

1 **KINGSLEY & KINGSLEY, APC**
2 ERIC B. KINGSLEY, Esq. (SBN-185123)
3 eric@kingsleykingsley.com
4 KELSEY M. SZAMET, Esq. (SBN-260264)
5 kelsey@kingsleykingsley.com
6 JUSTIN M. AUFDERHAR, Esq. (SBN 314023)
7 justin@kingsleykingsley.com
8 16133 Ventura Blvd., Suite 1200
9 Encino, CA 91436
10 Tel.: (818) 990-8300 | Fax: (818) 990-2903

11 Attorneys for Plaintiff and the Proposed Class

12
13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 CRYSTAL MARTINEZ RAMIREZ, an
17 individual, on behalf of the State of
18 California, as a private attorney general,

19 Plaintiff,

20 vs.

21 SP PLUS CORPORATION; and DOES 1 to
22 50, inclusive,

23 Defendants.

CASE NO.: BC614253

[Assigned for all purposes to the Hon. Howard
L. Halm, Dept. 53]

**NOTICE OF MOTION AND MOTION FOR
PRELIMINARY APPROVAL OF CLASS
SETTLEMENT; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

*[Filed concurrently with the Declaration of
Kelsey M. Szamet; Declaration of Crystal
Martinez; and [Proposed] Order Thereon]*

Date: September 6, 2018

Time: 8:30 a.m.

Dept.: 53

Complaint Filed: March 18, 2016

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

AUG 13 2018

Sherri R. Carter, Executive Officer/Clerk of Court
By: Judi Lara, Deputy

1 **TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that on September 6, 2018 at 8:30 am in Department
3 53 of the above-entitled court, Plaintiff CRYSTAL MARTINEZ RAMIREZ will move the Court
4 for an Order of Preliminary Approval of the Joint Stipulation of Class Action Settlement
5 (“Settlement” or “Settlement Agreement”), a copy of which is filed concurrently as Exhibit “A” to
6 the Declaration of Kelsey M. Szamet.

7 The Motion will be made on the grounds that the proposed Class Settlement is fair,
8 adequate, reasonable, and in the best interest of the Class and the Parties.

9 The Motion will be based on this Notice of Motion, the attached Memorandum of Points
10 and Authorities, the Declaration of Kelsey M. Szamet, the Joint Stipulation of Class Action
11 Settlement, all other papers and records on file in this action, and on such oral and documentary
12 evidence as may be presented at the hearing on this Motion.

13
14 DATED: August 13, 2018

KINGSLEY & KINGSLEY, APC

15
16 By: _____

Kelsey M. Szamet
Attorney for Plaintiff CRYSTAL MARTINEZ
RAMIREZ and all aggrieved employees

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	FACTUAL BACKGROUND	1
A.	Litigation Overview and Procedural History	1
B.	The Settlement Class	3
III.	THE SETTLEMENT	3
A.	Settlement Amount	3
B.	Process for Administering Settlement after Preliminary Approval	4
C.	Process for Class Members to Respond to Class Notice.....	4
IV.	ARGUMENT	5
A.	Plaintiff Requests Preliminary Approval of This Class Action Settlement	5
1.	The Strength of Plaintiff's Case	5
2.	The Risk, Expense, Complexity, and Likely Duration of Further Litigation	
	10	
3.	The Risk of Maintaining Class Action Status through Trial.....	11
4.	The Amount Offered in Settlement.....	11
5.	The Experience and Views of Counsel	13
6.	The Proposed Plan of Allocation Is Fair and Reasonable.....	13
7.	The Proposed Notice Fairly Apprises the Class Members of the Terms of	
	the Settlement and of the Class Members' Rights under the Settlement	14
V.	THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR	
	SETTLEMENT PURPOSES	14
A.	The Proposed Classes Are Ascertainable and Sufficiently Numerous	15
1.	Ascertainability	15
2.	Numerosity	16
B.	There Is a Well-Defined Community of Interest	16
1.	There Are Predominant Questions of Law and Fact	16
2.	The Class Representative Has Claims Typical of the Proposed Class.....	17

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3.	The Class Representative Has and Will Fairly Represent the Interests of the Settlement Class	18
C.	The Class Action Vehicle Is Superior to the Alternatives	19
VI.	CONCLUSION	20

TABLE OF AUTHORITIES

Federal Cases

McKenzie v. Fed. Express Corp.,

(C.D.Cal.2011) 275 F.R.D. 295 7

Officers for Justice v. Civil Service Comm’n,

(9th Cir. 1982) 688 F.2d 615..... 13

State Cases

Bell v. Farmers Ins. Exch.,

(2004) 115 Cal.App.4th 715 17

Blue Chip Stamps v. Superior Court,

(1976) 18 Cal.3d 381 19

Bradley v. Networkers International, LLC,

(2012) 211 Cal.App.4th 1141..... 17

Brinker Restaurant Corp. v. Superior Court,

(2012) 53 Cal.4th 1021. 15, 17

Cartt v. Superior Court,

(1975) 50 Cal.App.3d 960..... 14

Classen v. Weller,

(1983) 145 Cal.App.3d 27..... 18

Cochran v. Schwan’s Home Services, Inc.,

(2014) 228 Cal.App.4th 1137 8

Collins v. Rocha,

(1972) 7 Cal.3d 232 15, 16

Fireside Bank v. Sup. Court,

(2007) 40 Cal.4th 1069 14, 15

Hicks v. Kaufman & Broad Home Corp.,

(2001) 89 Cal.App.4th 908 16

1	<u>Knapp v. AT & T Wireless Services, Inc.,</u>	
2	(2011) 195 Cal.App.4th 932	16
3	<u>Kullar v. Foot Locker Retail, Inc.,</u>	
4	(2008) 168 Cal.App.4th 116	5, 6
5	<u>Linder v. Thrifty Oil Co.,</u>	
6	(2000) 23 Cal.4th 429	15
7	<u>Lockheed Martin Corp. v. Sup. Ct.,</u>	
8	(2003) 29 Cal.App.4th 1096	18, 19
9	<u>Lopez v. Friant & Associates, LLC,</u>	
10	(2017) 15 Cal.App.5th 773	9, 10, 11
11	<u>Miller v. Woods,</u>	
12	(1983) 148 Cal.App.3d 862.....	16
13	<u>Raines v. Coastal Pacific Food Distributors, Inc.,</u>	
14	(2018) 23 Cal.App.5th 667	9
15	<u>Richmond v. Dart Industries, Inc.,</u>	
16	(1981) 29 Cal.3d 462	15, 19
17	<u>Rose v. City of Hayward,</u>	
18	(1981) 126 Cal.App.3d 926.....	15, 16
19	<u>Sav-on Drug Stores, Inc. v. Sup. Court,</u>	
20	(2004) 34 Cal.4th 319	15, 16, 17
21	<u>Seastrom v. Neways, Inc.,</u>	
22	(2007) 149 Cal.App.4th 1496	18
23	<u>Simons v. Horowitz,</u>	
24	(1984) 151 Cal.App.3d 834.....	18
25	<u>Trotsky v. L.A. Fed. Sav. & Loan Ass'n,</u>	
26	(1975) 48 Cal.App.3d 134.....	14
27	<u>Vasquez v. Superior Court,</u>	
28	(1971) 4 Cal.3d 800	19

