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

16 AKIM EVANS, on behalf of all others
17 similarly aggrieved,

18 Plaintiffs,

19 vs.

20 WHELAN SECURITY OF CALIFORNIA
INC. dba GARDAWORLD SECURITY
21 SERVICES, a California Corporation; and
DOES 1-50, Inclusive,

22 Defendants.
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Case No.: 20STCV10973

**STIPULATION OF SETTLEMENT OF
REPRESENTATIVE CLAIMS UNDER
THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

EXHIBIT A: [PROPOSED] JUDGMENT

**EXHIBIT B: PROPOSED NOTICE OF
SETTLEMENT**

Complaint Filed: March 18, 2020
Trial Date: None set

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I. INTRODUCTION AND NATURE OF ACTION

2. On March 18, 2020, Plaintiff Evans filed a complaint in Los Angeles County Superior Court entitled *Akim Evans v. Whelan Security of California, Inc.*, Case No. 20STCV10973 (the “Evans Litigation”). Plaintiff Evans filed a First Amended Complaint on July 29, 2020 in the Evans Litigation. Plaintiff Evans’ First Amended Complaint seeks civil penalties under PAGA on behalf of himself and all similarly aggrieved individuals employed by Defendant as non-exempt employees, however titled, in the State of California. His claim is based on the following alleged predicate violations: (1) failure to pay all regular wages and overtime wages due, including without limitation for allegedly requiring employees to work during off-duty meal periods, in violation of Labor Code sections 204, 218.5, 510, and 1194-1199; (2) failure to provide Plaintiff Evans and similarly aggrieved employees with one 30-minute meal period free from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all shifts longer than 10 hours, or compensation in lieu thereof, in violation of Labor Code sections 226.7 and 512 and Wage Order 4-2001 (and all applicable Wage Orders); (3) failure to provide Plaintiff Evans and

1 similarly aggrieved employees with all required and/or fully compliant rest periods, and/or
2 compensation in lieu thereof, in violation of Labor Code sections 226.7 and Wage Order 4-2001
3 (and all applicable Wage Orders); (4) failure to provide Plaintiff Evans and similarly aggrieved
4 employees with proper, itemized wage statements, including without limitation because the wage
5 statements provided by Defendant allegedly do not accurately reflect, inter alia, gross wages earned,
6 total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period
7 and all hours worked at each applicable hourly rate, in violation of Labor Code section 226; (5)
8 failure to keep “accurate and complete” payroll records showing, among other things, the hours
9 worked daily by all non-exempt employees, in violation of Labor Code sections 1174, 1187-99 and
10 Wage Order 4-2001 (and all applicable Wage Orders), section 7; (6) failure to pay Plaintiff Evans
11 and similarly aggrieved employees minimum wages and/or overtime wages, in violation of Labor
12 Code sections 1174, 1197, and 1198-99; (7) failure to pay Plaintiff Evans and similarly aggrieved
13 employees on a weekly basis, in violation of Labor Code section 201.3; (8) violation of Labor Code
14 section 216 by refusal by pay wages due and payable and/or denial of the validity of claims to wages
15 due, including without limitation by reason of (allegedly) willfully, knowingly and intentionally
16 failing to pay wages due and falsely representing to Plaintiff Evans and similarly aggrieved
17 employees that they were properly denied wages; (9) failure to reimburse Plaintiff Evans and
18 similarly aggrieved employees for all necessary business expenditures incurred by them in the
19 discharge of their duties, in violation of Labor Code section 2802; (10) failure to pay Plaintiff Evans
20 and similarly aggrieved employees all wages earned and unpaid at the time of discharge or
21 resignation, including without limitation minimum and overtime wages and meal and rest break
22 premiums, in violation of Labor Code sections 203, 256, and 2699; and (11) violating Labor Code
23 section 432.5 by requiring employees and applicants for employment to agree, in writing, to a term
24 or condition known by Defendant to be prohibited by law, namely by requiring Plaintiff Evans and
25 other employees to agree to unlawful disclosures and authorizations for purposes of background
26 investigations.

27 3. On January 10, 2020, Plaintiff Goto filed a complaint in San Francisco County
28 Superior Court entitled *Michael Anthony Goto v. Whelan Security of California, Inc.*, San Francisco

1 Superior Court, Case No. CGC-20-582164 (the “Goto Litigation”). Plaintiff Goto filed a First
2 Amended Complaint on February 7, 2020 in the Goto Litigation. Plaintiff Goto’s First Amended
3 Complaint seeks civil penalties under PAGA on behalf of himself and all similarly aggrieved
4 individuals employed by Defendant as non-exempt employees, however titled, in the State of
5 California. Plaintiff Goto’s First Amended Complaint asserts PAGA claims that overlap with the
6 claims asserted in the Evans Litigation. Plaintiff Goto’s First Amended Complaint also asserts
7 putative class claims for alleged violations of the Fair Credit Reporting Act (FCRA) as well as class
8 claims for alleged wage and hour violations, and an individual claim for violation of the California
9 Investigative Consumer Reporting Agencies Act (ICRAA). The parties in the Goto Litigation will
10 submit to the court in that action a proposed settlement whereby the FCRA claims will be resolved
11 on a class basis, and the remainder of the claims will be dismissed without prejudice so that the
12 proposed settlement of the PAGA claims asserted in either the Evans Litigation or the Goto
13 Litigation or both can be presented to the Court for approval in the Evans Litigation, which had
14 already set an earlier trial setting conference than in the Goto Litigation.

15 4. Defendant has filed a notice of related cases with respect to the Evans Litigation and
16 the Goto Litigation, and Defendant later filed a further notice of related cases after two additional
17 cases with overlapping PAGA claims were filed. No parties sought coordination of the Evans
18 Litigation and the Goto Litigation. The Parties agree and understand that Plaintiff Goto is one of
19 the Aggrieved Employees in the Evans Litigation.

