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11 employees

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF LOS ANGELES – STANLEY MOSK COURTHOUSE

14 FRANCISCO SALAZAR, individually
15 and on behalf of all other aggrieved
16 employees,

17 Plaintiffs,

18 v.

19 STAFFMARK INVESTMENT LLC, an
20 active California Limited Liability
21 Company; and DOES 1 through 10,

22 Defendants.

Case No.: 21STCV39663

REPRESENTATIVE ACTION

*[Assigned to Hon. Randolph M. Hammock
in Dept. 49]*

**PLAINTIFF’S NOTICE OF MOTION
AND UNOPPOSED MOTION FOR
APPROVAL OF PAGA SETTLEMENT,
AND PAYMENT OF ATTORNEYS’
FEES AND COSTS, ADMINISTRATION
COSTS, AND ENHANCEMENT AWARD**

[CONCURRENTLY SUBMITTED WITH
DECLARATION OF ZORIK
MOORADIAN; DECLARATION OF HAIK
HACOPIAN; AND [PROPOSED] ORDER]

Date: December 28, 2023

Time: 8:30 a.m.

Dept.: 49

RESERVATION ID: 619194368852

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1 **PLEASE TAKE NOTICE** that, pursuant to Cal. Lab. Code §2699, on December 28,
2 2023 at 8:30 a.m. or as soon thereafter as the matter may be heard in Department 49 of the
3 above-entitled Court located at 111 North Hill Street, Los Angeles, California 90012, Plaintiff,
4 Francisco Salazar ("Plaintiff"), on behalf of similarly-aggrieved employees, will and hereby
5 does move this Court for entry of an Order:

6 1. Approving the settlement entered into between Plaintiff and Defendant
7 Staffmark Investment LLC ("Staffmark") for representative claims under the Labor Code
8 Private Attorneys General Act of 2004 ("PAGA"), as reflected by the Parties' PAGA
9 Settlement Agreement ("Settlement Agreement"); and

10 2. Approving a distribution of the Gross Settlement Payment of \$1,090,000, in
11 accordance with the Settlement Agreement and on account of disputed and alleged civil
12 penalties, as follows: (a) payment of \$381,500 in attorneys' fees to Mooradian Law, APC,
13 ("PAGA Counsel"); (b) payment of \$12,740.18 in attorneys' costs to PAGA Counsel; (c)
14 payment of \$5,000 to Plaintiff as an enhancement award for bringing and prosecuting the
15 action; (d) \$16,750 in administration costs to CPT Group, Inc. (e) payment to the Labor and
16 Workforce Development Agency ("LWDA") totaling \$505,507.36 which amount represents
17 75% of the total Gross Settlement Payment after attorneys' fees, enhancement award,
18 attorneys' costs, and administration costs; and (f) payment of \$168,502.46, which amount
19 represents 25% of the total Gross Settlement Payment after attorneys' fees and costs, on a pro-
20 rata basis to all Aggrieved Employees (defined as all non-exempt employees placed by
21 Staffmark to work at Yusen Logistics (Americas), Inc., ("Yusen") in California at any time
22 during the period from August 21, 2020 to September 11, 2023 ("PAGA Period")).

23 This motion is based on this Notice, the attached Memorandum of Points and
24 Authorities, the supporting declarations of Zorik Mooradian and Haik Hacopian and the
25 exhibits attached thereto; the [Proposed] Order Granting Plaintiff's Motion for Approval of
26 PAGA Settlement, and Payment of Attorneys' Fees, Costs, and Enhancement Award; the
27 Settlement Agreement; all other pleadings and papers on file in this action; and on any further
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1 oral or documentary evidence or argument presented at the time of hearing.

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3 Dated: December 5, 2023

MOORADIAN LAW, APC

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By: /s/Haik Hacopian

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Zorik Mooradian, Esq.,

Haik Hacopian, Esq.,

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Attorneys for Plaintiff and aggrieved
employees

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff Francisco Salazar (“Plaintiff”) hereby seeks court approval of a settlement of
4 a pending Private Attorneys General Act (“PAGA”) claim as initiated by Plaintiff Salazar’s
5 notice letter dated August 21, 2021. The scope of the settlement is limited to civil penalties,
6 does not act as a waiver to any employee’s individual claims for individual relief, and releases
7 “PAGA claims alleged or that could have been alleged based on the facts alleged in the
8 Operative Complaint and the PAGA Notice that arose during the PAGA Period.” The
9 \$1,090,000 Gross Settlement Amount, and allocation for civil penalties therein, is fair,
10 adequate, and reasonable and sufficient to deter further violations and encourage compliance
11 with the law.

12 The Parties reached their settlement after review and analysis of the PAGA claims’
13 predicates through sufficient informal discovery. The settlement was thereafter reached after
14 a mediation session with a well-respected neutral mediator with significant wage and hour
15 experience, Mr. Jeffrey Krivis.

