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MICHAEL HARRINGTON

**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*

**DECLARATION OF ERIC A. GROVER IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Date: May 10, 2022
Time: 3:00 p.m.
Dept. 23

Complaint Filed: April 9, 2021
FAC Filed: May 18, 2021

Reservation No: 972899859533

1 I, ERIC A. GROVER, declare as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I
3 am a partner in the law firm Keller Grover LLP, co-counsel for Plaintiff Michael Harrington
4 (“Plaintiff”), and proposed co-Class Counsel in this action. I have personal knowledge of the
5 facts stated herein and, if called as a witness, I could and would testify competently to the facts
6 set forth below.

7 **Class Counsel’s Experience:**

8 2. Between September 1988 and October 2005, I was first an associate and then a
9 shareholder in the firm Littler Mendelson, P.C. Littler is the largest law firm in the United States
10 specializing in labor and employment law. During my 17 years at Littler, I practiced extensively
11 in all areas of labor and employment law, including wage and hour law and class action defense.
12 I also have extensive litigation experience, including numerous arbitrations and trying a number
13 of cases to verdict in state and federal courts.

14 3. In the time I worked at Littler, I worked on many class action matters. The
15 following is a list of various class action matters for which I was the lead or co-lead defense
16 attorney:

- 17 a. *DLSE v. UI Video* (Blockbuster) (Alameda County) (Failure to provide
18 uniforms.);
- 19 b. *Vickery, et al. v. Cinema Seven, Inc.* (San Francisco County) (Independent
20 contractor vs. employee status, overtime, minimum wage and expense
21 reimbursement claims.);
- 22 c. *ILWU, et al. v. DMS Messenger Services, et al.* (San Francisco County)
(Overtime, minimum wage, expense reimbursement and waiting time
23 penalties.);
- 24 d. *Shields, et al. v. Lyon’s Restaurants* (San Diego County) (Manager
25 misclassification.);
- 26 e. *O’Donnell, et al. v. Starving Students Movers* (Marin County) (Overtime,
27 minimum wage and waiting time penalties.);
- 28 f. *Cross, et al. v. Compass* (Sacramento County) (Overtime and waiting time
penalties.);
- g. *Flowers, et al. v. Starving Students Movers* (San Joaquin County)
(Overtime, minimum wage and waiting time penalties.);

- h. *Chen v. DMX Music, Inc.* (San Francisco County) (Improper chargebacks on commission payments.);
- i. *Tiffany, et al. v. Hometown Buffet* (San Francisco County) (Manager misclassification.);
- j. *Leoni, et al. v. Jetsetter Express, Inc.* (San Joaquin County) (Manager misclassification.);
- k. *Solano v. Clark Pest Control* (Los Angeles County) (Technician/salesperson misclassification.);
- l. *Guglielmino, et al. v. McKee Foods Corp.* (USDC-ND) (Independent contractor vs. employee status.); and
- m. *Evets v. Guess?, Inc.* (San Francisco County) (Manager misclassification.).

4. Between October 15, 2005 and the present, I have been practicing law at Keller Grover LLP. At Keller Grover, approximately 95% of my time is spent representing plaintiffs in employment, privacy, and data breach class action matters. I am currently lead counsel or co-lead counsel on more than 15 different class actions. I have been named Class Counsel in numerous recent class action matters, including:

- a. *Watson v. Ann Taylor Stores Corp.*, Los Angeles County Superior Court Case No. BC342729;
- b. *Novak v. Retail Brand Alliance, Inc., et al.*, Alameda County Superior Court Case No. RG 05-223254;
- c. *Jos. A. Banks Overtime Cases* (Coordinated Proceeding of *Palmtag v. Jos. A. Bank Clothiers, Inc.* and *McClure v. Jos A. Bank Clothiers, Inc.*, Solano County Superior Court Case No. JCCP NO. 4479);
- d. *Diaz v. Best Buy Stores, L.P.*, Alameda County Superior Court Case No. Case No. RG 06-264187;
- e. *Lozoya v. PA Acquisition Corp.*, et al, Alameda County Superior Court Case No. RG 06-258395;
- f. *Krispy Kreme Overtime Cases* (Coordinated Proceeding of *Avina v. Krispy Kreme Doughnut Corp. et al.* and *Hashimoto v. Krispy Kreme Doughnut Corp., et al.*, Alameda County Superior Court Case No. JCCP No. 4489);
- g. *Walgreens Overtime Cases* (Coordinated Proceeding of *Lebrecque v. Walgreen Healthcare Plus* and *Wright v. Walgreen Co.*, Los Angeles County Superior Court Case No. JCCP 4387);
- h. *Gring v. Claire's Boutique's, Inc.*, Alameda County Superior Court

Case No. RG 05-247759;

- i. *Greene v. Federated Retail Holdings, Inc.* San Francisco County Superior Court Case No. CGC 06-449456;
- j. *Stermer v. L'Occitane, Inc.*, San Francisco County Superior Court Case No. CGC 06-456056;
- k. *Wilde v. Catalina Restaurant Group, Inc. et al.*, Los Angeles County Superior Court Case No. BC347513;
- l. *Rogers v. Accentcare, Inc.*, Alameda County Superior Court County Superior Court Case No. RG 05-237683;
- m. *Fleming v. Dollar Tree Stores, Inc.*, United States District Court, Northern District of California, Case No. Case No. C 06-cv-03409 MJJ;
- n. *Corrado v. Valero Services, Inc.*, Alameda County Superior Court Case No. RG 07-322134;
- o. *Stenroos v. Core-Mark International, Inc.*, San Mateo County Superior Court Case No. CIV 451198;
- p. *Ford v. Pilot Travel Centers LLC*, United States District Court, Northern District of California, Case No. C-07-cv-02715 TEH;
- q. *Elsbury v. Pizza Hut of Southeast Kansas, Inc.*, United States District Court, Eastern District of California Case No. EDCV 07-00695 SGL (JCRx);
- r. *Brior v. AE Retail West LLC*, San Francisco County Superior Court Case No. CGC 06-455422;
- s. *Moore v. Genesco, Inc. et al.*, Alameda County Case No. RG 06-270570;
- t. *Stermer v. Ulta Salon, Cosmetics & Fragrance, Inc.*, San Francisco County Superior Court Case No. CGC 08-427014;
- u. *Lauzon v. Club Monaco U.S., LLC, Polo Retail, LLC, and Polo Ralph Lauren Corporation*, San Francisco County Superior Court Case No. CGC 06-449963;
- v. *Davenport v. Union Bank of California, N.A. and Unionbanc Investment Services LLC*, United States District Court, Central District of California, Case No. 2:07-cv-00001 FMC (VBKx);
- w. *Jacobs v. Les Schwab Tire Centers of California, Inc., et al.*, San Francisco County Superior Court Case No. CGC 08-478372;
- x. *Daniel Arias v. Praxair Distribution, Inc., et al.*, San Francisco County Case No. CGC 08-474506;
- y. *Flores, et al. v. Zale Delaware, Inc.*, United States District Court, Northern District of California, Case No. 07-cv-00539 TEH;

- 1 z. *Payan et al. v. MetroPCS, Inc.*, San Francisco County Superior Court
- 2 Case No. CGC 08-476703;
- 3 aa. *Njoku v. Ecko Direct, LLC*, San Francisco County Superior Court
- 4 Case No. CGC 07-469480;
- 5 bb. *Wiggins v. Cingular Wireless Employee Services, LLC*, San Francisco
- 6 County Superior Court Case No. CGC 08-477763;
- 7 cc. *Lee v. Marshalls of CA LLC*, Alameda County Superior Court Case
- 8 No. RG 07-337021;
- 9 dd. *Flores v. Cintas Corporation No. 2, Inc.*, Los Angeles County Superior
- 10 Court Case No. BC400422;
- 11 ee. *Drew v. HCR Manor Care Medical Services of Florida, LLC, et al.*,
- 12 San Francisco County Superior Court Case No. CGC 09-490181;
- 13 ff. *Ireland, et al. v. National Distribution Centers, L.P., et al.*, San
- 14 Francisco County Superior Court Case No. CGC 09-493709;
- 15 gg. *Lim-Hui v. Carter's Retail, Inc.*, San Francisco County Superior Court
- 16 Case No: CGC 09-484456;
- 17 hh. *Sefton v. OshKosh B'Gosh, Inc.*, San Francisco County Superior Court
- 18 Case No. CGC 09-484496;
- 19 ii. *Murphy v. Check n' Go of California, Inc.*, San Francisco County
- 20 Superior Court Case No. CGC 06-449394;
- 21 jj. *Wireless Advocates Wage and Hour Cases* (Coordinated Proceedings
- 22 of *Turner, et al v. Wireless Advocates LLC, Reyna, et al. v. Wireless*
- 23 *Advocates LLC* and *Burk v. Wireless Advocates LLC*), Los Angeles
- 24 County Superior Court Case No. JCCP 4600;
- 25 kk. *Matrix Service Wage and Hour Cases* (Coordinated Proceeding of
- 26 *Hickman v. Matrix Service, Inc. and Alexander, et al. v. Matrix*
- 27 *Service Company, et al.*), Alameda County Superior Court Case No.
- 28 JCCP 4610;
- ll. *Sullivan v. Kelly Services, Inc.*, United States District Court, Northern
- District of California Case No. 08-cv-3893 CW;
- mm. *Strickland, et al. v. Timec Company, Inc., et al.*, San Francisco
- County Superior Court Case No. CGC 10-501832;
- nn. *Davis and Duke v. Plant Performance Services LLC, et al.*, Alameda
- County Case No. RG 10-501301;
- oo. *Jordan v. Directory Distributing Associates, Inc.*, San Francisco
- County Superior Court Case No. CGC 10-500633;
- pp. *Martin v. Total Safety U.S., Inc.*, Alameda County Case No. RG 10-
- 533750;
- qq. *Placer Title Company Wage and Hour Cases* (Coordinated
- Proceedings of *Shults v. Placer Title Co. and Nazeri v. Placer Title*

- 1 Co.), Sacramento County Superior Court Case No. JCCP 4567;
- 2 rr. *Martin, et al. v. Starcon International, Inc.*, Contra Costa County
- 3 Superior Court Case No. MSC10-01071;
- 4 ss. *Meyer v. Irwin Industries, Inc.*, ADRS Case No. 11-3844-RAH;
- 5 tt. *Lazarin, et al. v. Total Western, Inc.*, JAMS Case No. 1100067385;
- 6 uu. *Potter v. Zale Delaware, Inc.*, Alameda County Superior Court Case
- 7 No. RG 10-548469;
- 8 vv. *Canales, et al. v. Electrical & Instrumentation Unlimited of*
- 9 *California, Inc.*, Kern County Superior Court Case No. S-1500-CV-
- 10 271947 WDP;
- 11 ww. *Schechter and Porter v. ISYS Solutions, Inc.*, Alameda County
- 12 Superior Court Case No. RG 10-550517;
- 13 xx. *Gomez v. Pizza Hut of Southeast Kansas, Inc.*, San Bernardino
- 14 County Superior Court Case No. CIVVS900679;
- 15 yy. *Hernandez v. Bodell Construction Company*, Alameda County
- 16 Superior Court Case No. RG12-624600;
- 17 zz. *Gilliam v. Matrix Energy Services, Inc.*, Alameda County Superior
- 18 Court Case No. RG11-592345;
- 19 aaa. *Tate v. Wyatt Field Services Co.*, Alameda County Superior Court
- 20 Case No. RG 10-522846;
- 21 bbb. *Becerra, et al. v. RadioShack Corporation*, United States District
- 22 Court, Northern District of California, Case No. C-11-cv-03586
- 23 YGR;
- 24 ccc. *Vasquez, et al. v. Turnaround Welding Services, Inc.*, Contra Costa
- 25 County Superior Court Case No. MSC12-00340;
- 26 ddd. *Betten and Lafa v. Diamond Wireless, LLC*, United States District
- 27 Court, Central District of California, Case No. 2:13-cv-02885 CBM;
- 28 eee. *Martin v. AltairStrickland LLC*, Alameda County Superior Court
- Case No. RG11 575618;
- fff. *Miller v. Southwest Airlines Co.*, United States District Court,
- Northern District of California, Case No. C-12-cv-5978-CRB;
- ggg. *Nguyen v. Equilon Enterprises LLC*, United States District Court,
- Northern District of California, Case No. 4:12-cv-04650-YGR;
- hhh. *Saunders v. StubHub Inc.*, San Francisco County Superior Court Case
- No. CGC-12-517707;
- iii. *Oregel v. PacPizza, LLC*, Contra Costa County Superior Court Case

- 1 No. MSC12-01454;
- 2 jjj. *Torres, et al. v. San Joaquin Community Hospital*, JAMS Case No.
- 3 1220043288;
- 4 kkk. *Hulsey v. San Joaquin Community Hospital*, JAMS Case No.
- 5 1210030884;
- 6 lll. *DeLeon, et al. v. NCR Corp.*, San Bernardino County Superior Court
- 7 Case No. CIVDS1403274;
- 8 mmm. *Springer, et al. v. Stanford Hospital and Clinics, et al.*, Los Angeles
- 9 County Superior Court Case No. BC470522;
- 10 nnn. *Ginn, et al. v. Certified Safety, Specialists LLC et al.*, Contra Costa
- 11 County Superior Court Case No. C11-0969;
- 12 ooo. *Clothier v. SPAR Marketing Services, Inc.*, Alameda County Superior
- 13 Court Case No. RG12-639317;
- 14 ppp. *St. Joseph Health System Medical Information Cases*, Orange County
- 15 Superior Court JCCP Case No. 4716;
- 16 qqq. *Everhart and Everhart v. Advantage Sales & Marketing, LLC*,
- 17 Alameda County Superior Court Case No. RG14-712100;
- 18 rrr. *Miller v. Hitachi America, Ltd.*, San Mateo County Superior Court
- 19 Case No. CIV 526430;
- 20 sss. *Johnson and Storey v. Mobility Plus Transportation LLC, et al.*, San
- 21 Francisco County Superior Court Case No. CGC-13-532872;
- 22 ttt. *Tripp and Solberg v. Crossmark, Inc., et al.*, United States District
- 23 Court, Northern District of California, Case No. 3:12-cv-04818-NC.
- 24 uuu. *McCabe, et al. v. Six Continents Hotels, Inc.*, United States District
- 25 Court, Northern District of California, Case No. 12-cv-04818-NC;
- 26 vvv. *Wheelock v. Hyundai*, Orange County Superior Court, Case No: 30-
- 27 2011-00522293-CU-BT-CJC;
- 28 www. *Roberts v. Wyndham Hotel and Resorts LLC, et al.*, United States
- District Court, Northern District of California, Case No. 5:12-cv-
- 05083-PSG;
- xxx. *Castillo, et al. v. Seagate Technology LLC*, United States District
- Court, Northern District of California Case No. 3:16-cv-01958-RS;
- yyy. *Halkola v. Fisher, Sand & Gravel Co.*, Alameda County Superior
- Court, Case No. RG17844100;

- 1 zzz. *Ashlock, et al. v. Sunrun, Inc., et al.* San Francisco County Superior
2 Court CGC-17-557027;
- 3 aaaa. *Spitzer v. FRHI Hotels and Resorts (Canada) Inc.*, San Bernardino
4 County Superior Court Case No. CIVDS1712220;
- 5 bbbb. *Matthews v. eHealthinsurance Services, Inc.*, Santa Clara County
6 Superior Court Case No. 17CV305656;
- 7 cccc. *Crowley, et al. v. Central Transport LLC*, San Bernardino Case No.
8 CIVDS1604546;
- 9 dddd. *Alfinito v. Loop Transportation*, San Francisco County Superior
10 Court Case No. CGC-17-556677;
- 11 eeee. *Rabanal v. P.F. Chang's China Bistro, et al*, Alameda County Case
12 No. RG17851208;
- 13 ffff. *Kindt and Pappas v. Aerovias de Mexico, S.A. de C.V., et al*, San
14 Bernardino County Case No. CIVDS1809416;
- 15 gggg. *Duke v. Jacobs Engineering Group Inc., et al.*, San Bernardino
16 Superior Court Case No. CIVDS1703459;
- 17 hhhh. *O'Leary v. Youngevity International, Inc.*, San Diego County
18 Superior Court Case No. 37-2017-00045550-CU-BT-CTL;
- 19 iiii. *Kindt v. Concesionaria Vuela Compañía de Aviación S.A.P.I. de*
20 *C.V., et al.*, Napa County Superior Court Case No. 19CV000373;
- 21 jjjj. *Docter v. Accor Management US Inc.*, San Joaquin County Superior
22 Court Case No. STK-CV-UBT-2019-0000147;
- 23 kkkk. *Clothier v Spar Group, Inc.*, Alameda County Superior Court Case
24 No. RG18926494;
- 25 llll. *Pennywell-Foster v. IMKO Workforce Solutions, et al.*, Sacramento
26 County Superior Court Case No. 34-2019-00252683;
- 27 mmmm. *Stohs, et al. v. Samsonite Company Stores, LLC*, Alameda County
28 Superior Court Case No. RG19001392;
- nnnn. *Casarez v. Chemtrade West US LLC*, Alameda County Superior
 Court Case No. RG19008007;
- oooo. *Butler v. Apple Inc.*, Santa Clara County Superior Court Case No. 1-
 14-cv-262989;
- pppp. *Gomez v. Pinnacle Workforce Logistics*, San Bernardino County
 Superior Court Case No. CIVDS1804163;
- qqqq. *Curtis v. Aegis Treatment Centers, LLC*, Shasta County Superior
 Court Case No. 193712;

- rrrr. *Vallimont v. Westat, Inc.*, Sacramento County Superior Court Case No. 34-2019-00264440-CU-OE-GDS;
- ssss. *Madrid, et al. v. Golden Valley Health Centers*, Merced County Superior Court Case No. 20CV-01484;
- tttt. *Vilitchai, et al. v. Ametek Programmable Power, Inc.*, San Diego County Superior Court Case No. 37-2015-00025968-CU-OE-CTL;
- uuuu. *Millay v. Napaidence OPCO, LLC*, Napa County Superior Court Case. No. 19CV001903;
- vvvv. *Gutierrez v. Brand Energy of California, Inc.*, Alameda County Superior Court Case No. RG17846239;
- www. *Sica and Ellis v. Construction & Turnaround Services, L.L.C.*, United States District Court, Northern District of California Case No. 4:21-cv-0188-JSW; and
- xxxx. *Clark-Alonso v. Southwest Airlines Co.*, Merced County Superior Court Case No. 21 CV-02475.

Factual and Procedural Background:

5. A true and correct copy of the Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Stipulation”) entered into by Plaintiff and Creative Security Company, Inc. (“Defendant”) is attached hereto as **Exhibit A**. The Stipulation is discussed below.

