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

14 MICHAEL HARRINGTON on behalf of)
15 himself, and all others similarly situated, and all)
16 aggrieved employees,)

17 Plaintiff,

18 v.

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

21 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

ENDORSED
FILED
ALAMEDA COUNTY

MAY 18 2021

CLERK OF THE SUPERIOR COURT
By NICOLE HALL
Deputy

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.

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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

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

4 **V. REPRESENTATIVE ACTION ALLEGATIONS**

5 30. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
6 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
7 performed work for CREATIVE SECURITY within the state of California and were who were not
8 paid overtime for hours worked over eight in a shift;

9 31. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
10 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
11 performed work for CREATIVE SECURITY in the State of California who were not provided their
12 required meal periods.

13 32. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
14 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
15 performed work for CREATIVE SECURITY in the State of California who were not authorized or
16 permitted to take all of their required rest periods.

17 33. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
18 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
19 performed work for CREATIVE SECURITY in the State of California who did not receive
20 complete and accurate itemized wage statements in violation of Labor Code § 226(a).

21 34. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
22 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
23 performed work for CREATIVE SECURITY in the State of California who were not paid all wages
24 due at the time of discharge or voluntary quit in violation of Labor Code §§ 201-203.

25 35. Plaintiff seeks to represent all aggrieved employees with the meaning of Labor Code
26 §§ 2698, *et seq.*, who are or were employed by Defendants as non-exempt security guards whom
27 performed work for CREATIVE SECURITY in the State of California who were not paid all wages
28 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.

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

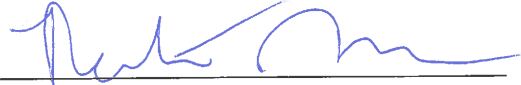
JURY TRIAL DEMAND

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:

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Attorneys for Defendant
CREATIVE SECURITY COMPANY, INC

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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