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

Jasmine T. Thompson, an individual, on behalf
of the State of California, as a private attorney
general, and on behalf of all others similarly
situated,

Plaintiff,

v.

Draeger's Super Markets, a California
Company; and DOES 1-50, inclusive,

Defendants.

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

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

10 **I. DEFINITIONS**

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

14 **1. Action.** “Action” shall mean the following civil action: *Jasmine T. Thompson v.*
15 *Draeger’s Super Markets*, Case No. CGC-20-582671, filed on February 4, 2020 in the Superior Court of
16 California for the County of San Francisco. On May 8, 2020, Parties filed a Stipulation and Order for
17 Change of Venue. The Order was entered by the Court on July 23, 2020, and transferred to San Mateo
18 Superior Court on August 3, 2020 as Case No. 20-CIV-03222.

19 **2. Administrative Expenses.** “Administrative Expenses” shall include all costs and
20 expenses associated with and paid to the third party Settlement Administrator, which are anticipated not
21 to exceed \$13,000.00.

22 **3. Claims.** “Claims” shall mean the claims asserted in the operative Complaint filed on
23 February 4, 2020, which are Defendant’s alleged: (1) failure to pay overtime compensation; (2) failure
24 to provide suitable seating; (3) failure to provide complete and accurate wage statements; (4) failure to
25 pay all wages due to its former employees upon separation; (5) unfair business practices based on the
26 foregoing; and (6) PAGA and other penalties based on the foregoing.

27 **4. Class or Settlement Class.** “Class” or “Settlement Class” shall mean “Plaintiff and all
28 other hourly non-exempt employees, excluding non-union workers who are or were employed by

1 Defendant Draeger’s Super Markets (“Defendant”) from February 18, 2015 through May 31, 2020.
2 Defendant has represented that the Settlement Class consists of approximately 800 Class Members that
3 worked a total of approximately 85,000 workweeks. As part of this agreement, Defendant stipulates to
4 certification of the class for settlement purposes only.

5 **5. Class Counsel.** “Class Counsel” shall mean Martin Sullivan and Jonathan Melmed of
6 Melmed Law Group P.C.

7 **6. Class Attorney Fees and Expenses.** “Class Attorney Fees and Expenses” shall mean
8 Class Counsel’s attorney fees and expenses as set forth in Section IV, Paragraph 6.

9 **7. Class Member or Settlement Class Member.** “Class Member” or “Settlement Class
10 Member” shall mean any person who is a member of the Settlement Class, or, if such person is
11 incompetent or deceased, the person’s legal guardian, executor, heir or successor-in-interest.

12 **8. Class Notice.** “Class Notice” shall mean the Notice of Proposed Class Action
13 Settlement and Hearing Date for Court Approval, as set forth in the form of **Exhibit 1** attached hereto,
14 or as otherwise approved by the Court, which is to be mailed to Class Members along with the Share
15 Form.

16 **9. Share Form.** “Share Form” shall mean the Share Form, as set forth in the form of
17 **Exhibit 2** attached hereto, or as otherwise approved by the Court, which is to be mailed to Class
18 Members along with the Class Notice.

19 **10. Class Participants.** “Class Participants” shall mean any and all Class Members who do
20 not timely Opt-Out of the Class Settlement.

21 **11. Class Period.** “Class Period” shall mean the period from February 18, 2015 through
22 May 31, 2020.

23 **12. Class Representative.** “Class Representative” shall mean Plaintiff Jasmine T.
24 Thompson.

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

27 **14. Complaint.** “Complaint” shall mean the Complaint filed in San Francisco County
28 Superior Court on February 4, 2020, Case No. CGC-20-582671, and transferred to San Mateo Superior

1 Court on August 3, 2020 as Case No. 20-CIV-03222.

2 **15. Court.** “Court” shall mean the Superior Court of San Mateo County.

3 **16. Defense Counsel.** “Defense Counsel” shall mean Paul V. Simpson, Matthew A. Mallet
4 and John V. Ricca of Simpson, Garrity, Innes & Jacuzzi, 601 Gateway Boulevard, Suite 950, South San
5 Francisco, CA 94080.

6 **17. Effective Date.** “Effective Date” shall be the date when all of the following events have
7 occurred: (a) this Stipulation has been executed by all Parties and by Class Counsel and Defense
8 Counsel; (b) the Court has given preliminary approval to the Settlement; (c) notice has been given to the
9 Settlement Class Members providing them with an opportunity to Opt-Out of the Class Settlement; (d)
10 the Court has held a Final Approval and Fairness Hearing and entered a final order and judgment
11 certifying the Class and approving this Stipulation; and (e) the later of the following events: the
12 expiration of the period for filing any appeal, writ, or other appellate proceeding opposing the Class
13 Settlement has elapsed without any appeal, writ or other appellate proceeding having been filed; or the
14 dismissal of any appeal, writ, or other appellate proceeding opposing the Class Settlement with no right
15 to pursue further remedies or relief; or any appeal, writ, or the issuance of such other final appellate
16 order upholding the Court’s final order with no right to pursue further remedies or relief. In this regard,
17 it is the intention of the Parties that the Class Settlement shall not become effective until the Court’s
18 order approving the Class Settlement is completely final and there is no further recourse by an appellant
19 or objector who seeks to contest the Class Settlement. In the event no objections are filed, the Effective
20 Date shall be after steps (a) through (d) are completed.

21 **18. Employee’s Taxes and Required Withholding.** “Employee’s Taxes and Required
22 Withholding” shall mean the employee’s share of any and all applicable federal, state or local payroll
23 taxes, including those collected under authority of the Federal Insurance Contributions Act (“FICA”),
24 FUTA and/or SUTA on the portion of any Class Participant’s Individual Settlement Amount that
25 constitutes wages as set forth in section IV, paragraph 4. The Employee’s Taxes and Requirement
26 Withholdings will be withheld from and paid out of the Net Settlement Amount.