Wershba v. Apple Computer, Inc.,

(2001) 91 Cal.App.4th 224 18

State Statutes

Code of Civil Procedure § 382..... 14, 15

Labor Code § 210..... 12

Labor Code § 225.5..... 12

Labor Code § 226(2)(C)..... 6

Labor Code § 226(a) passim

Labor Code § 226(e) 6, 7, 11

Labor Code § 226(e)(2)(B) 6

Labor Code § 226.3..... 7

Labor Code § 2802..... passim

Labor Code § 2699..... 8

Labor Code § 2699(e) 9

Labor Code § 2699.3..... 8

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff CRYSTAL MARTINEZ RAMIREZ (“Plaintiff”) submits this Memorandum of
4 Points and Authorities in support of Plaintiff’s Motion for Preliminary Approval of the settlement
5 reached between Plaintiff and Defendant SP PLUS CORPORATION (“Defendant”).

6 By this Motion, Plaintiff requests that the Court:

7 (1) Grant preliminary approval of the fully-executed Joint Stipulation of Class Action
8 Settlement (“Settlement” or “Settlement Agreement), a copy of which is attached to the
9 concurrently-submitted Declaration of Kelsey M. Szamet as Exhibit “A”;

10 (2) Approve the proposed Notice to Class Members, a copy of which is attached to the
11 Settlement Agreement as Exhibit “1,” and direct that the Notice be sent to Class Members in the
12 manner set forth in the Settlement Agreement;

13 (3) Approve the proposed Opt-Out Form, a copy of which is attached to the
14 Settlement Agreement as Exhibit “2,” and direct that the Opt-Out Notice be sent to Class
15 Members in the manner set forth in the Settlement Agreement;

16 (3) Approve the proposed Final Approval Order, a copy of which is attached to the
17 Szamet Decl. as Exhibit “B”; and

18 (4) Schedule a hearing on final approval of the proposed Settlement and Plaintiff’s
19 counsel’s application for an award of attorney’s fees and litigation costs at which Class Members
20 may be heard (“Final Approval Hearing”).

21 **II. FACTUAL BACKGROUND**

22 A. Litigation Overview and Procedural History

23 On February 4, 2016, Plaintiff sent a letter to Defendant and the Labor Workforce
24 Development agency giving notice of her intent to pursue a representative action under the
25 California Labor Code’s Private Attorneys General Act (“PAGA”) on behalf of herself, the State
26 of California, and on behalf of a proposed group of aggrieved employees. (Declaration of Kelsey
27 M. Szamet ¶4. (“Szamet Decl.”); Sett. Agrmt. 5:10-13)

28 ///

1 Plaintiff received confirmation that the LWDA was electronically served on February 4,
2 2016 and Defendant received the letter on February 8, 2016. (Szamet Decl. ¶5; Sett. Agrmt. 5:14-
3 15.)

4 On March 18, 2016, Plaintiff filed a representative action under the California Labor
5 Code's Private Attorneys General Act ("PAGA") alleging that Defendant provided Plaintiff and
6 other aggrieved employees with incomplete wage statements that violated Labor Code § 226(a)
7 and that it failed to reimburse expenses as required under Labor Code § 2802. (Szamet Decl. ¶6;
8 Sett. Agrmt. 5:16-19.)¹

9 After the case was at issue, the Parties began to engage in formal discovery. (Szamet
10 Decl. ¶9; Sett. Agrmt. 5:20-25.) Thereafter, the Parties began to explore potential early resolution
11 of this matter. *Id.* To that end, the Parties exchanged information concerning the claims set forth
12 in the Lawsuit, including Defendant's policies and practices regarding the alleged violations, the
13 number of allegedly violative wage statements at issue, the number of pay periods at issue, as
14 well as information regarding the number of allegedly affected employees. *Id.*

15 On August 22, 2017, the Parties engaged in good faith, arms-length negotiations during a
16 day-long mediation with the assistance of the Hon. Herbert B. Hoffman (Ret.). (Szamet Decl.
17 ¶10; Sett. Agrmt. 5:26-6:6.) The Parties were unable to reach a settlement of the Lawsuit that day,
18 but agreed to engage in further discussions aided by Judge Hoffman. *Id.* After further discussions
19 and the gathering of more information, the Parties then conducted a second full-day mediation
20 with Judge Hoffman on October 18, 2017. *Id.* Again, the Parties were unable to reach resolution
21 that day. But after months of continued arms-length negotiations conducted by Judge Hoffman,
22 the Parties were able to reach a settlement of the Lawsuit subject to the approval of the Court. *Id.*
23 The Parties entered into a Memorandum of Understanding ("MOU"), effective December 19,
24 2017. (Szamet Decl. ¶11; Sett. Agrmt. 5:26-6:6.) The Parties have now entered into this
25 Settlement Agreement for submission to the Court for Preliminary and Final Approval.

26 ¹ On June 26, 2018, Plaintiff submitted a Joint Stipulation to Permit Plaintiff to File First Amended Complaint.
27 (Szamet Decl. ¶7.) As of the date of this filing, the Order on the Stipulation has not been signed, but the
28 Settlement Agreement specifically contemplates settling all of the claims sets forth in the proposed First
Amended Complaint. The First Amended Complaint added class allegations. (Szamet Decl. ¶8; Settlement
Agreement ¶III, C.)