16 As part of the Gross Settlement Payment and as authorized by the PAGA statute,
17 Plaintiff’s counsel is seeking recovery of \$381,500 in attorneys’ fees, which is thirty five
18 percent (35%) of the Gross Settlement Payment. Moreover, this requested amount is fair,
19 adequate, and reasonable, in light of the work performed by counsel and recovery obtained. It
20 reflects a 3.4 multiplier on counsel’s collective lodestar, or a 2.1 multiplier to the extent Laffey
21 Matrix rates are applied. Counsel is additionally seeking \$12,740.18 in costs, which were
22 reasonable and necessary to the prosecution of this action. Additionally, Plaintiff is seeking a
23 \$5,000 enhancement award for bringing and prosecuting this action and making this
24 settlement possible. Plaintiff is also requesting that CPT Group, Inc. be appointed as the
25 settlement administrator and that \$16,750 be paid to CPT for services relating to mailing
26 payments to 3,300 aggrieved employees.

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1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 **A. Staffmark, Plaintiff, and Aggrieved Employees**

3 Defendant Staffmark is a staffing agency based in Cincinnati, Ohio and operates
4 nationally. Staffmark provides staffing services to clients primarily in the light industry,
5 logistics, and manufacturing industries. One such client was Defendant Yusen (Americas)
6 Logistics, Inc. (“Yusen”). Yusen is a global provider of international freight forwarding and
7 supply chain services who operated distribution warehouses in Southern California, primarily
8 in Torrance, where Plaintiff and aggrieved employees worked. Declaration of Zorik
9 Mooradian (hereinafter “ZM Decl.”) ¶6.

10 The number of Aggrieved Employees, i.e. Staffmark employees placed for work at
11 Yusen, at the time of mediation was 3,261 and who worked 41,017 weekly pay periods during
12 the PAGA Period from August 21, 2020 to September 11, 2023. ZM Decl. ¶7.

13 **B. Plaintiff’s Lawsuit, Discovery, and Mediation**

14 **1. Plaintiff Francisco Salazar’s Lawsuit**

15 Plaintiff Francisco Salazar filed the instant PAGA representative lawsuit, Case No.
16 21STCV39663, on October 27, 2021 after communicating a PAGA notice to Defendants and
17 the LWDA on August 21, 2021. Upon submission to the LWDA, Plaintiff Salazar’s PAGA
18 claim was assigned Case No. LWDA-CM- 842151-21. At the time the PAGA lawsuit was
19 filed, Plaintiff had a pending class action lawsuit against Defendants which was removed to
20 Federal District Court by Yusen and later dismissed. On January 26, 2022, the operative First
21 Amended Complaint was filed in this case which added Plaintiff’s individual Labor Code
22 claims that were previously part of the class action. ZM Decl. ¶8.

23 **2. Collective Labor Code/Wage Order sections at Issue**

24 As mentioned, Plaintiff Salazar filed a notice letter with the California Labor and
25 Workforce Development Agency (“LWDA”) on August 21, 2021 giving notice of his intent
26 to pursue a PAGA representative action, on behalf of himself and the State of California as
27 well as on behalf of a group of similarly situated aggrieved employees giving notice of their
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collective intent to seek penalties under Labor Code sections 2698 et. seq. based on alleged violations of Labor Code sections 201, 202, 203, 204, 212, 213, 226, 226.7, 510, 512, 1194, (“PAGA letter”). A true and correct copy of the noted PAGA Letter is attached as **Exhibit “1”** to the Declaration of Zorik Mooradian. ZM Decl. ¶9, Exh. 1.

3. Discovery and Mediation

This lawsuit has involved production of numerous documents and employee data including all relevant policies and procedures and employee metrics as they relate to the asserted PAGA claims. Specifically, Defendant provided data regarding the total number of aggrieved employees and total work weeks and a 10% sample of time and payroll data. This information has been reviewed and assessed by Plaintiff. The Parties have conducted investigation of the operative facts and applicable law during the litigation. The Parties have also investigated the applicable law as applied to the facts, potential defenses thereto, and damages claimed by Plaintiff on behalf of aggrieved employees. Subsequently, on July 13, 2023, Plaintiff and Staffmark engaged in mediation before an esteemed mediator with significant wage and hour experience, Mr. Jeffrey Krivis. During the Mediation, and with significant assistance from the mediator, the Parties agreed to a PAGA representative settlement, which was negotiated in light of all known facts and circumstances—including the difficulty of proving some of Plaintiff’s underlying bases for the PAGA penalty claims, potential defenses asserted by Staffmark to the PAGA penalty claims, the uncertainty associated with litigation, the risks of significant delay, and numerous potential appellate issues. Thereafter, the settlement was solidified between the Parties during the months that followed. Ultimately, a written settlement agreement was entered into. ZM Decl. ¶10.

C. Essential Terms of the Settlement

The Parties’ settlement allocates \$1,090,000 for settlement of the PAGA claims which is the total amount to be paid by Staffmark under this Settlement. After allocated attorneys’ fees of \$381,500, requested costs of \$12,740.18, administrative costs of \$16,750, and \$5,000 enhancement award to Plaintiff, 75% of the net, or \$505,507.36 will be paid as the LWDA’s

1 75% share of PAGA penalties, and \$168,502.46 will be payable to Aggrieved Employees¹.
2 The amount payable to Aggrieved Employees will be allocated on a pro-rata basis determined
3 by the number of pay periods each such Aggrieved Employee worked for Defendant during
4 the PAGA Period. The Gross Settlement Payment is for civil penalties only and does not act
5 as a waiver to any employee's individual claims for individual relief. ZM Decl. ¶11. A true
6 and correct copy of the PAGA Settlement Agreement ("Settlement Agreement" or "S.A"),
7 which is based on the LASC model agreement, is attached as **Exhibit 2** to the Declaration of
8 Zorik Mooradian. ZM Decl. ¶12, Exh. 2.