27 **19. Employer’s Taxes.** “Employer’s Taxes” shall mean and refer to Defendant’s share of
28 payroll taxes (e.g. UI, ETT, Social Security and Medicare taxes) that is owed on the portion of any

1 Class Participant’s Individual Settlement Amount that constitutes wages as set forth in section IV,
2 paragraph 4. The Employer’s Taxes shall be separately paid by Defendant and shall not be paid from
3 the Gross Settlement Amount or Net Settlement Amount.

4 **20. Final Approval and Fairness Hearing.** “Final Approval and Fairness Hearing” shall
5 mean the final hearing held to ascertain the fairness, reasonableness, and adequacy of the Class
6 Settlement.

7 **21. Defendant.** “Defendant” shall mean Draeger’s Super Markets.

8 **22. Hearing on Preliminary Approval.** “Hearing on Preliminary Approval” shall mean the
9 hearing held on the motion for preliminary approval of the Class Settlement.

10 **23. Individual Settlement Amount.** “Individual Settlement Amount” shall mean the
11 amount which is ultimately distributed to each Class Participant, net of any Employee’s Taxes and
12 Required Withholdings.

13 **24. Plaintiff.** “Plaintiff” shall mean the named Plaintiff Jasmine T. Thompson.

14 **25. Net Settlement Amount.** “Net Settlement Amount” shall mean the Gross Settlement
15 Amount minus Administrative Expenses, Class Attorney Fees and Expenses, 75% of the PAGA
16 Payment payable to the California Labor and Workforce Development Agency (“LWDA”), and
17 Plaintiff’s Incentive Award.

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

21 **27. Parties.** “Parties” shall mean Plaintiff and Defendant.

22 **28. Preliminary Approval Date.** “Preliminary Approval Date” shall mean the date upon
23 which the Court enters an order preliminarily approving this Stipulation.

24 **29. Released Claims.** “Released Claims” shall mean all claims alleged in the operative
25 Complaint, including all wage and hour claims for overtime compensation, failure to provide suitable
26 seating, wage statement violations, waiting time penalties, PAGA penalties, and Unfair Competition
27 Law violations, including claims under California Labor Code sections 201-203, 226, 226.3, 510, 1194,
28 1194.2, 1198, and claims under sections 17200 to 17204 of the California Business and Professions

1 Code based on the foregoing.

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

11 **30. Released Parties.** “Released Parties” shall mean Draeger’s Super Markets, and all of its
12 subsidiaries, affiliates, shareholders, members, agents, predecessors, successors, and assigns.

13 **31. Response Deadline.** “Response Deadline” shall mean the date thirty (30) days following
14 the date on which the Settlement Administrator first mails Class Notice to the Settlement Class
15 Members.

16 **32. Incentive Award.** “Incentive Award” shall mean any additional monetary payment
17 provided to the Class Representative for his efforts and risks on behalf of the Settlement Class in this
18 Action.

19 **33. PAGA Payment.** “PAGA Payment” means the penalties pursuant to California Labor
20 Code sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), that the
21 Parties have agreed is a reasonable sum to be paid in settlement of the PAGA claims included in the
22 Action, which is \$10,000.00. The PAGA Payment is to be approved by the Court pursuant to Labor
23 Code section 2699 and is to be distributed as follows: seventy-five percent (75%) (i.e. \$7,500.00) to the
24 LWDA and twenty-five percent (25%) (i.e. \$2,500.00) to the Class Members. Class Counsel shall give
25 timely notice of the Class Settlement to the LWDA under Labor Code section 2699(1)(2).

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

28 **35. Settlement Administrator.** “Settlement Administrator” shall mean CPT Group, Inc., or

1 Rust Consulting, Inc., which the Parties have agreed will be responsible for administration of the
2 Settlement and related matters.

3 **36. Gross Settlement Amount.** “Gross Settlement Amount” is the agreed upon non-
4 reversionary settlement amount totaling \$400,000.00 to be paid by Defendants in full settlement of the
5 Released Claims asserted in this case, including the Administrative Expenses, Employee’s Taxes and
6 Required Withholdings, Class Attorney Fees and Expenses, Incentive Award, and PAGA Payment.
7 Defendant shall separately pay its share of the Employer’s Taxes in addition to the Gross Settlement
8 Amount.

9 **37. Stipulation.** “Stipulation” shall mean this Joint Stipulation of Settlement and Release of
10 Class Action, including any attached exhibits.

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

12 **1. Plaintiff’s Claims.** On behalf of the Settlement Class, Plaintiff alleged the following
13 causes of action: (1) failure to pay overtime compensation (Labor Code §§ 510, 1194, 1199 and Wage
14 Order 5-2001); (2) failure to provide suitable seating (Labor Code § 1198 and IWC Wage Order No. 5);
15 (3) failure to provide complete and accurate wage statements (Labor Code § 226(a)); (4) failure to pay
16 all wages due to its former employees upon termination (Labor Code §§ 201-203); (5) unfair business
17 practices based on the foregoing; and (6) PAGA and other penalties based on the foregoing.

18 **2. Discovery, Investigation, Motion Practice and Research.** Class Counsel has
19 conducted significant informal discovery during the prosecution of the Action. This discovery,
20 investigation, and prosecution has included, among other things, (a) over a dozen telephonic conferences
21 with Plaintiff; (b) inspection and analysis of hundreds of pages of documents and other information
22 produced by Plaintiff and Defendant; (c) analysis and calculations based on employment data related to
23 all aggrieved employees and class members; (d) an analysis of the legal positions taken by Defendant;
24 (d) investigation into the viability of class treatment of the claims asserted in the Action; (e) analysis of
25 potential class-wide damages, including information sufficient to understand Defendant’s potential
26 defenses to Plaintiff’s claims; (f) research of the applicable law with respect to the claims asserted in the
27 Complaint and the potential defenses thereto; and (g) assembling and analyzing of data for calculating
28 damages.