1 Through substantial formal and informal discovery and attendant discussions between the
2 Parties, Plaintiff learned that the number of Settlement Class Members is 5,040 (including
3 Plaintiff) and there are 134,255 itemized wage statements at issue. (Szamet Decl. ¶12; Sett.
4 Agrmt. 6:11-15.) Plaintiff asserts that the maximum potential exposure for the PAGA claims for
5 Settlement Class Members is \$13,425,500 (134,255 itemized wage statements at issue × \$100 =
6 \$13,425,500). *Id.*

7 B. The Settlement Class

8 For purposes of Settlement, the Settlement Class is defined as: all current and former
9 employees who work/worked for Defendant in the State of California during the Covered Period.
10 (Szamet Decl. ¶13; Sett. Agrmt. 5:4-8.) The “Settlement Class Members,” “Settlement Class,” or
11 “Class Members” shall not include any person who submits a timely and valid Request for
12 Exclusion as provided in this Agreement, or any person who previously released the Released
13 Claims under a separate agreement. *Id.*

14 The Covered Period varies based on the alleged violations: (1) Labor Code § 226(a)
15 violations for the period of January 1, 2016 to the date the Court grants preliminary approval of
16 this Agreement; (2) Labor Code § 2802 violations for the period of March 3, 2015 to the date the
17 Court grants preliminary approval of this Agreement; (3) PAGA violations arising from Labor
18 Code § 226(a) for the period of January 1, 2016 to the date the Court grants preliminary approval
19 of this Agreement; and (4) PAGA Violations arising from Labor Code § 2802 for the period of
20 March 3, 2015 to the date the Court grants preliminary approval of this Agreement. (Szamet Decl.
21 ¶14; Sett. Agrmt. 2:24-3:2.)

22 **III. THE SETTLEMENT**

23 A. Settlement Amount

24 As detailed fully in the Settlement Agreement, the Settlement provides for Defendant to
25 pay a non-reversionary total settlement amount of \$1,180,000 as the Gross Settlement Amount.
26 The Gross Settlement Amount includes the sum of the Individual Settlement Payments, the Class
27 Representative Enhancement, the Class Counsel Award, PAGA Payment, and the Settlement
28 Administration Costs, as specified in this Agreement. After deduction of the above items from the

Gross Settlement Amount, subject to Court approval, the Net Settlement Sum shall remain and be allocated as described below. (Szamet Decl. ¶15; Sett. Agrmt. ¶III, J.)

The Parties estimate the amount of the Net Settlement Amount as follows:

Gross Settlement Amount	\$	1,180,000.00
-------------------------	----	--------------

Class Representative Enhancement:	\$	5,000.00
-----------------------------------	----	----------

Class Counsel's Fees:	\$	393,333.33
-----------------------	----	------------

Class Counsel's Costs:	\$	11,000.00
------------------------	----	-----------

PAGA Payment:	\$	25,000.00
---------------	----	-----------

(\$18,750 to the LWDA and \$6,250 to remain in the Net Settlement)

<u>Settlement Administration Costs:</u>	<u>\$</u>	<u>27,500.00</u>
---	-----------	------------------

Net Settlement Amount	\$	724,416.67
------------------------------	-----------	-------------------

(Szamet Decl. ¶16; Settlement Agreement ¶III, J.)

The amount of each Class Member's individual settlement payment is an individualized amount that is based on the number of compensable pay periods worked by the Settlement Class Member during the Class Period. This individual amount shall be determined according to the formula set forth in the Settlement Agreement. (Sett. Agrmt. ¶J.1.A) The Settlement Agreement provides for a specific and detailed Workweek dispute process. (Sett. Agrmt. ¶I.3)

B. Process for Administering Settlement after Preliminary Approval

The detailed Notice Procedure established by the Settlement Agreement will efficiently and accurately ensure that Notice is provided to the Class Members. (Sett. Agrmt. ¶III, I, 2.)

The Parties have agreed to use a reputable third-party claims administrator, CPT Group, Inc., to administer the Settlement. (Szamet Decl. ¶17; Sett. Agrmt. ¶1:18-19)

C. Process for Class Members to Respond to Class Notice

As detailed in the Settlement Agreement, the Class members will have an opportunity to request exclusion from the Settlement Class (i.e. opt out) and to object to the Settlement at the Final Approval Hearing. (Sett. Agrmt. ¶II, I, 5; VI.)

///

///

1 **IV. ARGUMENT**

2 A. Plaintiff Requests Preliminary Approval of This Class Action Settlement

3 The case of *Kullar v. Foot Locker Retail, Inc* (2008) 168 Cal.App.4th 116, 128, sets forth
4 several factors that the Court should analyze in determining whether to approve a class action
5 settlement. These factors include: (1) the strength of plaintiff's case; (2) the risk, expense,
6 complexity and likely duration of further litigation; (3) the risk of maintaining class action status
7 through trial; (4) the amount offered in settlement; (5) the extent of discovery completed and
8 stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a
9 governmental participant; and (8) the reaction of the class members to the proposed settlement.

10 The proposed settlement satisfies each of these factors. Class Counsel conducted
11 meaningful formal and informal discovery before entering into arms-length settlement
12 negotiations in this matter. (Szamet Decl. ¶18.) This discovery permitted Class Counsel to fairly
13 evaluate the strengths and weaknesses of the case and the risks associated with ongoing litigation.
14 (Szamet Decl. ¶19.) Class Counsel is experienced in handling wage and hour class actions and,
15 after weighing all of the following factors, supports this Settlement. (Szamet Decl. ¶20.)

16 1. The Strength of Plaintiff's Case

17 a) **The Risks Associated with the Wage Statement Claim**

18 Labor Code §226(a) requires, in relevant part:

19 An employer, semimonthly or at the time of each payment of wages, shall
20 furnish to his or her employee ... an accurate itemized statement in writing
21 showing ... (6) the inclusive dates of the period for which the employee is
22 paid, (7) the name of the employee and only the last four digits of his or
23 her social security number or an employee identification number other
24 than a social security number, (8) the name and address of the legal entity
that is the employer ... and (9) all applicable hourly rates in effect during
the pay period and the corresponding number of hours worked at each
hourly rate by the employee.

25 Here, Plaintiff alleged that Defendant issued wage statements that violate this provision by
26 issuing itemized wage statements that fail to show four specific categories set forth in Labor Code
27 §226(a)(6)-(9). (Szamet Decl. ¶21.) Specifically, Defendant failed to include the inclusive dates
28

1 of the period for which the employee is paid, the name of the employee, the name of the employer,
2 and all applicable hourly rates in effect during the pay period and the corresponding number of
3 hours worked at each hourly rate by the employee. *Id.*

4 Plaintiff takes the position that a review of the stubs at issue reveals that Defendant's
5 itemized wage statements simply do not show the required information. Given that Plaintiff
6 believes she could establish that at least some of the itemized wage statements issued by
7 Defendant did not include the required information, Plaintiff was reasonably confident that she
8 could establish that Defendant violated Labor Code § 226(a). (Szamet Decl. ¶22.) However,
9 there were certainly risks to be weighed. (Szamet Decl. ¶23.)

