

ERIC A. GROVER (SBN 136080)
eagrover@kellergrover.com
ROBERT W. SPENCER (SBN 238491)
rspencer@kellergrover.com

KELLER GROVER LLP

1965 Market Street
San Francisco, California 94103
Telephone: (415) 543-1305
Facsimile: (415) 543-7861

Attorneys for Plaintiffs

MICHAEL HARRINGTON and BRANDON OLDHAM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

MICHAEL HARRINGTON and BRANDON
OLDHAM, on behalf of themselves, and all
others similarly situated, and all aggrieved
employees,

Plaintiffs,

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*

**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR FINAL APPROVAL OF
CLASS ACTION AND PAGA
SETTLEMENT AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: February 14, 2023

Time: 3:00 p.m.

Dept. 23

Judge: The Hon. Brad Seligman

Complaint Filed: April 9, 2021

FAC Filed: May 18, 2021

Reservation No: A-21095377-001

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

Dated: January 27, 2023

By:

ERIC A. GROVER

ROBERT W. SPENCER

Attorneys for Plaintiffs and Class Counsel

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

By this unopposed motion, Michael Harrington and Brandon Oldham (“Plaintiffs” or “Class Representatives”) seek final approval of the class action settlement reached with Creative Security Company, Inc. (“Creative Security” or “Defendant”). On October 17, 2022, the Court granted preliminary approval of the proposed settlement, all of the terms of which are set forth in the parties’ Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Amended Stipulation”).¹

The proposed settlement satisfies all of the criteria for final settlement approval under California law because it is fair, adequate, and reasonable.² The notice of the settlement was distributed via U.S. mail.³ The Class Members’ response to the settlement confirms that final settlement approval is appropriate. There have been no objections to and no opt-outs from the settlement.⁴ Thus, 741 Settlement Class Members will receive settlement payments averaging \$405.53.⁵

Class Members were not required to submit claim forms to participate in the settlement.⁶ The Net Settlement Amount will be distributed to all Settlement Class Members (*i.e.*, those Class Members who did not submit a valid Request for Exclusion).⁷ Each Settlement Class Member will receive an Individual Settlement Payment based on the ratio of his or her number of Qualified Weeks divided by the total number of Qualified Weeks for the entire Settlement Class,

¹ See Declaration of Eric A. Grover submitted in support of this Motion (“Grover Decl.”), Ex. 1 (the Amended Stipulation); Ex. 3 (the Court’s October 17, 2022 Revised Order Granting Motion for Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”). All “Ex.” references are exhibits to the Grover Declaration unless otherwise stated.

² See Ex. 1; *see also*, *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-30; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801.

³ Declaration of Taylor Mitzner Regarding Settlement Notice Administration on behalf of Phoenix Settlement Administrators (“PSA”) filed with this brief, (“PSA Decl.”) at ¶¶ 3-7.

⁴ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 25.

⁵ Grover Decl. at ¶¶ 27, 31 (\$300,500 estimated Net Settlement Amount/741 Class Members = \$405.53); PSA Decl. at ¶¶ 11-14; *see* Ex. 1 at § III.L.2.a.

⁶ Ex. 1 at § III.L.2.a; Grover Decl. at ¶ 27.

⁷ Ex. 1 at § III.L.2.a; *see also*, §§ I.S, I.W, I.QQ.

1 according to the formula set forth in the Amended Stipulation.⁸

2 Because the settlement achieves outstanding results for the Settlement Class, Plaintiffs
3 respectfully request, without opposition from Defendant, that the Court approve the settlement as
4 fair, adequate, and reasonable, and enter judgment.

5 **II. PROCEDURAL BACKGROUND AND SUMMARY OF CLAIMS**

6 On April 9, 2021, Plaintiff Harrington filed his initial putative class action complaint in
7 Alameda County Superior Court and the First Amended Complaint on May 18, 2021.⁹ As part of
8 the settlement process, Plaintiff filed the operative Second Amended Complaint on September 30,
9 2022, adding Brandon Oldham as a named Plaintiff.

10 Plaintiffs alleged claims on behalf of themselves and a putative class of hourly, non-
11 exempt security and mobile patrol guards who worked for Defendant at California locations from
12 April 9, 2017 through January 6, 2022. Plaintiffs alleged that Defendant failed to pay overtime
13 wages for hours worked over eight in a shift, did not provide all required meal periods and rest
14 breaks, failed to provide accurate wage statement, and did not pay all wages due on termination.
15 Plaintiffs asserted that Defendant's practices and policies violated Labor Code §§ 201-203, 204,
16 226, 226.7, 510-512, 1194, 1198, 1199, and Business & Professions Code §§ 17200, *et seq.*¹⁰
17 Plaintiffs also alleged related representative PAGA claims.¹¹

18 Defendant has denied all of the allegations in their entirety. To date, no class has been
19 certified and no court has made any findings that Defendant engaged in any wrongdoing or in any
20 wrongful conduct or otherwise acted improperly or in violation of any state law, rule or
21 regulation, with respect to the issues presented in the litigation.¹²

22 Early in the case, the parties decided to explore the possibility of settlement. Plaintiff
23 Harrington provided Defendant with a detailed mediation information request in response to
24 which Defendant provided information and documents necessary for Plaintiff Harrington to

25 _____
26 ⁸ Ex. 1 at § III.L.2.a; *see also*, §§ I.S, I.W, I.JJ, I.QQ.

