

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 AWARD OF
REASONABLE ATTORNEYS' FEES AND
COSTS, CLASS REPRESENTATIVE
ENHANCEMENTS, AND SETTLEMENT
ADMINISTRATION FEES;
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-21095377-002

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, Taylor Mitzner of Phoenix Settlement Administrators, and Plaintiffs Harrington and Oldham, 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

This Court preliminarily approved the settlement of this putative class action on October 17, 2022.¹ Michael Harrington and Brandon Oldham (“Plaintiffs” or “Class Representatives”) now move the Court for an award of reasonable attorneys’ fees and costs incurred during this litigation. Plaintiffs also seek an order approving the requested Class Representative Incentive Awards/General Release Payments to Plaintiffs and payment of the Settlement Administrator’s fees.

On January 6, 2022, Plaintiffs and Defendant Creative Security Company, Inc. (“Creative Security” or “Defendant”) participated in an all-day mediation session with skilled mediator Michael Loeb, Esq. As a result of the mediation, the parties agreed to settle the entire action. After revising the settlement terms in response to the Court’s order denying preliminary approval dated May 20, 2022, the parties set forth all of the terms of the proposed settlement in the Amended Stipulation, which the Court preliminarily approved.²

Plaintiffs seek an award to Class Counsel of attorneys’ fees in the amount of \$159,194.56, which is 31% of the total settlement amount, not counting the employer’s share of payroll taxes, and costs in the amount of \$11,305.44, which is less than the maximum amount estimated for costs in the Amended Stipulation.³ Under California law, when the settlement produces a specific, identifiable common fund for the benefit of the entire class, the court may award attorneys’ fees using the percentage of the fund method.⁴ Class Counsel’s requested award of attorneys’ fees is reasonable and appropriate in light of the work performed by Class Counsel in

¹ See Declaration of Eric A. Grover submitted in support of this Motion (“Grover Decl.”), Ex. 1 (the Amended Joint Stipulation of Class Action and PAGA Settlement and Release of Claims (“Amended Stipulation”)); Ex. 3 (the Court’s October 17, 2022 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 Ex. 1 at § II.B; Grover Decl. at ¶¶ 14-16; Ex. 3.

³ Grover Decl. at ¶¶ 47-69, Exs.4-7; see Ex. 1 at § III.L.4.

⁴ *Laffitte v. Robert Half Int’l, Inc.* (2016) 1 Cal.5th 480, 503 (clarifying that the percentage of the common fund is a proper method for awarding fees).

the case, the contingent nature of this action, and the results achieved.⁵

A lodestar “cross-check” confirms the reasonableness of Plaintiffs’ fee request.⁶ Class Counsel’s hourly rates are reasonable in light of their significant experience, skill, and expertise.⁷ Moreover, the rates are consistent with those of attorneys of similar qualifications practicing in the area of class actions and have been approved by numerous courts in similarly settled cases.⁸ Class counsel has provided details regarding Class Counsel’s hours spent litigating this action and hourly rates.⁹

Plaintiffs also request that the Court confirm the amount of the enhancement awards/general release payments agreed to be paid to the Class Representatives in the amount of \$7,500 to Plaintiff Harrington and \$2,500 to Plaintiff Oldham.¹⁰ Courts approve incentive awards to plaintiffs when justified and appropriate to compensate plaintiffs for time, effort, and inconvenience.¹¹ The proposed enhancements are fair and reasonable.¹²

Plaintiffs further request the Court approve the fees of the Court-approved settlement administrator, Phoenix Settlement Administrators (“PSA” or “Settlement Administrator”), which are \$9,000, the amount provided for in the Amended Stipulation and the Notice of Class Action Settlement (“Notice”).¹³

II. SUMMARY OF RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiffs are filing their motion for final approval of the class settlement simultaneously with this motion and have set forth the summary of facts and procedural history in the

⁵ *Lealao v. Beneficial California, Inc.* (2000) 82 Cal.App.4th 19; *Williams v. MGM-Pathe Commc’ns Co.* (9th Cir. 1997) 129 F.3d 1026, 1027; Grover Decl. at ¶¶ 47, 60-66.

⁶ Grover Decl. at ¶¶ 48-59.

⁷ *Id.* at ¶¶ 2-4, 52-54.

⁸ *Id.* at ¶¶ 55-57.

⁹ *Id.* at ¶¶ 8-17, 49-50, Exs. 4-6.

¹⁰ See Ex. 1 at § III.L.3.

¹¹ *Clark v. Am. Residential Serv. LLC* (2009) 175 Cal.App.4th 785, 804 (internal quotations omitted), citing *Cook v. Niedert* (7th Cir.1998) 142 F.3d 1004, 1016 and *Van Vranken v. Atlantic Richfield Co.* (N.D. Cal. 1995) 901 F. Supp. 294, 299.

¹² Grover Decl. at ¶¶ 45-46.

¹³ See Declaration of Taylor Mitzner Regarding Settlement Notice Administration on behalf of Phoenix Settlement Administrators (“PSA”) filed with this brief, (“PSA Decl.”) at ¶ 17; see also, Ex. 1 at § III.L.6.

1 memorandum supporting that motion. To avoid repetition, Plaintiffs do not state the information
2 here.