20 5. The court in the Goto Litigation set a case management schedule requiring mediation
21 in the Goto Litigation on or before September 30, 2021. Subsequently, the Parties and their counsel
22 agreed to attend a mediation seeking to resolve both lawsuits. In advance of the mediation that led
23 to the Settlement, the Parties engaged in discovery and voluntary production of documents and
24 information including the production by Defendant of, among other things, time and pay data for
25 Plaintiffs and other employees; Defendant’s policies and procedures pertaining to the claims at issue
26 in the Evans Litigation and the Goto Litigation; and the number of potentially Aggrieved Employees
27 and the number of pay periods at issue.

1 6. On September 27, 2021, the Parties attended a full-day mediation with experienced
2 wage and hour mediator David Rotman. The mediation resulted in a tentative oral agreement. The
3 Parties later confirmed the terms of the settlement by a Settlement Term Sheet signed by the parties
4 on October 20, 2021. This Stipulation of Settlement is consistent with and in furtherance of the
5 settlement reached by the Parties at the mediation.

6 **II. CONDITIONAL NATURE OF THIS STIPULATION**

7 7. This Stipulation of Settlement is made for the purpose of attempting to consummate
8 settlement of the Evans Litigation on a representative basis under PAGA with a corresponding
9 dismissal of the PAGA claims in the Goto Litigation, which are covered and released by this
10 Stipulation of Settlement. Pursuant to separate agreements in the Goto Litigation, Goto will dismiss
11 without prejudice his wage and hour class action claims and separately resolve his class claim under
12 FCRA and his individual wage and hour claims and ICRAA claim. Through a separate agreement,
13 Evans will resolve his non-PAGA individual claims. This Stipulation of Settlement and the
14 settlement it evidences are made in compromise of disputed claims. Because this is a PAGA
15 settlement, it must receive approval from the Court. Accordingly, Defendant enters into this
16 Stipulation of Settlement and associated settlement on a conditional basis, i.e., subject to approval
17 by the Court in the Evans Litigation.

18 **III. THE LITIGATION AND DEFENDANT'S DENIAL OF LIABILITY**

19 8. Defendant denies any liability or wrongdoing of any kind associated with the claims
20 alleged in the Evans Litigation and the Goto Litigation, and denies any liability or intentional
21 wrongdoing whatsoever. Defendant contends, among other things, that it has complied at all times
22 with the California Labor Code, the related California Wage Orders, and all other state and federal
23 wage laws, and further contends that the claims asserted in the Evans Litigation and the PAGA
24 claims asserted in the Goto Litigation (collectively, the "PAGA Litigation") are without merit.
25 Defendant has denied and continues to deny each and every material factual allegation and alleged
26 claim asserted against it in the PAGA Litigation. Defendant further contends that the imposition of
27 any penalties would be unjust, arbitrary, oppressive, and confiscatory. Nevertheless, Defendant is
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1 willing to pay a reasonable amount in order to resolve this matter in light of the distraction to
2 Defendant's business and expense posed by continuing to defend the PAGA Litigation.

3 9. The Parties recognize that the issues presented in the PAGA Litigation are likely only
4 to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will
5 cause inconvenience, distraction, disruption, delay, and expense disproportionate to the potential
6 benefits of litigation in light of the risk and uncertainty of the outcome inherent in any litigation.

7 10. Plaintiffs and PAGA Counsel represent that they have diligently pursued an
8 investigation of the Aggrieved Employees' claims against Defendant.

9 11. Based on their own independent investigations and evaluations, Plaintiffs and PAGA
10 Counsel are of the opinion that the settlement for the consideration and on the terms set forth herein
11 is fair, reasonable, and adequate and is in the best interests of Plaintiffs and the Aggrieved
12 Employees in light of all known facts and circumstances and the risks inherent in litigation,
13 including potential appellate issues. Further, PAGA Counsel believes that the settlement amount
14 entered into is in the best interests of the State of California and the Aggrieved Employees and that
15 the settlement for each Aggrieved Employee is fair, reasonable, and adequate, given the inherent
16 risk of litigation.

17 12. The purpose of this Settlement is to settle and compromise the PAGA Litigation and
18 all Released Claims that Plaintiffs and the Aggrieved Employees have under PAGA against
19 Defendant and the Released Parties. Neither the existence of this Settlement nor anything contained
20 in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence,
21 or wrongdoing on the part of Defendant. The Parties expressly recognize that the making of the
22 Settlement does not in any way constitute an admission or concession of wrongdoing on the part of
23 Defendant. Nothing in the Settlement, nor any action taken in implementation thereof, nor any
24 statements, discussions or communications, nor any materials prepared, exchanged, issued or used
25 during the course of the PAGA Litigation, is intended by the Parties to, nor will any of the foregoing
26 constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral,
27 administrative, investigative or other forum or proceeding, as evidence of any violation of any
28 federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation

1 or duty at law or in equity. Neither the Settlement nor any resulting court order approving the
2 settlement or judgment shall have any collateral estoppel or other preclusive effect on Defendant,
3 and it shall not in any way establish any liability against Defendant.

4 **IV. DEFINITIONS**

5 13. "Aggrieved Employee Share" shall mean and refer to each Aggrieved Employee's
6 individual share of the 25% of PAGA penalties allocated to the Aggrieved Employees in accordance
7 with California Labor Code section 2699(i).

8 14. "Aggrieved Employees" shall mean all individuals who were non-exempt employees
9 of Defendant in California at any time between December 4, 2018, and the date of settlement
10 approval and associated entry of the Judgment in the Evans Litigation. As of July 31, 2021, there
11 were approximately 6,490 such individuals.

12 15. "Counsel for Defendant" and "Defense Counsel" shall refer to James A. Goodman
13 and Kevin D. Sullivan of Epstein Becker & Green, P.C.; Neal F. Perryman and Justin M. Ladendorf
14 of Lewis Rice LLC; and Malcolm A. Heinicke and Joseph D. Lee of Munger, Tolles & Olson LLP.

