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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MICHAEL HARRINGTON on behalf of
himself, and all others similarly situated, and
all aggrieved employees,

Plaintiff,

v.

CREATIVE SECURITY COMPANY, INC.;
and DOES 1 through 50, inclusive,

Defendants.

Case No: RG21095377

CLASS & REPRESENTATIVE ACTION

*Assigned for All Purposes to the Honorable
Brad Seligman, Dept. 23*

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: May 10, 2022

Time: 3:00 p.m.

Dept. 23

Complaint Filed: April 9, 2021

FAC Filed: May 18, 2021

Reservation No: 972899859533

This Motion will be based on the Memorandum of Points and Authorities set forth herein, the Joint Stipulation of Class Action Settlement and PAGA Settlement and Release of Claims, the Declarations of Eric A. Grover and Robert Spencer, and such evidence or oral argument as may be presented at the hearing, and on the complete records and file herein.

KELLER GROVER LLP

Offen

Attorneys for Plaintiff and Proposed Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff Michael Harrington (“Plaintiff” or “Class Representative”) brought this putative class action against Defendant Creative Security Company, Inc. (“Defendant”) on behalf of himself and a proposed class of current and former hourly security guard and mobile patrol employees who worked for Defendant in California. Plaintiff’s primary allegations were that Defendant failed to: (i) pay overtime wages; (ii) provide meal periods, (iii) authorize and permit rest breaks, (iv) provide accurate, itemized wage statements; and (v) pay all wages due upon termination. Plaintiff sought recovery of unpaid overtime wages, statutory damages, waiting time penalties, interest, and attorneys’ fees and costs on behalf of the putative class, asserting that Defendant violated various provisions of the California Labor Code and California Business and Professions Code §§ 17200, *et seq.*¹ Plaintiff also alleged Defendant violated the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) and seeks PAGA penalties on behalf of all aggrieved employee and California’s Labor and Workforce Development Agency (“LWDA”).

Plaintiff now seeks the Court’s preliminary approval of a proposed class action and PAGA settlement in this action, the terms of which are set forth in the parties’ Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Stipulation”).² The Stipulation was reached after the parties engaged in arm’s-length settlement negotiations through their experienced counsel.³ The negotiations included a formal mediation session with Michael Loeb, Esq., a well-respected mediator experienced in wage and hour class actions.⁴ The parties exchanged informal discovery prior to the mediation to enable productive discussions.⁵

The settlement represents a good result for the putative Class Members. To settle the matter, Defendant is required to make a non-reversionary payment of \$510,000, referred to as the

¹ Declaration of Eric A. Grover submitted herewith, at ¶ 6, Ex. B (the First Amended Complaint). Hereinafter, all “Ex.” references are to the exhibits attached to the Grover Declaration.

² Ex. A (the Stipulation).

³ Grover Decl. at ¶¶ 8-10, 35.

⁴ Ex. A at § II. B; Grover Decl. at ¶ 10.

⁵ Ex. A at § II. B; Grover Decl. at ¶¶ 8-9.

Maximum Settlement Amount (“MSA”), plus the employer’s share of the payroll taxes.⁶ The settlement will result in an average gross payment of approximately \$370.99 to those Class Members who do not opt out of the settlement, on terms that Plaintiff believes to be fair, reasonable and adequate.⁷

The settlement also provides that Plaintiff’s representative PAGA claims will be settled for \$20,000, referred to as the PAGA Payment.⁸ As Labor Code § 2699(i) requires, the PAGA Payment will be distributed 75% (\$15,000) to the California Labor and Workforce Development Agency (“LWDA”) and 25% (\$5,000) to Aggrieved Employees.⁹ From the \$5,000 allocated to Aggrieved Employees, each Aggrieved Employee will receive an Individual PAGA Payment based the number of Qualified Pay Periods worked.¹⁰ Settlement Class Members also may be Aggrieved Employees and, if so, will receive an Individual PAGA Payment in addition to the Individual Settlement Payment, combined in one settlement check.¹¹

For the foregoing reasons, Plaintiff respectfully requests that the Court take the following actions solely for the purposes of settlement: (a) grant preliminary approval of the Stipulation, (b) conditionally grant certification of the proposed settlement class, (c) appoint Michael Harrington as Class Representative, (d) appoint Eric A. Grover and Robert W. Spencer of Keller Grover LLP as Class Counsel, (e) approve the appointment of Phoenix Settlement Administrators as the Settlement Administrator, (f) authorize the mailing of the proposed class action notice, and (g) schedule a final fairness and approval hearing.

II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS

On April 9, 2021, Plaintiff filed his initial putative class action complaint in Alameda County Superior Court and the operative First Amended Complaint on May 18, 2021.¹² Plaintiff brought the action on behalf of himself and a putative class of hourly, non-exempt security and

⁶ Ex. A at §§ III.A and III.L.1; Grover Decl. at ¶ 22.