9 The Settlement contemplates inclusion of a "Notice of PAGA Settlement Agreement
10 of Claims" with payments to Aggrieved Employees which notifies them of the Lawsuit,
11 Settlement, Release, and calculation of their share. A true and correct copy of which is
12 attached as **Exhibit 3** to the Declaration of Zorik Mooradian. ZM Decl. ¶13, Exh. 3.

13 The Settlement contemplates maximum coverage for 42,884 Pay Periods during the
14 PAGA Period which may escalate to the extent the total Pay Periods exceeds 10% of that
15 amount. S.A. at ¶8.

16 The Administrator will issue checks for the Individual PAGA Payments and send them
17 to the Aggrieved Employees via First Class U.S. Mail. The face of each check shall
18 prominently state the date (not less than 180 days after the date of mailing) when the check
19 will be voided. The Administrator will cancel all checks not cashed by the void date. Before
20 mailing any checks, the Settlement Administrator must update the recipients' mailing
21 addresses using the National Change of Address Database. If any checks are not cashed within
22 180 days of mailing, the Administrator shall transmit the funds represented by such checks to
23 the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.
24 S.A. at ¶4.4.1, 4.4.3.

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27 ¹ In addition to the \$1,090,000 Gross Settlement Payment, the Parties have agreed to a separate \$10,000
28 settlement for Plaintiff's individual claims.

1 **III. THIS COURT SHOULD APPROVE THIS PAGA SETTLEMENT**
2 **BECAUSE IT IS A FAIR, ADEQUATE, AND REASONABLE**
3 **COMPROMISE OF HIGHLY DISPUTED CLAIMS**

4 Labor Code section 2699(l)(2) provides that the Court shall review and approve any
5 settlement of any civil action filed pursuant to PAGA. A PAGA settlement is different from
6 one in a class action, however, and a PAGA settlement is not subject to the same level of
7 scrutiny in approving an associated settlement. These distinctions include the fact that a
8 PAGA representative action is fundamentally a law enforcement action designed to protect
9 the public and penalize the employer for past illegal conduct. *Cunningham v. Leslie's*
10 *Poolmart, Inc.* (C.D. Cal. June 25, 2013) 2013 U.S.Dist. LEXIS 90256, 16-17 [internal
11 citation omitted].) The purpose of a PAGA action is not to collect damages on behalf of
12 employees or provide restitution for Labor Code violations. *Id. see also Franco v. Athens*
13 *Disposal Co., Inc.* (2009) 171 Cal.App.4th 1277, 1300 (“Restitution is not the primary
14 objection of a PAGA action, as it is in most class action.”) Also, PAGA does not require notice
15 requirements for unnamed aggrieved employees nor may such employees opt out of a PAGA
16 action. *Baumann v. Chase Ins. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122).

17 Civil Penalties assessed under PAGA are primarily intended to deter violations of the
18 employment laws of the State of California. *Iskanian v. CLS Transportation Los Angeles, LLC*
19 (2015) 59 Cal.4th 348. Whether the total settlement of a PAGA claim achieves the objectives
20 of the statute is a factor that should strongly be considered in evaluating this instant settlement.
21 Significantly, pursuant to Labor Code Section 2699(e)(2), in any action brought by an
22 aggrieved employee under PAGA, a court may award a lesser amount than the maximum civil
23 penalty amount if to do otherwise would result in an award that is unjust, arbitrary and
24 oppressive, or confiscatory. Courts routinely exercise this discretion. See e.g., *Parr v. Golden*
25 *State Overnight* (Alameda S.Ct., 2014, RG12-618103) (93% reduction in PAGA penalties
26 even after plaintiffs prevailed at trial); *Kileigh Carrington v. Starbucks Corp.* (2018) 30
27 Cal.App.5th 504 (reducing potential PAGA liability to only \$5 per proven violation). As
28 explained below, the weaknesses of the claim would potentially justify significant reduction
 of maximum available penalties. The terms of the settlement sufficiently act to deter

1 Defendant from further violations alleged in the matter.

2 PAGA was passed because the Legislature believed it necessary “to achieve maximum
3 compliance with state labor laws” and “to ensure an effective disincentive for employers to
4 engage in unlawful and anticompetitive business practices.” 2003 Cal. Legis. Serv. Ch. 906 §
5 1(a). The Legislature further found that, while self-policing efforts have had some success,
6 “in other cases the only meaningful deterrent to unlawful conduct is the vigorous assessment
7 and collection of civil penalties as provided in the Labor Code.” *Id.* at § 1(b). Through PAGA,
8 the Legislature thus: (1) sought to “enlist[] willing citizens in the task of private enforcement,”
9 *Iskanian*, 59 Cal.4th at 390; (2) “deputized” aggrieved employees to sue on behalf of the State
10 to enforce state labor laws; and (3) authorized them to recover civil penalties, attorneys’ fees,
11 and costs. 2003 Cal. Legis Serv. Ch. 906 (Legislative Counsel’s Digest). In bringing a PAGA
12 action, “[t]he employee-plaintiff acts as the proxy or agent of the state labor enforcement
13 agencies, representing the same legal right and interest as those agencies” *Id.* at 394.