15 16. "Court" refers to the Los Angeles County Superior Court.

16 17. "Covered Period" shall mean any time between December 4, 2018, and the date of
17 settlement approval and the associated entry of judgment in the Evans Litigation.

18 18. "Effective Date" shall mean the date that the Judgment becomes Final.

19 19. "Eligible Pay Periods" means the pay periods for which an Aggrieved Employee
20 received a wage statement from Defendant for non-exempt employment in California during the
21 Covered Period.

22 20. "Final" means the point at which the Judgment has become final and irreversible
23 because either (i) no appeal has been taken from the Judgment within 60 days of its entry or (ii) an
24 appeal or other review proceeding of the Judgment having been commenced, such appeal or other
25 review is finally concluded and is no longer subject to review, whether by direct appeal, writ of
26 certiorari, motion for reconsideration, or otherwise, and such appeal or other review has been finally
27 resolved in a manner that materially affirms the Judgment. Notwithstanding the foregoing, any
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1 proceeding or order, or any appeal or petition for a writ pertaining solely to the award of attorneys’
2 fees or costs shall not, by itself, in any way delay or preclude the Judgment from becoming Final.

3 21. “Gross Settlement Amount” shall mean and refer to the maximum, total gross
4 amount that Defendant is obligated to pay under the terms of the proposed settlement, which shall
5 be \$3,045,000 (three million forty-five thousand dollars) .

6 22. “Judgment” means the judgment to be entered by the Court pursuant to this
7 Stipulation of Settlement, which shall be a judgment in the same or substantially the same form as
8 Exhibit A.

9 23. “Net Penalty Amount” shall mean and refer to the portion of the Gross Settlement
10 Amount that is allocated to penalty payments under PAGA, which shall be the Gross Settlement
11 Amount less the payments for attorneys’ fees, costs, and costs of settlement administration
12 authorized by subparagraphs 27(b) and (c) below.

13 24. “PAGA Counsel” shall refer to Zachary Crosner, Michael Crosner, Blake Jones and
14 Jamie Serb of Crosner Legal, P.C. (Plaintiff’s counsel in the Evans Litigation) and Kevin Woodall
15 of Woodall Law Office (Plaintiff’s counsel in the Goto Litigation) .

16 25. “Settlement Administrator” shall refer to Rust Consulting.

17 26. “Settlement Notice” or “Notice” shall mean the letter to be sent by the Settlement
18 Administrator with each payment to an Aggrieved Employee, in the same or substantially the same
19 form as Exhibit B.

20 27. “Wages” or “wages” shall mean wages as defined under California Labor Code
21 section 200 and pertinent precedent interpreting it.

22 **V. TERMS OF SETTLEMENT**

23 28. In consideration of the mutual covenants, promises, and representations set forth in
24 this Settlement, Plaintiffs, on behalf of the State of California as a Private Attorney General, and
25 Defendant agree to settle and compromise the PAGA Litigation and the Released Claims, subject
26 to the terms and conditions set forth in this Settlement.

1 29. The Amount of Settlement. As consideration for the settlement described herein and
2 the release contained in this Settlement, Defendant agrees to pay the Gross Settlement Amount of
3 \$3,045,000 (three million forty-five thousand dollars).

4 30. The Gross Settlement Amount will include the following payments:

5 (a) The Net Penalty Amount. Pursuant to PAGA, Seventy-Five Percent (75%)
6 of the Net Penalty Amount will be paid to the LWDA, and the remaining Twenty-Five Percent
7 (25%) will be paid to Aggrieved Employees on a pro rata basis based on their respective Eligible
8 Pay Periods during the Covered Period;

9 (b) A payment to PAGA Counsel for reasonable attorneys' fees of up to one-
10 third of the Gross Settlement Amount (i.e., up to one million fourteen thousand nine hundred ninety
11 dollars (\$1,014,990), as well as a payment to PAGA Counsel not to exceed \$22,000 for allowable
12 costs, as addressed in more detail in paragraph 31 below; and

13 (c) Settlement administration costs reasonably incurred by the Settlement
14 Administrator.

15 31. PAGA Counsel's Fees and Costs. As part of the request for approval of this
16 Settlement, PAGA Counsel will request court approval of up to one-third of the Gross Settlement
17 Amount, i.e., up to \$1,014,990, in reasonable attorneys' fees in addition to allowable costs incurred
18 by PAGA Counsel not to exceed \$22,000 which is to be determined and supported by a sworn
19 declaration. Any attorneys' fees and costs awarded to PAGA Counsel, hereinafter referred to as
20 "PAGA Counsel Fees & Costs," shall fully compensate and reimburse PAGA Counsel for any and
21 all of the work already performed in connection with the Evans Litigation and the litigation of the
22 PAGA claims in the Goto Litigation and all work remaining to be performed in fully and finally
23 resolving the PAGA Litigation, including but not limited to securing court approval of this
24 Settlement, attending any court hearings, making sure that the Settlement is fairly and properly
25 administered, defending the Settlement in any appeal or other post-approval matter, all other work
26 that PAGA Counsel has performed or will perform, and all costs that PAGA Counsel has incurred
27 or will incur. Any portion of the fees and costs requested by PAGA Counsel that are not awarded
28 by the Court will be part of the Net Penalty Amount. In order to facilitate the payment of attorneys'

1 fees in connection with this Settlement, and prior to any such payment, PAGA Counsel shall
2 provide the Settlement Administrator and Defendant with a written statement as to how the PAGA
3 Counsel Fees & Costs are to be allocated among PAGA Counsel. Defendant shall have no
4 responsibility or liability for such allocation, and no payment of fees or costs shall be made until
5 this written allocation statement has been provided by PAGA Counsel. To enable PAGA Counsel
6 to provide direction on the structuring and method of payment by which the agreed upon and
7 approved fee and cost payments will be paid to them by the Settlement Administrator, it is
8 understood and agreed by the Parties and their counsel that no amounts designated herein as PAGA
9 Counsel Fees & Costs will be paid to PAGA Counsel until the payment amount and method are
10 agreed to by PAGA Counsel and the Settlement Administrator, provided Defendant shall have no
11 role or obligation with regard to such instructions as long as they are consistent with this Settlement.