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

5 **3. Allegations of the Class Representative and Benefits of Class Settlement.** The
6 extensive document and data exchange in this matter, as well as discussions between counsel, have been
7 adequate to give the Class Representative and Class Counsel a sound understanding of the merits of their
8 positions and to evaluate the worth of the claims of the Settlement Class. The informal discovery
9 conducted in this Action and the information exchanged by the Parties through pre-mediation
10 discussions are sufficient to reliably assess the merits of the Parties' respective positions and to
11 compromise the issues on a fair and equitable basis.

12 Plaintiff and Class Counsel believe that the claims, causes of action, allegations and contentions
13 asserted in the Action have merit. However, Plaintiff and Class Counsel recognize and acknowledge the
14 expense and delay of continued lengthy proceedings necessary to prosecute the Action against
15 Defendant through trial and through appeals. Class Counsel has taken into account the significant
16 numerous factual and legal issues raised by Defendant which create an uncertain outcome of the
17 litigation, the risk of continued litigation in complex actions such as this, as well as the difficulties and
18 delays inherent in such litigation, and the potential difficulty of obtaining certification of the Action as
19 well as trying the claims of the class. Class Counsel is mindful of the potential problems of proof under,
20 and possible defenses to, the claims alleged in the Action.

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

26 **4. Defendant's Denials of Wrongdoing and Liability.** Defendant has denied and
27 continues to deny each and all of the allegations, claims, and contentions alleged by Plaintiff in the
28 Action. Defendant has expressly denied and continues to deny all charges of wrongdoing or liability

1 against it arising out of any of the conduct, statements, acts or omissions alleged in the Action.
2 Defendant contends that it complied in good faith with California and federal wage and hour laws and
3 has dealt legally and fairly with Plaintiff and Settlement Class Members. Defendant further denies that,
4 for any purpose other than settling this Action, these claims are appropriate for class or representative
5 treatment. Nonetheless, Defendant has concluded that further proceedings in the Action would be
6 protracted and expensive and that it is desirable that the Action be fully and finally settled in the manner
7 and upon the terms and conditions set forth in this Stipulation in order to dispose of burdensome and
8 protracted litigation, to permit the operation of Defendant's business without further expensive litigation
9 and the distraction and diversion of its personnel with respect to matters at issue in the Action.
10 Defendant has also taken into account the uncertainty and risks inherent in any litigation, especially in
11 complex cases such as the Action. Defendant has, therefore, determined that it is desirable and beneficial
12 to it that the Action be settled in the manner and upon the terms and conditions set forth in this
13 Stipulation.

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

18 **III. CONDITIONAL CLASS CERTIFICATION AND APPOINTMENT OF CLASS**
19 **COUNSEL**

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

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

27 **IV. CLASS SETTLEMENT CONSIDERATION**

28 **1. Settlement Amount.** The Parties agree to settle this Action for the Gross Settlement

1 Amount of \$400,000.00. There shall be no reversion to Defendant. Defendants shall pay the Gross
2 Settlement Amount in full. The Gross Settlement Amount and other actions and forbearances taken by
3 Defendant shall constitute adequate consideration for the Class Settlement and will be made in full and
4 final settlement of: (a) the Released Claims, (b) Class Attorney Fees and Expenses, (c) Administrative
5 Expenses, (d) Incentive Award, (e) PAGA Payment; and (f) any other obligation of Defendant under this
6 Stipulation (other than the Employer's Taxes on the portion of the Net Settlement Amount allocated to
7 the payment of wages). After the court issues an order preliminarily approving this Class Settlement, the
8 Settlement Administrator will distribute the Class Notice to the Settlement Class Members, which shall
9 describe the terms of the Class Settlement and procedures to opt out, object or participate in the Class
10 Settlement as well as the Share Form, which shall identify the Settlement Class Member, the pay periods
11 worked by each Settlement Class Member, as well as the estimated amount of the Individual Settlement
12 Amount the Settlement Class Member can expect to receive once the Class Settlement becomes
13 Effective. Settlement Class Members shall be given the opportunity to challenge their pay periods
14 worked information.

15 **2. Incentive Award for Plaintiff.** Plaintiff may petition the Court to approve an Incentive
16 Award in an amount up to \$5,000.00 for Plaintiff's efforts on behalf of the Settlement Class in this
17 Action, including assisting in the investigation and consulting with Class Counsel and providing crucial
18 documents to Class Counsel. Defendant shall not oppose any request by Plaintiff for an Incentive Award
19 in such an amount. Any Incentive Award approved by the Court shall be paid to Plaintiff from the Gross
20 Settlement Amount and shall be in addition to any distribution to which he may otherwise be entitled as
21 a Class Participant. The Incentive Award shall not be considered wages, and the Settlement
22 Administrator shall issue Plaintiff an IRS Form 1099 reflecting such payment. Plaintiff shall be
23 responsible for the payment of any and all taxes with respect to her Incentive Award and shall hold
24 Defendant harmless from any and all liability with regard thereto.