27 ⁹ Grover Decl. at ¶ 6.

28 ¹⁰ Grover Decl. at ¶ 6.

¹¹ Grover Decl. at ¶ 6.

¹² Grover Decl. at ¶ 7.

engage in settlement discussions.¹³

In preparation for the mediation, Plaintiff Harrington reviewed and analyzed relevant documents and information that Defendant provided, including:

(A) The number of Class Members:

- o There were estimated to be approximately 810 Class Members. [The final number was 741.]

(B) The total weeks worked by Class Members:

- o Class Members were estimated to have worked a total of approximately 35,310 weeks during the Class Period. [The final number was 36,766.]
- o 29,241 of those weeks were estimated to have been worked by stationary security guards and 6,069 were estimated to have been 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:

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 were estimated to have worked a total of approximately 8,875 pay periods during the PAGA liability period. [The final number was 8,875.]¹⁴

On January 6, 2022, the parties participated in an all-day mediation session with skilled mediator, Michael Loeb, Esq. who has significant experience mediating wage and hour class actions.¹⁵ The mediated negotiations resulted in the parties reaching an agreement to settle the entire action, subject to the Court's approval.¹⁶ The terms of the parties' settlement were set forth in the initial joint stipulation.¹⁷

¹³ Grover Decl. at ¶ 9.

¹⁴ Grover Decl. at ¶ 10.

¹⁵ Ex. 1 at § II.B; Grover Decl. at ¶ 11.

¹⁶ Ex. 1 at § II.B; Grover Decl. at ¶ 11.

¹⁷ Grover Decl. at ¶ 11.

1 Plaintiff Harrington moved for preliminary approval of the settlement on March 11,
2 2022.¹⁸ The Court issued an order on May 20, 2022 denying preliminary approval. At the
3 preliminary approval hearing and in the May 20, 2022 order, the Court raised concerns that there
4 was insufficient information to support the proposed class settlement and that Plaintiff
5 Harrington, who had worked only as a mobile patrol employee, may not be a sufficient
6 representative for the stationary security guard class members.¹⁹

7 To address the Court's concerns, Class Counsel conducted further investigation.²⁰ Class
8 Counsel requested the contact information, time records, and payroll records for files for 75
9 putative class members, including 25 mobile patrol officers and 50 security officers. Defendant
10 provided the information and requested documents on August 6, 2022.²¹ Class Counsel
11 telephoned all 75 telephone numbers provided, a mix of mobile patrol and stationary security
12 guards. Class Counsel was able to interview 20 putative class members, including 13 security
13 officers and seven mobile patrol officers.²² Class Counsel also reviewed all of the time records
14 and payroll records that Defendant produced.²³ After assessing the additional information
15 obtained, Class Counsel continued to be of the opinion that the proposed settlement was fair and
16 adequate.²⁴ As part of Class Counsel's additional investigation, they located a putative class
17 member who had worked as a stationary security guard and who was willing to serve as an
18 additional class representative.²⁵

19 Class Counsel filed a supplemental declaration on October 11, 2022, outlining their
20 additional investigation, assessment of the settlement in light of the information obtained and
21 notifying the Court that a putative class member who worked as a former stationary security
22

23 ¹⁸ Grover Decl. at ¶ 13.

24 ¹⁹ See Ex. 2 (the Court's May 20, 2022 order denying preliminary approval).

25 ²⁰ See Second Supplemental Declaration of Robert Spencer, filed Oct. 11, 2022 ("Oct. 11, 2022
26 Spencer Decl."), at ¶¶ 3-7; *see also*, Grover Decl. at ¶ 15.

27 ²¹ Oct. 11, 2022 Spencer Decl. at ¶ 3.

28 ²² Oct. 11, 2022 Spencer Decl. at ¶ 4. Class Counsel spoke to additional putative class members
that stated they did not have a sufficient memory to be interviewed. *Id.*

²³ Oct. 11, 2022 Spencer Decl. at ¶ 5.

²⁴ Oct. 11, 2022 Spencer Decl. at ¶ 6; *see also*, Grover Decl. at ¶ 15.