12 32. Tax Treatment of Settlement Amounts. With regard to settlement payments to
13 Aggrieved Employees, including Plaintiffs, Defendant through the Settlement Administrator shall
14 be responsible for issuing all necessary tax forms. Because the payments to Aggrieved Employees
15 are being made in settlement of claims for statutory penalties, they shall be reported as non-wage
16 payments in the year of payment and reported on a Form 1099 with no withholdings or payroll
17 taxes. Nothing in this Settlement is intended to constitute legal advice regarding federal, state,
18 and/or local tax obligations. The Parties make no representations to one another or to any
19 Aggrieved Employee as to the tax treatment or legal effect of the payments called for hereunder,
20 and Aggrieved Employees are not relying on any statement or representation by the Parties, PAGA
21 Counsel or Defense Counsel in this regard. Aggrieved Employees understand and agree that they
22 will be responsible for the payment of any taxes and penalties assessed on the payments described
23 herein and will hold the Parties, PAGA Counsel and Defense Counsel free and harmless from and
24 against any claims, liabilities, costs and expenses, including attorney's fees, resulting in any way
25 from personal tax treatment of the payments made pursuant to this Settlement. To the extent that
26 this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any
27 state or federal tax issue, such advice is not intended or written to be used, and cannot be used, by
28 any person for the purpose of avoiding penalties under the Internal Revenue Code. Neither the

1 Parties, PAGA Counsel, nor Defense Counsel are responsible for any Aggrieved Employee's tax
2 obligations arising from the settlement payments.

3 **VI. RELEASE**

4 33. Release By All Aggrieved Employees. Upon the entry of Judgment in accordance
5 with this Settlement, Plaintiffs, all of the Aggrieved Employees, and the State of California will be
6 forever barred from pursuing, against Defendant and its predecessors and successors, corporate
7 parents, corporate subsidiaries, corporate affiliates and all of its and those entities' current and
8 former officers, owners, directors, managing agents, members, shareholders, assigns, employees,
9 agents, principals, heirs, representatives, attorneys, accountants, auditors, consultants, insurers and
10 reinsurers (collectively, the "Released Parties"), any claim arising during the period from
11 December 4, 2018 to the entry of Judgment for relief of any kind under PAGA based on any claims
12 that were or could have been asserted under PAGA based on the facts alleged in either the Goto
13 Litigation or the Evans Litigation, and shall specifically include, without limitation, all claims for
14 PAGA penalties based on any of the following alleged underlying violations of the California
15 Labor Code or Industrial Wage Orders: (1) failure to provide meal periods; (2) failure to provide
16 rest periods; (3) any associated failure to pay regular wages, minimum wages, overtime wages, or
17 premiums for meal periods or rest periods not provided; (4) failure to pay any and all regular or
18 premium wages, including without limitation claims for regular, vacation or premium wages and
19 any claims relating to calculation of overtime due for employees with multiple regular rates during
20 a particular pay period; (5) failure to pay minimum wages; (6) failure to pay all wages due to
21 discharged or quitting employees, including without limitation vacation or PTO claimed to have
22 accrued or otherwise be due; (7) failure to furnish accurate or compliant wage statements; (8)
23 failure to timely pay wages during employment; (9) failure to reimburse for necessary expenses,
24 including without limitation expenses relating to travel, personal phones, and uniforms; (10) failure
25 to comply with Labor Code 432.5 with respect to background checks or background check
26 disclosures or authorizations; (11) violation of Labor Code section 216 by refusal by pay wages
27 due and payable and/or denial of the validity of claims to wages due, including without limitation
28 by reason of (allegedly) willfully, knowingly and intentionally failing to pay wages due and falsely

1 representing that wages were properly denied; (12) failure to pay wages on a weekly basis, in
2 violation of Labor Code section 201.3; and (13) failure to maintain required records (all of the
3 foregoing, collectively the “Released Claims”). The Released Claims include, but are not limited
4 to, all PAGA claims based on alleged violations of California Labor Code sections 201, 201.3, 202,
5 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174, 1174.5, 1175, 1194,
6 1194.2, 1197, 1197.1, 1198, and 2802. Although a general release does not usually extend to claims
7 that the releasing party does not know or suspect to exist in his or her favor at the time of executing
8 the release and that, if known by him or her, would have materially affected his or her settlement
9 with the released party, here, the foregoing release of PAGA claims includes a waiver of that
10 limitation so that the release set forth above includes a release of unknown claims to the extent that
11 those unknown claims meet the definition of the Released Claims. The Aggrieved Employees will
12 not be deemed to have released any individual, non-PAGA wage and hour claims by virtue of this
13 Settlement.

14 **VII. APPROVAL MOTION OR JOINT STIPULATION**

15 34. The Parties recognize that, in accordance with California Labor Code Section
16 2699(I), court approval is required in the event of a settlement of a PAGA action on a representative
17 basis. As explained in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009), however, the Parties are
18 not obligated to follow the class action procedural rules in PAGA cases and therefore need not
19 obtain preliminary approval of the PAGA settlement or provide the Aggrieved Employees with the
20 opportunity to opt out of the settlement or to object. *See also Mendoza vs. Nordstrom, Inc.*, 2 Cal.
21 5th 1074, 1079 (2017) (“PAGA authorizes a representative action without the need for class
22 certification.”); *Baumann v. Chase Inv. Servs. Corp.*, 747 F.3d 1117, 1123 (9th Cir. 2014) (“[A]
23 PAGA suit is fundamentally different than a class action” in that “PAGA has no notice
24 requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA
25 action.”); *Williams v. Sup. Ct.*, 3 Cal. 5th 531, 546-547 (2017) (“PAGA does not make other
26 potentially aggrieved employees parties or clients of Plaintiffs’ counsel, does not impose on a
27 Plaintiff or counsel any express fiduciary obligations, and does not subject a Plaintiff or counsel to
28 scrutiny with respect to the ability to represent a large class.”).