⁷ See *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801-02; Ex. A at § III.L.2.a; Grover Decl. at ¶¶ 23, 27 (\$300,500 estimated Net Settlement Amount/810 Class Members = \$370.99).

⁸ Ex. A at §§ I.Z, III.L.5. See Lab. Code § 2699(l)(2).

⁹ Ex. A at §§ I.Z, III.L.5.

¹⁰ Ex. A at §§ I.R, III.L.2.b.

¹¹ Ex. A at §§ I.C, I.H, I.R., I.S.

¹² Grover Decl. at ¶ 6, Ex. B (the First Amended Complaint).

mobile patrol guards who worked for Defendant at California locations from April 9, 2017 through January 6, 2022. Plaintiff alleged that Defendant failed to pay overtime wages for hours worked over eight in a shift, did not provide all required meal periods and rest breaks, failed to provide accurate wage statement, and did not pay all wages due on termination. Plaintiff asserted that Defendant's practices and policies violated Labor Code §§ 201-203, 204, 226, 226.7, 510-512, 1194, 1198, 1199, and Business & Professions Code §§ 17200, *et seq.*¹³ Plaintiff also alleged related representative PAGA claims.¹⁴

Defendant has denied all of the allegations in their entirety. To date, no class has been certified and no court has made any findings that Defendant engaged in any wrongdoing or in any wrongful conduct or otherwise acted improperly or in violation of any state law, rule or regulation, with respect to the issues presented in the litigation.¹⁵

Early in the case, the parties decided to explore the possibility of settlement. Plaintiff provided Defendant with a detailed information request in response to which Defendant provided information and documents necessary for Plaintiff to engage in settlement discussions.¹⁶

At the time the final settlement was reached, Defendant had provided relevant documents and information, including:

(A) The number of Class Members:

- o There are estimated to be approximately 810 Class Members.

(B) The total weeks worked by Class Members:

- o Class Members worked a total of approximately 35,310 weeks during the Class Period.
- o 29,241 of those weeks were worked by stationary security guards and 6,069 were worked by mobile patrol guards.

(C) The total pay periods worked by Class Members during the Labor Code § 226 liability period:

- o Class Members worked a total of approximately 8,504 pay periods during the Labor Code § 226 liability period.

¹³ Grover Decl. at ¶ 6; *see also*, Ex. B.

¹⁴ Grover Decl. at ¶ 6; *see also*, Ex. B.

¹⁵ Grover Decl. at ¶ 7.

¹⁶ Grover Decl. at ¶ 8.

(D) Class Members' average hourly wage:

Class Members were hourly employees and the average hourly wage during the Class Period was approximately \$19.00.

(E) The total pay periods during the PAGA liability period:

- o Aggrieved Employees worked a total of approximately 8,875 pay periods during the PAGA liability period.¹⁷

On January 6, 2022, the parties participated in an all-day mediation session with skilled mediator, Michael Loeb, Esq. who has significant experience mediating wage and hour class actions.¹⁸ The mediated negotiations resulted in the parties reaching an agreement to settle the entire action, subject to the Court's approval.¹⁹ All terms of the parties' settlement are set forth in the Stipulation.²⁰

III. SUMMARY OF SETTLEMENT TERMS

A. The Settlement Class and Aggrieved Employees.

The parties agreed that, for purposes of settlement only, the Class should be defined as:

All current and former hourly security guard and mobile patrol employees who worked for Defendant in California during the Class Period.²¹

The Class Period is from April 9, 2017 through January 6, 2022, inclusive.²² In this memorandum, the members of the proposed Class are referred to as the "Class Members."

For the PAGA claims, the settlement defines "Aggrieved Employees" to mean "all current and former hourly security guard and mobile patrol employees who worked for Defendant in California at any time during the PAGA Period."²³ The PAGA Period is from and including March 12, 2020 through January 6, 2022.²⁴ All Aggrieved Employees are also Class Members. Approximately 415 Class Members also are Aggrieved Employees.²⁵

¹⁷ Grover Decl. at ¶ 9.

¹⁸ Ex. A at § II.B; Grover Decl. at ¶ 10.

¹⁹ Ex. A at § II.B; Grover Decl. at ¶ 10.

²⁰ Grover Decl. at ¶ 10; Ex. A.

²¹ Ex. A at § I.H.

²² Ex. A at § I.I; *see also*, Grover Decl. at ¶ 11.

²³ Ex. A at § I.C.

²⁴ Ex. A at § I.AA.

²⁵ Grover Decl. at ¶ 12.