14 As for the interests of the LWDA (in whose shoes Plaintiff stands), its top enforcement
15 priorities are “to vigorously enforce minimum labor standards in order to ensure employers
16 are not required or permitted to work under substandard unlawful conditions . . .” and to
17 “protect employers who comply with the law from those who attempt to gain a competitive
18 advantage at the expense of their workers by failing to comply with minimum labor
19 standards.” Labor Code § 90.5(a). Moreover, in addition to the collection of civil penalties,
20 Labor Code § 1194.5 (which is specifically referenced in Labor Code § 90.5) authorizes the
21 LWDA to seek injunctive relief.

22 **A. Analysis of Plaintiff’s PAGA Claim**

23 1. Off-the-Clock Security Checks

24 Plaintiff contended that Defendants implemented employee security checks off-the-
25 clock such that unpaid wages would ensue. Plaintiff contended that employees underwent
26 checks that took up to 10 minutes each time they entered and departed the Yusen warehouse
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1 facility. Plaintiff alleged that employees waited in line to go through a metal detector and have
2 their bags checked by security personnel off-the-clock. ZM Decl. ¶15.

3 Staffmark countered that the security check was not as involved as Plaintiff alleged.
4 Staffmark represented that employees went through a quick turnstile security check where
5 their attendance was logged before they clocked in to start their day. That this process only
6 took a few minutes, and would never exceed five minutes a day. Also, Staffmark represented
7 that there were no checks conducted when employees came and went for their breaks and
8 when they ended their shifts. ZM Decl. ¶16.

9 The above essentially suggests that employees would be owed some amount of wages,
10 to the tune of 2-5 minutes per shift, on account of the security procedures. In light of a regular
11 and common practice, PAGA penalties would be available for each of the 41,017 pay periods.
12 ZM Decl. ¶17.

13 2. Use of Debit Pay Cards

14 Plaintiff contended that Staffmark utilized a debit pay card whereby employees were
15 charged a fee to access their pay. Staffmark represented that debit pay cards were not
16 mandatory, very few chose them, and that employees could also opt for physical checks or
17 direct deposit. Employees opting for debit pay cards could use them wherever Visa was
18 accepted or withdraw cash, without charge, at any US bank. Although pay card fees had been
19 an issue in prior litigation, Staffmark insisted that the issue had been resolved such that no
20 Aggrieved Employees were charged fees if they opted for a debit pay card and no wages were
21 underpaid. It was surmised that the likely culprit for the assessment of fees was pay card use
22 at foreign financial institutions. ZM Decl. ¶18.

23 3. Reporting Time

24 Plaintiff alleged that Staffmark did not pay for reporting time to the extent an employee
25 reported to work but was turned away. Staffmark maintained that the issue of reporting time
26 was exceedingly rare and that they in fact paid for reporting time, as reflected by the payroll
27 records provided to Plaintiff. Moreover, it will be difficult for Plaintiff to prove that any
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1 employee reported to work and was turned away on any specific instance as there will likely
2 be no paper trail. ZM Decl. ¶19.

3 4. Meal and Rest Breaks

4 Plaintiff maintained that the security procedures highlighted above would be
5 undermined to the extent employees were allowed to leave the warehouse such that any
6 requirement that employees remain at the warehouse for their meal and rest breaks would
7 result in on-duty meal breaks triggering liability. Staffmark countered that employees
8 underwent security checks only when they started their shifts and employees were free to
9 leave the premises during breaks. To highlight this freedom, Staffmark indicated that food
10 trucks were permitted outside the warehouse and employees regularly took advantage of them.
11 ZM Decl. ¶20.

12 Plaintiff additionally alleged that because there were insufficient time clocks at the
13 warehouse, employees would have to cut their meal breaks short by 3-4 minutes in order to
14 get in line to clock back in to arrive at their workstations on time. That net meal breaks would
15 be shorter than what may appear to be compliant meal breaks in the time data. Staffmark
16 countered that shifts and corresponding meal breaks were staggered such that there never was
17 any backup to use time clocks. Also, that were six timeclock stations at the warehouse, more
18 than enough. Notably, the varying circumstances would potentially force determination on a
19 myriad of individual issues which would present manageability issues for trial. ZM Decl. ¶21.

20 5. Failure to Reimburse Expenses

21 Plaintiff contended that due to security concerns, Defendant required that employees
22 purchase and utilize clear bags and backpacks to carry personal items to and from work and
23 that there was no reimbursement for same. Defendant countered that there was no such
24 requirement and that employees could opt to put their items in clear bags to accommodate the
25 security procedure and many simply chose to carry their items in reusable plastic bags. ZM
26 Decl. ¶22.