²⁵ Oct. 11, 2022 Spencer Decl. at ¶ 8; Grover Decl. at ¶ 15.

guard was prepared to serve as another class representative. Class Counsel drafted and submitted a proposed Second Amended Complaint adding Brandon Oldham as a named plaintiff.²⁶ Class Counsel worked with Defense Counsel to draft an amended settlement stipulation in order to add Plaintiff Oldham as a proposed settlement class representative, provide Plaintiff Oldham with a \$2,500 enhancement and general release payment, and reduce Class Counsel's requested fee award by \$2,500, which meant that the Net Settlement Amount from the original settlement was unaffected by the changes.²⁷ Class Counsel submitted the Amended Stipulation for the Court's approval.²⁸

III. THE PRELIMINARY APPROVAL AND NOTICE PROCESS

On October 17, 2022, the Court issued a revised order granting preliminary approval of the proposed class action and PAGA settlement, including the Amended Stipulation, and provisionally certified the Settlement Class.²⁹

In granting preliminary approval, the Court found that the settlement appeared to be within the range of reasonableness of settlements that could ultimately be given final approval and implicitly found Class Counsel's proffered arguments and explanations supporting the Settlement to be reasonable.³⁰ The Court also approved the distribution of the Notice of Class Action and PAGA Settlement ("Notice").³¹

From its records, Defendant identified 741 Class Members and provided the information to Phoenix Settlement Administrators ("PSA"), the Court-approved Settlement Administrator.³² On November 21, 2022, PSA mailed the Court-approved Notice of Class Action Settlement ("Notice") via U.S. mail to the 741 Class Members on the class list.³³ Fifty Notices were returned by the Post Office. PSA was able to locate an updated address for 40 of the returned

²⁶ Oct. 11, 2022 Spencer Decl. at ¶ 8; Grover Decl. at ¶ 15.

²⁷ Oct. 11, 2022 Spencer Decl. at ¶ 10; Grover Decl. at ¶ 15.

²⁸ Oct. 11, 2022 Spencer Decl. at ¶ 9; Grover Decl. at ¶ 15.

²⁹ Ex. 3 at ¶ 2.

³⁰ Ex. 3 at ¶ 4.

³¹ Ex. 3 at ¶¶ 9-12.

³² PSA Decl. at ¶ 3; see Ex. 3 at ¶ 8.

³³ PSA Decl. at ¶¶ 4-5; Grover Decl. at ¶ 23.

1 Notices. Ultimately, all but 10 of the Notices were delivered; a 99% success rate for the
2 mailing.³⁴

3 All Class Members had 45 days from the date that PSA initially mailed the Notice to them
4 to opt out of or object to the settlement.³⁵ Thus, the deadline for Class Members to opt out or
5 object was January 5, 2023.³⁶ PSA has received no objections, timely or late.³⁷ PSA has
6 received no timely or late requests for exclusion.³⁸ Class Counsel has received no opt outs or
7 objections, timely or late.³⁹

8 The Notice also provided Class Members with information on how to dispute the number
9 of Qualified Weeks stated on their individualized Notice.⁴⁰ No disputes were received from Class
10 Members.⁴¹

11 **IV. SUMMARY OF SETTLEMENT TERMS**

12 **A. The Settlement Class**

13 As set forth in the October 17, 2022 Preliminary Approval Order, the Settlement Class is
14 defined as:

15 All current and former hourly security guard and mobile patrol employees
16 who worked for Defendant in California during the Class Period.⁴²

17 Also, the Class Period is April 9, 2017 through January 6, 2022, inclusive.⁴³

18 For the PAGA claims, the Preliminary Approval Order defines “Aggrieved Employees” to
19 mean “all current and former hourly security guard and mobile patrol employees who worked for
20 Defendant in California at any time during the PAGA Period.”⁴⁴ The PAGA Period is from and
21

22 ³⁴ PSA Decl. at ¶¶ 6-7; Grover Decl. at ¶ 24.

23 ³⁵ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 25; Ex. 1 at §§ I.NN, III.K.7, III.K.8.

24 ³⁶ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 25.

25 ³⁷ PSA Decl. at ¶ 9.

26 ³⁸ PSA Decl. at ¶ 8.

27 ³⁹ Grover Decl. at ¶ 25.

28 ⁴⁰ PSA Decl. at ¶ 10, Ex. A; Ex. 1 at § III.K.5.

⁴¹ PSA Decl. at ¶ 10; Grover Decl. at ¶ 26.

⁴² Ex. 3 at ¶ 2.

⁴³ Ex. 3 at ¶ 2.

⁴⁴ Ex. 3 at ¶ 3.

including March 12, 2020 through January 6, 2022.⁴⁵ All Aggrieved Employees are also Class Members. Approximately 365 Class Members also are Aggrieved Employees.⁴⁶

B. Benefits to the Class

The settlement is a good compromise for the alleged damages of absent Class Members. Defendant will pay Maximum Settlement Amount of \$510,000, plus the employer-side payroll taxes, to resolve the claims covered by the settlement.⁴⁷ After subtracting out the amounts being requested to pay the costs of administration (\$9,000), Class Counsel's fees (\$159,194.56) and actual out-of-pocket costs and expenses (\$11,305.44), the PAGA Payment (\$20,000), and the Class Representatives' Incentive Awards/General Release Payments (a total of \$10,000), all of which are subject to the Court's approval, the Net Settlement Amount ("NSA") equals \$300,500.⁴⁸ The NSA will be distributed to all Settlement Class Members, *i.e.*, all Class Members who do not timely opt out, based on the formula set forth in the Amended Stipulation and summarized below.⁴⁹ There is no reversion of the MSA to Defendant.⁵⁰