6. 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. Plaintiff brought the action on behalf of himself and a putative class of hourly, non-exempt security and 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 statements, 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, and 1199 and Business & Professions Code §§ 17200, *et seq.* Plaintiff also alleged related representative PAGA claims. A true and correct copy of the First Amended Complaint is attached hereto as **Exhibit B**.

7. 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.

8. 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.

9. 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.

(D) Class Members' average hourly wage:

- o 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.

10. 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

1 class actions. The mediated negotiations resulted in the parties reaching an agreement to settle
2 the entire action, subject to the Court's approval. All terms of the parties' settlement are set forth
3 in the Stipulation.

4 11. The parties agreed that, for purposes of settlement only, the settlement Class
5 should be defined as all current and former hourly security guard and mobile patrol employees
6 who worked for Defendant in California during the Class Period. The Class Period is April 9,
7 2017 through January 6, 2022, inclusive. In this declaration, the members of the proposed Class
8 are referred to as the "Class Members."

9 12. The Settlement defines Aggrieved Employees as all current and former hourly
10 security guard and mobile patrol employees who worked for Defendant in California at any time
11 during the PAGA Period. An individual Aggrieved Employee may also be a Class Members if he
12 or she falls within the "Class Member" definition. The PAGA Period is the period from and
13 including March 12, 2020 through January 6, 2022. All Aggrieved Employees are also Class
14 Members. Approximately 415 Class Members also are Aggrieved Employees. Aggrieved
15 Employees are not required to agree to any individual release of the PAGA claims.

16 **Class Counsel's Assessment of the Fairness of the Settlement:**

17 13. Based on my years of experience and my own independent investigation and
18 evaluation, I am of the opinion that settlement for the consideration and on the terms set forth in
19 the Stipulation is fair, reasonable, and adequate and it is in the best interests of the settlement
20 class in light of all known facts and circumstances and the expenses and risks inherent in
21 litigation. I am familiar with many class action settlements involving employment issues and
22 have a strong understanding of the trends in the value of settlements. I have also personally
23 settled multiple class action cases involving allegedly unpaid wages and meal and rest break
24 practices, including those that also alleged related PAGA claims. Based on that knowledge, I am
25 of the opinion the settlement is fair, reasonable and adequate and is in the best interests of the
26 Class Members.

27 14. The following is an explanation of the best-case scenario for recovery in this case
28 based on the assumptions below that were derived from the information provided by Defendant

and speaking with several putative class members:

Assumptions Used:

- **810 total Class Members**
- **500 former employees**
- **29,241 total shifts worked by stationary security guard Class Members during the Class Period**
- **6,069 total shifts worked by mobile patrol guard Class Members during the Class Period**
- **\$19.00 average hourly wage during the Class Period**
- **8,504 wage statements issued to Class Members during the Labor Code § 226 Liability Period**
- **8,875 total pay periods worked by Aggrieved Employees during the PAGA Liability Period**

Damage Calculations Based on Assumptions:

- **Unpaid Overtime Wages – \$461,244**
 - **approximately 8 hours per week of half-time pay: 6,069 weeks x 8 hours x \$9.50 per hour half rate**
 - **This is for mobile patrol guards only who were working what Plaintiff alleges was an improperly instituted 4/10 schedule**
- **Statutory Damages under Labor Code § 226(e)(1)– \$850,400**
 - **\$100 per wage statement multiplied by 8,504 wage statements**
- **Missed Meal Periods – approximately \$670,890 [\$19.00/hour x 35,310 work weeks (assuming one violation per pay period)]**
- **Missed Rest Breaks – approximately \$1,341,780 [\$19.00/hour x 70,620 pay periods x 2 (assuming two violations per pay period)]**
- **Waiting Time Penalties – approximately \$2,280,000 [500 former employees x \$19.00/hour x 8 hours per day x 30 days]**
- **The above damages total \$5,604,414.**
- **Potential PAGA penalties could add another \$88,750 to \$887,500 in damages at \$10-\$100 per Qualified Pay Period.¹**

¹ As addressed below, courts have wide latitude in assessing PAGA penalties.

1 15. Not including potential waiting time² and PAGA penalties, the \$510,000
2 Maximum Settlement Amount represents 15.34% of the maximum damage [\$510,000/\$3,324,414
3 = .1534] and 90.44% of the unpaid wages claim, which is the strongest claim [461,244/\$510,000
4 = .9044]. Although the maximum theoretical damages of the remaining claims exceed the Net
5 Settlement Amount by a substantial amount, Defendant's defenses to those claims discussed
6 below warrant a substantial discount.

7 16. Not surprisingly, Defendant has raised what it considers to be substantial defenses
8 to Plaintiff's class claims. Defendant asserts that it has complied at all times with the California
9 Labor Code, the California Wage Orders, and all applicable California state law. Defendant first
10 asserts that, although it did not fully comply with all of the technical requirements of the
11 alternative work schedule election process, it made a good faith effort to comply and believed that
12 it was in compliance until Plaintiff raised the issue in this action.

13 17. Defendant further asserts that it did not knowingly or willfully fail to provide
14 compliant meal and rest breaks. Defendant further points out that a level of willfulness is
15 required to impose liability in connection with the waiting time penalty claim and that Plaintiff
16 will not be able to establish willfulness. Also, with respect to meal and rest-break claims, two
17 published appellate court decisions have held that nonpayment of meal and rest-break premiums
18 do not give rise to waiting time claims. *See Betancourt v. OS Restaurant Services, LLC* (2020) 49
19 Cal.App.5th 240, 248 and *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal.App.5th
20 444, 474. Although the California Supreme Court recently heard oral argument in *Naranjo*, the
21 outcome is uncertain. In addition, Defendant has argued that no Class Member suffered any
22 damages related to the issuance of wage statements and the Plaintiffs will be unable to prove that
23 any Labor Code § 226(a) violation was a "knowing and intentional failure," a necessary element
24 for the award of statutory damages under Labor Code § 226(e).³ From a certification standpoint,

25 _____
26 ² As discussed below, the ability to obtain waiting time penalties for unpaid meal and rest break
premiums is questionable.

27 ³ *See e.g., Mays v. Wal-Mart Stores, Inc.* (9th Cir. 2020) 804 F. App'x 641, 644 (reversing class
28 certification of a wage statement class after concluding that the class representative's receipt of a
pay stub with only a minor discrepancy in the employer's name was not the type of injury-in-fact

(Cont'd)

Defendant argues, among other things, that because of the unique circumstances surrounding each individual putative class member’s alleged overtime work, missed meal periods and missed rest breaks, individual issues would preclude certification.

18. Class Counsel is of the opinion that Plaintiff would be able to establish Defendant’s class-wide liability at trial. However, taking Defendant’s proposed defenses into account, Class Counsel believes the proposed allocations of the Net Settlement Amount (“NSA”) to be fair and reasonable.

19. The settlement provides that the estimated Net Settlement Amount of \$300,500 will be distributed on a pro-rata basis based on the number of Qualified Weeks worked by each Class Member during the Class Period. Only the mobile patrol guards worked 4-day/40-hour work schedules. All stationary security guards worked 5-day/40-hour weeks. Because the unpaid wages claim is limited to mobile patrol guards, it was determined that, for calculation purposes, each 5-day/40-hour week would be counted as one “Qualified Week” and 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.

20. The settlement provides that \$20,000 of the MSA will be allocated to the settlement of the PAGA claims. Of that amount, the Settlement provides that 75%, or \$15,000, will be paid to the LWDA for enforcement of labor laws and education of employers and employees about their rights and responsibilities under the Labor Code and 25% – or \$5,000 – will be allocated to the Aggrieved Employees. All Class Members are Aggrieved Employees and will receive an Individual PAGA Payment.

21. Again, Defendant has raised what it considers to be substantial defenses to Plaintiffs’ claims. Also, Defendant has argued that, even if Plaintiffs succeed, it will be able to

required for Article III standing and, as a result, she could not represent the putative class); *Roadrunner Intermodal Servs., Ltd. Liab. Co. v. T.G.S. Transp., Inc.* (E.D. Cal. Aug. 21, 2019) No. 1:17-cv-01207-DAD-BAM, 2019 U.S. Dist. LEXIS 142321, at *50 (finding that the employer’s error on a wage statement was unintentional and therefore it was not liable under Labor Code § 226(e)).

convince the court to reduce the amount of PAGA penalties awarded, which Plaintiffs recognize is a substantial risk. Labor Code § 2699(e)(2) provides that the court sets the amount of PAGA penalties after trial. In setting the penalties to be assessed, court have wide latitude.⁴ The following are examples of cases where courts awarded substantially reduced PAGA penalties:

- *Fleming v Covidien, Inc.*, No. ED CV10-01487 RGK (OPx), 2011 U.S. Dist. LEXIS 154590, at *8-9 (C.D. Cal. Aug. 12, 2011) (of \$2,800,000 PAGA penalties requested, the court awarded \$500,000);
- *Thurman v Bayshore Transit Mgmt., Inc.*, 203 Cal.App.4th 1112, 1119, 1135 (2012), *disapproved on other grounds* in *ZB, N.A. v Superior Court*, 8 Cal. 5th 175, 196 n.8 (2019) (of \$512,000 PAGA penalties requested, the court awarded \$358,588);
- *Guifi Li v A Perfect Day Franchise, Inc.*, No. 5:10-CV-01189-LHK, 2012 U.S. Dist. LEXIS 83677, at *51-52 (N.D. Cal. June 15, 2012) (of \$3,334,942 PAGA penalties requested, the court ordered a \$2,764,896 default judgment after jury dismissed);
- *Elder v Schwan Food Co.*, No. B238876, 2013 Cal. App. Unpub. LEXIS 1472, at *7, 11, 19 (Feb. 27, 2013) (the court affirmed a reduced award of \$2,500 individual PAGA civil penalty);
- *Aguirre v Genesis Logistics*, No. SACV 12-00687-JVS (ANx), 2013 U.S. Dist. LEXIS 189820, at *6-7 (C.D. Cal. Dec. 30, 2013) (of \$1,800,000 PAGA penalties requested, the court awarded \$500,000);
- *Halevi v Aroma Bakery Café, Inc.*, Los Angeles County Superior Court No. 468146 (Aug. 30, 2013) (the court declined to award PAGA penalties after trial awarding wages to class on basis that action was not prompted by availability of PAGA penalties, penalties were not necessary to remedy ongoing or future violations, because corporate defendants corrected violations and were no longer in business, inequity would result from awarding penalties only to employees who opted out of class, and plaintiffs did not offer evidence establishing imposition of penalties on individual defendants would not be confiscatory);
- *Makabi v Gedalia*, No. B261005, 2016 Cal. App. Unpub. LEXIS 1489, at *6-7 (Mar. 2, 2016) (noting that the trial court found in favor of plaintiffs on Labor Code violation claims, but declined to award any PAGA penalties);
- *Arnold v San Diego Second Chance Program*, San Diego County Superior Court No. 37-2016-00018375 (Dec. 18, 2017) (no PAGA penalties awarded);

⁴ See e.g., *Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d 1058, 1100, 1104 (finding that, under Labor Code § 2699(e)(2), “the Court has broad discretion to award PAGA penalties as the Court sees fit” and reducing the PAGA penalty award significantly from the maximum penalties possible).

- *Felczer v Apple Inc.*, San Diego County Superior Court No. 37-2011-00102593 (Sept. 13, 2017) (no PAGA penalties awarded);
- *Morales v Peck Jeep Eagle, Inc.* (San Diego County Superior Court No. 37-2012-00103823, Oct. 24, 2016) (PAGA penalties of \$80,400.00 awarded);
- *Allen v American Multi-Cinema*, Alameda County Superior Court No. RG11585502 (July 24, 2016) (no PAGA penalties awarded);
- *Atempa v Pama*, San Diego County Superior Court (July 31, 2015) (of PAGA penalties of \$456,133 sought, the court awarded \$197,434.00);
- *Banford v American Gen. Life*, Santa Barbara County Superior Court No. CIV-DS1017566 (Feb. 24, 2015) (PAGA penalties of \$99,000.00 assessed);
- *Parr v GoldenState*, Alameda County Superior Court No. RG12-618103 (July 10, 2014) (PAGA penalties of \$325,835.00 assessed);
- *Driscoll v Granite Rock*, Santa Clara County Superior Court No. 1-08-cv-103426 (Sept. 20, 2011) (the court declined to award PAGA penalties);
- *In re Taco Bell Wage and Hour Actions*, (E.D. Cal. Apr. 8, 2016) No. 1:07-cv-01314-SAB, 2016 U.S. Dist. LEXIS 48557, at *41 (the court declined to award PAGA penalties after trial);
- *Morales v Bridgestone Retail Operations LLC*, Orange County Superior Court No. 30-2017-00900244 (Aug. 2, 2018) (of \$7 million PAGA penalties requested, the court awarded \$425,000);
- *Carrington v Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, 529 (of \$75 million in penalties sought, the court affirmed the trial court's \$150,000 PAGA penalty award based on 30,000 violations, which reduced the penalty rate to \$5 per violation); and
- *Magadia v Wal-Mart Assocs.* (N.D. Cal. 2019 384 F. Supp. 3d 1058, 1073, 1080, 1101, 1103-04, 1111) (the court awarded \$53,901,700 in total PAGA penalties, including \$48,046,000 of \$131,427,750 penalties sought for Labor Code §226(a)(9) wage statement violations; \$5,785,700 of \$28,928,500 sought for Labor Code § 226(a)(6) final pay statement violations; and \$70,000 of requested \$821,400 for Labor Code § 226.7 missed meal period violations; also decertifying meal period regular rate claim class).

22. The settlement is a good compromise for the damages of absent Class Members. The settlement provides that Defendant will pay a Maximum Settlement Amount ("MSA") of \$510,000, plus the employer-side payroll taxes, to resolve the claims covered by the settlement. There is no reversion of the MSA to Defendant.

23. After subtracting out the amounts allocated to pay the costs of administration (estimated to be no more than \$12,000), Class Counsel's fees (estimated to be \$170,000) and actual out-of-pocket costs and expenses (estimated to be no more than \$12,000), the PAGA

1 Payment (\$20,000), and the Class Representative's Incentive Award/General Release Payment
2 (up to \$7,500), all of which are subject to the Court's approval, the NSA is estimated to be
3 \$300,500. The NSA will be distributed to all Settlement Class Members, defined as all Class
4 Members who do not timely opt out, based on the formula set forth in the Stipulation and
5 summarized below.⁵

6 24. The Stipulation provides all Class Members with the opportunity to request
7 exclusion from the settlement or to object to the settlement terms. Class Members will have until
8 the Response Deadline to opt out or object, which is 45 calendar days after the Settlement
9 Administrator first mails the Notice of Class and PAGA Action Settlement ("Notice").

10 25. The Stipulation provides that NSA will be distributed proportionally based on the
11 number of Qualified Weeks that each Settlement Class Member worked during the applicable
12 Class Period. Each Settlement Class Member will be assigned a share calculated by dividing his
13 or her total number of Qualified Weeks by the total number of Qualified Weeks for the entire
14 Settlement Class, which is that person's Payment Ratio. The Payment Ratio then will be
15 multiplied by the NSA to determine that Settlement Class Member's Individual Settlement
16 Payment, except that no gross Individual Settlement Payment will be less than \$25.

17 26. Settlement Class Members are not required to submit a claim to receive an
18 Individual Settlement Payment.

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

23 28. The Stipulation provides that the portion of the PAGA Payment allocated to
24 Aggrieved Employees will be distributed in Individual PAGA Payments to each Aggrieved

25 _____
26 ⁵ Defendant is not able to fund the entire settlement in one payment. Defendant is required to pay
27 two-thirds of the MSA within 14 days of the Effective Date and the remaining one-third within
28 365 days of the Effective Date. All payment recipients will be paid in two payments with two-
thirds of the amount due paid after the first deposit and the remaining one-third after the second
deposit.

Employee. Using the Aggrieved Employee Data that Defendant will provide, the Settlement Administrator will calculate the total Qualified Pay Periods for all Aggrieved Employees. The respective Qualified Pay Periods for each Aggrieved Employees will be divided by the total Qualified Pay Periods for all Aggrieved Employees, resulting in the Payment Ratio for each Aggrieved Employee. Each Aggrieved Employee's Payment Ratio will then be multiplied by the \$5,000 portion of the PAGA Payment allocated for distribution to the Aggrieved Employees to calculate each Aggrieved Employee's Individual PAGA Payment.

29. The settlement provides that the Settlement Class Members will provide a limited release, the scope of which 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. The release is also temporally limited to the Class Period.

30. 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"). No individual Class Members or Aggrieved Employees are providing a PAGA Release.⁶

31. The settlement provides the proposed Class Representative, Plaintiff Harrington, with a reasonable service payment for the risks he took and the time and effort he expended in coming forward to provide invaluable information in support of the claims alleged in the First Amended Complaint.

32. The settlement also provides a fair notice procedure that ensures the highest number of Class Members will receive the Notice. The proposed Notice explains in plain language the nature of the lawsuit, terms of the settlement, Class Members' rights, the number of

⁶ 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.

1 Qualified Weeks the specific Class Member worked, expected Individual Settlement Payment
2 that each Class Member can expect to receive, and the steps necessary to request exclusion from
3 or object to the settlement. *See* Stipulation Exhibit 1.

4 33. The settlement provides that a Class Member who disagrees with the stated
5 number of Qualified Weeks on his or her Notice may submit a dispute to the Settlement
6 Administrator by the Response Deadline.

7 34. Also, although “PAGA has no notice requirements for unnamed aggrieved
8 employees, nor may such employees opt out of a PAGA action,”⁷ the Notice will inform
9 Settlement Class Members and Aggrieved Employees of the PAGA Settlement and the amount of
10 the Individual PAGA Payment the Aggrieved Employee can expect to receive. *See* Stipulation
11 Exhibit 1.

12 35. My firm conducted an extensive investigation of the factual allegations involved in
13 this case. We reviewed relevant information and documents produced through informal
14 discovery prior to reaching a settlement. As part of the settlement negotiations, we participated in
15 formal mediation with an experienced mediator and engaged in meaningful discussions with
16 Defendant’s counsel.

17 36. I am of the opinion that the settlement amount for each Settlement Class Member
18 is fair, reasonable, and adequate, given the inherent risk of litigation, the risk relative to class
19 certification and the costs of pursuing such litigation. The settlement is the result of extensive
20 arms’-length negotiations.

21 37. Fairness of the settlement is further demonstrated by the uncertainty and risks to
22 Plaintiff Harrington and the Class Members involved in not prevailing on the class claims.
23 Defendant adamantly disputes Plaintiff’s ability to certify the class and to prove that Defendant is
24 liable to the Class Members for its practices regarding overtime pay, meal periods and rest breaks,
25 wage statements and termination pay. Were a class not certified, it is unlikely that any putative
26 Class Members would maintain individual actions against Defendant.

