafter PAGA); (2) approving distribution of the settlement funds to the class members pursuant to the terms of the settlement agreement; (3) approving plaintiff’s request for a service incentive award of \$ 10,000.00; (4) approving class counsel request for attorney fees of \$ 100,000.00 and related litigation costs of \$ 7,112.50; (5) approving payment of \$ 13,500 to Phoenix Settlement Administrators for settlement administration costs; (6) approving payment of PAGA penalties of \$ 15,000.00 to the California Labor and Workforce Development Agency⁷ (hereafter LWDA) and \$ 5,000.00 to the PAGA settlement group pursuant to terms of the settlement agreement; and (7) entering final judgment as to all members of the class in this matter.

As a preliminary matter, the court notes the LWDA received timely notice of the cause of action and there has been no objection. The court finds plaintiff has appropriately brought this action as an aggrieved employee and properly exhausted administrative remedies. (See Lab. Code, §§ 2699, subd. (a), 2699.3.)

Class Certification for Settlement Purposes

Plaintiff has provided adequate evidence for the court to certify the class for settlement purposes. (See Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2023) ¶¶ 14:11, 14:99.2-14:99.3.)

PAGA and Class Settlements

In ruling on settlements of PAGA claims, this court has a duty to independently determine whether a settlement is fair, reasonable and adequate. (*Moniz v. Adecco USA, Inc.* (2021) 72 Cal.App.5th 56, 76-77.) In ruling on a settlement of class claims a similar analysis applies. (*Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.) The court must satisfy itself that the class settlement is “within the ‘ballpark’ of reasonableness.” (*Kullar v. Foot Locker Retail, Inc.*, (2008) 168 Cal. App. 4th 116, 133) [quoting from *Tech-Bilt, Inc. v. Woodward-Clyde & Associates* (1985) 38 Cal.3d 488, 499-500].) After conducting independent review of the proposed settlement, the court is satisfied that the settlement regarding both class groups is fair, reasonable and adequate. Plaintiff’s counsel is experienced in class litigation, the case was vigorously contested by defendant and its experienced

counsel, the parties engaged in discovery, the settlement was reached after a mediation with an experienced mediator, and plaintiff's counsel, provided the analysis of the strengths and weaknesses of the case and the uncertainties associated with this type of litigation.

Class Service Award

Incentive awards to class representatives are intended to compensate class representatives for the work and risk undertaken on behalf of the class, to reimburse expenses incurred in the class litigation, and sometimes to recognize the willingness of class representatives to act as a private attorney general. (*Cellphone Termination Fee Cases* (2010) 186 Cal.App.4th 1380, 1393-1394.) Here, plaintiff's requested service award is approximately 30 times the average payment to each aggrieved employee yet plaintiff's rather generic statements describing the "approximately 20 hours" spent assisting counsel with this action do not support finding he has expended a proportionate amount of effort relative to the other aggrieved employees. Moreover, he neither prepared for deposition nor was deposed, nor did he attend the mediation. Additionally, the court notes that conclusory statements about potential stigma or risk in gaining future employment, absent indicia of supporting evidence or reasoned argument explaining why, under the particular circumstances, an actual risk exists, does not support finding significant risk exists. (*Clark v. American Residential Services LLC* (2009) 175 Cal.App.4th 785, 805.) Thus, upon thoughtful review, the court finds a service award in the amount of \$ 3,500.00 to plaintiff is reasonable in this matter. (See *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251, 1272 [reduction of service award from \$ 3,500.00 to \$ 500.00 appropriate where plaintiff spent 16 hours on case, took no particular risk, had no unreimbursed expenses and other class members received payments ranging from \$ 10.00 to \$ 30.00]); *Clark v. American Residential Services LLC, supra*, 175 Cal. App.4th at 805, [service award providing named plaintiffs with 44 times average payout of other class members not justified by conclusory allegations of service performed].)

Remaining Fees and Costs

Payment of the proposed \$ 13, 500.00 settlement administration fee to Phoenix Settlement Administrators upon completion of settlement administration is approved.

Counsel provided documentation for the court to perform both a lodestar review and percentage of fund analysis of counsel's requested \$ 100,000.00 fee. Counsel also provided itemized litigation costs of \$ 7,112.50. The court notes the litigation costs fall below the not-to-exceed amount agreed upon at settlement and the fees fall under a negative lodestar multiplier. Accordingly, the court approves the agreed-upon attorney's fees in the amount of \$ 100,000.00 and litigation costs in the amount of \$ 7,112.50.

Allocation of payments to class members and PAGA settlement group members is approved.

Payment to the LWDS in the amount of \$ 20,000.00 is approved, distribution per settlement terms.

Accordingly, plaintiff's motion, filed March 11, 2024, **subject to the adjusted service award for David Montoya**, is GRANTED.

If the tentative ruling is uncontested, it shall become the order of the court. Thereafter, counsel for plaintiff shall prepare an amended written order consistent with this court's ruling for the court's signature, pursuant to California Rules of Court, Rule 3.1312, and provide written notice of the ruling to all parties who have appeared in the action, as required by law and the California Rules of Court. The court alerts the parties to revised Local Rule 3.403(b)(iv) (amended effective January 1, 2024) regarding the wording of proposed orders.



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PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

On April 11, 2024, I served the following document(s) described as: **[AMENDED PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND JUDGMENT** on the interested parties in this action as follows:

Paul V. Simpson Sean Broderick Cynthia Reese Simpson, Garrity, Innes & Jacuzzi 601 Gateway Blvd., Suite 950 South San Francisco, CA 94080	<i>Attorneys for Defendant Draeger's Super Markets</i> psimpson@sgijlaw.com sbroderick@sgijlaw.com cynthia@sgijlaw.com
San Mateo Superior Court	complexcivil@sanmateocourt.org Dept3@sanmateocourt.org

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on April 11, 2024, at Los Angeles, California.



Erika Mejia