B. Notice Procedure and Settlement Process.

The proposed Notice of Class and PAGA Action Settlement (“Notice”) explains in plain language the nature of the lawsuit, terms of the settlement, Class Members’ rights, the expected settlement payment that each Class Member can expect to receive, the steps necessary for a Class Member to dispute the information used to calculate his or her settlement payment, and the steps necessary to request exclusion from or object to the settlement.²⁶

“PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”²⁷ Even so, the Notice will inform Settlement Class Members and Aggrieved Employees of the PAGA Settlement and the amount of the Individual PAGA Payment the Aggrieved Employee can expect to receive.²⁸

The parties agreed upon a notice procedure that is intended to ensure the highest number of Class Members receive the Notice. Phoenix Settlement Administrators (“Phoenix” or the “Settlement Administrator”), the company that the parties selected to handle the notice and settlement administration, will mail the Notice to Class Members based on contact information Defendant will provide from its records.²⁹ In the event any Notices are returned by the post office as undeliverable, the proposed notice procedure requires Phoenix to perform reasonable searches to attempt to locate Class Members’ correct addresses.³⁰

The settlement provides all Class Members with the opportunity to request exclusion from the settlement or object to the settlement terms.³¹ Class Members will have 45 days from the date the Settlement Administrator mails the Notices to opt out or object.³²

Class Members are not required to submit a claim in order to participate in the settlement and receive a settlement payment.³³ The Notices will be individualized to state the number of Qualified Weeks that each Class Member worked and number of Qualified Pay Periods that each

²⁶ Ex. A at §§ I.X, III.K.2, Stipulation Exhibit 1.

²⁷ *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.

²⁸ Ex. A at §§ III.K.2.a and III.K.2.b, Stipulation Exhibit 1.

²⁹ Ex. A at §§ III.K.1, III.K.3.

³⁰ Ex. A at § III.K.4.

³¹ Ex. A at §§ III.K.7 and III.K.8.

³² Ex. A at §§ I.NN, III.K.7.a. and III.K.8.a.

³³ See Ex. A at § III.L.2.a; Grover Decl. at ¶ 26.

1 Aggrieved Employee worked.³⁴ The Notices also will state the Settlement Administrator’s
2 calculation of each Class Member’s estimated gross Individual Settlement Payment if that Class
3 Member does not request exclusion from the Settlement and each Aggrieved Employee’s
4 estimated Individual PAGA Payment.³⁵ Class Members will have the ability to dispute the
5 number of Qualified Weeks stated on his or her individualized Notice.³⁶

6 **C. Benefits to the Class.**

7 Plaintiff believes the settlement provides fair and adequate benefits for the Class
8 Members. Although the maximum theoretical damages of the remaining claims exceed the Net
9 Settlement Amount by a substantial amount, the defenses to those claims discussed in the Grover
10 declaration warrant a substantial discount.³⁷ Defendant also asserts that Plaintiff will not succeed
11 at class certification because individualized questions regarding each Class Member’s work time,
12 schedule, meal periods and rest breaks will predominate.³⁸

13 Taking those factors into account, Class Counsel believes the proposed allocations of the
14 Net Settlement Amount (“NSA”) to be fair and reasonable and a good compromise for the
15 damages of absent Class Members.³⁹

16 The settlement provides that Defendant will pay a Maximum Settlement Amount of
17 \$510,000, plus the employer-side payroll taxes, to resolve the claims covered by the settlement.⁴⁰
18 After subtracting out the amounts allocated to pay the costs of administration (estimated to be no
19 more than \$12,000), Class Counsel’s fees (estimated to be \$170,000) and actual out-of-pocket
20 costs and expenses (estimated to be no more than \$12,000), the PAGA Payment (\$20,000), and
21 the Class Representative’s Incentive Award/General Release Payment (up to \$7,500), all of which
22 are subject to the Court’s approval, the NSA is estimated to be \$300,500.⁴¹ The NSA will be
23 distributed to all Settlement Class Members, *i.e.*, all Class Members who do not timely opt out,

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³⁴ Ex. A at § III.K.2.b.

25 ³⁵ Ex. A at § III.K.2.b.

26 ³⁶ Ex. A at § III.K.5.

27 ³⁷ Grover Decl. at ¶¶ 14-18, 21.

28 ³⁸ Grover Decl. at ¶¶ 17, 37.

³⁹ Grover Decl. at ¶ 18, *see also*, ¶¶ 13, 22, 36-37.

⁴⁰ Ex. A at §§ I.V, III.L; Grover Decl. at ¶ 22.

⁴¹ Ex. A at § I.W; Grover Decl. at ¶ 23.

1 based on the formula set forth in the Stipulation and summarized below.⁴² There is no reversion
2 of the MSA to Defendant.⁴³

3 **D. Payments to Settlement Class Members.**

4 The Stipulation provides that NSA will be distributed proportionally based on the number
5 of Qualified Weeks each Settlement Class Member worked during the applicable Class Period.⁴⁴
6 Each Settlement Class Member will be assigned a share calculated by dividing his or her total
7 number of Qualified Weeks by the total number of Qualified Weeks for the entire Settlement
8 Class, which is that person's Payment Ratio.⁴⁵ The Payment Ratio then will be multiplied by the
9 NSA to determine that Settlement Class Member's Individual Settlement Payment, except that no
10 gross Individual Settlement Payment will be less than \$25.⁴⁶ Settlement Class Members are not
11 required to submit a claim to receive an Individual Settlement Payment.⁴⁷

12 If no Class Member opts out, the average Individual Settlement Payment would be
13 approximately \$370.99 (\$300,500 NSA/810 Class Members).⁴⁸ For the reasons explained above,
14 including the various defenses and other risks of litigation, the proposed settlement amount is
15 reasonable under the circumstances.