27
28 ⁷ *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122.

Suitability of the Settlement Class for Certification

38. To date, no class has been certified. The Stipulation reached among the Parties contains a provision pursuant to which we stipulate to the Court's provisional certification of the settlement Class, but do so for purposes of this settlement only.

39. As proposed Class Counsel, I believe that Plaintiff could successfully prove that this action meets the requirements of class certification; however, I understand that Defendant's counsel disagrees.

40. 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 the Class is ascertainable. In this case, the members of the proposed settlement Class are identifiable from Defendant's records. 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.

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

42. Plaintiff Harrington, the proposed class representative, contends that he, like all of the Class Members, worked for Defendant in California as an hourly, non-exempt security guard and mobile patrol employee and was subject to Defendant's uniform policies and practices regarding compensation for overtime, meal periods and rest breaks, payment of wages at termination, and issuance of wage statements. Thus, Plaintiff's claims and the Class Members' claims arise from the same course of conduct.

43. Plaintiff also has demonstrated that he will aggressively and competently assert the interests of the Class Members. Plaintiff has retained competent counsel experienced in litigating class action claims in the wage and hour context.

The Proposed Class Representative Service Award/General Release Payment:

44. It is appropriate to recognize the contribution of Plaintiff Harrington in prosecuting this litigation. I am of the opinion that it is fair and reasonable that Plaintiff receive a \$7,500 service award and general release payment. Plaintiff is the proposed Class Representative for the putative class members and has actively and aggressively represented them during this litigation. Plaintiff was an essential element in the successful prosecution and ultimate settlement of this case and was always available to provide his input on the litigation, gather evidence, and provide other information that proved critical to the prosecution. The proposed enhancement is fair given the amount of time and effort Plaintiff spent on assisting in the prosecution of this case and the personal hardship and pressure faced as a result of filing this lawsuit against his former employer. In addition, Plaintiff will provide a general release of his claims against Defendant, which is much broader than the limited release that will apply to the Settlement Class Members. Plaintiff will provide a declaration outlining his efforts on behalf of the Class Members as part of the final approval process

Residual Funds:

45. Settlement checks mailed out to Settlement Class Members and Aggrieved Employees shall be valid for 90 days from the date of issuance. The Settlement Administrator will send a postcard reminder to Settlement Class Members and Aggrieved Employees 30 days before the check void date. The settlement provides that, after the check void date, the Settlement

1 Administrator will send any funds from uncashed checks to the Katherine and George Alexander
2 Community Law Center at Santa Clara University. The Law Center provides pro bono
3 representation in various areas includes workers' rights. See <https://law.scu.edu/kgac/c/>.

4 **Overlapping Cases:**

5 46. To my knowledge, there are no related pending cases that will be affected by this
6 settlement.

7 **Notice to the LWDA of the PAGA settlement**

8 47. Because the parties have agreed to settle the PAGA claims in this action, proposed
9 Class Counsel has sent Plaintiff's motion for preliminary approval, the supporting memorandum
10 of points and authorities, this declaration, with its exhibits including the Stipulation, the
11 Declaration of Robert Spencer and the proposed order to the LWDA. See the Declaration of
12 Robert Spencer filed in support of Plaintiff's motion for preliminary approval.

13 **Tax Treatment:**

14 48. The provides that the Individual Settlement Payments shall be allocated and
15 treated as one-third wages and two-thirds statutory penalties and interest. For tax purposes,
16 Individual PAGA Payments shall be allocated and treated as 100% statutory penalties. Defendant
17 shall be responsible for paying the employer's share of payroll taxes (above and beyond the
18 \$510,000 MSA). The Settlement Administrator shall be responsible for timely issuing to
19 Settlement Class Members a form W-2 for amounts deemed "wages" and Form 1099s for the
20 non-wage portion if needed.

21 **Settlement Administration:**

22 49. The parties have agreed to propose Phoenix Settlement Administrators ("Phoenix"
23 to serve as Settlement Administrator for the Settlement. Phoenix is an experienced settlement
24 administration firm.

25 **Attorneys' Fees and Costs:**

26 50. Counsel understands that if preliminary approval is granted, the Court will not take
27 up the issue of attorneys' fees until the final approval hearing. Should preliminary approval be
28 granted, Counsel will provide information regarding the hours spent and costs incurred litigating

1 this case with Plaintiff's application for final approval.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct, and that this Declaration was executed on this 11th day of March
4 2022 at San Francisco, California.

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6 ERIC A. GROVER
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EXHIBIT A

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Attorneys for Plaintiff
MICHAEL HARRINGTON

[Additional Counsel Listed on Signature Pages]

**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

) **JOINT STIPULATION OF CLASS
ACTION AND PAGA SETTLEMENT
AND RELEASE OF CLAIMS**

IT IS HEREBY STIPULATED, by and between Plaintiff Michael Harrington (“Plaintiff”), individually and on behalf of the Settlement Class, and Defendant Creative Security Company, Inc. (“Defendant”), and subject to the approval by the Court, that the Action is hereby compromised and settled under the terms and conditions set forth in this Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (the “Stipulation”) and that the Court shall enter judgment subject to the definitions, recitals, and terms set forth in this Stipulation.

I. DEFINITIONS

- A. “Action” shall mean the civil action entitled *Michael Harrington v. Creative Security Company, Inc.*, filed on April 9, 2021, in the Alameda County Superior Court, Case No. RG21095377.
- B. “Agreement” or “Settlement Agreement” means this Joint Stipulation of Class Action and PAGA Settlement and Release of Claims.
- C. “Aggrieved Employees” means all current and former hourly security guard and mobile patrol employees who worked for Defendant in California at any time during the PAGA Period. An individual Aggrieved Employee may also be a Class Members if he or she falls within the “Class Member” definition.
- D. “Aggrieved Employee Data” means information regarding Aggrieved Employees that Defendant will compile from its available, existing, electronic records and will provide to the Settlement Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall include all of the following information: (i) each Aggrieved Employee’s full name; (ii) each Aggrieved Employee’s last-known address; (iii) each Aggrieved Employee’s Social Security and Employee ID numbers; and (iv) the number of pay periods worked by each Aggrieved Employee during the PAGA Period.
- E. “Class Counsel” means the attorneys of record for the Class Representative and Class Members, *i.e.*, Eric A. Grover and Robert W. Spencer of Keller Grover LLP, 1965 Market Street, San Francisco, California 94103.

- 1 F. “Class Counsel Award” means an award of attorneys’ fees, expenses, and litigation
2 costs granted to Class Counsel and paid from the Maximum Settlement Amount in
3 recognition of their efforts and risks in prosecuting the Action.
- 4 G. “Class Data” means information regarding Class Members that Defendant will
5 compile from its available, existing electronic records and provide to the Settlement
6 Administrator. It shall be formatted as a Microsoft Excel spreadsheet and shall
7 include all of the following information: (i) each Class Member’s full name; (ii)
8 each Class Member’s last-known mailing address; (iii) each Class Member’s Social
9 Security and Employee ID numbers; (iv) the number of 5-day/40 hours weeks
10 worked by each Class Member during the Class Period; and (v) the number of 4-
11 day/40 hours weeks worked by each Class Member during the Class Period.
- 12 H. “Class Members” means all current and former hourly security guard and mobile
13 patrol employees who worked for Defendant in California during the Class Period.
- 14 I. “Class Period” shall mean the time period from and including April 9, 2017 through
15 January 6, 2022.
- 16 J. “Class Representative Incentive Award/General Release Payment” means the
17 amount that the Court authorizes to be paid to Plaintiff from the Maximum
18 Settlement Amount, in addition to his Individual Settlement Payment and his
19 Individual PAGA Payment, in recognition of his efforts and risks in assisting with
20 the prosecution of the Action.
- 21 K. “Class Representative” means the named Plaintiff, i.e., Michael Harrington.
- 22 L. “Complaint” means the operative First Amended Class Action Complaint filed by
23 Plaintiff on May 18, 2021.
- 24 M. “Court” means the Alameda County Superior Court.
- 25 N. “Defendant” means Creative Security Company, Inc.
- 26 O. “Defense Counsel” means Rona P. Layton, Layton Law Firm, 111 N. Market Street,
27 #300, San Jose, California 95113.
28

- 1 P. “Effective Date” shall be the later of the following: (a) if no objections to the
2 settlement are submitted, or if any and all timely objections have been submitted
3 and then withdrawn, then the date the Court enters the Final Approval Order; or (b)
4 if one or more timely objections to the settlement have been submitted, 61 calendar
5 days after the Court enters the Final Approval Order; or (c) if any appeal, writ, or
6 other appellate proceeding opposing the Court’s Final Approval Order has been
7 filed, five court days after any appeal, writ, or other appellate proceedings opposing
8 the settlement have been finally and conclusively dismissed with no right to pursue
9 further remedies or relief.
- 10 Q. “Final Approval Order” means the Court’s order granting final approval of the
11 Settlement.
- 12 R. “Individual PAGA Payment” means the amount payable to each Aggrieved
13 Employee from the PAGA Payment. An individual who is entitled to both an
14 Individual Settlement Payment and an Individual PAGA Payment will receive one
15 check incorporating both amounts as part of each settlement distribution.
- 16 S. “Individual Settlement Payment” means the amount payable from the Net
17 Settlement Amount to each Settlement Class Member.
- 18 T. “LWDA” means the California Labor & Workforce Development Agency.
- 19 U. “LWDA Payment” means the 75% of the \$20,000 PAGA Payment (i.e., \$15,000)
20 that will be paid to the LWDA pursuant to PAGA.
- 21 V. “Maximum Settlement Amount” means \$510,000 plus the employer’s share of the
22 payroll taxes, which sum includes all payments contemplated by this Agreement,
23 including but not limited to the Individual Settlement Payments, the Individual
24 PAGA Payments, the LWDA Payment, the Class Representative Incentive
25 Award/General Release Payment, the Class Counsel Award, and the Settlement
26 Administration Costs. This is a non-reversionary settlement. Except as provided
27 for in Paragraph III.L.2.a).(3), in no event shall Defendant be liable for more than
28

the Maximum Settlement Amount of \$510,000 plus the employer's share of the payroll taxes under this Agreement.

W. "Net Settlement Amount" means the Maximum Settlement Amount minus the sum of the Class Representative Incentive Award/General Release Payment (\$7,500), the Class Counsel Award (estimated to be \$170,000), Class Counsel Costs and Expenses (estimated to be no more than \$12,000), the PAGA Payment (\$20,000), and the Settlement Administration Costs (estimated to be no more than \$12,000), resulting in a Net Settlement Amount of no less than \$300,500.

X. "Notice of Class and PAGA Action Settlement" means the notice substantially similar to the notice attached to this Stipulation as **Exhibit 1**, which will be mailed in an envelope containing language substantially similar to the exemplar envelope attached to this Stipulation as **Exhibit 2**.

Y. "PAGA" means the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

Z. "PAGA Payment" means the \$20,000 portion of the Maximum Settlement Amount that is allocated to the settlement of claims for civil penalties under PAGA, 25% (\$5,000) of which will be paid to the Aggrieved Employees and 75% (\$15,000) of which will be paid to the LWDA.

AA. "PAGA Period" means the time period from and including March 12, 2020 through January 6, 2022.

BB. "PAGA Released Claims" means all allegations and claims for PAGA civil penalties based on any and all underlying Labor Code violations alleged in the operative First Amended Complaint.

CC. "Parties" means Plaintiff and Defendant, collectively, and "Party" shall mean either Plaintiff or Defendant, individually.

DD. "Payment Ratio – Aggrieved Employee" means the respective number of Qualified Pay Periods for each Aggrieved Employee divided by the total number of Qualified Pay Periods for all Aggrieved Employees.

- 1 EE. "Payment Ratio" means the respective number of Qualified Weeks for each
2 Settlement Class Member divided by the total number of Qualified Weeks for all
3 Settlement Class Members.
- 4 FF. "Plaintiff" shall mean the named Plaintiff, i.e., Michael Harrington.
- 5 GG. "Preliminary Approval Order" means an order granting preliminary approval of the
6 settlement.
- 7 HH. "Preliminary Approval Date" means the date on which the Court enters an order
8 granting preliminary approval of the settlement.
- 9 II. "Qualified Pay Periods" means and includes any and all pay periods (as reflected
10 in Defendant's records) during which one or more Aggrieved Employees
11 performed work for Defendant in California during the PAGA Period.
- 12 JJ. "Qualified Weeks" means and includes any and all weeks worked (as reflected in
13 Defendant's records of each Class Member's dates of employment and pay records)
14 during which one or more Class Members performed hourly work as a security
15 guard or mobile patrol employee for Defendant in California during the Class
16 Period. Depending on job assignments, Class Members worked either 5-day/40-
17 hour weeks or 4-day/40-hour weeks. For calculation purposes, one 5-day/40-hour
18 week shall be the equivalent of one "Qualified Week" and one 4-day/40-hour week
19 shall be the equivalent of 1.5 "Qualified Weeks." By way of example, 10 5-day/40-
20 hour weeks would be counted as 10 Qualified Weeks and 10 4-day/40-hour work
21 weeks would be counted as 15 Qualified Weeks.
- 22 KK. "Qualified Settlement Fund" or "QSF" means the qualified settlement fund that will
23 be set up by the Settlement Administrator and into which the Maximum Settlement
24 Amount shall be deposited and from which disbursements shall be made.
- 25 LL. "Released Claims" means and includes all claims against the Released Parties
26 arising between April 9, 2017 and January 6, 2022, inclusive, under state, federal,
27 or local law, whether statutory or common law, arising out of the claims expressly
28 pleaded in the operative First Amended Complaint on file in the Action (i.e., Labor

Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 511, 512, 1194, 1198, and 1199, and Business & Professions Code §§ 17200, *et seq.* claims based on alleged violations of these Labor Code provisions) and all other potential claims reasonably related to or arising out of the same set of facts plead in the First Amended Complaint, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law. The Release Period for the Released Claims shall be the same as the Class Period, i.e., from April 9, 2017 through January 6, 2022, inclusive.

MM. “Released Parties” shall mean Defendant Creative Security Company, Inc. and all of Defendant’s parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its or their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims.

NN. “Response Deadline” means the date 45 calendar days after the Settlement Administrator first mails the Notice of Class and PAGA Action Settlement to Class Members and is the last date on which Class Members may submit Requests for Exclusion or a Notice of Objection to the settlement. Only Class Members may submit Requests for Exclusion or Notices of Objection to the Settlement.

OO. “Settlement” means the disposition of the Action pursuant to this Agreement.

PP. “Settlement Administrator” means Phoenix Settlement Administrators.

QQ. “Settlement Class Members” means all Class Members who do not submit a valid Request for Exclusion. All Settlement Class Members will automatically receive an Individual Settlement Payment without the need to submit a claim form. Settlement Class Members will release all of the Released Claims and be bound by all terms of the settlement and any final judgment entered in this Action.

II. RECITALS

A. Class Certification. The Parties stipulate and agree to certification for purposes of this Settlement only. This Agreement is subject to approval by the Court and is

made for the sole purpose of consummating settlement of the Action. Should the Settlement not become final and effective as provided herein, class certification shall immediately be set aside and the Settlement Class immediately decertified, subject to further proceedings on the motion of any party to certify or deny certification thereafter. The Parties' willingness to stipulate to class certification as part of the Settlement shall have no bearing on, and shall not be admissible in or considered in connection with, the issue of whether a class should be certified in a non-settlement context in this Action and shall have no bearing on, and shall not be admissible or considered in connection with, the issue of whether a class should be certified in any other lawsuit.

B. Settlement Negotiations. The Parties participated in a mediation with respected mediator Michael Loeb, Esq. on January 6, 2022. As part of the mediation process, the Parties exchanged the information necessary to engage in productive settlement negotiations. The mediated negotiations resulted in the settlement described in this Stipulation to resolve this Action in its entirety.

C. Benefits of Settlement. Plaintiff and Class Counsel recognize the expense and length of continued proceedings that would be necessary to litigate this dispute through trial and through any possible appeals. Plaintiff also has taken into account the uncertainty and risks regarding the outcome of further litigation and the difficulties and delays inherent in any such litigation. Plaintiff and Class Counsel also are aware of the burdens of proof necessary to establish liability for the claims asserted in the Action, both generally and in response to Defendant's defenses thereto, and the difficulties in establishing damages and civil penalties for the Class Members and Aggrieved Employees. Based on those factors, Plaintiff and Class Counsel have determined that the terms set forth in this Agreement represent a fair, adequate, and reasonable settlement and are in the best interests of the Class Members, the LWDA, and the Aggrieved Employees.

1 D. Defendant's Reasons for Settlement. Defendant has concluded that any further
2 defense of this litigation would be protracted and expensive for all Parties.
3 Substantial amounts of Defendant's time and resources have been and, unless this
4 Settlement is made, will continue to be devoted to the defense of the claims asserted
5 by Plaintiffs, Class Members, and the Aggrieved Employees. In reaching its
6 decision to enter into this Settlement, Defendant also has taken into account the
7 risks of further litigation. Defendant denies each of the allegations and claims
8 asserted against it in the Action. Despite continuing to contend that it is not liable
9 for any of the claims that Plaintiff has asserted, Defendant nonetheless has agreed
10 to settle in the manner and upon the terms set forth in this Agreement to put to rest
11 the claims asserted in the Action.

12 E. Class Members' Claims. The Class Representative contends that his allegations
13 have merit and give rise to liability on Defendant's part. This Agreement is a
14 compromise of disputed claims. The monies being paid as part of the settlement
15 are genuinely disputed and the Parties agree that the provisions of California Labor
16 Code § 206.5 are not applicable to this settlement. Because there is a good faith
17 dispute as to whether any wages are due, the release of claims does not violate
18 California Labor Code § 206.5. Nothing contained in this Agreement, no
19 documents referred to in this Agreement, and no action taken to carry out this
20 Agreement may be construed or used as an admission by or against the Class
21 Members or Class Counsel regarding the merits or lack of merit of the claims
22 asserted.

23 F. Aggrieved Employees' Claims. Plaintiff contends that the PAGA allegations have
24 merit and give rise to liability on the part of Defendant. This Agreement is a
25 compromise of disputed claims. The monies being paid as part of the settlement
26 are genuinely disputed and the Parties agree that the provisions of Labor Code §
27 206.5 are not applicable to this settlement. Nothing contained in this Agreement,
28 no documents referred to in this Agreement, and no action taken to carry out this

Agreement may be construed or used as an admission by or against the Aggrieved Employees or Class Counsel as to the merits or lack of merit of the claims asserted.