The Amended Stipulation provides that NSA will be distributed proportionally based on the number of Qualified Weeks each Settlement Class Member worked during the applicable Class Period.⁵¹ Each Settlement Class Member will be assigned a share calculated by dividing his or her total number of Qualified Weeks by the total number of Qualified Weeks for the entire Settlement Class, which is that person's Payment Ratio.⁵² The Payment Ratio then will be multiplied by the NSA to determine that Settlement Class Member's Individual Settlement

⁴⁵ Ex. 3 at ¶ 3.

⁴⁶ Grover Decl. at ¶ 19.

⁴⁷ Ex. 1 at §§ I.V, III.L; Grover Decl. at ¶ 29.

⁴⁸ Ex. 1 at § I.W; Grover Decl. at ¶ 30.

⁴⁹ Ex. 1 at § III.L.2.a; *see also*, §§ I.S, I.W; Grover Decl. at ¶ 30.

⁵⁰ Ex. 1 at § III.L; *see also*, §§ I.V, I.W.

⁵¹ Ex. 1 at § III.L.2.a; *see also*, §§ I.JJ, I.QQ; Grover Decl. at ¶ 31.

⁵² Ex. 1 at § III.L.2.a; *see also*, §§ I.HH, I.JJ, I.QQ. 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.

1 Payment, except that no gross Individual Settlement Payment will be less than \$25.⁵³ The Class
2 Members did not have to file a claim to participate in the settlement.⁵⁴ Because no Class Member
3 opted out of the settlement, the average individual gross settlement payment to be paid will be
4 approximately \$405.53 (\$300,500 NSA/741 Class Members) and the highest individual gross
5 settlement payment to be paid will be approximately \$2,921.14.⁵⁵

6 **C. Payments to the Aggrieved Employees and the State.**

7 The parties agreed to allocate \$20,000 of the MSA to settle the PAGA claims, referred to
8 as the PAGA Payment.⁵⁶ Labor Code § 2699(i) requires that the LWDA receive 75% (\$15,000)
9 of the PAGA settlement amount and Aggrieved Employees receive 25% (\$5,000).⁵⁷

10 To distribute the 25% allocated to the Aggrieved Employees, the Settlement
11 Administrator will distribute Individual PAGA Payments according to the formula set forth in the
12 Amended Stipulation.⁵⁸ The Settlement Administrator will divide the respective Qualified Pay
13 Periods for each Aggrieved Employees by the total Qualified Pay Periods for all Aggrieved
14 Employees, resulting in the Payment Ratio for each Aggrieved Employee.⁵⁹ Each Aggrieved
15 Employee's Payment Ratio then will be multiplied by the \$5,000 portion of the PAGA Payment
16 allocated to the Aggrieved Employees to calculate each Individual PAGA Payment.⁶⁰

17 **D. Other settlement terms.**

18 All Individual Settlement Payment and Individual PAGA Payment settlement checks will
19 be valid for 90 days from the date of issuance.⁶¹ The Settlement Administrator will send a
20 postcard reminder to Settlement Class Members and Aggrieved Employees 30 days before the

21 _____
22 ⁵³ Ex. 1 at § III.L.2.a; *see also*, §§ I.S, I.W, I.HH; Grover Decl. at ¶¶ 27, 31.

23 ⁵⁴ Ex. 1 at § III.L.2.a; Grover Decl. at ¶¶ 27, 31.

24 ⁵⁵ Grover Decl. at ¶¶ 27, 31; PSA Decl. at ¶ 14.

25 ⁵⁶ Lab. Code § 2699(f); Ex. 1 at §§ I.Z, III.L.5.

26 ⁵⁷ Lab. Code § 2699(i).

27 ⁵⁸ Ex. 1 at § III.L.2.b.

28 ⁵⁹ Ex. 1 at § III.L.2.b; *see also*, §§ I.C, I.GG, I.II; Grover Decl. at ¶ 32. Qualified Pay Periods are defined as any and all pay periods (as reflected in Defendant's records) during which one or more Aggrieved Employees performed work for Defendant in California during the PAGA Period. Ex. 1 at § I.II.

⁶⁰ Ex. 1 at § I.DD; Grover Decl. at ¶ 32.

⁶¹ Ex. 1 at § III.L.2.e.

1 check void date.⁶² The settlement provides that, after the check void date, the Settlement
2 Administrator will send any funds from uncashed checks to the Katherine and George Alexander
3 Community Law Center at Santa Clara University. The Law Center provides pro bono
4 representation in various areas includes workers' rights.⁶³

5 **V. LEGAL ANALYSIS**

6 When deciding whether to grant final approval of a class-action settlement, California
7 courts ensure that notice was given consistent with the preliminary approval and then examine
8 whether the settlement as a whole is fair, adequate and reasonable. Here, the notice given was
9 consistent with the Court's Preliminary Approval Order.⁶⁴ The response of Class Members
10 confirms the Court's preliminary determination that the settlement is fair, adequate and
11 reasonable.