1 35. To comply with the requirements of California Labor Code Section 2699(I),
2 Plaintiff Evans shall file this Stipulation of Settlement and an associated Motion to Approve PAGA
3 Settlement (the “Approval Motion”) with the Court and shall concurrently submit this Stipulation
4 of Settlement to the LWDA as required by PAGA. Plaintiff Goto will join this motion, or state his
5 non-opposition to and support for the motion. PAGA Counsel shall ensure that Counsel for
6 Defendant will have sufficient time to review and comment on the draft Approval Motion, in
7 substantially final form, prior to its being filed with the Court. Defendant shall not oppose the
8 Approval Motion provided it comports with the terms of this Stipulation of Settlement.

9 36. If the Court denies approval of this Settlement due to concerns that the Parties
10 cannot address through non-material or otherwise mutually agreeable modifications of this
11 Stipulation of Settlement, or in the event that Defendant exercises its right to terminate this
12 Settlement pursuant to paragraph 33, (i) this Settlement shall be null and void; (ii) neither this
13 Stipulation of Settlement nor any of the related negotiations or proceedings shall have any force or
14 effect; (iii) the Parties shall stand in the same position, without prejudice, as if this Settlement had
15 been neither entered into nor filed with the Court; and (iv) the terms and negotiation of this
16 Stipulation of Settlement shall remain subject to Federal Rule of Evidence 408 and California
17 Evidence Code sections 1119 and 1152. Plaintiffs and PAGA Counsel understand and agree that
18 this Stipulation of Settlement does not mean that Defendant cannot contest whether this action can
19 go forward on a representative basis in the event the Settlement is not approved by the Court or
20 litigation otherwise resumes (including without limitation on the ground that representative claims
21 would be unmanageable), and Plaintiffs and PAGA Counsel agree not to argue otherwise; provided,
22 however, that Plaintiffs and PAGA Counsel reserve the right to contend that litigation of the suit
23 on a representative basis would be appropriate independent of this Stipulation of Settlement and do
24 not waive the right to so contend.

25 37. In the event that the court in the Goto Litigation does not grant final approval to the
26 class settlement of the FCRA claims alleged in that lawsuit, Defendant shall have the right, but not
27 the obligation, to terminate this Settlement by providing reasonably prompt written notice to PAGA
28 Counsel. Notwithstanding the foregoing, and in view of the fact that this PAGA Settlement will

1 resolve and extinguish all of the PAGA claims asserted in the Goto Litigation, nothing shall
2 preclude the Parties from obtaining court approval for this PAGA Settlement prior to completing
3 the approval process for the class settlement of the FCRA claims in the Goto Litigation, and once
4 this PAGA Settlement is approved and the associated judgment entered, Defendant will not have
5 the right to rescind or terminate this PAGA Settlement regardless of the status of the class
6 settlement of the FCRA claims in the Goto Litigation.

7 **VIII. ADMINISTERING THE SETTLEMENT AND PAYMENT PLAN**

8 38. Within ten (10) business days after the entry of Judgment, Defendant will compile
9 a list of all Aggrieved Employees (“Aggrieved Employee List”) containing the following as to each
10 Aggrieved Employee: (1) name; (2) last known home address and telephone number; (3) number
11 of Eligible Pay Periods; (4) the estimated payment amount assuming all fees and costs sought are
12 awarded; and (5) social security number. Defendant will (a) provide this information to the
13 Settlement Administrator, who will confirm upon request from PAGA Counsel that the amount to
14 be paid to the State of California and Aggrieved Employees equals the Net Penalty Amount; and
15 (b) not provide this information to Plaintiffs or PAGA Counsel who understand and agree that they
16 are not entitled to obtain this information as a result of this Stipulation of Settlement. By approving
17 this Stipulation of Settlement, the Court shall be deemed to have authorized and ordered this
18 transmission of information to the Settlement Administrator.

19 39. Defendant shall fund the Gross Settlement Amount within five (5) business days
20 after the Effective Date. The Settlement Administrator shall distribute all payments due under this
21 Settlement (with the exception of the amount allocated to settlement administration costs) within
22 fourteen (14) calendar days after funding.

23 40. The payment checks for each Aggrieved Employee Share shall be sent to each
24 Aggrieved Employee by U.S. First Class mail to the Aggrieved Employee’s last known home
25 address (updated by the Settlement Administrator as appropriate using measures such as the
26 National Change of Address Database maintained by the United States Postal Service) with
27 directions to the Postmaster to forward the payment checks and return all undeliverable payment
28 checks to the Settlement Administrator. This payment check will be sent with the Settlement

1 Notice. It will be conclusively presumed that an Aggrieved Employee's individual settlement
2 payment check was received if the payment check has not been returned within thirty (30) days of
3 the original mailing of the payment check. The date of the initial mailing of the payment check
4 shall be conclusively determined according to the records of the Settlement Administrator.

5 41. Settlement checks shall remain valid and negotiable for 90 calendar days from the
6 date of mailing and shall state that, if they are not cashed within 90 days from issuance, they will
7 become void. Funds represented by settlement checks returned as undeliverable and those
8 settlement checks remaining un-cashed for more than 90 days after issuance will be tendered to the
9 State Controller's Office, Unclaimed Property Division, in the name of the affected Aggrieved
10 Employee.

11 **IX. PARTIES' AUTHORITY**

12 42. The signatories hereto hereby represent that they are fully authorized to enter into
13 this Settlement and bind the Parties to the terms and conditions hereof.