G. Defendant's Defenses. Defendant claims that the Released Claims and the PAGA Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. The monies being paid as part of the Settlement are genuinely disputed and the Parties agree that the provisions of California Labor Code § 206.5 are not applicable to this settlement. Because there is a good faith dispute as to whether any wages are due, the release of claims does not violate California Labor Code § 206.5. Nothing contained in this Agreement, no documents referred to in this Agreement, and no action taken to carry out this Agreement may be construed or used as an admission by or against Defendant as to the merits or lack of merit of the claims asserted.

III. TERMS OF AGREEMENT

A. Settlement Consideration to be paid by Defendant. Defendant shall pay the monetary sum specified in this Agreement, i.e., the Maximum Settlement Amount. Except as provided for in Paragraph III.L.2.a.(3), in no event shall Defendant be required to pay more than the Maximum Settlement Amount (including the employer's share of the payroll taxes).

B. Limited Release By All Settlement Class Members. As of the Effective Date, in exchange for the consideration set forth in this Agreement, Plaintiff and the Settlement Class Members will release the Released Parties from the Released Claims for the Class Period. Plaintiff and the Settlement Class Members may hereafter discover facts or legal arguments in addition to or different from those they now know or currently believe to be true with respect to the claims, causes of action and legal theories of recovery in this Action which are the subject matter of the Released Claims. Nonetheless, the discovery of new facts or legal arguments shall in no way limit the scope or definition of the Released Claims, and by virtue of this Agreement, Plaintiff and Settlement Class Members shall be deemed to have, and,

by operation of the final judgment approved by the Court shall have, fully, finally, and forever settled and released all of the Released Claims as defined in this Agreement.

C. General Release by Plaintiff Only. In addition to the release in Section III.B, in exchange for the consideration set forth in this agreement, Plaintiff makes the additional following general release of all claims, known or unknown: Plaintiff releases Defendant and the Released Parties, from all claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule, regulation, or ordinance arising out of, relating to, or in connection with Plaintiff's employment with Defendant through the end of the Release Period as well as any and all acts or omissions by or on the part of Defendant through the end of the Release Period. (The release set forth in this Paragraph shall be referred to hereinafter as the "Plaintiff's General Release.") With respect to the Plaintiff's General Release, the Plaintiff stipulates and agrees that, upon the Effective Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Cal. Civ. Code § 1542. Accordingly, if the facts relating in any manner to this Settlement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained in the Plaintiff's General Release shall be effective as to all unknown claims.

1 D. PAGA Release: As of the Effective Date, Plaintiff, individually and as
2 representative acting as a proxy or agent of the LWDA, a State of California
3 Executive Branch Agency, in this Action, agrees to release the Released Parties of
4 and from any and all claims for civil penalties, attorneys' fees, and litigation costs
5 under the California Labor Code Private Attorneys General Act of 2004, Labor
6 Code §§ 2698, *et seq.*, as alleged in the operative First Amended Complaint for the
7 PAGA Period, i.e., the "PAGA Released Claims." To avoid and prevent doubt, the
8 Parties agree that this Agreement and the Final Approval Order to be entered by the
9 Court following approval of this settlement forever bars Plaintiff and the LWDA,
10 directly or through any other proxy or agent, from any future prosecution of any of
11 the PAGA Released Claims against any of the Released Parties.

12 E. Conditions Precedent: This settlement will become final and effective only upon
13 the occurrence of all of the following events:

- 14 1. The Court enters a Preliminary Approval Order of the settlement;
- 15 2. The Court enters a Final Approval Order;
- 16 3. The Effective Date occurs; and
- 17 4. Defendant does not invoke its right to revoke the settlement as described
18 in Paragraph III.Q herein.

19 F. Nullification of Settlement Agreement. In the event that the Court denies
20 preliminary or final approval of this Agreement with prejudice, it fails to become
21 effective, or it is reversed, withdrawn or modified by the Court, or in any way
22 prevents or prohibits Defendant from obtaining a complete resolution of the claims
23 as described herein:

- 24 1. This Agreement shall be void *ab initio* and of no force or effect, and shall
25 not be admissible in any judicial, administrative or arbitral proceeding for
26 any purpose or with respect to any issue, substantive or procedural; and
- 27 2. None of the Parties to this settlement will be deemed to have waived any
28 claims, objections, defenses or arguments in the Action.

1 G. Tax Liability. The Parties make no representations as to the tax treatment or legal
2 effect of the payments called for by this Agreement, and Plaintiff, Settlement Class
3 Members, Aggrieved Employees, and Defendant are not relying on any statement
4 or representation by the Parties in this regard. Plaintiff, Settlement Class Members
5 understand and agree that they will be responsible for the payment of their
6 respective portions of any taxes and penalties assessed on the Class Representative
7 Incentive Award/General Release Payment, Individual Settlement Payments, and
8 Individual PAGA Payments described in this Stipulation and will be solely
9 responsible for any penalties or other obligations resulting from their personal tax
10 reporting of all such payments.

11 H. Circular 230 Disclaimer. Each Party to this Agreement acknowledges and agrees
12 that: (1) no provision of this Agreement, and no written communication or
13 disclosure between or among the Parties or their attorneys and other advisers, is or
14 was intended to be, nor shall any such communication or disclosure constitute or
15 be construed or be relied upon as, tax advice within the meaning of United States
16 Treasury Department circular 230 (31 CFR part 10, as amended); (2) the
17 acknowledging party (a) has relied exclusively upon his, her or its own,
18 independent legal and tax counsel for advice (including tax advice) in connection
19 with this Agreement, (b) has not entered into this Agreement based upon the
20 recommendation of any other Party or any attorney or advisor to any other Party,
21 and (c) is not entitled to rely upon any communication or disclosure by any
22 attorney or adviser to any other party to avoid any tax penalty that may be imposed
23 on the acknowledging party, and (3) no attorney or adviser to any other Party has
24 imposed any limitation that protects the confidentiality of any such attorney's or
25 adviser's tax strategies (regardless of whether such limitation is legally binding)
26 upon disclosure by the acknowledging party of the tax treatment or tax structure
27 of any transaction, including any transaction contemplated by this Agreement.
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- 1 I. Preliminary Approval Motion. At the earliest practicable time, Plaintiff shall file
2 with the Court a Motion for Preliminary Approval and supporting papers, which
3 shall include this Agreement. Plaintiff shall provide a courtesy draft of these papers
4 to Defense Counsel at least five court days before filing the documents.
- 5 J. Settlement Administrator. By accepting the role as Settlement Administrator, the
6 Settlement Administrator is bound to all of the terms, conditions, and obligations
7 described in this Settlement Agreement. Among these obligations, the Settlement
8 Administrator shall have sole and exclusive responsibility for calculating
9 Individual Settlement Payments and Individual PAGA Payments; processing and
10 transmitting payments to the Class Representative, Class Counsel, the LWDA,
11 Settlement Class Members, and Aggrieved Employees; printing the Notice of Class
12 and PAGA Action Settlement and mailing it to the Class Members and Aggrieved
13 Employees as directed by the Court; receiving, processing, and reporting Requests
14 for Exclusion and Notices of Objection; sending a postcard reminder to Settlement
15 Class Members and Aggrieved Employees 30 days before the check void date;
16 distributing tax forms; providing declaration(s) as necessary in support of
17 preliminary and/or final approval of this Agreement; and such other tasks as the
18 Parties mutually agree or the Court orders the Settlement Administrator to perform.
19 The Settlement Administrator shall keep the Parties timely apprised of the
20 performance of all of the Settlement Administrator's responsibilities. Defendant
21 and Defense Counsel shall have no responsibility for validating or ensuring the
22 accuracy of the Settlement Administrator's work. Plaintiff, Class Counsel,
23 Defendant, and Defense Counsel shall not bear any responsibility for errors or
24 omissions in the calculation or distribution of Individual Settlement Payments,
25 Individual PAGA Payments or any other distribution of monies contemplated by
26 this Agreement.
- 27 K. Notice Procedure.
- 28

1. Class Data and Aggrieved Employee Data. No later than 21 calendar days after the Preliminary Approval Date and only after Defendant receives sufficient and reasonable assurance that the Settlement Administrator will maintain the confidentiality of the Class Data and Aggrieved Employee Data, Defendant shall provide the Settlement Administrator with the Class Data and Aggrieved Employee Data for purposes of preparing and mailing the Notice of Class and PAGA Action Settlement to Class Members and Aggrieved Employees, as well as undertaking its other obligations. The Settlement Administrator shall be obligated to keep the Class Data and Aggrieved Employee Data confidential and shall take reasonable and necessary precautions to maintain the confidentiality of the data. The Settlement Administrator shall not distribute or use the Class Data, Aggrieved Employee Data or any information contained therein for any purpose other than to administer this settlement.
2. Notice of Class and PAGA Action Settlement.
 - a) The Notice of Class and PAGA Action Settlement shall be in a form substantially similar to the form attached to this Stipulation as **Exhibit 1**. The Notice of Class and PAGA Action Settlement shall instruct Class Members and Aggrieved Employees to keep the Settlement Administrator apprised of their current mailing addresses, to which the Settlement Payments will be mailed following the Effective Date. The Notice of Class and PAGA Action Settlement shall set forth the release to be given by Settlement Class Members in exchange for an Individual Settlement Payment.
 - b) The Notice of Class and PAGA Action Settlement shall be individualized by inclusion of each Class Member's number of Qualified Weeks and Qualified Pay Periods and the Settlement

Administrator's calculation of each Class Member's estimated gross Individual Settlement Payment if that Class Member does not request exclusion from the Settlement and each Aggrieved Employee's estimated Individual PAGA Payment.

3. Notice By First Class U.S. Mail. Upon receipt of the Class Data and Aggrieved Employee Data, the Settlement Administrator will perform a search based on the National Change of Address Database to update and correct any known or identifiable address changes. No later than 14 calendar days after receiving the Class and Aggrieved Employee Data from Defendant as provided in this Stipulation, the Settlement Administrator shall mail copies of the Notice of Class and PAGA Action Settlement to all Class Members and Aggrieved Employees via regular First Class U.S. Mail. The Settlement Administrator shall exercise its best judgment to determine the current mailing address for each Class Member and Aggrieved Employee. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Class Member and Aggrieved Employee.

4. Undeliverable Notices. Any mailed Notice of Class and PAGA Action Settlement that is returned to the Settlement Administrator as not having been delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed to it. If no forwarding address is provided, the Settlement Administrator promptly shall attempt to determine a correct address by lawful use of skip-tracing and by other searches using the name, address, and Social Security number of the Class Member or Aggrieved Employee involved and, if another mailing address is identified by the Settlement Administrator, then shall perform a re-mailing to that Class Member or Aggrieved Employee. In addition, if any Notices of Class and PAGA Action Settlement that are addressed to Class Members or

Aggrieved Employees who are employed by Defendant at the time of mailing are returned to the Settlement Administrator as non-delivered and no forwarding address is provided, the Settlement Administrator shall so notify Defendant. Defendant then will request that the currently-employed Class Member or Aggrieved Employee provide a corrected address and will transmit to the Administrator any corrected address provided by the Class Member or Aggrieved Employee.

5. Disputes Regarding Qualified Weeks. A Class Member who disagrees with the number of Qualified Weeks stated on that Class Member's Notice of Class and PAGA Action Settlement will have the opportunity to provide documentation and/or an explanation to show a different number of weeks having been worked during the Class Period. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Individual Settlement Payments under the terms of this Agreement. The Settlement Administrator's determination of the eligibility for and the amount of any Individual Settlement Payment shall be binding upon the Settlement Class Member and the Parties.

6. Disputes Regarding Administration of Settlement. Any disputes not resolved by the Settlement Administrator concerning the administration of the settlement will be resolved by the Court under the laws of the State of California. Before any such involvement of the Court, counsel for the Parties will confer in good faith to resolve the disputes without the necessity of involving the Court.

7. Requests for Exclusion.

a) The Notice of Class and PAGA Action Settlement shall state that Class Members who wish to exclude themselves from the class

1 action settlement must submit a written Request for Exclusion by
2 the Response Deadline. The written Request for Exclusion must
3 state that the Class Member wishes to exclude himself or herself
4 from the class action settlement and (1) must contain the name,
5 address, and the last four digits of the Social Security number or
6 Employee ID number of the person requesting exclusion; (2) must
7 be signed by the Class Member; (3) must be postmarked by the
8 Response Deadline and returned to the Settlement Administrator at
9 the specified mailing address; and (4) must contain a typewritten or
10 handwritten notice stating in substance: "I wish to opt out of the
11 settlement of the class action lawsuit entitled *Harrington v. Creative*
12 *Security Company, Inc.*"

- 13 b) The Request for Exclusion will not be valid if it is not timely
14 submitted and if it does not comply with the requirements set forth
15 above in Paragraph III.I.7(a). The date of the postmark on the return
16 mailing envelope for the Request for Exclusion shall be the
17 exclusive means used to determine whether the Request for
18 Exclusion was timely submitted. If the Settlement is approved by
19 the Court, Class Members who fail to submit a valid and timely
20 written Request for Exclusion on or before the Response Deadline
21 shall be Settlement Class Members who are bound by all terms of
22 the settlement and any Final Approval Order entered in this Action.
- 23 c) Any Class Member who requests to be excluded from the class
24 action settlement will not be entitled to an Individual Settlement
25 Payment and will not be bound by the terms of the class action
26 settlement or have any right to object, appeal or comment thereon.
27 Nothing in this settlement or Settlement Agreement will constitute
28 or be construed as a waiver of any defense that Defendant or the

Released Parties have or could assert against anyone who timely serves a Request for Exclusion.

d) Aggrieved Employees cannot request to be excluded from the settlement of the PAGA Released Claims. Class Members who are Aggrieved Employees cannot request to be excluded from the settlement of the PAGA Released Claims.

e) No later than five calendar days after the Response Deadline, the Settlement Administrator shall provide counsel for the Parties with a final list of the Class Members who have timely submitted written Requests for Exclusion.

f) At no time shall any of the Parties or their counsel solicit or otherwise encourage Class Members to submit Requests for Exclusion from the settlement.

8. Objections.

a) The Notice of Class and PAGA Action Settlement shall state that Class Members who wish to object to the settlement must mail to Settlement Administrator, at the addresses provided in the Notice of Class and PAGA Action Settlement, a typed or written statement of objection (“Notice of Objection”) by the Response Deadline. The postmark date of mailing shall be deemed to be the exclusive means for determining whether a Notice of Objection was timely submitted.

b) Class Members who submit a timely Notice of Objection will have a right to appear at the final approval hearing in order to have their objections heard by the Court. The Notice of Objection must be signed by the Class Member and state (1) the case name and number; (2) the name of the Class Member; (3) the address of the Class Member; (4) the last four digits of the Class Member’s Social

Security number or Employee ID number; (4) the basis for the objection and any supporting documents; and (5) whether or not the Class Member intends to appear at the final approval hearing. Class Members who fail to make objections in the manner specified above may be deemed to have waived any objections and to be foreclosed from making any objections to the settlement, whether by appeal or otherwise. The failure to submit a written objection does not waive a Settlement Class Member's right to appear and orally object at the final approval hearing.

- c) At no time shall any of the Parties or their counsel seek to solicit or otherwise encourage Class Members to file or serve written objections to the settlement or to appeal from the Final Approval Order.
- d) Class Members who submit a written Request for Exclusion are not entitled to object to the settlement. In the event that a Class Member submits both a Request for Exclusion and a Notice of Objection, the Request for Exclusion will be valid and the Notice of Objection will be invalid.
- e) The Settlement Administrator shall send all objections to Class Counsel and Defense Counsel promptly. Class Counsel will be responsible for filing the Notices of Objection with the Court before the final approval hearing. Plaintiff and/or Defendant may file oppositions to any properly-submitted Notices of Objection no later than 10 calendar days prior to the date of the final approval hearing.
- f) Aggrieved Employees cannot object to the settlement of the PAGA Released Claims. Class Members who are Aggrieved Employees cannot object to the settlement of the PAGA Released Claims. Any

such objections by Aggrieved Employees or by Class Members who are Aggrieved Employees shall be deemed invalid.

- g) Defendant shall not be responsible for the fees, costs, or expenses incurred by Plaintiff, Class Counsel, Class Members or Aggrieved Employees arising from or related to any objection to the Settlement Agreement or related to any appeals thereof.

L. Funding and Allocation of the Maximum Settlement Amount. This is a non-reversionary settlement in which Defendant is required to pay the entirety of the Maximum Settlement Amount (plus the employer's share of the payroll taxes). No amount of the Maximum Settlement Amount will revert to Defendant. Upon satisfaction of the preconditions described in this Settlement and pursuant to the timeline and instructions below, Defendant will deposit the Maximum Settlement Amount into a Qualified Settlement Fund ("QSF") to be established by the Settlement Administrator.

1. Funding Due Date. Defendant will pay the \$510,00 Maximum Settlement Amount (plus the employer's share of all payroll taxes) in two payments. The first payment of \$340,000 (plus the employer's share of payroll taxes related to that payment) is due to the Settlement Administrator within 14 days of the Effective Date. The second payment of \$170,000 (plus the employer's share of payroll taxes related to that payment) is due to the Settlement Administrator within 365 days of the Effective Date.

2. Payments to Settlement Class Members and Aggrieved Employees.

- a) Calculation of Individual Settlement Payments. Every Settlement Class Member is entitled to an Individual Settlement Payment without the need to submit a claim form. Individual Settlement Payments shall be paid from the Net Settlement Amount and shall be paid under the formula set forth in this Stipulation.

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- (1) Using the Class Data, the Settlement Administrator will calculate the total number of Qualified Weeks for all Settlement Class Members. The number of Qualified Weeks for each Settlement Class Member then will be divided by the total number of Qualified Weeks for all Settlement Class Members. The result of that division will be the “Payment Ratio” for each Settlement Class Member. Each Settlement Class Member’s Payment Ratio then will be multiplied by the Net Settlement Amount to calculate that Settlement Class Member’s share of the Net Settlement Amount, except that no gross Individual Settlement Payment will be less than \$25. A share of the Net Settlement Amount will be provided only to those individuals who satisfy the definition of Settlement Class Members, *i.e.*, Class Members who do not submit a timely and valid Request for Exclusion.
- (2) The Parties recognize and agree that the formula provided in this Stipulation for allocating the Net Settlement Amount to be paid to the Settlement Class Members is reasonable and designed to provide a fair settlement to the Settlement Class Members.
- (3) Defendant represents that there are no more than 815 Settlement Class members who worked no more than 40,000 total weeks during the Class Period. If it is determined that more than 40,000 total weeks were worked by Settlement Class Members during the Class Period, Defendant agrees that it will increase its total payment above the Maximum Settlement Amount by increasing the Net Settlement

Amount only at the rate of \$10 per additional week worked beyond 44,000.