10 Defendant maintained that Plaintiff was required to show injury per the Labor Code §226
11 (e)(1) and that Plaintiff could not articulate a cognizable injury here. ["An employee suffering
12 injury as a result of a knowing and intentional failure by an employer to comply with subdivision
13 (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay
14 period in which a violation occurs and one hundred dollars (\$100) per employee for each
15 violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars
16 (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."] (Szamet Decl.
17 ¶24.) In response, Plaintiff maintains that pursuant to Labor Code § 226(e)(2)(B) injury is
18 presumed by virtue of an employer failing to provide a properly itemized wage statement. ["An
19 employee is deemed to suffer injury for purposes of this subdivision if the employer fails to
20 provide accurate and complete information as required by any one or more of items (1) to (9),
21 inclusive, of subdivision (a) and the employee cannot promptly and easily determine² from the
22 wage statement alone... information required to be provided".] (Szamet Decl. ¶25.)

23 Plaintiff certainly anticipated that Defendant would argue Plaintiff could easily determine
24 the start date of the pay period from the face of the wage statement alone by simply counting back
25 from the listed end date of the pay period and likewise. (Szamet Decl. ¶26.) Contrary to
26 Defendant's anticipated argument, Plaintiff maintains that Plaintiff would have to look at

27 ² Lab. Code § 226(2)(C) provides: For purposes of this paragraph, "promptly and easily determine" means a
28 reasonable person would be able to readily ascertain the information without reference to other documents or
information.

documents outside the four corners of the wage statement to determine the exact dates of Defendant's pay periods. (Szamet Decl. ¶27.) In addition, Plaintiff maintains that courts have long held that confusion is sufficient to establish injury under this simple standard. (*McKenzie, supra*, 275 F.R.D. at p. 295.) Nonetheless, Plaintiff had to acknowledge that there was risk that the trier of fact would determine that the start date of the pay period could easily be determined from the face of the wage statement alone. (Szamet Decl. ¶28.) As it relates to the other three alleged violations of Labor Code §226(a), Plaintiff perceived little risk that she would be able to establish injury. (Szamet Decl. ¶29.)

Most importantly from a risk analysis perspective, however, is Plaintiff's ability to show that any alleged Section 226(a) violation was "knowing and intentional". (Szamet Decl. ¶30.) Defendant maintained that if a Court determined that there was any violation, it would be only a technical violation of Labor Code § 226(a)(6) that did not merit the imposition of penalties. (Szamet Decl. ¶31.) Pursuant to Labor Code § 226(e), employees are only entitled to the statutory penalty for a "knowing and intentional failure by an employer to comply with subdivision (a)." Pursuant to Labor Code § 226.3, the Labor Commissioner has the discretion to "decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake." Plaintiff anticipated that at trial, Defendant would argue that any alleged violation was the result of a clerical oversight and, accordingly, Plaintiff could not prove the violation was "knowing and intentional." (Szamet Decl. ¶32.) Consequently, Class Counsel anticipated that, at trial, Defendant could make a potentially persuasive argument that if Defendant did not act knowingly or intentionally there would be no penalties available under Labor Code § 226(e) to the Class. (Szamet Decl. ¶33.) While Class Counsel maintains that it could establish that the alleged violation was "knowing and intentional", nonetheless Class Counsel had to recognize that there was risk that a trier of fact might ultimately be swayed by Defendant's arguments. (Szamet Decl. ¶34.)

b) The Risks Associated with the Labor Code §2802 Claim

As it relates to the Labor Code §2802 allegations, there was also cognizable risk. (Szamet Decl. ¶35.) Plaintiff maintained that she was required to clock in and out using her cellphone.

(Szamet Decl. ¶36.) Defendant strongly disputed this, and maintained that if Plaintiff or any other workers did clock in and out using their personal cellphone, it was only a very limited group of employees working at a handful of parking of kiosks and those employees also generally had other available means to clock in and out such as through a desktop computer or landline telephone. (Szamet Decl. ¶37.) Plaintiff disputed these facts, but if Defendant were able to establish such facts, there could potentially be zero liability associated with this claim. (Szamet Decl. ¶38.) Moreover, even if Plaintiff were able to establish the facts and liability on this claim as to the entire class or even a smaller subclass, there is a question as to what amount could be recoverable. (Szamet Decl. ¶39.) If an employee is simply using a personal cellphone for a limited amount of time per shift, there is an open question as to what amount an employer is responsible for if that employee would have maintained the same personal cellphone anyway. (Szamet Decl. ¶40.) Assuming that if the Court found that the Class was in fact required to use their personal cellphone to clock in and out without a secondary option available, the Court could still be persuaded by the argument that the Class merely used personal cellphones for minutes or seconds per shift to clock in and out. Thus, even if Plaintiff established liability, she could potentially be awarded mere dollars or pennies as a “reasonable percentage” of her overall monthly cellphone costs (*See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137 at 1144). (Szamet Decl. ¶41.)

In light of the above, Plaintiff believed there were certainly serious risks to be weighed in considering whether or not she could establish liability on her class claims. (Szamet Decl. ¶42.)

c) The Risks Associated with the PAGA Claim

The PAGA statute gives aggrieved employees the right to pursue specific labor code violations by way of a civil action. (Lab. Code § 2699.3.) Here, the aggrieved employees’ PAGA claims are predicated upon two alleged underlying violations of the Labor Code. First, Plaintiff alleged that the same underlying violations of Labor Code § 226(a) discussed above give rise to penalties pursuant to Labor Code §2699, *et seq.* Second, Plaintiff alleged that Defendant’s alleged violation of Labor Code § 2802 gives rise to penalties pursuant to Labor Code §2699, *et seq.* (Szamet Decl. ¶43.)

1 As discussed above, Plaintiff takes the position that a review of the itemized wage
2 statements at issue reveals that Defendant simply failed to comply with all of the requirements of
3 Lab. Code § 226(a)(6)-(9). (Szamet Decl. ¶44.) Though Plaintiff determined that there was
4 cognizable risk that she could establish a violation of Labor Code § 226(a) given the required
5 showings of “injury” and that Defendant’s conduct was “knowing and intentional”, under the
6 PAGA framework, Plaintiff was confident that she could prevail in an action for civil penalties
7 based on Defendant’s alleged violation of Labor Code § 226(a). (Szamet Decl. ¶45.)