16 **E. Payments to the Aggrieved Employees and State**

17 The parties have agreed to allocate \$20,000 of the MSA to settle the PAGA claims,
18 referred to as the PAGA Payment.⁴⁹ Labor Code § 2699(i) requires that the LWDA receive 75%
19 (\$15,000) of the PAGA settlement amount and Aggrieved Employees receive 25% (\$5,000).⁵⁰

21 ⁴² Ex. A at § III.L.2.a; *see also*, §§ I.S, I.W; Grover Decl. at ¶ 23.

22 ⁴³ Ex. A at § III.L; *see also*, §§ I.V, I.W.

23 ⁴⁴ Ex. A at § III.L.2.a; *see also*, §§ I.JJ, I.QQ; Grover Decl. at ¶ 25.

24 ⁴⁵ Ex. A at § III.2.a; *see also*, §§ I.HH, I.JJ, I.QQ. Only the mobile patrol guards worked 4-
25 day/40-hour work schedules. All stationary security guards worked 5-day/40-hour weeks.
26 Because the unpaid wages claim is limited to mobile patrol guards, it was determined that, for
27 calculation purposes, each 5-day/40-hour week would be counted as one "Qualified Week" and
28 each 4-day/40-hour week would be counted as 1.5 "Qualified Weeks." By way of example, 10 5-
day/40-hour weeks would be counted as 10 (10 x 1) Qualified Weeks and 10 4-day/40-hour work
weeks would be counted as 15 (10 x 1.5) Qualified Weeks.

⁴⁶ Ex. A at § III.L.2.a; *see also*, §§ I.S, I.W, I.HH.

⁴⁷ Ex. A at § III.L.2.a; Grover Decl. at ¶ 26.

⁴⁸ Grover Decl. at ¶ 27.

⁴⁹ Lab. Code § 2699(f); Ex. A at §§ I.Z, III.L.5.

⁵⁰ Lab. Code § 2699(i).

To distribute the 25% allocated to the Aggrieved Employees, the Settlement Administrator will distribute Individual PAGA Payments according to the formula set forth in the Settlement Agreement.⁵¹ The Settlement Administrator will divide the respective Qualified Pay Periods for each Aggrieved Employees by the total Qualified Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio for each Aggrieved Employee.⁵² Each Aggrieved Employee's Payment Ratio then will be multiplied by the \$5,000 portion of the PAGA Payment allocated to the Aggrieved Employees to calculate each Individual PAGA Payment.⁵³

F. The scope of the Release applicable to Settlement Class Members.

The scope of the release is narrowly tailored to the claims asserted in the operative First Amended Complaint filed in this action and factual or legal theories that reasonably could have been alleged based on the facts and legal theories contained in the First Amended Complaint.⁵⁴ The release is also temporally limited to the Class Period.⁵⁵

G. The PAGA Release.

The settlement provides a separate PAGA Release through which Plaintiff, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, releases the Released Parties of and from any and all claims for civil penalties, attorneys' fees, and litigation costs under PAGA, as alleged in the operative First Amended Complaint for the PAGA Period (the "PAGA Released Claims").⁵⁶ No individual Class Members or Aggrieved Employees are providing a PAGA Release.⁵⁷

H. The Class Representative's Service Award and General Release Payment.

The Stipulation provides for a reasonable enhancement for the named Plaintiff to compensate him for the risks he took and the time and effort he expended in coming forward to

⁵¹ Ex. A at § III.2.b.

⁵² Ex. A at § III.L.2.b; *see also*, §§ I.C, I.GG, I.II; Grover Decl. at ¶ 28. Qualified Pay Periods are defined as any and all pay periods (as reflected in Defendant's records) during which one or more Aggrieved Employees performed work for Defendant in California during the PAGA Period. Ex. A at § I.II.

⁵³ Ex. A at § I.DD; Grover Decl. at ¶ 28.

⁵⁴ Ex. A at § III.B; *see* Ex. B (First Amended Complaint); Grover Decl. at ¶ 29.

⁵⁵ Ex. A at § III.B; Grover Decl. at ¶ 29.

⁵⁶ Ex. A at § III.D, *see also*, §§ I.AA and I.BB; Grover Decl. at ¶ 20.

⁵⁷ Grover Decl. at ¶ 30; *see* Ex. A at § III.D.