- b) Calculation of Individual PAGA Payments: Using the Aggrieved Employee Data, the Settlement Administrator will calculate the total number of Qualified Pay Periods for all Aggrieved Employees. The number of Qualified Pay Periods for each Aggrieved Employee then will be divided by the total number of Qualified Pay Periods for all Aggrieved Employees. The result of that division will be the Payment Ratio for each Aggrieved Employee. Each Aggrieved Employee's Payment Ratio then will be multiplied by the \$5,000 portion of the PAGA Payment that is allocated for distribution to the Aggrieved Employees to calculate each Aggrieved Employee's Individual PAGA Payment.
- c) Tax Allocation. For tax purposes, Individual Settlement Payments shall be allocated and treated as one-third wages and two-thirds statutory penalties and interest. For tax purposes, Individual PAGA Payments shall be allocated and treated as 100% statutory penalties. The Settlement Administrator will be responsible for issuing and mailing all required IRS Form W-2s and 1099s.
- d) Mailing. Individual Settlement Payments and Individual PAGA Payments will be paid two payments. The first payment, representing two-thirds of the amount of each Individual Settlement Payment and Individual PAGA Payment, shall be mailed by regular First Class U.S. Mail to Settlement Class Members' and Aggrieved Employees' last known mailing addresses no later than 28 calendar days after the Effective Date. The second payment, representing one-third of the amount of each Individual Settlement Payment and Individual PAGA Payment, shall be mailed by regular First Class

U.S. Mail to Settlement Class Members' and Aggrieved Employees' last known mailing addresses no later than 28 calendar days after the date of the second settlement payment by Defendant.

- e) Uncashed Checks. Any checks issued to Settlement Class Members shall remain valid and negotiable for 90 calendar days from the date of their issuance. Unless a Settlement Class Member contacts the Settlement Administrator for a re-issued check at least 10 days before Defendant makes the second deposit of settlement funds, the funds represented by any uncashed checks shall be included in the next check distribution such that any such Settlement Class Members' second settlement check will represent 100% of the Settlement Class Members' Individual Settlement Payment and Individual PAGA Payment. In the event any second Individual Settlement Payment and Individual PAGA Payment settlement checks have not been cashed by the check cashing deadline, upon Court approval, the Settlement Administrator shall tender to the Katherine and George Alexander Community Law Center at Santa Clara University (<https://law.scu.edu/kgac/c/>) the funds represented by any such uncashed checks.

3. Class Representative Incentive Award/General Release Payment.

- a) Plaintiff will apply for a Class Representative Incentive Award/General Release Payment of up to \$7,500 for his time, effort, and risk in bringing and prosecuting this Action. The Class Representative Incentive Award/General Release Payment shall be in addition to Plaintiff's Individual Settlement Payment and Individual PAGA Payment.
- b) The Settlement Administrator shall pay two-thirds of the Class Representative Incentive Award/General Release Payment to

Plaintiff from the Maximum Settlement Amount no later than 28 calendar days after the Effective Date. The Settlement Administrator shall pay one-third of the Class Representative Incentive Award/General Release Payment to Plaintiff from the Maximum Settlement Amount no later than 28 calendar days after Defendant makes the second settlement payment. Any portion of the requested Class Representative Incentive Award/General Release Payment that is not awarded to the Class Representative shall become part of the Net Settlement Amount.

c) The Settlement Administrator shall issue an IRS Form 1099 — MISC to Plaintiff for each of his Class Representative Incentive Award/General Release Payments. Plaintiff shall be solely and legally responsible to pay any and all applicable taxes on the Class Representative Incentive Award/General Release Payments and shall hold Defendant and the Released Parties harmless from any claim or liability for taxes, penalties, or interest arising as a result of the Class Representative Incentive Award/General Release Payment.

d) If the Court reduces or does not approve the requested Class Representative Incentive Award/General Release Payment, Plaintiff shall not have the right to revoke this Settlement Agreement, and it will remain binding, nor will Plaintiff seek, request, or demand an increase in the Maximum Settlement Amount on that basis.

4. Class Counsel Award.

a) In consideration for settling the Action and in exchange for the release of the Released Parties for all Released Claims, Class Counsel intends to apply for an award of attorneys' fees not to exceed one-third of the Maximum Settlement Amount (i.e.,

\$170,000 of the \$510,000), plus actual costs and litigation expenses estimated not to exceed \$12,000.

- b) Class Counsel, Plaintiff, Settlement Class Members, and the Aggrieved Employees will not apply to the Court for any payment of attorneys' fees and costs that are in addition to the foregoing. The Parties agree that, over and above the Court-approved Class Counsel Award, each of the Parties, including each Settlement Class Member and Aggrieved Employee, shall bear his, her or its own fees and costs, including, but not limited to, those related to the investigation, filing, prosecution, or settlement of the Action; the negotiation, execution, or implementation of this Agreement; and/or the process of obtaining, administering, or challenging a Preliminary Approval Order and/or Final Approval Order.
- c) Any portion of the requested Class Counsel Award that is not awarded to Class Counsel shall be part of the Net Settlement Amount and shall be distributed to Settlement Class Members as provided in this Agreement.
- d) The Settlement Administrator shall pay two-thirds of the Class Counsel Award to Class Counsel from the Maximum Settlement Amount no later than 28 calendar days after the Effective Date. The Settlement Administrator shall pay one-third of the Class Counsel Award to Class Counsel from the Maximum Settlement Amount no later than 28 calendar days after Defendant makes the second settlement payment.
- e) Class Counsel shall be solely and legally responsible to pay all applicable taxes on the payment made pursuant to this Paragraph III.L.4. The Settlement Administrator shall issue an IRS Form

1099-MISC to Class Counsel for each payment made pursuant to this Paragraph.

f) In the event that the Court reduces or does not approve the requested Class Counsel Award, Plaintiff and Class Counsel shall not have the right to modify or revoke the Settlement, and the Settlement will remain binding, nor will Plaintiff or Class Counsel seek, request, or demand an increase in the Maximum Settlement Amount on that basis.

5. PAGA Payment. \$20,000 shall be allocated from the Maximum Settlement Amount for settlement and release of claims for civil penalties under PAGA, i.e., the “PAGA Payment.” The Settlement Administrator shall, in two separate payments, pay 75% of that \$20,000 payment, i.e., \$15,000, to the LWDA (the “LWDA Payment”) and the remaining 25% of that \$20,000 payment, i.e., \$5,000, to the Aggrieved Employees according to the formula described in Paragraph III.L.2.(b). The first payment, representing two-thirds of each amount, shall be made no later than 28 calendar days after the Effective Date. The second payment, representing one-third of each amount, shall be made no later than 28 calendar days after Defendant makes the second settlement payment. Class Counsel will take all action required by California Labor Code § 2699(l).

6. Settlement Administration Costs. The Settlement Administrator shall be paid from the Maximum Settlement Amount for the costs of administration of the Settlement. The Settlement Administrator has agreed to a fee not to exceed \$12,000. The Settlement Administrator shall be paid \$8,000 for the settlement administration costs no later than 28 calendar days after Defendant provides funds to the Settlement Administrator for disbursement under this Agreement. The Settlement Administrator shall be paid the

remaining \$4,000 for the settlement administration costs no later than 28 calendar days after Defendant makes the second settlement payment.

M. Mutual Full Cooperation. The Parties agree to cooperate fully with each other to accomplish the terms of this Settlement Agreement, including but not limited to executing the necessary documents and taking such other action as reasonably may be necessary to implement the terms of this Settlement Agreement. As soon as practicable after executing this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendant and Defense Counsel, take all necessary steps to secure the Court's Preliminary and Final Approval of this Settlement Agreement. The Parties also agree to cooperate in the settlement administration process. The Parties each represent they do not have any financial interest in the Settlement Administrator or otherwise have a relationship with the Settlement Administrator that could create a conflict of interest. Class Counsel also will notify Defense Counsel if subpoenaed or upon receipt of any other request for documents or information regarding any other action filed or potential action against the Released Parties that covers or includes any Settlement Class Members and the Released Claims or any Aggrieved Employees and the PAGA Released Claims.

N. Preliminary Approval Hearing. Plaintiff will request preliminary approval of the settlement, entry of a Preliminary Approval Order for preliminary approval of the proposed Agreement, and the setting of a date for a final-approval hearing. The Preliminary Approval Order shall provide for the Notice of Class and PAGA Action Settlement to be sent to all Class Members as specified in this Stipulation. In conjunction with the preliminary approval hearing, Plaintiff shall submit this Agreement, which sets forth the terms of this settlement, and will include the proposed Notice of Class Action Settlement.

O. Motion for Approval of the Class Representative Incentive Award/General Release Payment, the Class Counsel Award, and the Settlement Administration Costs. No

later than 16 court days before the final approval hearing, Plaintiff shall file with the Court a motion for approval of the Class Representative Incentive Award/General Release Payment, the Class Counsel Award, and the Settlement Administration Costs. Plaintiff shall provide a courtesy draft of those motion papers to Defense Counsel at least five court days before filing the documents.

P. Final Approval Motion. No later than 16 court days before the final approval hearing, Plaintiff shall file with the Court a Motion for Final Approval, which motion shall request final approval of the settlement. Plaintiff shall provide a courtesy draft of those motion papers to Defense Counsel at least five court days before filing the documents.

1. Declaration by Settlement Administrator. The Settlement Administrator shall submit a declaration in support of Plaintiff's Motion for Final Approval of this Settlement. That declaration shall detail the number of Notices of Class and PAGA Action Settlement mailed and re-mailed to Class Members, the number of undeliverable Notices of Class Action Settlement, the number of timely Requests for Exclusion, the number of Notices of Objection received, the amount of the average Individual Settlement Payment, the average Individual PAGA Payment, the settlement administration costs, and any other information that the Parties mutually agree to include or that the Court orders the Settlement Administrator to provide.

2. Final Approval Order. The Parties shall present a proposed Final Approval Order to the Court, consistent with the terms and conditions of this Agreement, for the Court's approval and judgment thereon.

Q. Option to Revoke Settlement. Defendant has the unilateral right to revoke this Agreement if, after the Response Deadline, the number of Class Members who have submitted timely and valid written Requests for Exclusion equals at least 5% of all Class Members. If Defendant exercises the option to terminate this Agreement, (a)

Defendant shall provide written notice to Class Counsel within 15 calendar days after the Response Deadline, at which time this Agreement shall be void *ab initio*, (b) Defendant shall pay all settlement administration costs incurred up through that date and/or as a result of the termination, and (3) the Parties shall proceed in all respects as if this Agreement had not been executed.

R. Interim Stay of Proceedings. Pending the final approval hearing to be conducted by the Court, the Parties agree to stay all proceedings in the Action except such proceedings as are necessary or desirable to implement and complete the Settlement.

S. Nullification of Settlement Agreement. In the event that (i) the Court denies preliminary approval with prejudice, (ii) the Court denies final approval with prejudice, (iii) the Court does not enter a final judgment as provided in this Stipulation, or (iv) the settlement does not become final for any other reason, this Agreement shall be null and void and any order or judgment entered by the Court in furtherance of this settlement shall be treated as void from the beginning. In such a case, the Parties shall be returned to their respective statuses as of the date and time immediately before the execution of this Agreement, and the Parties shall proceed in all respects as if this Agreement had not been executed, except that any costs already incurred by the Settlement Administrator shall be paid by equal apportionment among the Parties, except as otherwise specified in Paragraph III.Q. If an appeal is filed from the Court's final judgment, or any other appellate review is sought, administration of the settlement shall be stayed pending final resolution of the appeal or other appellate review. In that event, within 30 calendar days of that notification, the Parties shall pay any costs by equal apportionment that were incurred by the Settlement Administrator before it was notified of the filing of an appeal from the Court's final judgment or of any other appellate review.

T. No Effect on Employee Benefits. Amounts paid to Plaintiff, Settlement Class Members, and Aggrieved Employees under this Agreement shall be deemed not to

be pensionable earnings and shall not have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations, holiday pay, retirement plans, etc.) of the Plaintiff, the Settlement Class Members, and Aggrieved Employees.

U. Headings. The descriptive headings of any paragraphs or sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

V. Amendment or Modification. This Agreement may be amended or modified only by a written instrument that (1) is signed by counsel for all Parties or their successors-in-interest, (2) is signed by the Parties or their successors-in-interest, and (3) if the Court's approval is required, is as approved by the Court.

W. Entire Agreement. This Agreement and any attached Exhibits constitute the entire Agreement among these Parties. Apart from the representations, warranties and covenants contained and memorialized in this Agreement and its Exhibits, no oral or written representations, warranties or inducements have been made to any Party concerning this Agreement or its Exhibits.

X. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and represent they are expressly authorized by the Parties whom they represent to negotiate this Agreement and to take all appropriate actions required or permitted to be taken by those Parties under this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The person signing this Agreement on behalf of Defendant represents and warrants that he or she is authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and warrants that he is authorized to sign this Agreement and that he has not assigned or transferred to any third-party or encumbered any claim, or part of a claim, demand, cause of action or any rights herein released and discharged or covered by this Agreement.

- 1 Y. Binding on Successors and Assigns. The provisions of this Settlement Agreement
2 shall run in perpetuity. This Agreement shall be binding upon and inure to the
3 benefit of the successors or assigns of the Parties to this Agreement, including the
4 Settlement Class Members and the LWDA.
- 5 Z. California Law Governs. All terms of this Agreement and its Exhibits and any
6 disputes arising under this Agreement shall be governed by and interpreted in
7 accordance with the laws of the State of California.
- 8 AA. Counterparts. This Agreement may be executed in one or more counterparts. All
9 executed counterparts and each of them shall be deemed to be one and the same
10 instrument, provided that counsel for the Parties to this Agreement shall exchange
11 among themselves copies or originals of the signed counterparts.
- 12 BB. This Settlement Is Fair, Adequate and Reasonable. The Parties believe this
13 Settlement to be a fair, adequate and reasonable settlement of this Action and have
14 arrived at this Agreement after extensive arm's-length negotiations, taking into
15 account all relevant factors, present and potential. The Parties further agree that
16 this Settlement Agreement shall not be construed in favor of or against any Party
17 by reason of the extent to which any Party or his, her or its counsel participated in
18 the drafting of this Settlement Agreement.
- 19 CC. Jurisdiction of the Court. The Parties agree that the Court shall retain jurisdiction
20 with respect to the interpretation, implementation and enforcement of the terms of
21 this Agreement and all orders and judgments entered in connection therewith. The
22 Parties to this Agreement and their counsel submit to the jurisdiction of the Court
23 for purposes of interpreting, implementing and enforcing the settlement embodied
24 in this Agreement and all orders and judgments entered in connection with this
25 Agreement.
- 26 DD. Invalidity of Any Provision. Before declaring any provision of this Agreement to
27 be invalid, the Court first shall attempt to construe those provisions as valid to the
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fullest extent possible consistent with applicable precedents so as to hold all provisions of this Agreement valid and enforceable.

EE. Waiver of Certain Appeals. Provided that the Court does not materially modify the terms of this Agreement, the Parties (1) agree to waive all appeals from any orders of the Court before final approval of the settlement and (2) further agree to waive all appeals from the Court's final approval of the settlement.

FF. Confidentiality of Documents. After the expiration of any appeals period, Plaintiff, the Settlement Administrator, and Class Counsel shall maintain the confidentiality of all settlement-related documents and other information obtained from the other Party in the Action, unless necessary for appeal or such documents are ordered to be disclosed by the Court or by a subpoena.

GG. No Admissions by the Parties. Plaintiff has asserted and continues to assert that the Released Claims have merit and give rise to liability on Defendant's part. Defendant asserts that the Released Claims have no merit and do not give rise to liability. This Agreement is a compromise of disputed claims. Nothing contained in this Agreement, no documents referred to in this Agreement and no action taken to carry out this Agreement may be construed or used as an admission by or against the Defendant or Plaintiff or Class Counsel as to the merits or lack of merit of the claims asserted.

By signing below, the Parties indicate their approval of the form of this Settlement Agreement and its exhibits.

IN WITNESS WHEREOF, this Joint Stipulation of Class and PAGA Action Settlement is executed by the Parties and their duly authorized attorneys as of the day and year set forth below.

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KELLER GROVER LLP
1965 Market Street, San Francisco, CA 94103
Tel. 415.543.1305 | Fax. 415.543.7861

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IT IS SO AGREED:

DATED: 2/15/2022

CREATIVE SECURITY COMPANY, INC.

By: Charles H. Wall
CHUCK WALL

DATED: _____

MICHAEL HARRINGTON

By: _____

APPROVED AS TO FORM:

DATED: 2-15-2022

KELLER GROVER LLP

By: Eric A. Grover
ERIC A. GROVER
ROBERT W. SPENCER

Attorneys for Plaintiff
MICHAEL HARRINGTON

DATED: 2-15-22

LAYTON LAW FIRM

By: Rona P. Layton
RONA P. LAYTON

Attorneys for Defendant
CREATIVE SECURITY COMPANY, INC.

IT IS SO AGREED:

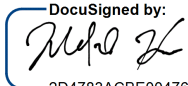
DATED: _____

CREATIVE SECURITY COMPANY, INC.

By: _____
CHUCK WALL

DATED: 2/10/2022

MICHAEL HARRINGTON

By:  _____
2D4783ACBE00476

APPROVED AS TO FORM:

DATED: _____

KELLER GROVER LLP

By: _____
ERIC A. GROVER
ROBERT W. SPENCER

Attorneys for Plaintiff
MICHAEL HARRINGTON

DATED: _____

LAYTON LAW FIRM

By: _____
RONA P. LAYTON

Attorneys for Defendant
CREATIVE SECURITY COMPANY, INC.

EXHIBIT 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ALAMEDA
Harrington v. Creative Security Company, Inc.
Case No. RG21095377

NOTICE OF CLASS ACTION SETTLEMENT

*A court authorized this notice. This is not a solicitation.
This is not a lawsuit against you and you are not being sued.
However, your legal rights are affected whether you act or don't act.*

This class action settlement will affect your rights if you worked as an hourly security guard or mobile patrol employee for Creative Security Company, Inc. in California at any time during the period from and including April 9, 2017 through January 6, 2022.