12 **A. The notice procedure was adequate and reasonable.**

13 California law vests the Court with broad discretion in fashioning an appropriate notice
14 program.⁶⁵ To protect the rights of absent class members, the parties must provide class members
15 with the best notice practicable of a potential class action settlement.⁶⁶ The content and method
16 of the notice should be designed to apprise the class members of the terms of the proposed
17 settlement and of the class members' rights regarding the settlement.⁶⁷

18 The Notice approved by the Court met these requirements: it identified the parties and
19 described the lawsuit, the Class, the settlement amount, the proposed method for distribution of
20 the Maximum Settlement Amount, the proposed amount of the enhancement award to the named
21 Plaintiff, and the requested amount for attorneys' fees and costs.⁶⁸ The Notice described the

22
23 ⁶² Ex. 1 at § III.J.

24 ⁶³ Ex. 1 at § III.L.2.e; Grover Decl. at ¶ 38. See <https://law.scu.edu/kgac/c/>.

25 ⁶⁴ Ex. 3; PSA Decl. at ¶¶ 3-10, Ex. A (Notice).

26 ⁶⁵ See Cal. Civ. Code § 1781; *Cartt v. Superior Court* (1975) 50 Cal.App.3d 960, 973-74.

27 ⁶⁶ *Phillips Petroleum Co. v. Shutts* (1985) 472 U.S. 797, 811-12; *Eisen v. Carlisle & Jacquelin*
28 (1974) 417 U.S. 156, 174-76 (individual notice must be sent to all class members who can be
identified through reasonable efforts).

⁶⁷ See *Mullane, supra*, 339 U.S. at 314; *Philadelphia Housing Authority v. Am. Radiator &*
Standard Sanitary Corp. (E.D. Pa. 1970) 323 F. Supp. 364, 378.

⁶⁸ See PSA Decl., Ex. A.

proposed settlement with enough specificity to allow Class Members to make an informed choice whether to opt-out or object and how and when they could do so. Finally, the Notice provided the schedule for the hearing on final approval of the settlement and informed Class Members how to obtain additional information about the settlement.⁶⁹

The California Supreme Court has held that notice is appropriate if it has a “reasonable chance of reaching a substantial percentage of the class members ...”⁷⁰ Notice must be reasonable under the circumstances.⁷¹ In this case, the Notice was successfully mailed to all but 10 of the Class Members.⁷² The Notice was reasonable and adequate.

B. Final settlement approval is appropriate.

The settlement is fair, adequate, and reasonable because it provides substantial benefits to Class Members and the general public. The fairness, adequacy, and reasonableness of the settlement are illustrated by the fact that not one of 741 Class Members filed an objection to the settlement or opted out.⁷³ Under the legal standards used by California courts to determine whether class action settlements should be approved, this settlement warrants approval.

1. The three-step approval process

The law favors settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigors of formal litigation.⁷⁴ “Where complex class action litigation is concerned,” there exists a “strong judicial policy that favors settlements.”⁷⁵ A class action, however, may not be dismissed, compromised, or settled without the approval of the court.⁷⁶ Judicial proceedings under Federal Rule of Civil

⁶⁹ *Id.*

⁷⁰ *Archibald v. Cinerama Hotels* (1976) 15 Cal.3d 853, 861, citing *Cartt, supra*, 50 Cal.App.3d at 974.

⁷¹ *Mullane, supra*, 339 U.S. at 314.

⁷² PSA Decl. at ¶¶ 5-6.

⁷³ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 37, *see also*, ¶¶ 28-36.

⁷⁴ *See e.g.*, 4 Newberg on Class Actions 4th (4th ed. 2002) § 11.41 (and cases cited therein); *Campbell v. Facebook, Inc.* (9th Cir. 2020) 951 F.3d 1106, 1120-21 (internal quotes omitted); *In re Hyundai & Kia Fuel Econ. Litig.* (9th Cir. 2019) 926 F.3d 539, 556 (en banc); *Van Bronkhorst v. Safeco Corp.* (9th Cir. 1976) 529 F.2d 943, 950.

⁷⁵ *Campbell, supra*, 951 F.3d at 1120-21, quoting *In re Hyundai*, 926 F.3d at 556.

⁷⁶ Cal. Rule of Court 3.769; Fed. R. Civ. Proc. 23(e).