1 provide invaluable information in support of the claims alleged in the First Amended
2 Complaint.⁵⁸ Plaintiff also will provide a general release of his claims against Defendant that is
3 much broader than the release that will apply to the Settlement Class Members.⁵⁹

4 Subject to the Court's approval, the settlement provides that Plaintiff Harrington will
5 receive a \$7,500 Class Representative Incentive Award/General Release Payment.⁶⁰ This service
6 award is approximately one and one-half percent of the overall settlement amount.⁶¹ The
7 settlement provides that any amount allocated to the service award that the Court does not
8 approve will become part of the NSA.⁶² With the application for final approval, Plaintiff will
9 submit a declaration detailing the time and effort he put into this case.⁶³

10 **I. Attorneys' fees and costs.**

11 The Stipulation also provides that, at final approval, Class Counsel will seek an award of
12 attorneys' fees not to exceed one-third (33.33%) of the MSA, *i.e.*, \$170,000 of the \$510,000
13 MSA, and actual costs, which are estimated not to exceed \$12,000, referred to collectively as the
14 Class Counsel Award.⁶⁴ The fee request of 33.33% of the MSA is reasonable given the time
15 invested in the case and the amount that will be paid to the 810 Class Members. With the final
16 application, Class Counsel will provide information regarding the hours they have spent litigating
17 this case.⁶⁵ The settlement provides that any amount allocated to the Class Counsel Award that
18 the Court does not approve will become part of the NSA.⁶⁶

19 **J. Administration costs.**

20 The Stipulation allocates \$12,000 of the MSA for the costs of settlement administration,
21 subject to the Court's approval.⁶⁷

22
23
24 ⁵⁸ Ex. A at § III.L.3, *see also*, § I.J; Grover Decl. at ¶¶ 31, 44.

25 ⁵⁹ Ex. A at § III.C; Grover Decl. at ¶ 44.

26 ⁶⁰ Ex. A at § III.L.3.

27 ⁶¹ *See* Ex. A at §§ III.L and III.L.3.a.

28 ⁶² Ex. A at § III.L.3.b.

⁶³ Grover Decl. at ¶ 44.

⁶⁴ Ex. A at §§ I.F, III.L.4.

⁶⁵ Grover Decl. at ¶ 50.

⁶⁶ Ex. A at § III.L.4.c.

⁶⁷ Ex. A at § III.L.6.

K. Residual funds.

All Individual Settlement Payment and Individual PAGA Payment settlement checks will be valid for 90 days from the date of issuance.⁶⁸ The Settlement Administrator will send a postcard reminder to Settlement Class Members and Aggrieved Employees 30 days before the check void date.⁶⁹ The settlement provides that, after the check void date, the Settlement Administrator will send any funds from uncashed checks to the Katherine and George Alexander Community Law Center at Santa Clara University. The Law Center provides pro bono representation in various areas includes workers' rights.⁷⁰

L. Overlapping cases.

There are no known related pending cases that will be affected by this settlement.⁷¹

M. Notice of the PAGA settlement to the LWDA

Because the parties have agreed to settle the PAGA claims in this action, proposed Class Counsel has sent Plaintiff's motion for preliminary approval, this memorandum, the Grover Declaration, with its exhibits including the Stipulation, the Declaration of Robert Spencer and the proposed order to the LWDA.⁷²

N. Tax treatment.

The Stipulation provides that the Individual Settlement Payments shall be allocated and treated as one-third wages and two-thirds statutory penalties and interest.⁷³ For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% statutory penalties.⁷⁴ Defendant shall be responsible for paying the employer's share of payroll taxes (above and beyond the \$510,000 MSA).⁷⁵ The Settlement Administrator shall be responsible for timely issuing to Settlement Class Members a form W-2 for amounts deemed "wages" and Form 1099s

⁶⁸ Ex. A at § III.L.2.e.

⁶⁹ Ex. A at § III.J.

⁷⁰ Ex. A at § III.L.2.e; Grover Decl. at ¶ 45. See <https://law.scu.edu/kgac/c/>.

⁷¹ Grover Decl. at ¶ 46.

⁷² See Declaration of Robert Spencer filed with Plaintiff's motion for preliminary approval; see also, Grover Decl. at ¶ 47.

⁷³ Ex. A at § III.L.2.c.

⁷⁴ Ex. A at § III.L.2.c.

⁷⁵ Ex. A at § L.1; Grover Decl. at ¶ 48.

for the non-wage portion if needed.⁷⁶

IV. LEGAL ANALYSIS

A. Two-step approval process.

Any settlement of class litigation must be reviewed and approved by the Court.⁷⁷ This is done in two steps: (1) an early (preliminary) review by the trial court, and (2) a final review after notice has been distributed to the Class Members for their comment or objections. The Manual for Complex Litigation (Third) § 30.41 states:

Approval of class action settlements involves a two-step process. First, counsel submits the proposed terms of settlement and the court makes a preliminary fairness evaluation. If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or of segments of the class, or excessive compensation for attorneys, and appears to fall within the range of possible approval, the court should direct that notice ... be given to the class members of a formal fairness hearing, at which arguments and evidence may be presented in support of and in opposition to the settlement.⁷⁸

Thus, the preliminary approval by the trial court is simply a conditional finding that the settlement appears to be within the range of acceptable settlements. As Professor Newberg comments, “[t]he strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal may vary. The court may find that the settlement proposal contains some merit, is within the range of reasonableness required for a settlement offer, or is presumptively valid subject only to any objections that may be raised at a final hearing.”⁷⁹

The procedures for the submission of a proposed settlement for preliminary approval by the court also are discussed in 4 Newberg on Class Actions:

⁷⁶ Ex. A at § III.L.2.c; Grover Decl. at ¶ 48.