- Former employee Michael Harrington ("Class Representative" or "Plaintiff") sued Creative Security Company, Inc. ("CSC" or "Defendant") on behalf of himself and certain current and former CSC security guards and mobile patrol employees in California and has alleged that Defendant violated the California Labor Code and the California Unfair Competition Law.
- The complaint also alleges that Plaintiff is entitled to recover civil penalties for himself and other aggrieved employees under the California Private Attorneys General Act of 2004 ("PAGA").
- Plaintiff and Defendant have entered a settlement agreement ("Settlement") that settles the claims of the Class Representative, the Class claims, and the PAGA claims. The Court has preliminarily approved the Settlement.
- If you worked for CSC as an hourly security guard or mobile patrol employee at any time during the period from and including April 9, 2017 through January 6, 2022, you may be considered a putative class member ("Class Member"). Because you qualify as a Class Member, you could receive money from the Settlement.
- If you worked for CSC as an hourly security guard or mobile patrol employee at any time during the period from and including March 12, 2020 through January 6, 2022, you may be considered an "Aggrieved Employee" under PAGA. If you qualify as an Aggrieved Employee, you will receive money from the Settlement of the PAGA claim. (In this Settlement, all Aggrieved Employees are also Class Members.)
- Your legal rights are affected whether you act or don't act. Read this Notice carefully.

WHAT ARE YOUR OPTIONS?

DO NOTHING	If you do nothing, you will receive a Settlement payment. In exchange for this payment, you will give up any rights to sue for the same class claims that were part of this Settlement.
EXCLUDE YOURSELF	Give up all benefits, including money, from the Class Settlement. Retain all rights you may have against CSC, as explained below.
OBJECT	Write to the Court about why you don't agree with the Class Settlement. The Court may or may not agree with your objection. If the Court approves the Class Settlement, you will receive a Class Settlement payment.

HOW MUCH CAN I GET FROM THE CLASS ACTION SETTLEMENT?	Based on CSC's records, your Individual Settlement Payment is estimated to be \$ _____. This is based on your total Qualified Weeks during the Class Period: _____.
HOW MUCH CAN I GET FROM THE PAGA SETTLEMENT?	Based on CSC's records, your Individual PAGA Payment is estimated to be \$ _____. This is based on your total Qualified Pay Periods during the PAGA Period: _____.

- Your rights and options – and the deadlines to exercise them – are explained in this Notice.
- The Court in charge of this case still has to decide whether to grant final approval of the Settlement. If the Court approves the Settlement and after any appeals are resolved, payments will be made to (a) Settlement Class Members who do not opt out of the Class Settlement; and (b) all Aggrieved Employees.

WHY AM I RECEIVING THIS NOTICE?

CSC's records show that you worked for CSC as an hourly security guard or mobile patrol employee in California during the period from and including April 9, 2017 through January 6, 2022. You received this Notice because you have a right to know about a proposed settlement of a class action lawsuit and about your options before the Court decides whether to grant final approval of the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, a Settlement Administrator appointed by the Court will make the payments that the Settlement allows.

This Notice explains the lawsuit, the Settlement, your legal rights, what benefits are available, who is eligible for them and how to get them.

WHAT IS THIS LAWSUIT ABOUT?

Plaintiff Michael Harrington filed a putative class action lawsuit on April 9, 2021, on behalf of himself and other hourly security guards and mobile patrol employees who worked for Defendant in California during the Class Period, April 9, 2017 through January 6, 2022, inclusive. The operative First Amended Complaint alleges causes of action against Defendant on a class basis for: (1) unfair business practices; (2) failure to provide meal periods; (3) failure to provide rest breaks; (3) failure to pay all wages due; (4) failure to provide accurate wage statements; and (6) waiting time penalties. The complaint also alleges claims under the California Private Attorneys General Act of 2004 ("PAGA").

DO I HAVE AN ATTORNEY?

You do not need to hire your own attorney. You are already represented by Class Counsel (see below for their contact information). However, you may hire your own attorney at your own expense if you choose.

WHAT IS THE CASE STATUS?

CSC denies all of Plaintiff's allegations, or that it violated any law, and contends that at all times it complied with federal, state, and local laws. The settlement is not an admission by CSC of any wrongdoing or an indication that any law was violated.

Questions? Call <<CLAIM ADMIN PH NO>>

The Court did not decide in favor of Plaintiff or Defendant. Nor has it decided whether this case could proceed as a class action.

Instead of going through class certification or to trial, after a thorough investigation into the facts of this lawsuit, both sides agreed to a settlement. The class claims were settled because Class Counsel and the Class Representative believe that the terms of the Settlement, which include monetary benefits, are fair and reasonable in light of the strength and weaknesses of the claims and other factors.

WHO IS IN THE CLASS?

You are part of the Settlement if you are a member of the Class, which includes all individuals who worked for CSC as hourly security guards or mobile patrol employees in California during the period from and including April 9, 2017 through January 6, 2022.

WHAT ARE THE TERMS OF THE SETTLEMENT?

In exchange for the release of claims against it and final judgment on the lawsuit, Defendant will pay \$510,000 plus the employer's share of payroll taxes ("Maximum Settlement Amount"), which includes all payments contemplated by the Settlement, including all payments to Class Members, a service award to Plaintiff, Class Counsel's attorneys' fees and costs, employee-side taxes, a payment to the California Labor and Workforce Development Agency ("LWDA") as part of the settlement of the PAGA claim, all payments to Aggrieved Employees, and settlement administration costs. The "Net Settlement Amount" is the amount remaining after deduction of Class Counsel's attorneys' fees and costs, the service awards to Plaintiffs, the PAGA Payment, and the settlement administration costs, all of which will be distributed to Class Members who do not opt out.

Subject to Court approval, the Maximum Settlement Amount will be allocated at follows:

- **Individual Settlement Payments:** Class Members who do not opt out are eligible to receive money from the Net Settlement Amount as an Individual Settlement Payment, which is calculated as described below. The Net Settlement Amount is estimated to be approximately \$300,500. Your estimated gross Individual Settlement Payment from the Net Settlement Amount is listed on the first page of this Notice.
- **Class Representative Service Award:** Plaintiff will request from the Court an award of \$7,500 in recognition of his efforts and risks in assisting with the prosecution of the Action and in return for executing a General Release of claims against Defendant. This amount will be paid from the Maximum Settlement Amount, and any amount not awarded will revert to the Net Settlement Amount for distribution.
- **Class Counsel Award:** Class Counsel will request that the Court approve up to 33-1/3% of the Maximum Settlement Amount (\$170,000 of the \$510,000 settlement) as attorneys' fees for litigation and resolution of this Action and actual costs and expenses (estimated not to exceed \$12,000), as supported by declaration. This amount will be paid from the Maximum Settlement Amount, and any amount not awarded will revert to the Net Settlement Amount for distribution.

- Settlement Administration: The cost of settlement administration shall not exceed \$12,000, which pays for tasks such as mailing and tracking this Notice, tracking Requests for Exclusion and Notices of Objection, mailing checks and tax forms, and reporting to the parties and the Court.
- All checks issued to Class Members shall remain valid and negotiable for 90 calendar days after the date of their issuance. Any undeliverable or uncashed checks will then be voided and sent to the Katherine and George Alexander Community Law Center.
- The \$20,000 PAGA Payment is required by law to be split 75% to the LWDA and 25% to the Aggrieved Employees. Therefore, \$15,000 will be distributed to the LWDA and \$5,000 will be distributed to Aggrieved Employees. If you qualify as an Aggrieved Employee, your estimated Individual PAGA Payment is listed on the first page of this Notice.

WHAT CAN I RECEIVE FROM THE SETTLEMENT?

If you do not opt out of the Settlement, you will automatically receive your share of the Net Settlement Fund after the Court approves the Settlement. Your estimated share, that is your estimated gross Individual Settlement Payment, and your total Qualified Weeks from CSC's records used to calculate it, are listed on the first page of this Notice. One-third of the Individual Settlement Payment will be designated as wages for which an IRS Form W-2 will issue, and two-thirds will be designated as penalties and interest, for which an IRS Form 1099 may issue.

HOW IS MY PORTION OF THE CLASS SETTLEMENT CALCULATED?

Your Individual Settlement Payment is your pro rata share of the Net Settlement Amount based on your total Qualified Weeks, which is the total number of weeks that you worked as an hourly security guard or mobile patrol employee in California (based on CSC's records) during the Class Period (April 9, 2017 through January 6, 2022, inclusive). Your Qualified Weeks will be divided by the total number of Qualified Weeks for all Settlement Class Members, resulting in your Payment Ratio. The Payment Ratio then will be multiplied by the Net Settlement Amount to determine your gross Individual Settlement Payment, except that no gross Individual Settlement Payment will be less than \$25.

Depending on job assignments, Class Members worked either 5-day/40-hour weeks or 4-day/40-hour weeks. For calculation purposes, one 5-day/40-hour week shall be the equivalent of one "Qualified Week" and one 4-day/40-hour week shall be the equivalent of 1.5 "Qualified Weeks." By way of example, 10 5-day/40-hour weeks would be counted as 10 Qualified Weeks and 10 4-day/40-hour work weeks would be counted as 15 Qualified Weeks.

Your Individual Settlement Payment may vary from the estimated payment listed on this form if any Class Members opt out of the Settlement and depending upon the amounts that the Court approves for awards to Class Counsel, the Class Representative, and the Settlement Administrator.

ONLY if you disagree with the Qualified Weeks stated on page one of this Notice, mail a letter to the Settlement Administrator explaining why you disagree. Be as specific as possible and include copies of any supporting documents, such as paystubs. The decision of the Settlement Administrator will be final. Disputes must be mailed to the address below and must be postmarked no later than **[insert same date as objection and opt-out deadline]**:

Questions? Call **<<CLAIM ADMIN PH NO>>**

Settlement Administrator

<<Address>>

Phone: (*) ***-******

WHAT WILL I RECEIVE FROM THE PAGA SETTLEMENT?

Class Members who qualify as Aggrieved Employees also will receive an Individual PAGA Payment. Your Individual PAGA Payment will be based on your pro rata share of the 25% of the PAGA Payment (\$5,000) based on your number of Qualified Pay Periods during the PAGA Period, which is March 12, 2020 through January 6, 2022, inclusive. Your total Qualified Pay Periods will be divided by the total Qualified Pay Periods for all Aggrieved Employees, resulting in your Payment Ratio. The Payment Ratio will then be multiplied by \$5,000 to determine your Individual PAGA Payment.

WHAT HAPPENS IF I DO NOTHING?

If you do nothing and the Court approves the Settlement at the Final Approval Hearing, you will be issued your Individual Settlement Payment and your Individual PAGA Payment (if you qualify as an Aggrieved Employee,) without any further action needed from you.

Please Note: The Individual Settlement Payments and Individual PAGA Payments will be paid two payments. The first payment, representing two-thirds of the amount of each Individual Settlement Payment and Individual PAGA Payment, will be mailed no later than 28 calendar days after the settlement Effective Date. The second payment, representing the remaining one-third of the amount of each Individual Settlement Payment and Individual PAGA Payment, will be mailed no later than 28 calendar days after the date of the second settlement payment by Defendant, which will happen approximately one year from the settlement Effective Date.

To ensure receipt of your settlement payments, you must notify the Settlement Administrator of any change in your name, mailing address and/or telephone number. **It is your responsibility to keep the Settlement Administrator informed of your updated information, and your settlement payments will be mailed to the last known address that the Settlement Administrator has on file for you.**

WHEN AND WHERE IS THE FINAL APPROVAL HEARING?

The Court will hold the Final Approval Hearing on **<<date>>** in Department 23 of the California Superior Court for the County of Alameda, 1221 Oak Street, Oakland, California 94612, to decide whether to approve the Settlement. If the Court approves the Settlement, your first settlement payment will be mailed to you within approximately 28 days from the Effective Date of the Settlement.

Please be advised that the date of the final approval hearing may change without further notice to the class and/or the hearing may be conducted virtually. Class Members are therefore advised to check the Court's website (see instructions at end of this Notice) or contact Class Counsel or the Settlement Administrator to confirm that the date and location has not been changed.

WHAT CLAIMS AM I GIVING UP IF I REMAIN PART OF THE SETTLEMENT?

Questions? Call **<<CLAIM ADMIN PH NO>>**

Unless you exclude yourself, you will remain a Settlement Class Member, and you will be bound by the terms of the Settlement, including the Release of the Released Claims as described below. That means you will be unable to sue, or to continue to sue, or be part of any other lawsuit about the Released Claims. It also means that all of the Court's orders in this Action will apply to you and legally bind you.

Released Claims

The "Released Claims" means and includes all claims against the Released Parties arising between April 9, 2017 and January 6, 2022, inclusive, under state, federal, or local law, whether statutory or common law, arising out of the claims expressly pleaded in the operative First Amended Complaint on file in the action (i.e., Labor Code §§ 201, 202, 203, 204, 226, 226.3, 226.7, 510, 511, 512, 1194, 1198, and 1199, and Business & Professions Code §§ 17200, *et seq.* claims based on alleged violations of these Labor Code provisions) and all other potential claims reasonably related to or arising out of the same set of facts plead in the First Amended Complaint, such as those under the California Labor Code, Wage Orders, regulations, and/or other provisions of law. The Release Period for the Released Claims is the same as the Class Period, i.e., from April 9, 2017 through January 6, 2022, inclusive.

The Release will extend to Defendant Creative Security Company, Inc. and all of Defendant's parent companies, subsidiaries, divisions, concepts, related or affiliated companies, and its or their shareholders, officers, directors, employees, agents, attorneys, insurers, successors and assigns, and any individual or entity that could be liable for any of the Released Claims (i.e., the Released Parties").

WHAT CLAIMS ARE RELEASED BY THE SETTLEMENT OF PAGA CLAIMS?

If this Settlement is approved, then Plaintiff Harrington, individually and as representative acting as a proxy or agent of the LWDA, a State of California Executive Branch Agency, agrees to release the Released Parties of and from any and all allegations and claims for PAGA civil penalties based on any and all underlying Labor Code violations alleged in the operative First Amended Complaint or in Plaintiff's letter to the LWDA dated March 12, 2021.

WHAT SHOULD I DO IF I DO NOT WANT TO BE PART OF THE SETTLEMENT?

If you do not wish to participate in the Class Settlement, you may exclude yourself (generally called "opting out") by submitting a written Request for Exclusion to the Settlement Administrator. Your request to opt-out must (a) be in writing; (b) state your name, address, and the last four digits of your social security number or Employee ID number; and (c) include a typed or handwritten statement requesting exclusion from the Settlement Class and stating in substance: "I wish to opt out of the settlement of the class action lawsuit entitled *Harrington v. Creative Security Company, Inc.*"

You must personally sign the Request for Exclusion and may not have someone sign for you, nor may you submit a Request for Exclusion on behalf of a group or anyone else. Your Request for Exclusion must be signed and mailed via United States first class mail postmarked no later than <<Date>> [45 calendar days after initial mailing] to:

Settlement Administrator

<<Address>>

Phone: (*) ***-******

Questions? Call <<CLAIM ADMIN PH NO>>

If you submit a timely Request for Exclusion, then upon its receipt you shall not be a member of the Settlement Class, you shall be barred from participating in any portion of the Settlement, you may not object to the Settlement.

If you submit a timely Request for Exclusion, you may then pursue, at your own expense, any claims you may have against CSC. If you do not submit a complete and timely written Request for Exclusion, you will be included in the Settlement Class, and be bound by the terms of the Settlement (including the Released Claims described above), whether or not you objected to the Settlement.

NOTE: Aggrieved Employees in a PAGA action may not opt-out of a PAGA settlement. Thus, in a settlement involving both class and PAGA claims, employees may only opt-out from participating in the class portion of the settlement. If you submit a timely Request for Exclusion and are an Aggrieved Employee, you will still receive an Individual PAGA Payment representing your portion of the PAGA Payment.

WHAT SHOULD I DO IF I WANT TO OBJECT TO THE SETTLEMENT?

Any Settlement Class Member who has not asked to be excluded from this Settlement may object to the Settlement. Keep in mind that objecting is not the same as requesting to be excluded. Submitting an objection will **not** exclude you from the Settlement Class. **If your objection is overruled, you will still be bound by the Settlement.**

If you wish to object to the Settlement, you may submit your written Notice of Objection to the Settlement Administrator stating the basis or reason(s) for your objection to the Settlement. You may object to any of the terms in the Settlement Agreement, including but not limited to the proposed Class Counsel Award, the Class Representative Service Award, or the Settlement Administrator's payment. A written Notice of Objection must be signed by you and include: (1) the name and case number of this Action, (2) your full name and most current address, (3) the last four digits of the Settlement Class Member's Social Security number or Employee ID; (4) the basis for the objection; and (5) a statement of whether you intend to appear at the Final Approval Hearing. The failure to submit a written objection does not waive a Settlement Class Member's right to appear and orally object at the final approval hearing.

The written Notice of Objection must be mailed via United States first class mail postmarked no later than **<<Date>>** [45 calendar days after initial mailing] to:

Settlement Administrator

<<Address>>

Phone: (*) ***-******

If you have submitted a written objection, you may also appear at the Final Approval Hearing set for _____, 2022 in Department 23 of the California Superior Court for the County of Alameda, 1221 Oak Street, Oakland, California 94612, and discuss your objections with the Court and the Parties. The Final Approval Hearing may be held virtually or continued to another date without further notice.

You have the right to retain your own attorney, at your own expense, to submit a Notice of Objection or appear on your behalf at the Final Approval Hearing.

Questions? Call **<<CLAIM ADMIN PH NO>>**

If the Court approves the Settlement despite any objections, and you have not opted out of the Settlement, you will receive your Individual Settlement Payment and will be bound by the terms of the Settlement (including the Released Claims described above).

You cannot both object and opt-out. If you submit both a Request for Exclusion and a Notice of Objection, the Notice of Objection will be invalid, while the Request for Exclusion will be valid.

HOW DO I GET ADDITIONAL INFORMATION?

This Notice only summarizes the proposed Settlement and its terms. For more information, contact Class Counsel at the below address or phone number, by accessing the Court docket by visiting the office of the Clerk of the California Superior Court for the County of Alameda, 1221 Oak Street, Oakland, California 94612. You may also review documents online by accessing the Alameda County Superior Court's eCourt Public Portal website, at <https://eportal.alameda.courts.ca.gov/> and click on the "Searches" hyperlink. Then select "Case Number Search" and enter the case number "RG21095377." (Note: You will need to create a free user account.) Your browser will be directed to information regarding this case. You may view the Court's docket from here, including but not limited to documents filed with the Court (*see the "Register of Actions" tab*), ruling and orders, and other information.

If you have further questions regarding this case or Settlement, you may contact Class Counsel, whose contact information is provided below:

Eric A. Grover
egrover@kellergrover.com
Robert W. Spencer
rspencer@kellergrover.com
KELLER GROVER LLP
1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

In addition to contacting Class Counsel, you may contact the Settlement Administrator at (800) ____.

PLEASE DO NOT WRITE OR TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT OR THE SETTLEMENT PROCESS.