8 Plaintiff maintains that an employee need not prove actual injury or a knowing and
9 intentional failure to comply with Labor Code § 226(a) in order to collect civil penalties pursuant
10 to PAGA. (*See Raines v. Coastal Pacific Food Distributors, Inc.* (May 22, 2018) 23 Cal.App.5th
11 667; *see also Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773.) In essence, in
12 Plaintiff’s analysis, these recent decisions render Labor Code § 226(a) essentially a strict liability
13 statute when viewed through the PAGA lens. (Szamet Decl. ¶46) However, as the *Raines*
14 decision notes, the trial court has the discretion to reduce civil penalties for technical, non-
15 harmful violations. Here, Plaintiff saw a very real threat that even after the time and expense
16 associated with success at trial, the Court could, in its discretion, ultimately award mere pennies
17 on the dollar if it deemed the alleged violation as technical or non-harmful to employees.³
18 (Szamet Decl. ¶47.) In fact, though very few PAGA cases have gone to trial, a recent bench trial
19 conducted by Judge Ann Jones in the Los Angeles Superior Court yielded a very low penalty
20 assessment by the trial court when the plaintiffs were seeking an eight-figure penalty award. (*See*
21 *Sanchez et al. v. McDonald’s Restaurants of California Inc. et al.*, Case No. BC499888 [July
22 2017 Statement of Decision by Judge Jones awarding \$700,270 in PAGA penalties based upon
23 underlying wage violations].)

24 This same, very real risk analysis applies to the underlying alleged violation of Labor
25 Code §2802. Labor Code §2802 requires that “[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence

27 ³ While PAGA provides a penalty amount of \$100 for each aggrieved employee per pay period for the initial
28 violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, it also gives the
Court discretion to award a lesser amount than the maximum penalty. (Lab. Code § 2699(e).)

1 of the discharge of his or her duties, or of his or her obedience to the directions of the
2 employer...” In short, employers must pay or reimburse employees for expenses incurred as a
3 direct result of their employment.

4 Here, Plaintiff alleged that she was required to use her personal cellphone to clock in and
5 out while stationed at one of Defendant’s parking kiosks. (Szamet Decl. ¶48) Though there are
6 some legal arguments to be made (as discussed above), the real risk identified by Class Counsel
7 was, again, that even after the time and expense associated with a successful trial, the Court has
8 the discretion to award mere pennies on the dollar for this penalty violation if the Court were
9 persuaded that Plaintiff and other putative Class Members did not actually incur any sizeable
10 extra cost because they would have maintained their personal cellphones anyway at the same
11 expenses regardless of having to clock in and out for their job. (Szamet Decl. ¶49.) The
12 significant uncertainty associated with the PAGA claim, and any penalties ultimately awarded,
13 required a deep discount of the value of the claim for settlement purposes. (Szamet Decl. ¶50.)

14 **2. The Risk, Expense, Complexity, and Likely Duration of Further**
15 **Litigation**

16 Given the risks outlined above, some of the legal issues in this case are unsettled and the
17 risk for Plaintiff and the Class Members associated with this litigation was high, given the
18 uncertainty. (Szamet Decl. ¶51.) Moreover, there is significant expense associated with the class
19 certification process and a class action trial, which the Parties can avoid by entering into the
20 contemplated settlement. (*Id.*)

21 If the Court did eventually certify a wage statement class, trial of a case involving
22 approximately 5,040 Class Members could certainly require the retention of expensive expert
23 witnesses, the accrual of extensive litigation costs, and a significant time overlay by the parties.
24 (Szamet Decl. ¶52; Settlement Agreement ¶VI.)

25 Finally, given the complexity and unsettled nature of the issues in this case it is likely that
26 any outcome at trial would have resulted in a lengthy and costly appeal. (Szamet Decl. ¶53.) An
27 appeal would result in further delay for the Class Members who are waiting for a resolution in
28 this matter. (Szamet Decl. ¶54.)

1 **3. The Risk of Maintaining Class Action Status through Trial**

2 This case has not been certified to be tried as a class action. (Szamet Decl. ¶55.) While
3 Plaintiff believes there is strong evidence to support certification of a proposed wage statement
4 class, certification is always hard fought and subject to judicial discretion. Moreover, in class
5 actions, decertification is always a possibility. (*Id.*) In attempting to certify a class, the parties
6 would need to conduct multiple depositions, including of the named Plaintiff and person(s) most
7 knowledgeable regarding Defendant’s policies. (*Id.*) There is a risk for both sides as to what these
8 depositions will reveal and whether they will support class certification to the extent expected.
9 (*Id.*)

10 **4. The Amount Offered in Settlement**

11 It was very difficult for the Parties to reach this Settlement. (Szamet Decl. ¶56.) This
12 settlement is the result of adversarial, non-collusive, and arms-length negotiations. (Szamet Decl.
13 ¶57.) The Parties arrived at it only after extensive investigation and discovery and a careful
14 evaluation of the law, risks, and all information substantiating the amount of penalties reasonably
15 likely to be awarded to the class were the trier of fact to find Defendant was liable. (*Id.*) As
16 discussed above, the Parties attended two unsuccessful, full-day mediations with Judge Hoffman
17 and still were not able to reach a resolution until several further rounds of negotiation aided by
18 Judge Hoffman. (Szamet Decl. ¶58.)

19 As for valuation of the Labor Code § 226(a) claim, Labor Code § 226(e) sets forth the
20 penalty scheme of \$50 for the initial violation and \$100 for each pay period thereafter with a
21 maximum of \$4,000 per employee.⁴ Here, the maximum available penalty would be
22 \$13,173,500. (initial violation of 5,040 x \$50 = \$252,000 + subsequent violation of 129,215 x
23 \$100 = \$12,921,500).⁵

24 ⁴ Labor Code § 226(e)(1): “An employee suffering injury as a result of a knowing and intentional failure by an
25 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars
26 (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each
violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is
entitled to an award of costs and reasonable attorney’s fees.”

27 ⁵ This number is actually overstated because it does not account for the \$4,000 maximum penalty per individual.
28 This calculation assumes each “subsequent” violation would be valued at \$100 per pay period, but for class
members who worked the entire class period the \$4,000 maximum would be hit thereby lowering the overall
potential penalty recovery.

1 With regard to the Labor Code § 2802 analysis, Plaintiff's believed that it was reasonable
2 to value the reimbursement at \$10 per month, per employee. Using 5,040 Class Members, the
3 maximum amount is amount \$2,116,800 (42 months x \$10/person x 5,040).

4 The exposure under PAGA was certainly the largest. In this matter, there are 134,255
5 itemized wage statements at issue, which translates to the same number of pay periods at issue.
6 Using the PAGA statutory scheme of \$100/\$200 for the initial and subsequent violations the
7 maximum exposure amounts to \$26,347,000. However, it may very well be that this number is
8 greatly overstated. While there is little authority directly on point, the Court in *Amaral v. Cintas*
9 *Corp. No. 2* addressed what constitutes an "initial" violation as opposed to a "subsequent"
10 violation for purposes of assessing penalties under California Labor Code sections 210 and 225.5.
11 The Court found that "until an employer has been notified that it is violating a Labor Code
12 provision (whether or not the Commissioner or court chooses to impose penalties), the employer
13 cannot be presumed to be aware that its continuing underpayment of employees is a 'violation'
14 subject to penalties." (163 Cal.App.4th 1157 at 1209.) While some practitioners have taken the
15 position that providing notice of a violation in the form of a PAGA notice letter to the LWDA
16 would suffice, others take the view that *Amaral* states that until the Labor Commissioner provides
17 notice of a violation, only the "initial" penalty amount can apply. If this argument is correct, then
18 the maximum exposure for PAGA penalties is \$13,425,500.