25 **3. Payment to Class Participants.** Each Class Participant shall be eligible to receive
26 payment of the Individual Settlement Amount, which is a share of the Net Settlement Amount based on
27 the pro rata number of weeks worked by the Settlement Class Members during the Class Period as a
28 proportion of all weeks worked by all Settlement Class Members. The Individual Settlement Amount for

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

5 **4. Tax Treatment and Payment.** For the purpose of calculating Employee's Taxes and
6 Required Withholding for the Individual Settlement Amounts for Class Participants (including any
7 payments to the Class Representative but exclusive of his Incentive Award), the Parties agree that 15%
8 of each Individual Settlement Amount shall constitute wages (and each Class Participant will be issued
9 an IRS Form W-2 for such payment to him or her), 5% of each Individual Settlement Amount shall
10 constitute penalties, and 80% of each Individual Settlement Amount shall constitute interest and non-
11 wage damages (and each Class Participant will be issued an IRS Form 1099 for such payment to him or
12 her). Prior to final distribution, the Settlement Administrator shall calculate the total Employee's Taxes
13 and Required Withholding due as a result of the wage portion of Class Participants' anticipated
14 Individual Settlement Amounts and such actual amount will be deducted from the Net Settlement
15 Amount. Additionally, prior to the funding of the Gross Settlement Sum and final distribution, the
16 Settlement Administrator shall calculate the total Employer's Taxes due on the wage portion of the
17 Class Participants' Individual Settlement Amounts and issue instructions to Defendant to separately fund
18 these tax obligations/withholdings. The Parties understand that Plaintiff and the Class Participants who
19 receive any payment pursuant to this Stipulation shall be solely responsible for any and all other
20 individual tax obligations associated with this Class Settlement.

21 **5. No Effect on Employee Benefit Plans.** Neither the Class Settlement nor any amounts
22 paid under the Class Settlement will modify any previously credited hours, days, or weeks of service
23 under any employee benefit plan, policy or bonus program sponsored by Defendant. Such amounts will
24 not form the basis for additional contributions to, benefits under, or any other monetary entitlement
25 under Defendant's sponsored benefit plans, policies or bonus programs. The payments made under the
26 terms of this Stipulation shall not be applied retroactively, currently, or on a going forward basis, as
27 salary, earnings, wages, or any other form of compensation for the purposes of any of Defendant's
28 benefit plan, policy or bonus program. Defendant retains the right to modify the language of its benefits

1 plans, policies and bonus programs to effect this intent and to make clear that any amounts paid pursuant
2 to this Stipulation are not for “weeks worked,” “weeks paid,” “weeks of service,” or any similar
3 measuring term as defined by applicable plans, policies and bonus programs for purpose of eligibility,
4 vesting, benefit accrual, or any other purpose, and that additional contributions or benefits are not
5 required by this Stipulation. Defendant does not consider the Class Settlement payments
6 “compensation” for purposes of determining eligibility for, or benefit accrual within, any benefit plans,
7 policies, or bonus programs, or any other plan sponsored by Defendant.

8 **6. Class Attorney Fees and Expenses.** As part of the motion for final approval of the
9 Class Settlement, Class Counsel may submit an application for an award of Class Attorney Fees and
10 Expenses with the fee portion not to exceed one third of the Gross Settlement Amount (*i.e.*,
11 \$133,333.33, if the escalator provision is not implicated, see section VIII., para. 2) and the award of
12 costs and expenses of up to an additional \$14,000.00. Defendant agrees not to object to any such fee,
13 cost or expense application in those amounts. As a condition of this Class Settlement, Class Counsel has
14 agreed to pursue fees only in the manner reflected by this Section. Any Class Attorney Fees and
15 Expenses awarded by the Court shall be paid from the Gross Settlement Amount in arriving at the Net
16 Settlement Amount and shall not constitute payment to any Settlement Class Members. If Class Counsel
17 voluntarily reduces the request for Class Attorney Fees or Expenses or the Court’s award of Class
18 Attorney Fees or Expenses is less than set forth above, the Net Settlement Amount shall be recalculated
19 to reflect the actual Class Attorney Fees and Expenses awarded.

20 The Class Attorney Fees and Expenses approved by the Court shall encompass: (a) all work
21 performed and costs and expenses incurred by, or at the direction of, any attorney purporting to
22 represent the Settlement Class through the date of this Stipulation; (b) all work to be performed and
23 costs to be incurred in connection with approval by the Court of the Class Settlement; (c) all work to be
24 performed and costs and expenses, if any, incurred in connection with administering the Class
25 Settlement through the Effective Date and dismissal of the Action, with prejudice; and (d) may be based
26 on the Catalyst Theory and/or Common Fund Doctrine.

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

28 **1. The Settlement Administrator’s Costs and Expenses.** All costs and expenses due to

1 the Settlement Administrator in connection with its administration of the Class Settlement, including,
2 but not limited to, providing the Class Notice, locating Settlement Class Members, processing Opt-Out
3 requests and objections, distributing the portion of the PAGA Payment payable to the LWDA, and
4 calculating, administering and distributing Individual Settlement Amounts to the Class Participants and
5 related tax forms, shall be paid from the Gross Settlement Amount, and shall not exceed \$13,000.00.

6 **2. Payment by Defendant.** Within 20 calendar days after the Effective Date, Defendant
7 shall deposit the Gross Settlement Amount of \$400,000.00 with the Settlement Administrator to pay: (1)
8 the Class Attorney Fees and Expenses, as approved by the Court; (2) the Incentive Award, as approved
9 by the Court, (3) the Administrative Expenses, not to exceed \$13,000; (4) the \$10,000 PAGA Penalties,
10 75 percent of which is to be paid to the LWDA pursuant to Cal. Labor Code 2699(i); (5) the aggregate
11 of all Individual Settlement Amounts of Class Participants; and (6) the Employer's Taxes and Required
12 Withholding associated with the Individual Settlement Amounts. Defendants shall separately pay their
13 share of Employer Taxes to the Settlement Administrator prior to the distribution of the Individual
14 Settlement Amounts to Class Participants. In no event shall Defendants be obligated to pay or deposit
15 with the Settlement Administrator more than \$400,000.00 plus its Employer Taxes.