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1 6. Potentially Available PAGA Penalties/Realistic Exposure

2 The lawsuit implicated 41,017 weekly pay periods from August 21, 2020 through the
3 date of mediation. The only realistic route to recovery of penalties will be through the pre-
4 clock in security checks as Plaintiff does not expect to recover on the other predicate claims
5 due to strong factual defenses and trial manageability issues. Maximum penalties pursuant to
6 *Amaral v. Cintas*, assuming a violation for each and every pay period, assessed at the initial
7 violation rate of \$100 for pay periods prior to the PAGA notice date of August 21, 2021
8 (14,356 pay periods) and the subsequent violation rate of \$200 for pay periods after that date
9 (26,661 pay periods), results in maximum potential exposure of \$6,767,500. To the extent
10 Plaintiff is able to trigger predicate violations beyond the security check issue and is able to
11 stack PAGA penalties, the potential maximum could be higher. Although no California
12 appellate decision has addressed whether a plaintiff can stack penalties for different predicate
13 violations, the California Supreme Court’s decision in *ZB, N.A. v. Superior Court*, (2019) 8
14 Cal.5th 175, rejected an employee’s attempt to recover default civil penalties in addition to
15 civil penalties assessed with respect to unpaid wages under Cal. Labor Code 558. The Court
16 highlighted that civil penalties “are intended ‘to punish the employer’ for wrongdoing, often
17 ‘without reference to the actual damage sustained’” (citing *Murphy v. Kenneth Cole*
18 *Productions, Inc.* (2007) 40 Cal.4th 1094, 1104). Plaintiff ultimately does not anticipate being
19 able to stack PAGA penalties as he deems it highly likely that a court will potentially be
20 persuaded that assessment of a single penalty per pay period per employee will be sufficient
21 to punish past violations and deter future ones. ZM Decl. ¶23.

22 Furthermore, discretionary reductions are anticipated in addition to general litigation
23 risk and delay. Taking the \$6,767,500 as the maximum potential figure and applying a
24 discretionary reduction of 85% (consistent with reported cases) results in \$1,015,125 in
25 available penalties. This reflects the potential value of Plaintiff’s PAGA claims for settlement
26 purposes. The Parties’ settlement captures this realistic valuation, provides for significant
27 recovery of civil penalties by the state, and is expected to deter future Labor Code violations
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1 by Staffmark and Yusen. Accordingly, Plaintiff’s counsel believes that this PAGA settlement
2 is fair, reasonable, and in the best interests of the aggrieved employees and the State of
3 California. ZM Decl. ¶24.

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5 **IV. AN AWARD OF ATTORNEYS’ FEES SHOULD BE APPROVED**

6 California Labor Code § 2699(g) states that an employee whose action results in the
7 payment of civil penalties “shall be entitled to an award of reasonable attorneys’ fees and
8 costs.” Here, Plaintiff’s counsel is seeking recovery of \$381,500 in attorneys’ fees, or thirty-
9 five percent of the Gross Settlement Amount. The incurred fees are necessary and reasonable.
10 Significantly, these fees are contingent in nature for counsel. ZM Decl. ¶25.

11 In Counsel’s experience, a gross PAGA settlement of \$1,090,000 is a fair, reasonable,
12 and adequate settlement in light of the strength of the claim, Defendant’s defenses, and the
13 strong possibility there would be no recovery without this settlement. Even if Plaintiff was to
14 prevail on the underlying claim, he would face the potential of significant discretionary
15 reduction of maximum penalties by the Court. ZM Decl. ¶26. Counsel’s efforts have resulted
16 in over half a million dollar recovery by the State of California.

17 **A. PAGA Counsel’s Fees Should be Approved as a Percentage of the**
18 **Total Common Fund Created**

19 PAGA Counsel seeks a fee award calculated as a percentage of the total value of the
20 settlement for successful prosecution and resolution of all existing claims. Both California
21 State and Federal Courts have recognized that an appropriate method in determining an
22 attorney fee award may be based on the percentage on the total value of the benefits conferred
23 by the settlement. *Serrano v. Priest* (1997) 20 Cal. 3d 25-34 [*Serrano III*]; *Boeing Company*
24 *v. Van Gemert* (1980) 344 U.S. 472, 478; *Vincent v. Hughes Airwest, Inc.* (9th Cir. 1977) 557
25 F.2d 759, 769. The purpose of this equitable doctrine is to avoid unjust enrichment and to
26 “spread litigation costs proportionately among all the beneficiaries so that the active
27 beneficiary does not bear the entire burden alone.” *Id.* at 768. The monetary benefits will then
28 be paid from a common fund.

1 The California Supreme Court endorsed a fee award as a percentage of the common
2 fund; the Court clarified “that when an attorney fee is awarded out of a common fund
3 preserved or recovered by means of litigation (internal citation omitted), the award is not per
4 se unreasonable merely because it is calculated as a percentage of the common fund.” *Laffitte*
5 *v. Robert Half Int’l. Inc.* (2016) 1 Cal. 5th 480, 486. Also “[t]hat the recognized advantages
6 of the percentage method...convince us that the percentage method is a valuable tool that
7 should not be denied in our trial courts.” *Id.* at 503.