19 Once Class Counsel determined the maximum potential damages they believed were at
20 issue, they carefully considered the risks detailed above and the likelihood of success on the
21 merits before determining that the proposed Settlement is a fair and reasonable result for the
22 Settlement Class. (Szamet Decl. ¶59.) Class Counsel believes that the Class had a reasonable
23 likelihood of success on the wage statement claims, but were keenly aware of the risk in
24 establishing "injury" and that Defendant's conduct was "knowing and intentional." (Szamet Decl.
25 ¶60.) As it relates to the section 2802 claim, the risks are detailed above and Plaintiff felt the
26 largest risk related to certification of this claim. (Szamet Decl. ¶61.) Finally, Counsel
27 determined that the likelihood of success on the claim for PAGA penalties was strong, but felt
28 that it was not likely that a court would award the maximum potential penalty of \$100 and \$200

1 because the statute vests the Court with discretion when it comes to any PAGA penalty award.
2 (Szamet Decl. ¶62.) Finally, Class Counsel also had to consider that the claim pursuant to Labor
3 Code § 226(a) was pled in other pending actions against Defendant and there was a very real risk,
4 as there always is in complex class litigation, that Defendant could potentially settle the claims
5 pending in this case as a result of a settlement reached in another matter. (Szamet Decl. ¶63.)

6 In light of the above, Plaintiff's Counsel believes that the proposed Settlement Amount of
7 \$1,080,000 is fair and reasonable. (Szamet Decl. ¶64.)

8 **5. The Experience and Views of Counsel**

9 Kingsley & Kingsley is very experienced in prosecuting and defending complex
10 employment litigation, and the firm has focused its practice since the year 2000 on wage, hour,
11 and working condition violations. (Szamet Decl. ¶65-67.) The firm is well versed in class action
12 litigation and has diligently and aggressively pursued this action. (*Id.*) Kingsley & Kingsley
13 currently serves as class counsel for dozens of pending class action lawsuits in Northern, Central,
14 and Southern California. (*Id.*) A list of representative cases that Kingsley & Kingsley has
15 handled is included in the accompanying declaration of counsel. (*Id.*) After factoring in the risks
16 explained above, Class Counsel believes that the proposed settlement is fair and reasonable.
17 (Szamet Decl. ¶68.)

18 **6. The Proposed Plan of Allocation Is Fair and Reasonable**

19 Plans of allocation are subject to the same standard of review as class action settlements;
20 they must be "fair, adequate and reasonable." (*See, e.g., Officers for Justice v. Civil Service*
21 *Comm'n* (9th Cir. 1982) 688 F.2d 615, 624–625, 629–630.) Here, the proposed plan of allocation
22 compensates Class Members on pro rata based on the number of compensable workweeks worked
23 by the Class Member during the Class Period. The lump sum payment to each member of the
24 Settlement Class not excluding him/herself will be determined on an individualized basis based
25 upon the compensable pay periods worked by the Settlement Class Member. (Sett. Agrmt. ¶III, J,
26 1.) This allocation distributes Settlement funds proportionally to each class member's potential
27 damages as related to length of employment during the operative period, and should therefore be
28 approved as fair, adequate, and reasonable. (Sett. Agrmt. ¶III, J.)

1 7. **The Proposed Notice Fairly Apprises the Class Members of the Terms**
2 **of the Settlement and of the Class Members' Rights under the**
3 **Settlement**

4 Plaintiff requests that the Court approve the proposed plan and form of Class Notice. The
5 standard for determining the adequacy of notice is whether the notice has “a reasonable chance of
6 reaching a substantial percentage of the class members.” (*Cartt v. Superior Court* (1975) 50
7 Cal.App.3d 960, 974.) Pursuant to the Settlement Agreement, the Notice will be sent to the last
8 known address of all Class Members, or to an updated address if one is located. (Sett. Agrmt. ¶III,
9 I). If any Notices are returned as undeliverable, the Administrator will undertake another address
10 verification measure to locate a valid mailing address and will promptly send the Notice to the
11 new address. (*Id.*) As such, the Notice is likely to reach most, if not all, Class Members.

12 With respect to the contents of the Notice, the “notice given to the class must fairly
13 apprise the class members of the terms of the proposed compromise and of the options open to
14 dissenting class members.” (*Trotsky v. L.A. Fed. Sav. & Loan Ass’n* (1975) 48 Cal.App.3d 134,
15 151–52.) The purpose of a class notice is to give class members sufficient information to decide
16 whether they should accept the benefits offered, opt out and pursue their own remedies, or object
17 to the settlement. (*Ibid.*) Here, the Notice clearly explains the proposed Settlement and the
18 options to opt out of the Settlement or object to it at the Final Approval Hearing. (Sett. Agrmt.
19 ¶III, I.) In short, the Court should approve the proposed Class Notice because it describes the
20 proposed settlement with enough specificity to allow Class Members to make an informed choice
21 regarding whether to participate.

22 **V. THE PROPOSED SETTLEMENT CLASS SHOULD BE CERTIFIED FOR**
23 **SETTLEMENT PURPOSES**

24 Originally creatures of equity, class actions have been statutorily embraced by the
25 Legislature whenever “the question [in a case] is one of a common or general interest, of many
26 persons, or when the parties are numerous, and it is impracticable to bring them all before the
27 court” (Code Civ. Proc. § 382; *see, e.g., Fireside Bank v. Sup. Court* (2007) 40 Cal.4th 1069,
28 1078.) They serve an important function by “establishing a technique whereby the claims of many

1 individuals can be resolved at the same time” thereby “eliminat[ing] the possibility of repetitious
2 litigation and provid[ing] small claimants with a method of obtaining redress.” (*Richmond v. Dart*
3 *Industries, Inc.* (1981) 29 Cal.3d 462, 469.) Public policy supports the use of class actions to
4 enforce wage and overtime laws for the benefit of workers. (*See Sav-on Drug Stores, Inc. v. Sup.*
5 *Court* (2004) 34 Cal.4th 319, 340.)