16 **VI. NOTICE TO CLASS MEMBERS AND CLAIMS ADMINISTRATION PROCESS**

17 **1. The Settlement Administrator.** The Settlement Administrator will be responsible for
18 mailing the Class Notice and Share Form (**Exhibits 1 and 2**) to Settlement Class Members, handling
19 inquiries from Settlement Class Members concerning the Class Notice, determination of Individual
20 Settlement Amounts, maintaining the settlement funds in an appropriate interest bearing account,
21 preparing, administering and distributing Individual Settlement Amounts to Class Participants, issuing a
22 final report and performing such other duties as the Parties may direct.

23 On a weekly basis, the Settlement Administrator will provide reports to Class Counsel and
24 Defense Counsel summary information updating them as to the number of validated and timely
25 objections and Opt-Out Requests. The Settlement Administrator will serve on Class Counsel and
26 Defense Counsel via e-mail date-stamped copies of the original Opt-Outs and objections no later than
27 seven days after their receipt. The Settlement Administrator will provide Class Counsel with proof of
28 mailing of the Class Notice, without listing individual Class Member names which the Settlement

1 Administrator will file with the Court at the time Class Counsel files its motion in support of the Court's
2 Final Approval and Fairness Hearing. No later than seven days prior to the Final Approval and Fairness
3 Hearing, the Settlement Administrator will compile and deliver to Class Counsel and Defense Counsel a
4 report with summary information regarding (a) the total amount of final Individual Settlement Amounts
5 of each Class Participant (b) the number of Class Participants to receive such payments, and (c) the final
6 number of Opt-Outs and objections.

7 Administrative Expenses are not anticipated to exceed \$13,000.00. Prior to the calculation and
8 distribution of the Individual Settlement Amounts, the Settlement Administrator shall calculate the total
9 Administrative Expenses through the conclusion of their services and such actual amount will be
10 deducted from the Gross Settlement Amount prior to the final calculation of the Individual Settlement
11 Amounts.

12 **2. Notice to Settlement Class Members.** Notice shall be provided to Settlement Class
13 Members in the following manner: Within 14 days after the Preliminary Approval Date, Defendant shall
14 provide the Settlement Administrator with an updated list of Class Members containing names, social
15 security numbers, dates of employment, last-known addresses and phone numbers (the "Database"). The
16 Database shall be marked "Confidential –Settlement Administrator's Eyes Only." Class Counsel shall
17 not receive a copy of this list.

18 Within 28 days following the Preliminary Approval Date, the Settlement Administrator shall
19 determine the number of pay periods for each Settlement Class Member, populate the Settlement Class
20 for each accordingly, and send each Settlement Class Member the Class Notice via first-class, United
21 States mail. The Class Notice shall also contain an easily understood statement alerting the Class
22 Members that, unless they elect to Opt-Out of the Class Settlement, the Settlement Class Member is
23 releasing and waiving all Released Claims against the Released Parties.

24 The Class Notice will inform Settlement Class Members of his/her estimated share of the
25 settlement and the number of pay periods he/she worked during the Class Period. Class Members may
26 dispute their weeks worked if they believe they worked more weeks in the Class Period than
27 Defendant's records show by submitting information to the Settlement Administrator no later than 30
28 days after being mailed the Class Notice and Share Form by the Settlement Administrator, which is the

1 defined Response Deadline. The Settlement Administrator will jointly work with Plaintiff and
2 Defendant to resolve the dispute in good faith. If Plaintiff and Defendant cannot agree over the pay
3 periods to be credited, the Settlement Administrator shall make the final decision based on the
4 information presented by the Settlement Class Member and Defendant.

5 **3. Opt-Out Procedure.** Settlement Class Members who do not timely Opt-Out of the
6 Class Settlement will be deemed to participate in the Class Settlement and shall become a Class
7 Participant without having to submit a claim form or take any other action. In order to Opt-Out of the
8 Class Settlement, the Settlement Class Member must submit a letter or postcard to the Settlement
9 Administrator by the Response Deadline. The Opt-Out request must state the Settlement Class
10 Member's name, address, telephone number, and signature. The Opt-Out request should state to the
11 effect of: "I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE THOMPSON
12 V. DRAEGER'S SUPER MARKETS LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE
13 EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT RECEIVE ANY MONEY FROM
14 THE CLASS SETTLEMENT OF THIS LAWSUIT AND WILL NOT BE RELEASING ANY CLAIMS
15 I MIGHT HAVE." Any Opt-Out request that is not postmarked by the Response Deadline will be
16 invalid. In the event that, prior to the Response Deadline, any Class Notice mailed to a Settlement Class
17 Member is returned as having been undelivered by the U.S. Postal Service, the Settlement Administrator
18 shall perform a skip trace search and seek an address correction for such Settlement Class Member(s),
19 and a second Class Notice will be sent to any new or different address obtained. Such Settlement Class
20 Member(s) shall have an additional 14 days in which to Opt-Out.

21 It will be presumed that, if an envelope containing the Class Notice has not been returned within
22 28 days of the mailing, the Settlement Class Member received the Class Notice. At least 30 days prior to
23 the Final Approval and Fairness Hearing, the Settlement Administrator shall provide Class Counsel and
24 Defense Counsel with a Declaration of Due Diligence and Proof of Mailing with regard to the mailing of
25 the Class Notice and its attempts to locate Class Members. The declaration shall specify the number of
26 Settlement Class Members to whom Class Notices were sent and the number of Settlement Class
27 Members to whom Class Notices were not delivered, as well as information relating to the number of
28 Opt-Outs and objectors. Class Counsel shall file this declaration with the Court.

1 If the Settlement Administrator determines that an Opt-Out request returned by a Settlement
2 Class Member before the Response Deadline is deficient, then the Settlement Administrator shall mail a
3 deficiency letter to that Settlement Class Member identifying the problem. If a Settlement Class Member
4 submits both a dispute and an Opt-Out request, the Settlement Administrator shall make reasonable
5 attempts to clarify as if the Opt-Out request were deficient. If the Class Member fails to cure the
6 deficiency, the Opt-Out request shall be disregarded and the claim will be paid, and the Class Member
7 will become bound by the judgment.