Procedure Rule 23 have led to a defined procedure and specific criteria for settlement approval in class action settlements, described in the Federal Judicial Center, Manual for Complex Litigation, Fourth (4th ed. 2004) (“Manual”) § 21.632, *et seq.*⁷⁷ The Manual’s settlement approval procedure describes three distinct steps:

- (1) Preliminary approval of the proposed settlement at an informal hearing;
- (2) Dissemination of mailed and/or published notice of the settlement to all affected Class members; and
- (3) A “formal fairness hearing,” or final settlement approval hearing.⁷⁸

The first two steps of this process are now complete. The first step was completed when the Court granted preliminary approval.⁷⁹ In doing so, the Court determined that the settlement was within the range of possible final approval and that notice to the Class Members of the settlement’s terms and of the scheduling of the formal fairness hearing should be distributed.⁸⁰

The second step in the class action settlement approval process, the dissemination of the Notice, is complete as well.⁸¹ The third and last step in the class action settlement approval process is the final approval hearing at which the Court shall determine whether the settlement is fair, adequate, and reasonable. At the final approval hearing, scheduled for February 14, 2023, Class Members will have the opportunity to be heard regarding the settlement, and Class Counsel will present evidence and argument in support of the settlement.⁸²

2. The terms of the settlement disclose no grounds to doubt its fairness.

Under Code of Civil Procedure § 382, a court inquires whether the settlement is “fair, adequate, and reasonable.”⁸³ A preliminary review of the terms of the proposed settlement shows

⁷⁷ “California courts may look to federal authority for guidance on matters involving class action procedures.” *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1392.

⁷⁸ Manual, § 21.632-34.

⁷⁹ Ex. 3.

⁸⁰ *See Wershba v. Apple Computer* (2001) 91 Cal.App.4th 224, 234-35, overruled on other grounds by *Hernandez v. Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 269-70; 4 Newberg, *supra*, § 11.25.

⁸¹ *See* Ex. 3; PSA Declaration generally, Ex. 1. *See also*, Cal. C.C.P. § 382.

⁸² *See Manual*, § 21.634.

⁸³ *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801.

that it is fair. During the course of this litigation, the Parties have engaged in significant investigation into the factual and legal claims presented in the complaint. Defendant and Plaintiffs exchanged a considerable amount of information and documentation and further apprised each other of their respective factual contentions, legal theories, and defenses.⁸⁴ Moreover, during the course of their information exchange, the Parties have engaged in extensive good faith, arms-length negotiations aimed at settling their disputes.⁸⁵

The settlement reached by the Parties provides monetary payments to Class Members. The presumption of fairness and adequacy is especially appropriate here because the reaction of Class Members has been overwhelmingly positive – not a single person has objected or opted out of the settlement.⁸⁶ Accordingly, because the four circumstances identified in *Dunk* are present here, it is appropriate for the Court to presume that the settlement is worthy of final approval.⁸⁷

3. Each of the relevant criteria supports final approval of the settlement.

In deciding whether to grant final approval to a class action settlement, California courts consider several factors, including the following: (1) the value of the settlement; (2) the complexity, expense, and likely duration of the litigation in the absence of settlement; (3) the extent of discovery completed and the stage of the proceedings when settlement was reached; (4) the experience and views of class counsel; and (5) the reaction of class members.⁸⁸ As described below, each of these criteria supports final approval of the settlement.

a) The value of the settlement favors final approval.

The settlement provides a good result for Class Members in terms of a cash settlement payable in a single payment. The amounts to be paid are not nominal or symbolic.

With no Class Member having opted out, 741 Settlement Class Members will receive Individual Settlement Payments from the Net Settlement Amount.⁸⁹ Each of the Settlement

⁸⁴ Grover Decl. at ¶¶ 9-11, 15, 34-35.

⁸⁵ *Id.* at ¶¶ 11-12.

⁸⁶ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶¶ 25, 37.

⁸⁷ *See Dunk, supra*, 48 Cal.App.4th at 1802; *see also, Kullar, supra*, 168 Cal.App.4th at 129-30.

⁸⁸ *See Wershba, supra*, 91 Cal.App.4th at 244-45; *Dunk, supra*, 48 Cal.App.4th at 1801.

⁸⁹ Ex. 1 at § III.L.2.a; Grover Decl. at ¶ 27.

Class Members will receive, on average, a gross settlement payment of \$405.53.⁹⁰ This a substantial benefit in relation to the claimed harm and justifies the final approval of the settlement.

b) The risk, complexity, expense, and likely duration of continued litigation weigh in favor of final approval.

Courts also consider the risk, expense, and duration of the litigation in the absence of settlement.⁹¹ In applying this factor, a court should weigh the benefits of the settlement against the expense and delay involved in achieving an equivalent or more favorable result at trial.⁹²

The risks of continued litigation are substantial. Of particular relevance to the proposed settlement's reasonableness is the fact that Defendant has legal and factual grounds for defending this action.⁹³ Defendant consistently asserted, for example, that it complied with all applicable laws and that, even if they could prove a violation, Plaintiffs could not establish that Defendant acted willfully, a necessary component for liquidated damages and Labor Code § 203 waiting time penalties.⁹⁴ In addition, Defendant has argued that no Class Member suffered any damages related to the issuance of wage statements and the Plaintiffs will be unable to prove that any Labor Code § 226(a) violation was a "knowing and intentional failure," a necessary element for the award of statutory damages under Labor Code § 226(e).⁹⁵ Defendant also contended that Plaintiffs could not satisfy the criteria to certify a class under Code of Civil Procedure § 382 and would lose a contested class certification motion.⁹⁶

Employment class actions are expensive and time-consuming to prosecute. Continued litigation of this action against Defendant would likely be complex and expensive due to the nature of the claims. Plaintiffs faced significant uncertainty and risk, both in not prevailing on the

⁹⁰ PSA Decl. at ¶¶ 11, 14; Grover Decl. at ¶¶ 27, 31.