8 The Common Fund Doctrine is predicated on the principle of preventing unjust
9 enrichment. When a litigant’s efforts create or preserves, or generates a fund from which
10 others derive benefits, he may require the passive beneficiaries to compensate those who
11 created the fund. Both California State and Federal Courts have embraced this Doctrine.
12 *Serrano III, supra*, at 35; *Vincent, supra*, at 769.

13 Since *Serrano III, supra*, there has been a ground swell of support for mandating the
14 percentage of the fund approach in common fund cases. Both State and Federal Court have
15 found the percentage approach preferable to the Lodestar because; (1) it aligns the interest of
16 counsel and absent parties (PAGA Counsel and the LWDA here); (2) it encourages efficient
17 resolution of the litigation by providing an incentive for early, yet reasonable, settlement; and
18 (3) it reduces the demand on judicial resources. *In re Activision Sec. Litig.* (N.D. Cal. 1989)
19 723 F Supp. at 1378-79. The Ninth Circuit now routinely uses the percentage of the common
20 fund approach to determine the award of attorney fees. *Lealao v. Beneficial Calif., Inc.* (2000)
21 82 Cal.App.4th 19, 30-31.

22 Collectively, PAGA counsel seeks \$381,500 which is thirty-five percent (35%) of the
23 \$1,090,000 Settlement Amount. Class Counsel’s request for thirty-five percent of the
24 monetary fund recovered is well within the range customarily approved by California courts
25 in class actions as well as with contingency contracts negotiated by Plaintiff and his counsel.
26 “Empirical studies show that regardless of whether or not the percentage method or Lodestar
27 method is used, fee awards in class actions average around one-third of the recovery.” See
28 e.g., *Chavez v. Netflix, Inc.* (2008) 162 Cal.App.4th 66, fn. 11; *In re California Indirect*
Purchases (October 22, 1998) WL1031494 at *9 (citing *In re Milk Antitrust Litigation* (L.A.

Sup. Ct. 1998) Civ. Case No. BC070061 (33 1/3% award); *In re Facsimile Paper Antitrust Litigation* (San Francisco Sup. Ct. 1997) Civ. Case No. BC 0070061 (33 1/3% award); *In re Liquid Carbon Dioxide Cases* (San Diego Sup. Ct. 1996) J.C.C.P. 3012 (33 1/3% award); *Romero v. Producers Dairy Foods, Inc.* (E.D. Cal. November 14, 2007) WL 3492841 at *4 (“fee awards in class actions average around one-third of the recovery.” (Quoting Newberg on Class Actions § 14.6 (4th ed. 2007)).

In *Lealao, supra*, at 46-47, the Court indicated that in defining a “reasonable” fee in representative actions, the law should “mimic the market.” The Court went on to state:

“Given the unique reliance of our legal system on private litigants to enforce substantive provisions of law through class and derivative actions, attorneys providing the essential enforcement services must be provided incentives roughly comparable to those negotiated in the private bargaining that takes place in the legal marketplace as it will otherwise be economic for Defendant’s to increase injurious behavior. *Lealao, supra*, 82 Cal.App.4th at 46-47, and *Graciano v. Robinson Ford Sales, Inc.* (2006) 144 Cal. App.4th 140, 163.

For the following reasons, awarding thirty-five percent of the gross settlement for attorney fees is fair, reasonable and appropriate.

B. Factors Supporting the Fee Award

1. The Amount of the Settlement

In Counsel’s experience, a PAGA settlement for \$1,090,000 is a fair, reasonable, and adequate settlement in light of the asserted claims, Defendant’s defenses, and the strong possibility that there would be no recovery without this settlement. ZM Decl., ¶26. Declaration of Haik Hacopian (hereinafter “HH Decl.” ¶5). The LWDA will be recovering a significant penalty award and aggrieved employees will be receiving noteworthy payments as well. The average amount expected to be paid amongst 3,300 Aggrieved Employees is \$48.15. (\$168,502.46 ÷ 3,300). ZM Decl., ¶11.

2. The Named Plaintiff Signed a Retainer Agreement

Plaintiff Salazar signed a single retainer with Mooradian Law, APC. The Retainer Agreement had language providing a maximum of forty percent (40%) in attorneys’ fees, of course, subject to a court approval of class wide issues. The Retainer Agreement also had a provision for recovery of costs in relation to the representation. ZM Decl. ¶27.

1 In *Lealao, supra*, 82 Cal.App.4th at 46-47, the court indicated that in defining a
2 “reasonable” fee in representative actions, the law should “mimic the market.” Here, as for
3 the representation of the individual rights of Mr. Salazar, a proposed retainer agreement for
4 recovery of fees could be thirty-five percent of the gross recovery. That would be consistent
5 with the market rate, and there is no reason to believe that if counsel had signed a retainer
6 agreement with the LWDA to prosecute claims on the LWDA’s behalf, it would be any
7 different. ZM Decl. ¶28.