8 Those Settlement Class Members who do not timely Opt-Out will be bound by the Release of
9 Released Claims set forth in Section I, Paragraph 29 of this Stipulation.

10 **4. Objections.** The Class Notice shall inform the Settlement Class Members of their right
11 to object to the Class Settlement. Any Settlement Class Member who wishes to object to the Class
12 Settlement must submit a written objection to the Settlement Administrator no later than the Response
13 Deadline. The objection must include the case name and number and must set forth, in clear and concise
14 terms, a statement of the reasons why the objector believes that the Court should find that the proposed
15 Class Settlement is not in the best interest of the Settlement Class and the reasons why the Class
16 Settlement should not be approved, including the legal and factual arguments supporting the objection.
17 If an objector also wishes to appear at the Final Approval and Fairness Hearing, in person or through an
18 attorney, he or she *must also* file a notice of intention to appear at the same time as the objection is filed.
19 The Settlement Administrator will promptly serve copies of any objection or notice of intention to
20 appear on Class Counsel and Defense Counsel. Unless otherwise ordered by the Court, Settlement Class
21 Members shall not be entitled to appear and or object at the Final Approval Hearing unless they have
22 submitted a timely written objection and notice of intention to appear pursuant to this Section.
23 Settlement Class Members who have properly and timely submitted objections may appear at the Final
24 Approval Hearing, either in person or through a lawyer retained at their own expense.

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

26 **1. Allocation of the Gross Settlement Amount.** The claims of all Settlement Class
27 Members are settled for the Gross Settlement Amount of \$400,000.00, which will be allocated as
28 follows:

1 a. The Administrative Expenses, not to exceed \$13,000.00;

2 b. The Class Attorney Fees and Expenses not to exceed 1/3 of the GSA (i.e., \$133,333.33
3 if the escalator provision is not implicated, see section VIII., para. 2) in fees and expenses not to exceed
4 \$14,000.00;

5 c. The Incentive Award, not to exceed \$5,000.00

6 d. PAGA Payment of \$10,000.00, of which \$7,500.00 shall be paid to the LWDA.

7 For purposes of calculating the estimated Individual Settlement Amounts, the Settlement Administrator
8 shall calculate the estimated Net Settlement Amount based on the estimated values in Section 1(a-d)
9 prior to sending Notice to the Settlement Class Members. Prior to final distribution, the Settlement
10 Administrator shall calculate the final Net Settlement Amount based on the actual values in Section 1 (a-
11 d).

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

15 The Settlement Administrator shall divide the Net Settlement Amount by the total number of
16 workweeks Settlement Class Members were employed during the Class Period, in order to determine the
17 amount each Settlement Class Member is entitled to for each workweek s/he was employed by
18 Defendant (the “Weekly Amount”). The Settlement Administrator will multiply the Weekly Amount by
19 the total number of workweeks that each Settlement Class Member was employed and deduct all
20 Employee’s Taxes and Required Withholding attributable to wages to arrive at the Individual Settlement
21 Amount for that Class Member. Defendant will provide the Settlement Administrator with any
22 information reasonably necessary to perform the calculation of number of pay periods for each
23 Settlement Class Member, and any other reasonably required information the Settlement Administrator
24 requests to perform the calculations required under this Settlement Agreement. Defendant shall have no
25 responsibility for deciding the validity of the Individual Settlement Amounts or any other payments
26 made pursuant to this Stipulation, shall have no involvement in or responsibility for the determination or
27 payment of Employee’s Taxes and Required Withholding, and shall have no liability for any errors
28 made with respect to such Employee’s Taxes and Required Withholding. Although the Settlement

1 Administrator will calculate and pay the standard Employee's Taxes and Required Withholding on the
2 portion of the Individual Settlement Amounts constituting wages on their behalf, Plaintiff and Class
3 Participants represent and understand that they shall be solely responsible for any and all tax obligation
4 associated with their respective Individual Settlement Amounts and Incentive Awards.

5 **3. Time for Payment of Attorney Fees and Expenses to Class Counsel.** The Settlement
6 Administrator shall distribute to Class Counsel any attorney fees and expenses approved by the Court to
7 Class Counsel no later than 20 days after the Effective Date.

8 **4. Time for Payment of Incentive Award to Class Representative.** The Settlement
9 Administrator shall distribute to Plaintiff the Incentive Award approved by the Court no later than 20
10 days after the Effective Date.

11 **5. Time for Payment of PAGA Payment to the LWDA.** The Settlement Administrator
12 shall distribute to the LWDA the portion of the PAGA Payment due to it and approved by the Court no
13 later than 20 days after the Effective Date.

14 **6. Time for Payment of Taxes and Required Withholding and Individual Settlement**
15 **Amounts.** The Settlement Administrator shall make every effort to pay the Employee's Taxes and
16 Required Withholding associated with each Class Participant's Individual Settlement Amount and mail
17 the Individual Settlement Amount to each Class Participant, by first-class U.S. mail, to the last-known
18 address no later than 20 days after the Effective Date. If the Settlement Administrator is not able to do so
19 within the time period set forth above, it shall so inform Class Counsel and Defense Counsel and
20 provide an approximate date by which the Employee's Taxes and Required Withholding shall be paid
21 and the Individual Settlement Amounts will be mailed. Under no circumstances shall the Settlement
22 Administrator distribute checks to Class Participants until all Individual Settlement Amounts have been
23 considered, calculated, and accounted for, and the all of the remaining monetary obligations have been
24 calculated and accounted for. Within 120 days of mailing the Individual Settlement Amounts to Class
25 Participants, the Settlement Administrator shall file with the Court and provide to Class Counsel a
26 declaration of payment. In the event that any Class Participant is deceased, payment shall be made
27 payable to the estate of that Settlement Class Member and delivered to the executor or administrator of
28 that estate, unless the Settlement Administrator has received an affidavit or declaration pursuant to Cal.