⁹¹ See *Dunk, supra*, 48 Cal.App.4th at 1801; *Briseño v. Henderson* (9th Cir. 2021) 998 F.3d 1014, 1023-24.

⁹² See *Young v. Katz* (5th Cir. 1971) 447 F.2d 431, 433.

⁹³ Grover Decl. at ¶¶ 33-36.

⁹⁴ Grover Decl. at ¶ 35.

⁹⁵ Grover Decl. at ¶ 35.

⁹⁶ Grover Decl. at ¶ 35.

merits and in non-certification, as explained above. In contrast, the settlement ensures timely relief and a substantial and risk-free recovery for the settlement Class.

Further, if the Court were to deny the class certification motion, Class Members would be left without a group remedy for their claims. The other issues presented here would need to be litigated individually in Superior Courts in a piecemeal, costly, and time-consuming fashion.

c) Disclosure of documents and data demonstrating the strengths and weaknesses of this action was completed prior to entering into the settlement.

The extent of discovery that has been completed and the stage of the litigation are factors that courts consider in determining the fairness of a settlement.⁹⁷ As noted above, informal discovery took place between the Parties in which Defendant and Plaintiffs exchanged a considerable amount of relevant information.⁹⁸ The information exchanged through informal discovery enabled Plaintiffs to evaluate the strengths, weaknesses and risks of the class claims and defenses and to negotiate a fair, reasonable, and adequate settlement.⁹⁹

d) The experience and views of counsel favors final approval.

Class Counsel supports the settlement as fair, adequate, reasonable, and in the best interests of the Class as a whole.¹⁰⁰ The endorsement of qualified and well-informed counsel of the settlement as fair is entitled to significant weight.¹⁰¹

e) Class Members' positive reaction to the settlement favors final approval.

Finally, courts look at the reaction of class members to determine if a settlement that directly affects their interests should be approved as fair, adequate, and reasonable. Of great importance is the fact that no Class Member has objected to or opted-out of the Settlement.¹⁰² In light of such a positive reaction by the Class Members, the Court should construe the

⁹⁷ See *Dunk*, *supra*, 48 Cal.App.4th at 1801.

⁹⁸ Grover Decl. at ¶¶ 9-11, 15, 33-36; Oct. 11, 2022 Spencer Decl. at ¶¶ 3-7.

⁹⁹ *Id.*

¹⁰⁰ Grover Decl. at ¶¶ 27-37.

¹⁰¹ See *Dunk*, *supra*, 48 Cal.App.4th at 1802; *In re Omnivision Techs.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1043 ("The recommendations of plaintiffs' counsel should be given a presumption of reasonableness." (internal quotations and citation omitted)).

¹⁰² PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶¶ 35, 37.

overwhelming non-opposition to the settlement as a strong indication of the Class Members' support for the settlement as fair, adequate, and reasonable.

4. The Settlement Class meets all of the requirements for certification for settlement purposes under Code of Civil Procedure § 382.

The proposed settlement class meets all requirements for certification of a settlement class, as summarized below.

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

The proposed settlement Class is ascertainable. The Class definition, the total size 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.¹⁰³ The settlement Class is comprised of 741 current and former employees of Defendant.¹⁰⁴

b) Questions of law and fact common to Class Members predominate.

Here, the 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. Plaintiffs contend that all Class Members were subject to Defendant's uniform practices and policies, including those regarding AWS, overtime pay, meal periods, rest breaks and termination pay. Those uniform policies and practices are at the core of Plaintiffs' allegations that Defendant violated the Labor Code and create questions of law and fact common to all Class Members. All Class Members seek the same legal remedies under the same state laws.¹⁰⁵

Furthermore, the common questions regarding Defendant's AWS, 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. Plaintiffs contend that common questions will predominate over any individual questions that

¹⁰³ PSA Decl. at ¶ 3; *Reyes v. Board of Supervisors* (1987) 196 Cal.App.3d 1263, 1274.

¹⁰⁴ See Grover Decl. at ¶ 41.

¹⁰⁵ Grover Decl. at ¶ 42.

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 proposed Class for settlement.¹⁰⁶

c) The proposed Class Representatives' claims are typical of the Class Members' claims.

A class representative's claims are typical when they arise from the same event or course of conduct that gives rise to the claims of the class, and are based on the same legal theory.¹⁰⁷ In this case, the named Plaintiffs contend that they, like all of the Class Members, worked for Defendant in California as an hourly, non-exempt mobile patrol employee and a security guard and were 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, Plaintiffs' claims and the Class Members' claims arise from the same course of conduct.¹⁰⁸

d) The proposed Class Representatives will adequately represent the Class.