6 The certification question is “essentially a procedural one that does not ask whether an
7 action is legally or factually meritorious.” (*Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 439–
8 440.) A court ruling on a certification motion must determine “whether . . . the issues which may
9 be jointly tried, when compared with those requiring separate adjudication, are so numerous or
10 substantial that the maintenance of a class action would be advantageous to the judicial process
11 and to the litigants.” (*Collins v. Rocha* (1972) 7 Cal.3d 232, 238.)

12 The California Supreme Court has identified three certification requirements: (1) “the
13 existence of an ascertainable and sufficiently numerous class”; (2) “a well-defined community of
14 interest”; and, (3) “substantial benefits from certification that render proceeding as a class
15 superior to the alternatives.” (*Brinker, supra*, 53 Cal.4th at p. 1021.) The “community of interest”
16 requirement includes three additional requirements: (1) common questions of law or fact
17 predominant over individual questions; (2) the class representatives have claims or defenses
18 typical of the class; and (3) the class representatives can adequately represent the class. (*Ibid.*,
19 *citing Fireside Bank, supra*, 40 Cal.4th 1069 at p. 1089.)

20 Class certification for settlement purposes is proper in this case as the proposed Settlement
21 Class satisfies each of the requirements under Code of Civil Procedure § 382. Accordingly, this
22 Court should certify the putative settlement class.

23 **A. The Proposed Classes Are Ascertainable and Sufficiently Numerous**

24 **1. Ascertainability**

25 Putative class members are deemed “ascertainable” when they may be “readily identified
26 without unreasonable expense or time by reference to official records.” (*Rose v. City of Hayward*
27 (1981) 126 Cal.App.3d 926, 932.) In determining whether a class is ascertainable, a court
28 scrutinizes the class definition, the size of the class and the means of identifying class members.

1 (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 873.)

2 Here, the proposed Settlement Class is ascertainable for several reasons. First, Defendant
3 has agreed in the Settlement Agreement to provide a class list to the claims administrator
4 containing the generic employee identification number, name, last known mailing address, last
5 known telephone number, social security number, and start and end dates of employment for all
6 putative class members after issuance of the preliminary approval order. (Szamet Decl. ¶69; Sett.
7 Agrmt. ¶1:25-2:2; III, I, 1.) Second, class members consist of Defendant's employees, and
8 Defendant is required to keep records of its hourly employees' names, home addresses, and social
9 security numbers. (*See* Wage Order 4-2001, subsection 7(c).) (Szamet Decl. ¶70.) Third and
10 finally, Defendant already informally produced data for putative class members for purposes of
11 mediation, which confirms that all class members may be readily identified based on Defendant's
12 records. (Szamet Decl. ¶71.)

13 **2. Numerosity**

14 There is no set number that is required as a matter of law to maintain a class action. (*See*,
15 *e.g.*, *Rose v. City of Hayward*, *supra*, 126 Cal.App.3d at p. 934.) Here, the proposed Class
16 contains, based upon information and belief, over 5,000 employees in the state of California.
17 Therefore, Plaintiff will be able to establish that the proposed Class is ascertainable and
18 sufficiently numerous. (Szamet Decl. ¶72; Settlement Agreement ¶II.)

19 **B. There Is a Well-Defined Community of Interest**

20 **1. There Are Predominant Questions of Law and Fact**

21 In deciding whether questions of common or general interest predominate, a court must
22 determine whether "the issues which may be jointly tried, when compared with those requiring
23 separate adjudication, are so numerous or substantial that the maintenance of a class action would
24 be advantageous to the judicial process and to the litigants." (*Collins v. Rocha* (1972) 7 Cal.3d
25 232, 238; *accord*, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.) As a
26 general matter, if the defendant's liability can be determined by facts common to all members of
27 the class, a class will be certified even if the members must individually prove their damages."
28 (*Hicks v. Kaufman & Broad Home Corp.* (2001) 89 Cal.App.4th 908, 916, 107; *accord*, *Knapp v.*

1 *AT & T Wireless Services, Inc.* (2011) 195 Cal.App.4th 932, 941.)

2 Here, questions of law and fact common to the proposed Class predominate over any
3 questions affecting only individual Class Members. (Szamet Decl. ¶73.) The critical common
4 questions are (1) whether Defendant failed to provide compliant itemized wage statements within
5 the meaning of Labor Code § 226(a) to Plaintiff and others similarly situated and (2) whether
6 Defendant failed to properly reimburse for expenses necessarily incurred as part of their work
7 duties. (Szamet Decl. ¶74.)

8 Plaintiff's challenge to Defendant's uniform practices involves common factual and legal
9 issues that are amenable to class treatment. (Szamet Decl. ¶75.) As the California Supreme Court
10 has emphasized, "[c]laims alleging that a uniform policy consistently applied to a group of
11 employees is in violation of the wage and hour laws are of the sort routinely, and properly, found
12 suitable for class treatment." (*Brinker, supra*, 53 Cal.4th at p. 1033; *see also Bradley, supra*, 211
13 Cal.App.4th at 1141-1146.) Moreover, a class of similarly situated employees may be certified
14 based on common questions of fact or law, even if each employee has to establish the amount of
15 his or her damages. (*See Bell v. Farmers Ins. Exch.* (2004) 115 Cal.App.4th 715, 741; *Sav-On*
16 *Drug Stores, Inc. v. Superior Court, supra*, 34 Cal.4th at p. 340.)

17 Here, the proposed Class Members suffered the same alleged violations, in the same
18 manner because the itemized wage statements issued to the proposed class share the same
19 common alleged defect – failure to show required information. (Szamet Decl. ¶76.) Likewise,
20 Plaintiff alleges that she and all putative Class Members were required to use their personal
21 cellphones to clock in and out as a matter of Defendant's common policy. (Szamet Decl. ¶77.)
22 Because the Class Members were subject to the same employment policies and practices, the
23 questions of fact and claims of these employees are the same for each member of the class.
24 Accordingly, for purposes of settlement, the evidence reviewed by Plaintiff's Counsel
25 demonstrates that common policies applied to the proposed Settlement Class and certification for
26 settlement purposes is appropriate. (Szamet Decl. ¶78.)

27 **2. The Class Representative Has Claims Typical of the Proposed Class**

28 A putative class representative's claim must be "typical," but not necessarily identical, to

1 the claims of other class members. The test of typicality “is whether other members have the
2 same or similar injury, whether the action is based on conduct which is not unique to the named
3 plaintiffs, and whether other class members have been injured by the same course of conduct.”
4 (*Seastrom v. Neways, Inc.* (2007) 149 Cal.App.4th 1496, 1502.) Thus, it is sufficient that the
5 representative is similarly situated so that he or she will have the motive to litigate on behalf of all
6 class members. (See, e.g., *Classen v. Weller* (1983) 145 Cal.App.3d 27, 45.) It is not necessary
7 that the class representative have personally incurred all of the damages suffered by each of the
8 other class members. (*Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 238.)