14 **X. MUTUAL FULL COOPERATION**

15 43. The Parties agree to fully cooperate with each other to accomplish the terms of this
16 Settlement, including, but not limited to, execution of such documents and to take such other action
17 as may reasonably be necessary to implement the terms of this Settlement. The Parties to this
18 Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any
19 other efforts that may become necessary by order of the Court, or otherwise, to effectuate this
20 Settlement and the terms set forth herein. The Parties agree that this Settlement is beneficial and
21 fair, and they will not argue otherwise regardless of any future developments in the law or
22 precedent. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with
23 the assistance and cooperation of Defendant and its counsel, take all necessary steps in the Evans
24 Litigation to secure the approval of this Settlement from and entry of Judgment by the Court.

25 **XI. CONFIDENTIALITY**

26 44. Plaintiffs and PAGA Counsel agree that prior to moving for approval of this
27 Settlement, they shall not publicize any terms of this Settlement. After filing the Approval Motion
28 and thereafter, Plaintiffs and PAGA Counsel shall not publicize the Settlement or the terms thereof

1 via (a) press releases, (b) Internet postings that include the Defendant's name, other information
2 that could identify Defendant in any way such as its location, or the case name or number, or (c)
3 communications with the media. This shall not prohibit PAGA Counsel from discussing this case
4 or any aspect of this Settlement with Plaintiffs or any Aggrieved Employee and shall not prohibit
5 PAGA Counsel from in any way disclosing their status as counsel in the case or making objective
6 and truthful reference to the Settlement and any attorney fee award in any future pleading in another
7 litigation.

8 **XII. NO PRIOR ASSIGNMENTS**

9 45. Plaintiffs represent and warrant that they have not directly or indirectly assigned,
10 transferred, or purported to assign, or transfer to any person or entity any portion of any liability,
11 claim, demand, action, cause of action or rights herein released and discharged by this Stipulation
12 of Settlement.

13 **XIII. NO ADMISSION**

14 46. The Parties expressly recognize that the making of this Stipulation of Settlement
15 does not in any way constitute an admission or concession of wrongdoing on the part of Defendant.
16 Nothing in this Stipulation of Settlement, nor any action taken in implementation thereof, nor any
17 statements, discussions or communications or any materials prepared, exchanged, issued, or used
18 relating to this Settlement, is intended by the Parties to, nor will any of the foregoing constitute, be
19 introduced, be used or be admissible in any way in any other judicial, arbitral, administrative,
20 investigative, or other forum or proceeding, as evidence of any violation of any federal, state, or
21 local law, statute, ordinance, regulation, rule, or executive order, or any obligation or duty at law
22 or in equity. Neither this Stipulation of Settlement nor the resulting entry of Judgment or any other
23 order approving the Settlement shall have any collateral estoppel or other preclusive effect against
24 Defendant, and it shall not in any way establish any liability against Defendant. Plaintiffs and
25 PAGA Counsel agree that there shall be no such effect and shall not contend otherwise, and that
26 entry of the Judgment shall be deemed confirmation by the Court that the Judgment has no such
27 effect. Notwithstanding the foregoing, this Stipulation of Settlement may be used in any
28

1 proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement
2 of the Settlement or any orders or judgments of the Court entered into in connection therewith.

3 **XIV. ATTORNEYS' FEES, COSTS AND EXPENSES**

4 47. Except as specifically set forth herein, each Party shall bear his/its own attorneys'
5 fees, costs, and expenses, taxable or otherwise, incurred by him/it arising out of the PAGA
6 Litigation, and shall not seek reimbursement thereof from any other Party to this Settlement.

7 **XV. ARMS' LENGTH**

8 48. The Parties hereto agree that the terms and conditions of this Settlement are the
9 result of lengthy, intensive, arms-length negotiations between the Parties, that this Settlement is a
10 fair, adequate, and reasonable settlement of the PAGA claims asserted in the Evans Litigation and
11 the Goto Litigation.

12 **XVI. ENTIRE AGREEMENT**

13 49. This Stipulation of Settlement is the sole and exclusive agreement with respect to
14 the Released Claims and the resolution of the Evans Litigation and the PAGA claims asserted in
15 the Goto Litigation, and this Stipulation of Settlement supersedes all prior agreements, written or
16 oral, between or among the Parties regarding the Released Claims and the resolution of such claims.

17 **XVII. CAPTIONS AND INTERPRETATIONS**

18 50. Paragraph titles or captions contained herein are inserted as a matter of convenience
19 and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or
20 any provision hereof. Each term of this Settlement is contractual and not merely a recital.

21 **XVIII. MODIFICATION**

22 51. This Settlement may not be amended, changed, altered, or modified, except in
23 writing and signed by the Parties (or their successors-in-interest); provided, however, that PAGA
24 Counsel and Defense Counsel may agree to modifications necessary to address any comments or
25 concerns raised by the Court in connection with court approval of this Settlement, in which event
26 counsel shall represent and warrant that they are authorized to make and agree to such
27 modifications. This Settlement may not be discharged except by performance in accordance with
28 its terms or by a writing signed by the Parties.

1 **XIX. MISCELLANEOUS**

2 52. No rights hereunder may be waived except in writing. The Parties have made such
3 investigation of the facts and the law pertaining to the matters described herein and to this
4 Stipulation of Settlement as they deem necessary, and have not relied, and do not rely, on any
5 statement, promise, or representation of fact or law, made by the other Party, or their agents,
6 employees, attorneys, or representatives, with regard to any of their rights or asserted rights, or
7 with regard to the advisability of making and executing this Stipulation of Settlement, or with
8 respect to any such matters that would alter or change the terms of this Stipulation of Settlement.
9 No representations, warranties, or inducements have been made to any Party concerning this
10 Stipulation of Settlement other than those expressly set forth or referred to herein.

11 53. This Settlement shall be binding upon and inure to the benefit of the Parties and
12 their respective heirs, trustees, executors, administrators, successors, and assigns.

13 54. This Settlement may be executed in counterparts, and when each Party has signed
14 and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when
15 taken together with other signed counterparts, shall constitute one Settlement, which shall be
16 binding upon and effective as to all Parties. The counterparts may be transmitted electronically
17 (PDF) or by facsimile and may be signed via DocuSign, HelloSign, or Adobe Sign.