Questions? Call <<CLAIM ADMIN PH NO>>

EXHIBIT 2

Harrington v. Creative Security Company, Inc.
Settlement Administrator

[insert address]

[Insert Recipient's Address]

**THIS IS A LEGAL NOTICE REGARDING DEADLINES AFFECTING YOUR RIGHTS TO
MONEY FROM A CLASS ACTION SETTLEMENT. IT IS NOT AN ADVERTISEMENT OR A SOLICITATION.**

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EXHIBIT B

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ENDORSED
FILED
ALAMEDA COUNTY

MAY 18 2021

CLERK OF THE SUPERIOR COURT
By NICOLE HALL
Deputy

**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

) **FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

) **1. UNFAIR BUSINESS PRACTICES;
2. VIOLATIONS OF THE LABOR CODE;
3. PENALTIES; and
4. ATTORNEYS' FEES.**

) **DEMAND FOR JURY TRIAL**

Plaintiff MICHAEL HARRINGTON, on behalf of himself and all others similarly situated, and all aggrieved employees, complains against Defendants CREATIVE SECURITY COMPANY, INC., and Does 1 through 50 (all referred to collectively as “Defendants” or “CREATIVE SECURITY”) as follows:

I. JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among other statutes, California Business & Professions Code §§ 17200, *et seq.*, and California Labor Code §§ 201-203, 204, 226, 226.3, 226.7, 510, 511, 512, 1194, 1198, and 1199. In particular, Plaintiff has complied with all California Labor Code § 2699.3 requirements for commencing a civil action under the California Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”).

2. This Court has personal jurisdiction over the parties because, at all relevant times, Plaintiff was a California resident who worked in California for Defendants and Defendants systematically and continuously have conducted business in the State of California.

3. Venue is proper in this Court because California Code of Civil Procedure § 395.5 because (a) Plaintiff performed part of his duties in Alameda County, (b) part of the of the obligations of the parties arises in Alameda County, (c) part of Defendants’ liability arises in Alameda County, and (d) breaches by Defendants occurred in connection with work performed partly in Alameda County. Venue is further proper in this Court because a PAGA action may be prosecuted in any county where any allegedly aggrieved employees worked or is alleged to have suffered violations of the Labor Code. *Crestwood Behavioral Health v. Superior Court* (2021) 60 Cal App. 5th 1069. Allegedly aggrieved employees – including Plaintiff – worked in and are alleged to have suffered Labor Code violations in Alameda County.

II. PARTIES AND BACKGROUND

4. Plaintiff MICHAEL HARRINGTON is an adult who worked for Defendants as a non-exempt hourly employee. He worked for Defendants as an hourly, non-exempt patrol supervisor from approximately March 2020 through July 2020 at client locations in California, including Alameda County.

1 5. Defendant CREATIVE SECURITY COMPANY, INC. is a California corporation
2 doing business throughout California and is a “person” as defined by California Labor Code § 18
3 and California Business and Professions Code § 17201. In addition, it is an “employer” as that
4 term is used in the California Labor Code and in the California Industrial Welfare Commission’s
5 Orders regulating wages, hours, and working conditions.

6 6. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1
7 through 50, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will
8 amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is
9 informed and believes and on that ground alleges that each of the fictitiously-named Defendants is
10 responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other
11 losses as alleged are proximately caused by those occurrences.

12 7. Plaintiff brings this action on behalf of a proposed state-wide class of hourly non-
13 exempt security guards who worked at CREATIVE SECURITY locations in California to
14 challenge Defendants’ (a) policy and practice of failing to pay overtime for hours worked over eight
15 in a shift; (b) policy and practice of violating California Labor Code §§ 226.7 and 512 and IWC
16 Wage Order 5-2001 by failing to provide meal periods to employees, including second meal periods
17 to employees who worked more than 10 hours in a day; (c) policy and practice of violating Labor
18 Code § 226.7 by failing to authorize and permit adequate rest periods, (d) policy and practice of
19 violating California Labor Code § 226 by failing to provide accurate, itemized wage statements;
20 and (e) policy and practice of violating California Labor Code §§ 201-203 by failing to pay former
21 employees all wages due and owing at the time of discharge or voluntary quit.

22 8. Plaintiff brings this action on behalf of himself and a proposed class of all hourly
23 non-exempt workers employed by CREATIVE SECURITY at client locations within the State of
24 California at any time during the applicable limitations period preceding the original filing of this
25 Complaint up through the present and until compliance with the law. Plaintiff seeks recovery of
26 all allowable compensation and other sums for the violations described above, including unpaid
27 overtime, penalties/premium pay for missed meal and rest periods, restitution and restoration of
28 sums owed and property unlawfully withheld, statutory penalties, interest, attorneys’ fees, and

costs.

III. FACTUAL ALLEGATIONS

9. CREATIVE SECURITY provides security guard services on to clients throughout California. The work is performed at multiple locations in the State of California, including Alameda County.

10. At all relevant times, Plaintiff was employed by CREATIVE SEUCRITY as an hourly non-exempt employee in a guard occupation as defined by § 2(O) of IWC Wage Order 4-2001. During his employment with CREATIVE SECURITY, Plaintiff worked four days a week, and typically worked 10 or more hours a day, including some shifts over 12 hours.

11. Labor Code § 511 requires employers to adhere to strict requirements when adopting an alternative workweek schedule, including, among other things, that an employer must hold a secret election allowing employees to vote to adopt the alternative workweek schedule. Plaintiff alleges that Defendant failed to lawfully adopt an alternative workweek schedule.¹ Labor Code § 510 requires that employers must pay employees overtime for hours worked over eight in one workday and 40 hours in any one workweek. Labor Code § 1194 provides for a private right of action for an employee to seek unpaid overtime. Plaintiff alleges that CREATIVE SECURITY failed to lawfully adopt an alternative workweek schedule and failed to Plaintiff and other putative class members overtime for hours worked over eight in a day.

12. At all times relevant, Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 11 have required employers to provide employees with (1) a first meal period of not less than 30 minutes during which they are relieved of all duty before working more than five hours and (2) a second duty-free meal period of not less than 30 minutes before working more than 10 hours per day. Further, an employer cannot require employees to stay on-site or be on-call during meal periods and breaks. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. Plaintiff alleges that CREATIVE SECURITY required Plaintiff and other putative class members to take their first

¹ There is no evidence that CREATIVE SECURITY properly held such an election in the Department of Industrial Relations Alternative Workweek Elections Database, available online here: <https://www.dir.ca.gov/databases/oprl/dlsr-awe.html>.

1 meal periods on-duty, despite no agreement to do so. Further, CREATIVE SECURITY required
2 Plaintiff and other putative class members to carry company provided cellular telephones and be
3 on-call during their breaks in violation of *Augustus*. In addition, Plaintiff and other putative class
4 members often worked 10 hours or more per day, including many shifts over 12 hours. CREATIVE
5 SECURITY had a policy and practice of failing to provide Plaintiff and other putative class
6 members with their second meal periods on these shifts. Plaintiff and other putative class members
7 did not receive a second meal period on shifts over 10 hours. Plaintiff alleges that he and, on
8 information and belief, other putative class members never waived their right to a second meal
9 period. Further, Plaintiff and other putative class members often worked more than 12 hours in a
10 day. Under Labor Code § 512(a), second meal periods are not waivable for employees who work
11 more than 12 hours in a day.

12 13. CREATIVE SECURITY had a policy and practice of failing to authorize and permit
13 Plaintiff and other putative class member to take discrete paid rest breaks of at least 10 minutes for
14 every four hours worked or major fraction thereof as required by Labor Code § 226.7 and IWC
15 Wage Order 4-2001, § 12(A). Plaintiff and putative class member typically worked shifts of 10 or
16 more hours a day, including shifts over 12 hours. CREATIVE SECURITY had a policy and practice
17 of failing to authorize and permit Plaintiff and other putative class members to take adequate paid
18 rest breaks in violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12(A), including
19 third rest breaks on shifts over 10 hours. In addition, Defendants required Plaintiff and other
20 Putative Class Members to stay on-site and remain on-call through company provided cellular
21 telephones during their rest breaks in violation of *Augustus*.

22 14. Labor Code § 226 provides that every employer is required, “semimonthly or at the
23 time of each payment of wages,” to give each employee an itemized wage statement that includes
24 “gross wages earned” as well as “all applicable hourly rates” and “the corresponding number of
25 hours worked at each hourly rate...” Defendants had a policy and practice of violating Labor Code
26 § 226 by failing to provide complete and accurate itemized wage statements to Plaintiff and the
27 putative class members in that the wage statements provided did not, among other things, include
28 the correct gross wages earned as well as correct hours worked at the correct overtime rate.

15. Defendants had a policy and practice of violating California Labor Code §§ 201-203 by failing to pay Plaintiff and putative class members all wages due and owing at the time of discharge or voluntary quit. Plaintiff and putative class members still are owed wages, including unpaid overtime for work over eight hours a shift.

16. Defendants had a policy and practice of failing to pay employees in a timely manner as required by Labor Code § 204.

IV. CLASS ACTION ALLEGATIONS

17. Plaintiff brings this action on behalf of himself and as a class action under Code of Civil Procedure § 382 on behalf of a class of similarly situated persons employed by CREATIVE SECURITY in the State of California. Specifically, Plaintiff seeks to represent the class of all hourly non-exempt security guards who performed work for CREATIVE SECURITY at client locations throughout the State of California at any time during the applicable limitations period preceding the original filing of this Complaint and up through the present and until compliance with the law. Plaintiff also seeks to represent the following sub-classes of employees who worked for CREATIVE SECURITY at job sites within the State of California:

(a) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the applicable period preceding the original filing of this Complaint and up through the present and until compliance with the law, inclusive, who were not paid overtime for hours worked over eight in a shift;

(b) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the applicable limitations period preceding the original filing of this Complaint and up to the present and until compliance with the law, inclusive, who were not provided timely and compete meal periods;

(c) All hourly non-exempt security guards who performed work for CREATIVE SECURITY at any time during the applicable limitations period preceding the original filing of this Complaint and up to the present and until

1 compliance with the law, inclusive, who were not provided required paid
2 rest breaks;

3 (d) All hourly non-exempt security guards who performed work for CREATIVE
4 SECURITY at any time during the applicable limitations period preceding
5 the original filing of this Complaint and up to the present and until
6 compliance with the law, inclusive, who were not paid all wages due upon
7 discharge or voluntary quit as required by Labor Code §§ 201-203; and

8 (e) All hourly non-exempt on-site employees who performed work for
9 CREATIVE SECURITY at any time during the applicable limitations period
10 preceding the original filing of this Complaint and up through the present
11 and until compliance with the law, inclusive, who did not receive complete
12 and accurate wage statements.

13 18. The class and sub-classes that Plaintiff seeks to represent contain numerous
14 members and are clearly ascertainable. Plaintiff reserves the right under Rule 3.765 of the
15 California Rules of Court to amend or modify the class and sub-class descriptions with greater
16 specificity or further division into additional sub-classes or limitation to particular issues.

17 19. By their unlawful practices and policies, Defendants have violated the rights of
18 employees under the laws and regulations of the State of California. The questions raised are,
19 therefore, of common or general interest to the class members, who have a well-defined community
20 of interest in the questions of law and fact raised in this action.

21 20. Plaintiff's claims are typical of those of the class, as Plaintiff now suffers and has
22 suffered in the past from the same violations of the law as other members of the proposed class.
23 Plaintiff has retained competent counsel to represent himself and the class, and Plaintiff will fairly
24 and adequately represent the interests of the class.

25 21. This action may properly be maintained as a class action under Code of Civil
26 Procedure § 382 because there is a well-defined community of interest in the litigation and the
27 proposed class and sub-classes are easily ascertainable.

28 //

Numerosity

22. The members of the proposed class are so numerous that joinder of all class members is impractical. While the precise number of class members has not been determined at this time, Plaintiff is informed and believes that Defendants have employed as many as 600 workers or more in the relevant time period.

23. Plaintiff alleges that Defendants' employment records would contain relevant information as to the number of members of the proposed class.

Commonality

24. There are questions of law and fact common to the class that predominate over any questions affecting only individual class members. Those common questions of law and fact include, without limitation, the following:

- (a) Whether Defendants had a policy or practice of violating Labor Code § 1194 by failing to pay class members overtime for hours worked over eight in a shift;
- (b) Whether Defendants had a policy and practice of failing to provide class members with all of their required meal periods;
- (c) Whether Defendants had a policy and practice of failing to authorize and permit class members to take adequate duty-free rest periods;
- (d) Whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as gross wages earned, and whether those statements were accurate;
- (e) Whether Defendants had a policy and practice of violating Labor Code §§ 201-203 by failing to pay departing class members all wages, including overtime wages, due at the time of discharge or voluntary quit; and
- (f) Whether Plaintiff and the class members are entitled to equitable and restitutionary relief under Business and Professions Code §§ 17200, *et seq.*

Typicality and Adequacy of Representation

25. Plaintiff's claims are typical of the claims of the proposed class. Plaintiff and all

1 members of the proposed class sustained injuries and economic loss arising out of and caused by
2 Defendants' common course of conduct in violation of laws and regulations alleged in this
3 Complaint.

4 26. Plaintiff will fairly and adequately protect the interests of all proposed class
5 members. Plaintiff has no interests that are antagonistic to those of the proposed class and is not
6 subject to any unique defenses. Plaintiff also has retained counsel experienced in class actions and
7 in representing employees and protecting employees' rights.

8 **Superiority of Class Action**

9 27. A class action is superior to other available means for the fair and efficient
10 adjudication of this controversy. Individual joinder of all proposed class members is not
11 practicable, and questions of law and fact common to the class predominate over any questions
12 affecting only individual members of the class. Each member of the class has been damaged and
13 is entitled to recovery by reason of Defendants' illegal policies and/or practices.

14 28. Class action treatment will allow those similarly-situated persons to litigate their
15 claims in the manner that is most effective and economical for the parties and the judicial system.
16 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
17 action that would preclude its maintenance as a class action.

18 29. A class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy because individual litigation of the claims of all proposed class
20 members is impractical. Even if every proposed class member could afford individual litigation,
21 the court system could not. It would be unduly burdensome to the courts if individual litigation of
22 numerous cases were to be required. Individualized litigation also would present the potential for
23 varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all
24 parties and to the court system resulting from multiple trials of the same complex factual issues.
25 By contrast, the conduct of this action as a class action with respect to some or all of the issues
26 presented herein gives rise to fewer management difficulties, conserves the resources of the court
27 system and the parties and protects the rights of each proposed class member. Further, it prevents
28 the very real harm that would be suffered by numerous putative class members who simply will be

unable to enforce individual claims of this size on their own, and by Defendants' competitors, who will be placed at an unfair competitive disadvantage as their punishment for obeying the law. Plaintiff does not anticipate difficulties in the management of this action.

V. REPRESENTATIVE ACTION ALLEGATIONS

30. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY within the state of California and were who were not paid overtime for hours worked over eight in a shift;

31. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY in the State of California who were not provided their required meal periods.

32. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY in the State of California who were not authorized or permitted to take all of their required rest periods.

33. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY in the State of California who did not receive complete and accurate itemized wage statements in violation of Labor Code § 226(a).

34. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY in the State of California who were not paid all wages due at the time of discharge or voluntary quit in violation of Labor Code §§ 201-203.

35. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom performed work for CREATIVE SECURITY in the State of California who were not paid all wages in a timely manner as required by Labor Code § 204.

36. There is a well-defined community of interest in the question of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including, but not limited to, the following: (1) whether Defendants had a policy and practice of failing to pay aggrieved employees overtime for hours worked over eight in a shift; (2) whether Defendant had a policy and practice of failing to provide aggrieved employees with all of their required meal periods; (3) whether Defendants had a policy and practice of failing to provide aggrieved employees with all of their required rest periods; (4) whether Defendants had a policy and practice of violating Labor Code § 226 by failing to provide required information on wage statements, such as gross wages earned and the hours worked at the correct overtime rate, and whether those statements were accurate; (5) whether Defendants had a policy and practice of failing to pay departing aggrieved employees all wages due at the time of discharge or voluntary quit in violation of Labor Code §§ 201-203; (6) and whether Defendants had a policy and practice of failing to pay aggrieved employees in a timely manner as required by Labor Code § 204.

37. Plaintiff's claims are typical of the claims of the members of the aggrieved employees whom Plaintiff seeks to represent on a representative basis and his interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved employees whom he seeks to represent because Plaintiff is also an aggrieved employee and his claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and representative actions, and Plaintiff intends to prosecute this action vigorously.

38. Common questions of law and fact exist as to all aggrieved employees that predominate over any other questions affecting only individual aggrieved employees.

39. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

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VI. FIRST CAUSE OF ACTION

(UNFAIR BUSINESS PRACTICES – CAL. BUS. & PROF. CODE §§ 17200, *et seq.*)

40. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

41. California Business and Professions Code §§ 17200, *et seq.*, prohibit unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent business act or practice.

42. Beginning at an exact date unknown to Plaintiff, but at least during the applicable limitations period preceding the original filing of this Complaint and up through the present, Defendants committed unlawful acts and practices as defined by California Business and Professions Code §§ 17200, *et seq.* Defendants have had a policy and practice of engaging in unlawful and unfair business practices including, but not limited to, violations of:

- (a) Labor Code § 1194 (failure to pay all overtime wages);
- (b) Labor Code §§ 226.7 and 512 (failure to provide meal periods);
- (c) Labor Code § 226.7 (failure to authorize and permit adequate duty-free rest breaks)
- (d) Labor Code § 226 (failure to provide accurate itemized wage statements);
- (e) Labor Code §§ 201-203 (failure to pay all wages, including statutory minimum wages, due and owing at time of discharge or voluntary quit); and
- (f) Industrial Welfare Commission IWC Wage Order No. 4-2001.

43. The violations of those laws and the acts and practices described in this Complaint constitute unlawful, unfair, deceptive and fraudulent business acts and practices and unfair competition within the meaning of Business and Professions Code §§ 17200, *et seq.*

44. As a direct and proximate result of those acts and practices, Defendants have received and continue to hold as ill-gotten gains money and property belonging to Plaintiff and the class, in that Defendants have profited in those amounts from their unlawful practices.

45. Business and Professions Code § 17203 provides that the Court may restore to any person in interest any money or property that may have been acquired by means of unfair competition and may order Defendants to make restitution to Plaintiff for the practices alleged in

1 this Complaint. Plaintiff and putative class members are entitled under Business and Professions
2 Code §§ 17203 and 17208 to restitution and restoration of all wages unlawfully withheld at any
3 time during the applicable limitations period preceding the original filing of this Complaint and up
4 through the present and until the violations have been corrected, together with all civil penalties
5 owed in connection with those violations. Plaintiff will, upon leave of the Court, amend this
6 Complaint to state those amounts when they are ascertained.