The named Plaintiffs also have demonstrated that they will aggressively and competently assert the Class Members' interests. Plaintiffs have retained competent counsel, experienced in litigating class action claims in the wage and hour context, including those in which collective bargaining agreements are at issue.¹⁰⁹

e) Class treatment is superior to individual trials.

For purposes of settlement only, the parties have agreed that certification of the settlement Class is appropriate. The only alternative to certifying a case like this for settlement purposes or otherwise as a class action would be to force hundreds of individuals to file individual actions. As the Supreme Court has stated, "[t]he relevant comparison lies between the costs and benefits of adjudicating plaintiffs' claims in a class action and the costs and benefits of proceeding by numerous separate actions – not between the complexity of a class suit that must accommodate

¹⁰⁶ Grover Decl. at ¶ 42.

¹⁰⁷ *Classen v. Weller* (1983) 145 Cal.App.3d 27, 46-47.

¹⁰⁸ Grover Decl. at ¶ 43.

¹⁰⁹ See Grover Decl. at ¶¶ 2-4, 27, 44, 52-54, 62.

some individualized inquiries and the absence of any remedial proceeding whatsoever.”¹¹⁰ Here, proceeding with 741 trials would likely require this and other courts to hear similar testimony regarding Defendant’s alleged overtime pay and meal and rest break practices over and over again. The inefficiency and resulting inconsistent judgments that could result from numerous individual trials would warrant certifying this case as a class action.

C. The PAGA settlement warrants approval.

Labor Code § 2699(l)(2) requires that the court review and approve any PAGA settlement. Class action requirements do not apply to PAGA actions.¹¹¹ For all of the reasons stated above, the Settlement is fair, reasonable and adequate, and should be approved. As part of the Settlement, Defendant has agreed to pay \$20,000 to settle the PAGA penalty claims, of which a payment of \$15,000 will go to the LWDA for education and enforcement purposes.¹¹²

The circumstances of the settlement, rather than the amount allocated to PAGA claims, determine whether a PAGA settlement is appropriate.¹¹³ In *Nordstrom Com’n Cases*, the state appellate court held that the court can approve a settlement even when the parties did not allocate any dollars to the PAGA claims.¹¹⁴ Here, Plaintiffs believe that the agreed upon allocation between PAGA and direct Class Member payments is appropriate and request that the Court approve this portion of the Settlement.

“PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”¹¹⁵ To offer as much information as reasonably possible, the Parties agreed to provide individualized information in the Notice regarding each Aggrieved Employee’s estimated Individual PAGA Payment.¹¹⁶ If the Court grants final approval of the Settlement, all of the Aggrieved Employees will receive Individual PAGA Payments.

¹¹⁰ *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 339, fn. 10.

¹¹¹ *Arias v. Superior Court* (2009) 46 Cal.4th 969, 974.

¹¹² Ex. 1 at § III.L.5; Lab. Code § 2699(i).

¹¹³ *Nordstrom Com’n Cases* (2010) 186 Cal.App.4th 576, 589.

¹¹⁴ *Id.*

¹¹⁵ See e.g., *Turrieta v. Lyft, Inc.* (2021) 69 Cal.App.5th 955, 974 (“PAGA has no notice requirements for unnamed aggrieved employees, nor may such employees opt out of a PAGA action.”); *Baumann v. Chase Inv. Servs. Corp.* (9th Cir. 2014) 747 F.3d 1117, 1122 (same).

¹¹⁶ See Ex. 1 at §§ I.R, III.K.2, III.L.5.

1 Plaintiffs therefore seek the Court's approval of the PAGA portion of the Settlement,
2 including the \$20,000 PAGA Payment, the distribution plan for the PAGA Payment, and the
3 PAGA Release.¹¹⁷

4 **VI. CONCLUSION**

5 For all of the foregoing reasons, Plaintiffs request that the Court grant final approval of
6 this settlement. A [Proposed] Order Granting Motions for Final Approval and for Award of
7 Reasonable Attorneys' Fees and Costs, Class Representative Incentive Awards/General Release
8 Payments, and Settlement Administration Fees is submitted herewith.

9 Respectfully submitted,

10 Dated: January 27, 2023

KELLER GROVER LLP

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12 By: 

ERIC A. GROVER
ROBERT W. SPENCER
Attorneys for Plaintiffs and Class Counsel

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28 ¹¹⁷ Ex. 1 at §§ I.BB, III.D.

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 **January 27, 2023** in the case of *Harrington, et al., v. Creative Security Company, Inc., et al.*, Alameda County Superior Court Case Number RG21095377, I served the foregoing document(s):

PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR FINAL APPROVAL OF CLASS ACTION AND PAGA SETTLEMENT AND MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

Attorneys for Defendants

CREATIVE SECURITY COMPANY, INC

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

☒	(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