8 In, *In re Cont’l Ill. Secs. Litig.*, Judge Posner endorsed a market-based approach to
9 evaluating fee requests, stating that the function of judges in fee litigation “is to determine
10 what the lawyer would receive if he were selling his services in the market rather than being
11 paid by court order.” (7th Cir. 1992) 962 F.2d 566, 568. In a law review article (Silver) entitled
12 “A Restitutionary Theory of Attorneys’ Fees in Class Actions (1991) 76 Cornell L.Rev. 656,
13 702-703 (it stated that the goal “is to pay attorneys on terms they would probably accept in an
14 ex ante bargain, before the outcome of litigation is known”).

15 3. The Defendant Does Not Object to the Attorney Fee 16 Agreement

17 In almost all the mediations that Mr. Mooradian has attended, a one-third to 35%
18 attorney fee percentage is generally agreed upon by the defendant and the plaintiff subject to
19 court approval. In this matter, the Parties agreed that PAGA Counsel may request up to 35%
20 and Staffmark would not oppose the same. ZM Decl. ¶29.

21 Here, it is beyond any reasonable dispute that, if PAGA counsel had been able to
22 negotiate directly with the LWDA, the LWDA would have found that a thirty-five percent fee
23 arrangement was eminently reasonable. ZM Decl. ¶30.

24 4. The Contingent Risk Factor

25 For PAGA Counsel, the fees in this case are entirely contingent in nature. As the 9th
26 Circuit noted, class counsel who take a case on a contingency basis bears a “double
27 contingency: first they must prevail on the class claims, and then they must find some way to
28 collect what they win.” *Torrissi v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1377.

The fees received from one case, are often used to finance and move forward other cases that have failed and bring in revenue for counsel. ZM Decl. ¶25.

C. The Lodestar/Multiplier Cross-Check

Even though class counsel is requesting fees with the percentage of the benefit approach, some courts nevertheless use a Lodestar/Multiplier cross check to confirm the fees' reasonableness. *Lealao v. Beneficial California, Inc.*, *supra*, 82 Cal.App.4th 19-45; *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1051. The Lodestar Analysis (Lodestar-Multiplied Method) begins with a calculation of time spent in reasonable hourly compensation of each attorney and paralegal who worked on the case and then to compensation counsel for risk, quality and result, courts commonly apply a "multiplier" to the Lodestar in awarding attorney fees.

The first step is to determine the Lodestar individually for each attorney and/or paralegal that has worked on the case and is claiming fees. The Lodestar analysis for each attorney appears in their own Declaration(s) and fee and cost ledger attachments, which is summarized below:

Attorney(s)	Billable Rate(s)	Hours	Lodestar	Laffey Rate	
Zorik Mooradian ZM Decl., ¶31, Exh. 4	\$650.00	125.60	\$81,640.00	\$997.00	\$125,223.20
Haik Hacopian HH Decl., ¶6, Exh. 1	\$450.00	67.9	\$30,555.00	\$829.00	\$56,289.10
Total Lodestar		193.50	\$112,195.00		\$181,512.30

In this matter, the total present and anticipated lodestar tallies to \$112,195.00 and results in the requested \$381,500.00 fee award after the application of a 3.4 multiplier. To the extent Laffey Matrix rates are applied, the lodestar calculates to \$181,512.30 and results in the reflected fee award after the application of a 2.1 multiplier. ZM Decl., ¶33.

//

1 **D. A Lodestar Multiplier of 2.1 to 3.4 is Reasonable**

2 “It is an established practice in the private legal market to reward attorneys for taking
3 the risk of non-payment by paying them a premium over their normal hourly rates for winning
4 contingency cases.” *Fischell v. Equitable Life Assur. Society of U.S.* (9th Cir. 2002) 307 F.3d
5 997, 1008. In the Ninth Circuit, a lodestar amount is “routinely enhanced...to reflect the risk
6 of non-payment in common fund cases.” *Craft v. County of San Bernardino* (C.D. Cal. 2008)
7 624 F.Supp.2d 1113, 1125 (awarding multiplier of 5.2 and collecting cases with cross-check
8 multipliers ranging from 4.5 to 19.6); *Morgret v. Applus Tech., Inc.* (E.D. Cal. Jun. 1, 2015)
9 Case No. 1:13-cv-01801-JLT, 2015 WL 3466389 at *17 (awarding multiplier of 3.9, “which
10 is within the range typically awarded in the Ninth Circuit.”); *Torchia v. W.W. Grainger, Inc.*
11 (C.D. Cal. Dec. 29, 2014) 304 F.R.D. 256, 277 (Thurston, J.) (awarding multiplier of about
12 3.6).

13 Here, the lodestar multiplier of approximately 3.4 is well within the range of
14 reasonableness, as has been held by numerous courts, especially in light of the significant
15 work performed in this case, the results obtained, and the efficiency with which it was done.