7 46. Plaintiff's success in this action will enforce important rights affecting the public
8 interest and, in that regard, Plaintiff sues on behalf of the proposed class as well as on behalf of
9 himself and the general public. Plaintiff seeks and is entitled to unpaid wages and any other remedy
10 owing to Plaintiff and all others similarly situated.

11 47. To prevent Defendants from profiting and benefiting from their wrongful and illegal
12 policies and practices, an order requiring Defendants to restore to Plaintiff and class members all
13 monies and property unlawfully gained through Defendants' unlawful practices is appropriate and
14 necessary.

15 48. Plaintiff takes upon himself enforcement of these laws and lawful claims. There is
16 a financial burden incurred in pursuing this action and it would be against the interests of justice to
17 penalize Plaintiff by forcing him to pay attorneys' fees from the recovery in this action. Therefore,
18 an award of attorneys' fees is appropriate under California Code of Civil Procedure § 1021.5.

19 Wherefore, Plaintiff prays for relief as set forth below.

20 **VII. SECOND CAUSE OF ACTION**

21 **(UNPAID OVERTIME WAGES– LABOR CODE § 1194)**

22 49. Plaintiff repeats and realleges each and every paragraph above as though fully set
23 forth herein.

24 50. Plaintiff alleges that CREATIVE SECURITY failed to lawfully adopt an alternative
25 workweek schedule in accordance with Labor Code § 511 and failed to pay Plaintiff and other
26 putative class members overtime for hours worked over eight in a day as required by Labor Code
27 §§ 510 and 1194.

28 51. Plaintiff seeks to recover all overtime wages due to Plaintiff and other putative class

members and interest, under Labor Code §§ 1194 and 218.6.

52. Plaintiff seeks attorneys' fees and costs under Labor Code § 1194, which provides for a private right of action to recover overtime compensation and also provides for the recovery of attorneys' fees and costs by a prevailing employee.

Wherefore, Plaintiff prays for relief as set forth below.

VIII. THIRD CAUSE OF ACTION

(UNPAID OVERTIME WAGES –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

53. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

54. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

55. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

56. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 510, 511, 1194, 1198 and 1199.

57. By the actions alleged herein, Defendants failed to pay Plaintiff and other aggrieved employees overtime for hours worked over eight in a day in violation of Labor Code §§ 510, 511, 1194, 1198 and 1199.

58. Therefore, Plaintiff and all current and former aggrieved employees demand the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 510, 511, 1194, 1198 and 1199.

59. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §§ 1194 and 2699(g)(1).

60. Wherefore, Plaintiff prays for relief as set forth below.

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IX. FOURTH CAUSE OF ACTION
(FAILURE TO PROVIDE MEAL PERIODS)

61. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

62. At all relevant times, the Defendants were “employers” of Plaintiff and other putative class members within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 2(F).

63. At all relevant times, Plaintiff and other putative class members were “employees” of Defendants within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 2(E). Plaintiff and other putative class members also were employed by Defendants in a professional, technical, clerical, mechanical, and similar occupation, as defined in and within the meaning of IWC Wage Order 4-2001, § 2(O).

64. At all relevant times, Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001, § 11 provide that employees must receive a first meal period of not less than 30 minutes before working more than five hours, and a second meal period of not less than 30 minutes before working more than 10 hours in a day. Further, an employer cannot require employees to stay on-site or on-call during meal periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257.

65. As alleged above, Defendants failed to provide Plaintiff and other putative class members with their legally required meal periods. CREATIVE SECURITY required Plaintiff and other putative class members to take their first meal periods on-duty, despite no agreement to do so. Further, CREATIVE SECURITY required Plaintiff and other putative class members to carry company provided cellular telephones and be on-call during their meal periods in violation of *Augustus*. In addition, Plaintiff and other putative class members often worked 10 hours or more per day, including many shifts over 12 hours. CREATIVE SECURITY had a policy and practice of failing to provide Plaintiff and other putative class members with their second meal periods on these shifts. Plaintiff and other putative class members did not receive a second meal period on shifts over 10 hours. Plaintiff alleges that he and, on information and belief, other putative class members never waived their right to a second meal period. Further, Plaintiff and other putative

1 class members often worked more than 12 hours in a day. Under Labor Code § 512(a), second meal
2 periods are not waivable for employees who work more than 12 hours in a day.

3 66. Defendants' practices of failing to provide employees meal periods violate Labor
4 Code §§ 226.7 and 512(a), and IWC Wage Order 4-2001, § 11.

5 67. Plaintiff and members of proposed class have lost money as a direct result of
6 Defendants' unlawful practices as alleged above in that they were required to work shifts longer
7 than 10 hours, were not provided meal periods, and were not compensated correctly for not having
8 been provided such meal periods, respectively. Accordingly, Plaintiff and other putative class
9 members are entitled to proper compensation, restitution and premium pay for each missed, late,
10 and/or short meal period as required by law and to the waiting time penalties attached to those
11 violations.

12 68. CREATIVE SECURITY's violations of Labor Code §§ 226.7 and 512 and IWC
13 Wage Order 4-2001 as alleged above are ongoing and will continue unless and until this Court
14 enters an injunction barring those violations.

15 69. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred in
16 this action under Code of Civil Procedure § 1021.5.

17 Wherefore, Plaintiff prays for relief as set forth below.

18 **X. FIFTH CAUSE OF ACTION**

19 **(FAILURE TO PROVIDE MEAL PERIODS –**

20 **LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

21 70. Plaintiff repeats and realleges each and every paragraph above as though fully set
22 forth herein.

23 71. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties
24 on their own behalf and on behalf of other current and former employees.

25 72. Plaintiff is an "aggrieved employee" as that term is defined in the Labor Code
26 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
27 violator and against whom one or more of the alleged violations was committed.

28 73. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil

1 action against Defendants for violations of Labor Code §§ 226.7, 512, 1198, and 1199.

2 74. By the actions alleged herein, Defendants failed to provide all required meal periods
3 in violation of Labor Code §§ 226.7, 512 and 1198 and 1199.

4 75. Therefore, Plaintiff and all current and former aggrieved employees demand the
5 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 512, 1198, and
6 1199.

7 76. Plaintiff further seeks reasonable attorneys' fees and costs under Labor Code §
8 2699(g)(1).

9 Wherefore, Plaintiff prays for relief as set forth below.

10 **XI. SIXTH CAUSE OF ACTION**

11 **(FAILURE TO AUTHORIZE AND PERMIT REST BREAKS)**

12 77. Plaintiff repeats and realleges each and every paragraph above as though fully set
13 forth herein.

14 78. At all relevant times, the Defendants were "employers" of Plaintiff and other
15 putative class members within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order
16 4-2001, § 2(H).

17 79. At all relevant times, Plaintiff and other putative class members were "employees"
18 of Defendants within the meaning of Labor Code §§ 226.7 and 512, and IWC Wage Order 4-2001,
19 § 2(H). Plaintiff and other putative class members were employed by Defendants in a professional,
20 technical, clerical, mechanical, or similar occupation, as defined in and within the meaning of IWC
21 Wage Order 4-2001, § 2(O).

22 80. At all relevant times, Labor Code § 226.7 and IWC Wage Order 4-2001, § 12 require
23 employers to authorize and permit employees to take discrete paid rest breaks of at least ten minutes
24 for every four hours worked or major fraction thereof.

25 81. CREATIVE SECURITY had a policy and practice of failing to authorize and permit
26 Plaintiff and other putative class member to take discrete paid rest breaks of at least 10 minutes for
27 every four hours worked or major fraction thereof as required by Labor Code § 226.7 and IWC
28 Wage Order 4-2001, § 12(A). Plaintiff and putative class member typically worked shifts of over

ten hours or more a day, including many shifts over 12 hours. CREATIVE SECURITY had a policy and practice of failing to authorize and permit Plaintiff and other putative class members to take adequate paid rest breaks in violation of Labor Code § 226.7 and IWC Wage Order 4-2001, § 12(A), including third rest breaks on shifts over 10 hours. In addition, Defendants required Plaintiff and other Putative Class Members to stay on-site and remain on-call through company provided cellular phones in violation of *Augustus*.

82. Defendants' practices of failing to authorize and permit employees to take discrete paid rest breaks of not less than 10 minutes for every four hours worked or major fraction thereof, and of requiring employees to work through their rest breaks, violate Labor Code § 226.7 and IWC Wage Order 4-2001, § 12(A).

83. Plaintiff and other putative class members lost money as a direct result of Defendants' unlawful practices as alleged above in that they were not compensated correctly for not having been provided adequate rest periods. Accordingly, Plaintiff and other putative class members are entitled to proper compensation, restitution and premium pay for each rest period that was not provided as required by Labor Code § 226.7.

84. Defendants' violations of Labor Code § 226.7 and IWC Wage Order 4-2001 as alleged above are ongoing and will continue unless and until this Court enters an injunction barring those violations.

85. Plaintiff is entitled to an award of attorneys' fees and costs and expenses incurred in this action under Code of Civil Procedure § 1021.5.

Wherefore, Plaintiff prays for relief as set forth below.

XII. SEVENTH CAUSE OF ACTION

(FAILURE TO AUTHORIZE AND PERMIT REST BREAKS –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

86. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

87. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

1 88. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code
2 Private Attorneys General Act of 2004 because he is a person who was employed by the alleged
3 violator and against whom one or more of the alleged violations was committed.

4 89. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil
5 action against Defendants for violations of Labor Code §§ 226.7, 1198, and 1199.

6 90. By the actions alleged herein, Defendants failed to authorize and permit all required
7 rest periods in violation of Labor Code §§ 226.7, 1198, and 1199.

8 91. Therefore, Plaintiff and all current and former aggrieved employees demand the
9 penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 226.7, 1198, and
10 1199.

11 92. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code §
12 2699(g)(1).

13 Wherefore, Plaintiff prays for relief as set forth below.

14 **XIII. EIGHTH CAUSE OF ACTION**

15 **(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS)**

16 93. Plaintiff repeats and realleges each and every paragraph above as though fully set
17 forth herein.

18 94. As alleged above, during all or some portion of the proposed class period,
19 Defendants violated Labor Code § 226 through their practice of failing to provide their employees,
20 including Plaintiff and members of the proposed class, with complete and accurate itemized wage
21 statements. Among other things, the wage statements provided by Defendants violated Labor Code
22 § 226(a) by failing to state accurately the gross wages earned and the accurate hours worked by
23 each employee at the correct hourly rate.

24 95. Under Labor Code § 226(e), Plaintiff and members of the proposed class are entitled
25 to recover the greater of actual damages or \$50 for the initial pay period in which a violation
26 occurred and \$100 for each subsequent pay period in which Defendants failed to comply with the
27 statute, up to a maximum of \$4,000 per employee.

28 96. Under Labor Code § 226(g), Plaintiff is entitled to an award of attorneys’ fees and

costs incurred in bringing this action.

Wherefore, Plaintiff prays for relief as set forth below.

XIV. NINTH CAUSE OF ACTION

**(FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS –
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

97. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

98. Labor Code § 2699(f) permits “aggrieved employees,” acting on their own behalf and on behalf of the State of California and other current and former employees, to recover certain penalties.

99. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

100. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 226(a).

101. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 226(a) as it relates to Plaintiff and the other aggrieved employees. As alleged above, Defendants employed and employ a policy and practice of violating Labor Code § 226(a) by failing to provide complete and accurate itemized wage statements to Plaintiff and other aggrieved employees. Among other things, the wage statements provided by Defendants violated Labor Code § 226(a) by failing to state accurately the gross wages earned and the accurate hours worked by each employee at the correct hourly rate.

102. Therefore, Plaintiff, for himself and all current and former aggrieved employees on behalf of the State of California, demand the Labor Code § 226.3 penalties provided for violations of Labor Code § 226(a). (If Labor Code § 226.3 is found not to apply to Defendants’ violations of Labor Code § 226(a), Plaintiff alternatively will seek Labor Code § 2699(f) penalties.)

103. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XV. TENTH CAUSE OF ACTION

(LABOR CODE §§ 201-203)

104. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

105. Labor Code §§ 201 and 202 require an employer to pay its employees all wages due within the times specified by law. Labor Code § 203 provides that if an employer willfully fails to pay those wages within the times specified by Labor Code §§ 201 or 202, the employer must continue to pay the subject employees' wages day-by-day, weekends included, until the back wages are paid in full or an action is commenced, up to a maximum of thirty days of wages.

106. Defendants unfairly and unlawfully have had a policy and practice of violating Labor Code §§ 201 and 202 by failing to pay Plaintiff and the class all wages earned during their employment within the times specified by those sections.

107. Plaintiff and all other putative class members who ceased employment with Defendants are entitled to unpaid compensation but thus far have not received that compensation.

108. More than 30 days have passed since Plaintiff and certain class members left Defendants' employ.

109. Due to Defendants' willful failure to compensate Plaintiff and putative class members timely for all hours worked, Plaintiff and class members whose employment ended at any time during the applicable limitations period preceding the original filing of this Complaint and up through the present and until compliance with the law are entitled to 30 days' wages under Labor Code § 203, together with interest.

Wherefore, Plaintiff prays for relief as set forth below.

XVI. ELEVENTH CAUSE OF ACTION

(LABOR CODE §§ 201-203 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

110. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

111. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

112. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

113. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 201-203.

114. By their actions as alleged herein, Defendants have failed to comply with Labor Code §§ 201-203 as they relate to Plaintiff and the other aggrieved employees.

115. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code §§ 201-203.

116. Plaintiff further seek reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

XVII. TWELFTH CAUSE OF ACTION

(LABOR CODE § 204 –

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004)

117. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

118. Labor Code § 2699(f) permits “aggrieved employees” to recover certain penalties on their own behalf and on behalf of other current and former employees.

119. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because he is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

120. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code § 204.

121. By their actions as alleged herein, Defendants have failed to comply with Labor Code § 204 as they relate to Plaintiff and the other aggrieved employees.

122. Therefore, Plaintiff, for himself and all current and former aggrieved employees, demands the penalties provided by Labor Code § 2699(f) for violations of Labor Code § 204.

123. Plaintiff further seek reasonable attorneys' fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

- i. For an order certifying this action as a class action;
- ii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of failing to pay all overtime compensation owed to Plaintiff and the class members in violation of Business and Professions Code §§ 17200, *et seq.*;
- iii. For disgorgement of profits and restitution and restoration of all costs incurred, sums or property unlawfully withheld and/or losses caused by the policy and practice of violating Business and Professions Code §§ 17200, *et seq.* by failing to provide proper meal and rest periods and to pay all premium wages due and owing for those failures;
- iv. For compensatory damages in amounts according to proof at time of trial representing the amount of overtime wage compensation owed to Plaintiff and the class members for the policy and practice of failing to pay all wages due and owing during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;
- v. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 510, 511, 1194, 1198, and 1199 (failure to pay overtime) during the applicable limitations period preceding the original filing of the Complaint

and up to and including the present and until the date of compliance with the law;

vi. For compensatory damages in amounts according to proof at time of trial representing the amount of unpaid compensation owed to Plaintiff and class members for missed meal and rest periods due and owing during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;

vii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 226.7, 512(a), 1198, and 1199 (missed meal periods and missed rest periods) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;

viii. For the statutory amounts provided by Labor Code § 226(e) for Plaintiff and class members during the applicable limitations period preceding the original filing of this Complaint and up through and including the present and until the date of compliance with the law;

ix. For civil penalties as specified by Labor Code § 226.3 for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a) (failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint. (Should Labor Code § 226.3 be found not to apply to Defendants' violations of Labor Code § 226(a), Plaintiff alternatively seeks the civil penalties specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee and on behalf of the State of California for each violation of Labor Code § 226(a)

(failure to provide itemized wage statements) during the applicable limitations period preceding the original filing of the Complaint.)

- x. For waiting time penalties as provided by Labor Code § 203 for Plaintiff and class members;
- xi. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current or former aggrieved employee for each violation of Labor Code §§ 201-203 (failure to pay departing employees all wages due and owing) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xii. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each aggrieved employee for each violation of Labor Code § 204 (failure to pay wages in a timely manner) during the applicable limitations period preceding the original filing of the Complaint and up to and including the present and until the date of compliance with the law;
- xiii. For reasonable attorneys' fees and costs as allowed by Labor Code §§ 218.5, 226(e), 226(g), 1194(a), 2699(g)(1) and Code of Civil Procedure § 1021.5;
- xiv. For all interest as required by Labor Code § 218.6 and other applicable law;
- xv. For all costs of this suit as allowed by law, including Labor Code §§ 218.5, 226(g), and 1194; and 2699(g)(1); and
- xvi. For such other and further relief as the Court may deem proper.

Dated: May 18, 2021

Respectfully submitted,

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class

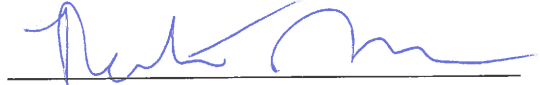
JURY TRIAL DEMAND

Plaintiff demands a trial by jury as to all issues so triable.

Dated: May 18, 2021

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT SPENCER

Attorneys for Plaintiff and the Proposed Class

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 **May 18, 2021**, 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):

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

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

Rona P. Layton, Esq.
Layton Law Firm
111 North Market Street # 300
San Jose, California 95113
rlayton@laytonlawfirm.com

Attorneys for Defendant
CREATIVE SECURITY COMPANY, INC

Creative Security Company, Inc.
C/O Charles H. Wall
Registered Agent for Service of Process
150 S. Autumn Street, Suite B
San Jose California 95110

Registered Agent for Defendant
CREATIVE SECURITY COMPANY, INC

☒	(BY UNITED STATES MAIL) I sealed the envelope(s), with postage thereon fully prepaid, and on the date below, following ordinary business practices, I placed it for collection and mailing in the United States Postal Service, in San Francisco, California.
☐	(BY OVERNIGHT DELIVERY) I placed a true copy in a sealed envelope addressed as indicated above this date. I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery. It is deposited in a Federal Express depository on that same day in the ordinary course of business for delivery to the parties above the next business day. (CCP §1013)
☐	(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.
☐	(FEDERAL) I declare under penalty of perjury under the laws of the United States that the above is true and correct.



JOEY GONZALEZ

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):

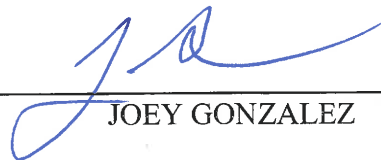
**DECLARATION OF ERIC A. GROVER IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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

Rona P. Layton, Esq.
Layton Law Firm
111 North Market Street # 300
San Jose, California 95113
rlayton@laytonlawfirm.com

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