18 55. This Stipulation of Settlement shall be governed, construed, and interpreted, and the
19 rights of the Parties shall be determined, in accordance with the laws of the State of California,
20 irrespective of the State of California's choice of law principles.

21 56. The Parties have cooperated in the negotiation and preparation of this Stipulation of
22 Settlement. This Stipulation of Settlement shall not be construed against any Party on the basis
23 that the Party, or the Party's counsel, was the drafter or participated in the drafting of this
24 Stipulation of Settlement.

25 57. The Court shall retain jurisdiction to enforce this Stipulation of Settlement pursuant
26 to California Code of Civil Procedure section 664.6. The Court shall retain continuing jurisdiction
27 over the PAGA Litigation, and over all Parties and Aggrieved Employees, to the fullest extent
28 necessary to enforce and effectuate the terms and intent of this Stipulation of Settlement, and

1 Plaintiff Goto specifically consents to such exercise of jurisdiction as if he were a party to the Evans
2 Litigation.

3 IT IS SO STIPULATED AND AGREED.

4 DATED: AKIM EVANS

6 DATED: MICHAEL ANTHONY GOTO

9 DATED: January 26, 2022

WHELAN SECURITY OF CALIFORNIA, INC.

10 By: 

11 Name: L.J. Paul Stutz

12 Title: General Counsel

13 APPROVED AS TO FORM:

14 DATED: CROSNER LEGAL, P.C

15 By: _____

Zachary Crosner

16 Attorneys for Plaintiffs AKIM EVANS and
17 MICHAEL ANTHONY GOTO

18 DATED: WOODALL LAW OFFICES

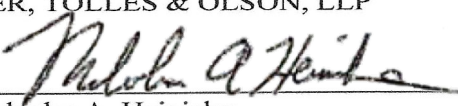
19 By: _____

Kevin Woodall

20 Attorneys for Plaintiffs AKIM EVANS and
21 MICHAEL ANTHONY GOTO

22 DATED: January 27, 2022

MUNGER, TOLLES & OLSON, LLP

24 By: 

Malcolm A. Heinicke

25 Attorneys for Defendant WHELAN SECURITY OF
26 CALIFORNIA, INC.

1 Plaintiff Goto specifically consents to such exercise of jurisdiction as if he were a party to the Evans
2 Litigation.

3 IT IS SO STIPULATED AND AGREED.

4 DATED: 02 / 01 / 2022

AKIM EVANS

5 

6 DATED: February 4, 2022

MICHAEL ANTHONY GOTO

7 

8 DATED:

WHELAN SECURITY OF CALIFORNIA, INC.

9 By:

10 Name:

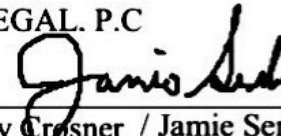
11 Title:

12 APPROVED AS TO FORM:

13 DATED: February 1, 2022

CROSNER LEGAL, P.C

14 By:

15 
Zachary Crosner / Jamie Serb

16 Attorneys for Plaintiffs AKIM EVANS and
17 MICHAEL ANTHONY GOTO

18 DATED:

WOODALL LAW OFFICES

19 By:

20 Kevin Woodall

21 Attorneys for Plaintiffs AKIM EVANS and
22 MICHAEL ANTHONY GOTO

23 DATED:

MUNGER, TOLLES & OLSON, LLP

24 By:

25 Malcolm A. Heinicke

26 Attorneys for Defendant WHELAN SECURITY OF
27 CALIFORNIA, INC.
28

1 Plaintiff Goto specifically consents to such exercise of jurisdiction as if he were a party to the Evans
2 Litigation.

3 IT IS SO STIPULATED AND AGREED.

4 DATED: 02 / 01 / 2022

AKIM EVANS

5

6

7 DATED:

MICHAEL ANTHONY GOTO

8

9

10 DATED:

WHELAN SECURITY OF CALIFORNIA, INC.

11

By:

12

Name:

13

Title:

14 **APPROVED AS TO FORM:**

15 DATED: February 1, 2022

CROSNER LEGAL, P.C

16

By:

Zachary Crosner / Jamie Serb

17

Attorneys for Plaintiffs AKIM EVANS and
MICHAEL ANTHONY GOTO

18

19 DATED: 2/4/22

WOODALL LAW OFFICES

20

By:

Kevin Woodall

21

Attorneys for Plaintiffs AKIM EVANS and
MICHAEL ANTHONY GOTO

22

23

24 DATED:

MUNGER, TOLLES & OLSON, LLP

25

By:

Malcolm A. Heinicke

26

Attorneys for Defendant WHELAN SECURITY OF
CALIFORNIA, INC.

27

28

EXHIBIT A

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Michael Crosner (SBN 41294)
Blake Jones (SBN 211221)
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Attorneys for Defendant WHELAN
SECURITY OF CALIFORNIA, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

AKIM EVANS, on behalf of all others
similarly aggrieved,

Plaintiffs,

vs.

WHELAN SECURITY OF CALIFORNIA
INC. dba GARDAWORLD SECURITY
SERVICES, a California Corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No.: 20STCV10973

[PROPOSED] JUDGMENT

Date:

Time:

Dept.:

Complaint Filed:

March 18, 2020

Trial Date:

None set

It is hereby **ORDERED, ADJUDGED AND DECREED** as follows:

1. Judgment in this matter is entered in accordance with the terms of the Parties' Stipulation of Settlement (the "Stipulation" or "Settlement"). Unless otherwise provided, all capitalized terms used herein shall have the same meaning as those defined by the Settlement.