⁷⁷ Cal. Rules of Court 3.769; Fed. R. Civ. Pro. 23(e). The California Supreme Court has authorized California’s trial courts to use Federal Rule 23 and cases applying it for guidance in considering class issues. See *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 821; *Green v. Obledo* (1981) 29 Cal.3d 126, 145-146. Where appropriate, therefore, Plaintiff cites Federal Rule 23 and federal case law in addition to California law.

⁷⁸ The Manual for Complex Litigation (Third).

⁷⁹ 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions, § 11.26 (4th ed. 2002).

When the parties to an action reach a monetary settlement, they will usually prepare and execute a joint Stipulation, which is submitted to the court for preliminary approval. The stipulation should set forth the essential terms of the agreement, including but not limited to, the amount of settlement, form of payment, manner of determining the effective date of settlement and any recapture clause.⁸⁰

Here, the parties have reached such an agreement, which Plaintiff now submits to this Court, in connection with this Motion. The Stipulation sets forth all terms of the agreement reached by the parties.⁸¹

B. Procedures for Settlement Before Class Certification

Pursuant to Cal. Rules of Court 3.769, the parties also may, at the preliminary approval stage, request that the court provisionally approve certification of the class – conditional upon final approval of the settlement. “[P]re-certification settlements are routinely approved if found to be fair and reasonable.”⁸²

The strength of the findings made by a judge at a preliminary hearing or conference concerning a tentative settlement proposal . . . may be set out in conditional orders granting tentative approval to the various items submitted to the court. Three basic rulings are often conditionally entered at this preliminary hearing. These conditional rulings may approve a temporary settlement class, the proposed settlement, and the class counsel’s application for fees and expenses.⁸³

Each such condition is appropriate here (although, as mentioned, the parties do not hereby seek final approval of the award to proposed Class Counsel, which will be addressed at the final approval stage).

1. The proposed Class should be certified solely for settlement purposes.

It is well established that trial courts should use a lower standard for determining the

⁸⁰ 4 Newberg on Class Actions at § 11.24.

⁸¹ See Ex. A.

⁸² *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 244, *overruled on other grounds* by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal. 5th 260, 269; *accord Dunk, supra*, 48 Cal. App. 4th at 1803 (although the settlement was reached before any “adversary certification,” the court was satisfied that it was “fair, adequate and reasonable.”); *see also, In re Baldwin-United Corp.* (S.D.N.Y. 1984) 105 F.R.D. 475, 478 (“many courts have employed this practice in the name of judicial efficiency in order to facilitate apparently beneficial settlement proposals.”).

⁸³ 4 Newberg on Class Actions, at § 11.26.

propriety of certifying a settlement class, as opposed to a litigation class.⁸⁴ The reason for this is that no trial is anticipated in a settlement class, so the case management issues inherent in determining if the class should be certified need not be confronted.⁸⁵ The proposed settlement class meets all requirements for certification of a settlement class, as discussed below.

a) The proposed settlement Class is ascertainable and too numerous to make joinder practicable.

The proposed settlement Class is ascertainable. The Class definition, the total size of the Class and the means for identifying the members of the Class determine whether it is ascertainable. In this case, the members of the proposed settlement Class are identifiable from Defendant's records.⁸⁶

Further, the size of the proposed Class is sufficiently numerous to warrant certification. According to Defendant's records, there are approximately 810 proposed Class Members.⁸⁷

b) Questions of law and fact common to members of the settlement Class predominate.

The proposed Class Members' claims all stem from a common set of circumstances. All of the Class Members worked for Defendant as hourly, non-exempt security guards and mobile patrol employees in California during the relevant time period. Plaintiff contends that all Class Members were subject to Defendant's uniform practices and policies, including those regarding overtime pay, meal periods, rest breaks and termination pay. Those uniform policies and practices are at the core of Plaintiff's allegations that Defendant violated the Labor Code and create questions of law and fact common to all Class Members. All of the Class Members seek the same legal remedies under the same state laws.⁸⁸

Furthermore, the common questions regarding Defendant's overtime pay, meal period and rest break, termination pay, and wage statement policies and practices are among the key issues that will determine Defendant's alleged liability to the proposed settlement Class. Plaintiff

⁸⁴ *Dunk, supra*, 48 Cal. App. 4th at 1807, n. 19.