9 Plaintiff’s claims arise from the same policies and course of conduct that underlie the
10 claims of all other class members – that they were issued itemized wage statements that fail to
11 show all required information and were required to use their personal cellphones to clock in and
12 out as a matter of Defendant’s common policy. (Szamet Decl. ¶79.)

13 **3. The Class Representative Has and Will Fairly Represent the Interests**
14 **of the Settlement Class**

15 A putative class representative must show that he can adequately represent the class.
16 (*Lockheed Martin Corp. v. Sup. Ct.* (2003) 29 Cal.App.4th 1096, 1104.) The representative,
17 through qualified counsel, must be capable of “vigorously and tenaciously” protecting the
18 interests of the class members. (*Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846.)

19 Plaintiff is capable of fairly representing and adequately protecting the interests of the
20 proposed Class Members. (Szamet Decl. ¶80.) Plaintiff’s interests in this litigation are
21 coextensive with the interests of the proposed Settlement Class. The members of the proposed
22 Settlement Class all worked for Defendant during the relevant time period and incurred the same
23 type of alleged violations of the law. (Szamet Decl. ¶81.) Moreover, Plaintiff has agreed to serve
24 as Class Representative and has retained qualified Counsel who is experienced in prosecuting
25 wage and hour class actions. (Szamet Decl. ¶82.) This demonstrates her commitment to bringing
26 about the best possible results for the benefit of the proposed Classes. (Szamet Decl. ¶83.)
27 Plaintiff has provided her Counsel with all necessary and pertinent information. (Szamet Decl.
28 ¶84.) Therefore, Plaintiff has and will continue to adequately represent the proposed Class

1 Members. (Szamet Decl. ¶85.)

2 C. The Class Action Vehicle Is Superior to the Alternatives

3 “The ultimate question in every case of this type is whether . . . the issues which may be
4 jointly tried, when compared with those requiring separate adjudication, are so numerous or
5 substantial that the maintenance of a class action would be advantageous to the judicial process
6 and to the litigants.” (*Lockheed Martin Corp.*, *supra*, 29 Cal.App.4th 1096, 1104–1105.) The
7 California Supreme Court has directed the courts to utilize the class action device to fashion “an
8 effective and inclusive group remedy.” (*Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462,
9 469.) Normally, in making its class certification decision, the Court must determine that a class
10 action would be superior to alternate means for a fair and efficient adjudication. If the causes of
11 action may be adjudicated in a single proceeding, thereby saving time, reducing waste, and
12 limiting duplication of effort, class certification is superior to individual litigation. (*See, e.g.*,
13 *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 816.) Since the Parties agreed to a settlement in
14 principal and now seek Court approval of that Settlement, Plaintiff submits that there is not as
15 much need as there would be in an ordinary motion for class certification for the Court to
16 determine that the case can be manageably tried.

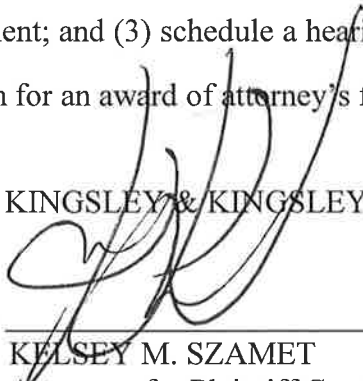
17 Class treatment would be the superior method of managing this case. A class action is
18 superior to individual litigation “when numerous parties suffer injury of insufficient size to
19 warrant individual action and when denial of class relief would result in unjust advantage to the
20 wrongdoer.” (*Blue Chip Stamps v. Superior Court* (1976) 18 Cal.3d 381, 385.) In cases such as
21 this, where individual damages may be small, the class action device is the most feasible method
22 of recovery. (*See, e.g. Lockheed, supra*, 29 Cal.4th at p. 1131.) In this regard, the superiority of
23 class treatment is evident here because many of the class members were low-wage restaurant
24 workers, and individual pursuit of their claims would thus not be economically viable. (Szamet
25 Decl. ¶86.) The only alternative to certification would be to force over 2,835 employees to join
26 this action, file individual, uniform actions, or abandon their legal rights altogether. (Szamet Decl.
27 ¶87.) This economic reality would result in a windfall for Defendant if this case were not
28 certified. (Szamet Decl. ¶88.)

1 **VI. CONCLUSION**

2 Plaintiff respectfully submits that the proposed Settlement is fair, adequate, reasonable,
3 and in the best interest of the Class. Therefore, the Parties respectfully request that the Court (1)
4 grant preliminary approval of the Settlement Agreement, and all of its terms; (2) approve the
5 proposed form of notice, and direct that the Notice packet be sent to Class Members in the
6 manner set forth in the Settlement Agreement; and (3) schedule a hearing on final approval of the
7 Settlement and Class Counsel's application for an award of attorney's fees and litigation costs.

8
9 DATED: August 13, 2018

KINGSLEY & KINGSLEY, APC

10
11 By: 

KELSEY M. SZAMET

12 Attorneys for Plaintiff Crystal Martinez Ramirez and
13 all aggrieved employees
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

(PROOF OF SERVICE)
[CCP 1013(a)(3)]
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On August 13, 2018, I served all interested parties in this action the following documents described as **NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

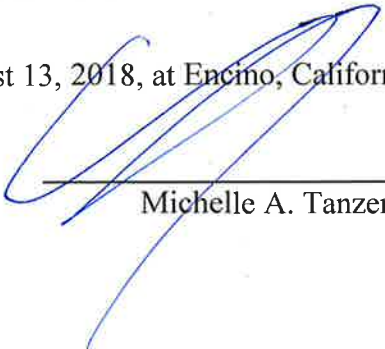
Spencer C. Skeen
Tim L. Johnson
Jesse C. Ferrantella
Nikolas T. Djordjevski
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Attorneys for Defendants SP Plus Corporation,
Standard Parking Corporation IL, SP Plus Property Management, Inc.,
SP Plus Security Services, Inc.

PROOF OF SERVICE LIST CONTINUED ON NEXT PAGE

[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 13, 2018, at Encino, California.



Michelle A. Tanzer

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Re Martinez v. Standard Parking – Case No. BC614253

Sam Kim
Yoonis Han
VERUM LAW GROUP, APC
841 Apollo Street, Suite 340
El Segundo, CA 90245
Attorneys for Plaintiffs Yuliana Chavez,
Gloria A. Cerritos and Frankcelia Payes

Raymond A. Gallenberg
Rosa Vigil-Gallenberg
GALLENBERG PC
800 S. Victory Blvd., Suite 203
Burbank, CA 91502
Attorneys for Plaintiff Sarah Huda