1 2. Pursuant to the Private Attorneys General Act of 2004 (“PAGA”) and Labor Code
2 section 2699(1)(2) in particular, the Court approves the Settlement and finds that it is fair and
3 reasonable and furthers PAGA’s objectives. The Court further finds that notice of the Settlement
4 has been provided to the California Labor and Workforce Development Agency (“LWDA”) as
5 required by PAGA and Labor Code section 2699(1)(2), in particular. The Parties are directed to
6 perform in accordance with the terms set forth in the Settlement, and specifically, Defendant shall
7 make the payments to the LWDA, the Aggrieved Employees, Plaintiffs, and PAGA Counsel as
8 provided for and in the respective amounts set forth in the Settlement. Such payments may be made
9 through the Settlement Administrator.

10 3. This Judgment shall be binding on Plaintiff, all Aggrieved Employees, and the State
11 of California, who are hereby barred by the doctrine of res judicata from asserting any and all of the
12 Released Claims, as that term is defined by the Settlement. (See *Arias v. Superior Court* (2009) 46
13 Cal.4th 969, 986 [judgment in a representative action brought by an aggrieved employee under
14 PAGA is binding not only on the named employee plaintiff but also on state labor law enforcement
15 agencies and any aggrieved employee not a party to the proceeding].)

16 4. This Judgment resolves and extinguishes all Released Claims on behalf of the State
17 of California and the Aggrieved Employees against the Released Parties during the Covered Period,
18 which is defined as the period from December 4, 2018 until the date on which the Court enters this
19 Judgment. These Released Claims include, without limitation, any and all claims for civil penalties
20 under PAGA that were alleged in this lawsuit or the Goto Litigation (*Michael Anthony Goto v.*
21 *Whelan Security of California, Inc.*, San Francisco Superior Court, Case No. CGC-20-582164), or
22 could have been alleged based on the facts alleged in such lawsuits, or were alleged in any associated
23 LWDA submission by the Plaintiffs in these lawsuits. The claims released by this PAGA Settlement
24 include, but are not limited to, all PAGA claims based on alleged violations of Labor Code sections
25 201, 201.3, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 227.3, 256, 510, 512, 558, 1174,
26 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

1 5. Without affecting the finality of the Judgment, the Court shall retain exclusive and
2 continuing jurisdiction over the above-captioned action and the Parties for purposes of enforcing
3 the terms of the Judgment and the Settlement.

4 6. Neither this Judgment, the Settlement, any document referred to herein, any exhibit
5 to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations
6 or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or an
7 admission or concession with regard to, the claims asserted by Plaintiff or the denials or defenses of
8 Defendant, and shall not be offered in evidence in any proceeding against the Parties hereto in any
9 court, administrative agency, or other tribunal for any purpose whatsoever other than to enforce the
10 provisions of the Settlement or this Judgment.

11 7. Neither this Judgment, the Settlement, any document referred to herein, any exhibit
12 to any document referred to herein, any action taken to carry out the Settlement, nor any negotiations
13 or proceedings related to the Settlement shall have any collateral estoppel or other preclusive effect
14 against Defendant; provided, however, that Defendant and any of the Released Parties can use this
15 Judgment to enforce the release and extinguishment of the Released Claims as set forth above,
16 including without limitation by way of defense to any claims that have been or may hereafter be
17 asserted in any lawsuit or other judicial, administrative, or arbitral proceeding.

18 8. This document shall constitute a judgment under California Code of Civil Procedure
19 § 664.6.

20 **IT IS SO ORDERED, ADJUDGED, AND DECREED.**

21 DATED: _____, 2022

22
23
24 _____
25 Hon. Stephanie M. Bowick
26 Los Angeles Superior Court Judge
27
28

EXHIBIT B

[Mailing Date]

[RETURN ADDRESS OF SETTLEMENT ADMINISTRATOR]

Re: *Akim Evans v. Whelan Security of California, Inc. dba GardaWorld Security Services*, Los Angeles County Superior Court, Case No. 20STCV10973, filed on March 18, 2020

To [MERGE NAME]:

Plaintiff Akim Evans ("Plaintiff") filed the above-referenced lawsuit against Defendant Whelan Security of California Inc. dba GardaWorld Security Services ("Garda"). This lawsuit asserted wage and hour claims under the California Private Attorneys General Act of 2004 ("PAGA"). Plaintiff was employed in California as a security officer, and sought to assert his claims on behalf of himself and other hourly Garda employees in California. This letter refers to these employees as the "Covered Employees."

Garda strenuously denies Plaintiff's allegations, and contends that it has at all times complied with all wage and hour requirements. Further, the court overseeing this lawsuit has not made any determination that the Plaintiff's claims are valid. Nevertheless, Garda highly values its employees, and has chosen to resolve this matter and make payments to its employees instead of incurring further disruption and expense in this litigation. Garda has not admitted to any liability by entering into this settlement.

The Covered Employees include non-exempt (hourly) employees who, like Plaintiff, have worked for Garda in security officer or other non-exempt (hourly) positions in California in a defined time period. Specifically, the Covered Employees are those individuals who were non-exempt employees of Garda in California at any time between December 4, 2018, and <date>. You have been identified as one of the Covered Employees entitled to receive proceeds from the settlement.

On [DATE], the California Superior Court for the County of Los Angeles County approved the resolution of this matter. Under this resolution, payments are being made to the Covered Employees on a pro-rata basis calculated according to the number of pay periods each Covered Employee worked between December 4, 2018 and <date>. This resolution and resulting judgment extinguish all claims under PAGA that the Plaintiff, the Covered Employees, and the State of California may have arising from the allegations in the lawsuit or that could have been asserted based on the facts alleged in the lawsuit.

Your enclosed check, payable in the gross amount of [\$ Amount], is valid for ninety (90) days from the date of its issuance. After that date, it will be null and void, the check will be canceled, and the funds from the canceled check will be tendered to the State Controller's Office, Unclaimed Property Fund in the Covered Employee's name. Covered Employees who do not cash their checks will remain subject to the judgment and the release of PAGA claims, described above.

Garda encourages you to cash this check, and it will not take any adverse action against you for doing so.

If you have any questions regarding the settlement, please contact Rust Consulting at [INSERT ADDRESS [AND PHONE] INFORMATION].