⁸⁵ *Amchem Products, Inc. v. Windsor* (1987) 521 U.S. 591, 620.

⁸⁶ *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.

⁸⁷ See Grover Decl. at ¶¶ 9, 40.

⁸⁸ Grover Decl. at ¶ 41.

1 contends that common questions will predominate over any individual questions that may arise.
2 Under these circumstances, the requirements that common questions of law and/or fact exist
3 among the proposed Class Members and will predominate over individual questions are satisfied
4 for purposes of certifying the Class for settlement.⁸⁹

5 **c) The Proposed Class Representative's Claims are typical of the**
6 **Class Members' Claims.**

7 A class representative's claims are typical when they arise from the same event or course
8 of conduct that gives rise to the claims of the class, and are based on the same legal theory.⁹⁰ In
9 this case, the named Plaintiff contends that he, like all of the Class Members, worked for
10 Defendant in California as an hourly, non-exempt security guard and mobile patrol employee and
11 was subject to Defendant's uniform policies and practices regarding compensation for overtime,
12 meal periods and rest breaks, payment of wages at termination, and issuance of wage statements.
13 Thus, Plaintiff's claims and the Class Members' claims arise from the same course of conduct.⁹¹

14 **d) The Proposed Class Representative will adequately represent**
15 **the Class.**

16 The named Plaintiff also has demonstrated that he will aggressively and competently
17 assert the Class Members' interests. Plaintiff has retained competent counsel, experienced in
18 litigating class action claims in the wage and hour context.⁹² Thus, the Court should
19 conditionally certify the proposed Class solely for settlement purposes.

20 **C. The settlement is fair and reasonable and not the result of fraud or collusion.**

21 "The trial court operates under a presumption of fairness when the settlement is the result
22 of arm's-length negotiation, investigation and discovery that are sufficient to permit counsel and
23 the court to act intelligently, counsel are experienced in similar litigation, and the percentage of
24 objectors is small."⁹³

25 ⁸⁹ Grover Decl. at ¶ 41.

26 ⁹⁰ *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

27 ⁹¹ Grover Decl. at ¶ 42.

28 ⁹² See Grover Decl. at ¶¶ 2-4, 43.

⁹³ *In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723, citing *Dunk, supra*, 48 Cal. App. 4th at 1800-01, which cited *Officers for Justice v. Civil Service Com'n*, (9th Cir. 1982) 688 F.2d 615, 625. See also, e.g., *Wershba*, 91 Cal.App.4th at 245 (similar).

1 While the recommendations of counsel proposing the settlement are not conclusive, the
2 Court can properly take them into account, particularly where, as here, such counsel have been
3 involved in informal discovery and negotiations, appear to be competent, have experience with
4 this type of litigation, and have exchanged substantial, relevant information with the opposing
5 party.⁹⁴ Here, both Plaintiff's and Defendant's counsel have a great deal of experience in wage
6 and hour matters and class action litigation.⁹⁵ Moreover, both class counsel and defense counsel
7 conducted an extensive investigation of the factual allegations involved in this case. The parties
8 have engaged in the exchange of relevant documents, records and other information necessary to
9 evaluate the strengths and weaknesses of the case. Each side has apprised the other of their
10 respective factual contentions, legal theories and defenses, resulting in extensive arm's-length
11 negotiations – including formal mediation with an experienced mediator -- taking place between
12 the parties.⁹⁶

13 Plaintiff believes the settlement for each Class Member to be fair, reasonable and
14 adequate, given the inherent risk of litigation and the costs of pursuing such litigation.⁹⁷ The
15 settlement shall finally resolve all claims in the operative First Amended Complaint Code under
16 California Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 511, 512, 1194, 1198, and
17 1199, and related Business & Professions Code §§ 17200, *et seq.* claims, together with interest,
18 fees, and costs related to those claims.⁹⁸ The Release Period for the Released Claims shall be the
19 same as the Class Period, *i.e.*, from April 9, 2017 through January 6, 2022, inclusive.⁹⁹ The
20 settlement also finally resolves any and all PAGA claims for civil penalties, attorneys' fees, and
21 litigation costs during the PAGA Period.¹⁰⁰

22
23 ⁹⁴ See Newberg on Class Actions, § 11.47; *Wershba*, 91 Cal.App.4th at 245; *In re Paine Webber*
24 *Ltd. P'ships Litig.* (S.D.N.Y. 1997) 171 F.R.D. 104, 125 (“[s]o long as the integrity of the arm's
25 length negotiation process is preserved, however, a strong initial presumption of fairness attaches
to the proposed settlement . . . [citations] and ‘great weight’ is accorded to the recommendations of
counsel, who are most closely acquainted with the facts of the underlying litigation”).

26 ⁹⁵ See Grover Decl. at ¶¶ 2-4, 13, 43.