1 Probate Code § 13101, in which case payment shall be made to the affiant(s) or declarant(s).

2 7. **Non-Cashed Settlement Checks.** Any funds associated with checks that have not been
3 cashed within 90 days, will become void and the Individual Settlement Amount associated with the in-
4 cashed check will be distributed pursuant to CCP section 384 (a *cy pres* to be agreed upon by the parties
5 and approved by the Court).

6 **VIII. NULLIFICATION OF THIS STIPULATION**

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

16 2. **Parties' Rights to Void Class Settlement; Escalator Provision.** If 5% or more
17 members of the Settlement Class timely Opt-Out, Defendant shall have the right (but not the
18 obligation) to void this Class Settlement. In the event that the total number of weeks worked in the
19 Class Period is greater than 85,000 weeks worked, then the GSA shall be increased proportionately for
20 each additional shift worked over 85,000. In that event, the attorney fee allowance shall be adjusted to
21 1/3 of the increased GSA.

22 3. **Invalidation.** Invalidation of any material portion of the Class Settlement shall
23 invalidate the Class Settlement in its entirety, unless the Parties shall subsequently agree in writing that
24 the remaining provisions of the Class Settlement are to remain in full force and effect.

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

1 **IX. MOTION FOR COURT APPROVAL**

2 **1. Preliminary Approval.** Class Counsel will submit this Stipulation to the Court along
3 with a Motion for Preliminary Approval of the Class Settlement. Each party shall cooperate to present
4 the Class Settlement to the Court for preliminary approval in a timely fashion. The Court’s preliminary
5 approval of the Class Settlement shall be embodied in an order substantially in the form attached hereto
6 as **Exhibit 3**.

7 **2. Final Approval.** The Final Approval and Fairness Hearing shall be held before the
8 Court. At the Final Approval and Fairness Hearing, Plaintiff shall move the Court for the entry of the
9 final order certifying the Class for settlement purposes only and approving the Class Settlement as being
10 fair, reasonable and adequate to the Class Participants within the meaning of California Rules of Court,
11 Rule 3.769(c), (d) and (e) and for the entry of a final judgment of the Action consistent with the terms of
12 the Class Settlement and California Rule of Court 3.769(h). Class Counsel and Defense Counsel shall
13 submit to the Court such pleadings and/or evidence as may be required for the Court’s determination.

14 **X. RELEASES AND WAIVERS**

15 **1. Release of Claims by Settlement Class.** Upon the Effective Date, each Settlement
16 Class Member who has not submitted a timely Opt-Out request, and Plaintiff, each releases the
17 Released Parties, and each of them, of and from any and all Released Claims during the Class Period.

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

20 Each Settlement Class Member, except those who timely Opt-Out, will be bound to the release
21 of Released Claims as a result of the Class Settlement and to the terms of the final judgment and the
22 satisfaction of such judgment.

23 Settlement Class Members who do not opt out will be deemed to have acknowledged and agreed
24 that their claims for wages and/or penalties in the Action are disputed, and that their Individual
25 Settlement Amount constitute payment of all sums allegedly due to them. Class Members will be
26 deemed to have acknowledged and agreed that California Labor Code Section 206.5 is not applicable to
27 the Individual Settlement Amount. That section provides in pertinent part as follows:

28 **“An employer shall not require the execution of a release of a claim or**

1 **right on account of wages due, or to become due, or made as an**
2 **advance on wages to be earned, unless payment of those wages has**
3 **been made.”**

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

1 Defendant and the Released Parties from any and all claims for attorney fees and costs arising out of the
2 matters released in this Stipulation.

3 Plaintiff specifically acknowledge that she is aware of and familiar with the provisions of Section
4 1542, which provides as follows:

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

9 Plaintiff, being aware of Section 1542, hereby expressly waives and relinquishes all rights and benefits
10 she may have under Section 1542 as well as any other statutes or common law principles of a similar
11 effect. Plaintiff may hereafter discover facts in addition to or different from those which she now knows
12 or believes to be true with respect to the subject matter of all the claims referenced herein, but stipulates
13 and agrees that, upon the Effective Date, Plaintiff shall and hereby does fully, finally and forever settle
14 and release any and all claims against the Released Parties, known or unknown, suspected or
15 unsuspected, contingent or non-contingent, that were asserted or could have been asserted upon any
16 theory of law or equity without regard to the subsequent discovery of existence of such different or
17 additional facts.

18 **XI. DUTIES OF THE PARTIES**

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

28 **2. Duty to Support and Defend the Class Settlement.** The Parties agree to abide by all of
the terms of the Class Settlement in good faith and to support the Class Settlement fully and to use their

1 best efforts to defend this Class Settlement from any legal challenge, whether by appeal or collateral
2 attack.

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

13 **XII. MISCELLANEOUS PROVISIONS**

14 **1. Voiding the Stipulation.** Pending Court approval and other than as provided in Section
15 VIII herein, if any of the conditions set forth in this Stipulation are not met and satisfied, this Stipulation
16 shall, at the option of either Plaintiff or Defendant, be ineffective, void, and of no further force and
17 effect, and shall not be used or be admissible in any subsequent proceeding, either in this Court or in any
18 other court or forum. If either Party decides to void the Settlement, then the Settlement and conditional
19 class certification shall be considered void, and neither the Settlement Agreement, conditional class
20 certification, nor any of the related negotiations or proceedings, shall be of any force or effect, and the
21 Parties shall stand in the same position, without prejudice, as if this Stipulation had been neither entered
22 into nor filed with the Court. Should either Party choose to void the Class Settlement under this
23 paragraph, such Party shall be responsible for all Settlement Administrator fees and costs actually
24 incurred.