16 Class Counsel’s requested hourly rates could also be assessed pursuant to the Laffey
17 Matrix, which has been utilized in California district courts as “a widely recognized
18 compilation of attorney and paralegal rate data.” *Fernández v. Victoria Secret Stores, LLC*
19 (C.D. Cal. Jul. 21, 2008) 2008 WL 8150856 at *14 (citing *In re Chiron Corp. Sec. Litig.* (N.D.
20 Cal. Nov. 30, 2007) 2007 WL 4249902 at *6); see also *Theme Promotions, Inc. v. News*
21 *America Mktg. FSI, Inc.* (N.D. Cal. 2010) 731 F.Supp.2d 937, 948. As the court noted in
22 *Theme Promotions*, “[t]he rates posted in the Laffey matrix are tailored for the District of
23 Columbia, which has a different cost of living index” from the Los Angeles area. Therefore,
24 “to adjust the rates for the relevant legal market, the court will use the federal locality pay
25 differentials based on federally compiled cost of living data.” *Id.* (citing *In re HPL Tech., Inc.*
26 *Sec. Litig.* (N.D. Cal. 2005) 366 F.Supp.2d 912, 921); see also *Fernandez, supra*, at *14
27 (recognizing “where use of the Laffey matrix has been disapproved [in the Central District],
28

1 it has been because it produced a rate that the court determined was too low.”)

2 The Laffey Matrix demonstrates PAGA Counsel’s requested rates are reasonable. The
3 current Laffey Matrix lists hourly rates of \$829 for attorneys in their 11th to 19th years out of
4 law school such as Mr. Hacopian, and \$997 for attorneys 20 plus years out of law school such
5 as Mr. Mooradian. PAGA Counsel’s requested rates fall well below these rates. To the extent
6 Mooradian Law APC’s lodestar is calculated at Laffey hourly rates, the total present lodestar
7 would amount to \$181,512.30 (and which would result in a 2.1 multiplier). ZM Decl., ¶¶32,
8 33, **Exhibit 5** (“Laffey Matrix”).

9 **E. Attorneys Fees v. Benefits Conferred**

10 While it’s generally true that the greater the attorney fees, the less funds there will be
11 for distribution as damages, nevertheless, a balance must be achieved. In the instant matter,
12 the LWDA and Aggrieved Employees got a very balanced and fair settlement. Given the
13 strengths and weaknesses of the case, they will be receiving a fair sum of money. The results
14 and the case law support that the settlement was fair, reasonable and adequate. In light of the
15 favorable settlement, giving more money to the LWDA and Aggrieved Employees after an
16 excellent settlement had been achieved punishes the attorneys without whom such a settlement
17 would not have been attained but for the efforts of good lawyering. Punishing lawyers when
18 they do well is potentially sending the wrong message and serves as a disincentive and unjustly
19 enriches the LWDA and Aggrieved Employees who will be receiving a fair and adequate
20 amount of benefits. ZM Decl. ¶34.

21
22 **V. PAYMENT OF COSTS TO COUNSEL SHOULD BE APPROVED**

23 Counsel has incurred \$12,740.18 in total costs in prosecuting this matter, which is far
24 less than the \$25,000 maximum contemplated by the settlement, and is the amount that
25 Plaintiff is requesting that the Court approve. S.A. ¶3.2.1. All costs are necessary and
26 reasonable, as reflected by the itemized cost ledgers of counsel. ZM Decl. ¶31, Exh. 4
27 (\$12,300.50); HH Decl. ¶6, Exh. 1 (\$439.68).

1 **VI. PAYMENT FOR ADMINISTRATION EXPENSES SHOULD BE APPROVED**

2 Counsel has secured a not to exceed bid from CPT Group, Inc., the Parties' selected
3 administrator, in the amount of \$16,750 in relation to dissemination of payments to the various
4 parties as contemplated by the settlement including to 3,300 aggrieved employees. CPT will
5 also translate the notice to Aggrieved Employees into Spanish and will be responsible for the
6 escheatment of uncashed checks. A true and correct copy of the not to exceed quote secured
7 from CPT is attached to the Declaration of Zorik Mooradian as **Exhibit "6"**. ZM Decl., ¶35,
8 Exh. 6.

9
10 **VII. CONCLUSION**

11 For the reasons stated herein, this Court should grant Plaintiff's Motion in its entirety
12 and adopt the [Proposed] Order submitted concurrently herewith.

13 Dated: December 5, 2023

MOORADIAN LAW, APC

15 By: /s/ Haik Hacopian

16 Zorik Mooradian, Esq.,
17 Haik Hacopian, Esq.,

18 Attorneys for Plaintiff and Aggrieved
19 Employees



Court Reservation Receipt

Reservation

Reservation ID: 619194368852	Status: RESERVED
Reservation Type: Motion re: (PAGA Settlement Approval)	Number of Motions: 1
Case Number: 21STCV39663	Case Title: FRANCISCO SALAZAR, INDIVIDUALLY AND ON BEHALF OF ALL OTHER AGGRIEVED EMPLOYEES vs YUSEN LOGISTICS (AMERICAS) INC., AN ACTIVE NEW YORK CORPORATION, et al.
Filing Party: Francisco Salazar, individually and on behalf of all other aggrieved employees (Plaintiff)	Location: Stanley Mosk Courthouse - Department 49
Date/Time: December 28th 2023, 8:30AM	Confirmation Code: CR-GWUGNCLKVXHEXGXPV

Fees

Description	Fee	Qty	Amount
Motion re: (name extension)	60.00	1	60.00
Credit Card Percentage Fee (2.75%)	1.65	1	1.65
TOTAL			\$61.65

Payment

Amount: \$61.65	Type: Visa
Account Number: XXXX7684	Authorization: 02085A
Payment Date: 2023-11-15	

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