27 ⁹⁶ Grover Decl. at ¶¶ 8-10, 14-17, 21, 35-37; see Ex. A at § II.B.

28 ⁹⁷ Grover Decl. at ¶¶ 13-18, 35-37.

⁹⁸ See Ex. A at § III.B; see also, §§ I.LL., I.MM; Ex. B.

⁹⁹ See Ex. A at § III.B; see also, § I.I.

¹⁰⁰ Ex. A at § III.L.5; see also, §§ I.Z, I.AA, I.BB.

The settlement also compensates the named Plaintiff with a reasonable Incentive Award/General Release Payment, taking into consideration the risks, time, effort, and expenses he incurred in coming forward to provide invaluable information, negotiate, and litigate this matter on behalf of all Class Members against his former employer.¹⁰¹ The named Plaintiff also will provide a General Release of his individual claims against Defendant.¹⁰²

Fairness of the settlement is further demonstrated by the uncertainty and risks to Plaintiff involved both in not prevailing on one or more of the causes of action or theories alleged in the complaint and in non-certification. Defendant disputes Plaintiff's ability to certify a class and prove that Defendant is liable to the Class for its overtime, meal period and rest break, wage statement and termination pay policies and practices. Were a class not certified, it is unlikely that any Class Member would maintain an individual action against Defendant.¹⁰³

Despite the asserted fairness of the settlement terms, should any proposed Class Member, upon reviewing the Notice of proposed settlement, object to the terms of the settlement as set forth in the Stipulation, each has the right to submit a request for exclusion (*i.e.*, opt out) from the settlement, pursuant to which the Class Member would retain any claim he or she may have against Defendant.¹⁰⁴ Moreover, Class Members who do not opt out may object to one or more of the settlement terms set forth in the Stipulation.¹⁰⁵

D. The PAGA Payment is reasonable and warrants approval.

Labor Code § 2699(l)(2) requires court approval of any PAGA settlement. Class action requirements do not apply to PAGA actions.¹⁰⁶ "PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action."¹⁰⁷ The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.¹⁰⁸

¹⁰¹ Ex. A at §§ III.L.3 and I.J; Grover Decl. at ¶¶ 31, 44.

¹⁰² Ex. A at §§ III.C, III.L.3.a.

¹⁰³ See Grover Decl. at ¶¶ 13, 37.

¹⁰⁴ Ex. A at § III.K.7.

¹⁰⁵ Ex. A at § III.K.8.

¹⁰⁶ *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 974.

¹⁰⁷ *Baumann, supra*, 747 F.3d at 1122.

¹⁰⁸ *Nordstrom Com'n Cases* (2010) 186 Cal.App.4th 576, 589.

As part of the final approval process, Plaintiff will seek the Court's approval of the PAGA portion of the Settlement, including the \$20,000 PAGA Payment, the distribution plan for the PAGA Payment and the PAGA Release.¹⁰⁹

V. CONCLUSION

Based on the foregoing, Plaintiff requests that this Court, as part of its preliminary approval of the settlement, do the following:

1. Review the proposed Stipulation setting forth the settlement terms;
2. Consider whether the proposed settlement preliminarily appears to be fair, reasonable and adequate, and whether the proposed settlement class preliminarily appears to meet the applicable certification criteria;
3. Preliminary approve the Stipulation;
4. Confirm Michael Harrington as Class Representative and appoint Eric A. Grover and Robert W. Spencer of Keller Grover LLP, as Class Counsel solely for settlement purposes;
5. Approve Phoenix Settlement Administrators as Settlement Administrator with regard to handling the notice and settlement procedure as set forth more particularly in the Stipulation; and
6. Enter an Order provisionally approving the proposed Class on a non-mandatory basis, approve the proposed Notice to be distributed to Class Members, and direct the Notice to be given to Class Members in accordance with the procedure set forth in the Stipulation.

Respectfully submitted,

Dated: March 11, 2022

KELLER GROVER LLP

By: 

ERIC A. GROVER

ROBERT W. SPENCER

Attorneys for Plaintiff and Proposed Class Counsel

¹⁰⁹ Grover Decl. at ¶ 30, n. 6.

PROOF OF SERVICE

I, JOEY GONZALEZ, am employed in the County of San Francisco, State of California. I am over the age of eighteen and not a party to the within action. My business address is 1965 Market Street, San Francisco, California 94103. On **March 11, 2022**, in the case of *Harrington v. Creative Security Company, Inc., et al.*, Alameda County Superior Court Case Number RG21095377, I served the foregoing document(s):

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

on the interested party(ies) below, using the following means:

Rona P. Layton, Esq.
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Attorneys for Defendant
CREATIVE SECURITY COMPANY, INC

☒	(BY ELECTRONIC SERVICE) by electronically mailing a true and correct copy in PDF format through our electronic mail system to the email address(es) set forth above, or as stated on the attached service list per agreement between the parties.
☒	(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



JOEY GONZALEZ