25 **2. Different Facts.** The Parties hereto, and each of them, acknowledge that, except for
26 matters expressly represented herein, the facts in relation to the dispute and all claims released by the
27 terms of this Stipulation may turn out to be other than or different from the facts now known by each
28 party and/or its counsel, or believed by such Party or counsel to be true, and each Party therefore

1 expressly assumes the risk of the existence of different or presently unknown facts, and agrees that this
2 Stipulation shall be in all respects effective and binding despite such difference.

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

7 **4. Non-Admission.** Nothing in this Stipulation shall be construed as or deemed to be an
8 admission by any Party of any liability, culpability, negligence, or wrongdoing toward any other Party,
9 or any other person, and the Parties specifically disclaim any liability, culpability, negligence, or
10 wrongdoing toward the each other or any other person. Each of the Parties has entered into this
11 Stipulation with the intention to avoid further disputes and litigation with the attendant inconvenience,
12 expenses, and contingencies. Nothing herein shall constitute any admission by Defendant of wrongdoing
13 or liability, or of the truth of any factual allegations in the Action. Nothing herein shall constitute any
14 admission by Defendant regarding the merits of the Claims in this Action, including but not limited to
15 claims for unpaid wages under California and/or federal law. Nothing herein shall constitute an
16 admission by Defendant that the Action was properly brought as a class or representative action other
17 than for settlement purposes. To the contrary, Defendant has denied and continues to deny each and
18 every material factual allegation and all Claims. To this end, the Class Settlement of the Action, the
19 negotiation and execution of this Stipulation, and all acts performed or documents executed pursuant to
20 or in furtherance of this Stipulation or the Class Settlement are not, shall not be deemed to be, and may
21 not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of
22 the truth of any of the factual allegations in the Complaint in the Action; and are not, shall not be
23 deemed to be, and may not be used as, an admission or evidence of any fault or omission on the part of
24 Defendant in any civil, criminal or administrative proceeding in any court, administrative agency or
25 other tribunal.

26 **5. Media or Press.** Plaintiff and Defendant, and their respective counsel, recognize, and
27 accept that the Parties to this Stipulation desire that the terms of this Stipulation, the fact of the Class
28 Settlement embodied in this Stipulation, the disposition of the Action, the Action, and all matters

1 relating to the litigation of the Action, including discovery proceedings therein, and evidence obtained
2 during the course of the Action, shall not be discussed with or presented to the media or press.

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

9 **7. Construction.** The Parties hereto agree that the terms and conditions of this Stipulation
10 are the result of lengthy, intensive, arms-length non-collusive negotiations between the Parties and that
11 this Stipulation is not to be construed in favor of or against any party by reason of the extent to which
12 any party or its counsel participated in the drafting of this Stipulation. If any of the dates in the
13 Stipulation fall on a weekend, bank or court holiday, the time to act shall be extended to the next
14 business day.

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

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

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

26 **11. Modification.** This Stipulation may not be changed, altered, or modified, except in
27 writing signed by the Parties and approved by the Court. This Stipulation may not be discharged except
28 by performance in accordance with its terms or by a writing signed by the Parties.

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

6 **13. Successors and Assigns.** This Stipulation shall be binding upon and inure to the benefit
7 of the Parties and Settlement Class Members (excluding only persons who timely Opt-Out) and their
8 respective present and former heirs, trustees, executors, administrators, representatives, officers,
9 directors, shareholders, agents, employees, insurers, attorneys, accountants, auditors, advisors,
10 consultants, pension and welfare benefit plans, fiduciaries, parent companies, subsidiaries, affiliates,
11 related companies, joint ventures, predecessors, successors, and assigns.

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

16 **15. Execution in Counterparts.** This Stipulation shall become effective upon its execution
17 by all of the undersigned. The Parties may execute this Stipulation in counterparts, and execution of
18 counterparts shall have the same force and effect as if all Settling Parties had signed the same
19 instrument.

20 **16. Attorney Fees, Costs and Expenses.** Except as otherwise specifically provided for
21 herein, each party shall bear his or its own attorney fees, costs and expenses, taxable or otherwise,
22 incurred by them in or arising out of the Action and shall not seek reimbursement thereof from any other
23 party to this Stipulation.

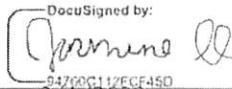
24 **17. Action to Enforce Agreement.** In any suit or court action to enforce the terms of this
25 Agreement, the prevailing party shall be entitled to recover his or its attorney fees and costs.

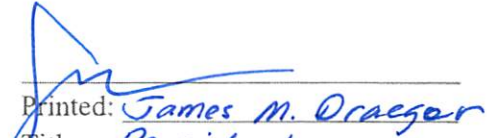
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3 **IN WITNESS WHEREOF**, the Parties and their counsel have executed this Stipulation on the
4 date below their signatures or the signature of their representatives. The date of the Stipulation shall be
5 the date of the latest signature.

6 Jasmine T. Thompson

Draeger's Super Markets

7 DocuSigned by:
8 


9 Printed: James M. Draeger
10 Title: President
11 Dated: 9-8-2020

Dated: 9/1/2020

12 **APPROVED AS TO FORM AND CONTENT**

13 MELMED LAW GROUP P.C.

SIMPSON, GARRITY, INNES & JACUZZI

14 9/3/2020

9/8/20

15 By: 

By: 

16 Martin Sullivan
17 Jonathan Melmed
18 Attorney for Plaintiff Jasmine T. Thompson,
19 the Putative Class and Aggrieved Employees

Paul V. Simpson
Attorneys for Defendant Draeger's Super Markets