3 **A. Class Counsel's work in litigating and settling this action.**

4 Prior to filing this action, Class Counsel expended time and effort in investigating,
5 researching and preparing this case for litigation. Class Counsel investigated and researched the
6 named Plaintiffs' potential Labor Code claims, both in the individual context and as putative class
7 claims. Class Counsel drafted and filed the complaint and later the First and Second Amended
8 Complaints.¹⁴

9 Early in the case, the parties decided to explore the possibility of settlement. Prior to the
10 formal mediation session, Class Counsel drafted and sent a detailed mediation information
11 request to Defense Counsel.¹⁵ In preparation for the mediation, Class Counsel reviewed and
12 analyzed the relevant documents and information that Defendant provided.¹⁶

13 On January 6, 2022, the parties participated in an all-day mediation session with skilled
14 mediator, Michael Loeb, Esq. who has significant experience mediating wage and hour class
15 actions.¹⁷ The mediated negotiations resulted in the parties reaching an agreement to settle the
16 entire action, subject to the Court's approval. The terms of the parties' settlement were set forth
17 in the initial joint stipulation.¹⁸

18 Following the mediation, Class Counsel drafted a detailed, formalized settlement
19 agreement and exhibits and negotiated the language and terms with counsel for Defendant until
20 the initial joint stipulation and its exhibits were finalized and executed.¹⁹ Class Counsel drafted
21 and filed the motion for preliminary approval and supporting papers.²⁰

22 Plaintiff Harrington moved for preliminary approval of the settlement on March 11,
23

24 _____
¹⁴ Grover Decl. at ¶ 8.

25 ¹⁵ Grover Decl. at ¶ 9.

26 ¹⁶ Grover Decl. at ¶ 10.

27 ¹⁷ Ex. 1 at § II.B; Grover Decl. at ¶ 11.

28 ¹⁸ Grover Decl. at ¶ 11.

¹⁹ Grover Decl. at ¶ 12.

²⁰ Grover Decl. at ¶ 13.

2022.²¹ The Court issued an order on May 20, 2022 denying preliminary approval. At the preliminary approval hearing and in the May 20, 2022 order, the Court raised concerns that there was insufficient information to support the proposed class settlement and that Plaintiff Harrington, who had worked only as a mobile patrol employee, may not be a sufficient representative for the stationary security guard class members.²²

To address the Court's concerns, Class Counsel conducted further investigation.²³ Class Counsel requested the contact information, time records, and payroll records for files for 75 putative class members, including 25 mobile patrol officers and 50 security officers. Defendant provided the information and requested documents on August 6, 2022.²⁴ Class Counsel telephoned all 75 numbers provided, a mix of mobile patrol and stationary security guards. Class Counsel was able to interview 20 putative class members, including 13 security officers and seven mobile patrol officers.²⁵ Class Counsel also reviewed all of the time records and payroll records that Defendant produced.²⁶ After assessing the additional information obtained from putative class member interviews, time records, and payroll records, Class Counsel continued to be of the opinion that the proposed settlement was fair and adequate.²⁷ As part of Class Counsel's additional investigation, they located a putative class member who had worked as a stationary security guard and who was willing to serve as an additional class representative.²⁸

Class Counsel filed a supplemental declaration on October 11, 2022, outlining their additional investigation, assessment of the settlement in light of the information obtained and notifying the Court that a putative class member who worked as a former stationary security guard was prepared to serve as another class representative. Class Counsel drafted and submitted

²¹ Grover Decl. at ¶ 13.

²² See Ex. 2 (the Court's May 20, 2022 order denying preliminary approval); Grover Decl. at ¶ 14.

²³ See Second Supplemental Declaration of Robert Spencer, filed Oct. 11, 2022 ("Oct. 11, 2022 Spencer Decl."), at ¶¶ 3-7; Grover Decl. at ¶ 15.

²⁴ Oct. 11, 2022 Spencer Decl. at ¶ 3.

²⁵ 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.

²⁶ Oct. 11, 2022 Spencer Decl. at ¶ 5.

²⁷ Oct. 11, 2022 Spencer Decl. at ¶¶ 4-7; Grover Decl. at ¶ 15.

²⁸ Oct. 11, 2022 Spencer Decl. at ¶ 8; Grover Decl. at ¶ 15.

1 a proposed Second Amended Complaint that added Brandon Oldham as a named plaintiff.²⁹
2 Class Counsel worked with Defense Counsel to draft an amended settlement stipulation in order
3 to add Plaintiff Oldham as a proposed settlement class representative, provide Plaintiff Oldham
4 with a \$2,500 enhancement and general release payment, and reduce Class Counsel's requested
5 fee award by \$2,500, which meant that the Net Settlement Amount from the original settlement
6 was unaffected by the changes.³⁰ Class Counsel submitted the Amended Stipulation for the
7 Court's approval.³¹

8 On October 17, 2022, the Court issued a revised order granting preliminary approval of
9 the Amended Stipulation.³²

10 After the entry of the Preliminary Approval Order, Class Counsel spent time speaking
11 with Class Members and interacting with Defense Counsel and the Settlement Administrator on
12 notice and settlement administration issues. Class Counsel expect to spend additional time
13 working with Defense Counsel, the Settlement Administrator, speaking with Class Members,
14 finalizing this motion, preparing and filing the final approval motion, and preparing for and
15 attending the final fairness hearing.³³

16 **B. Status of the notice process and Class Members' response after preliminary**
17 **approval.**

18 The notice procedures set forth in the Amended Stipulation and approved in the Court's
19 Preliminary Approval Order required the Court-approved Settlement Administrator, PSA, to
20 distribute notice of the class settlement through the U.S. mail.³⁴ Defendant identified 741 Class
21 Members.³⁵ On November 21, 2022, PSA mailed the Court-approved Notice to the 741 Class
22 Members.³⁶ Fifty Notices were returned by the Post Office to PSA. PSA was able to locate

23
24 ²⁹ Oct. 11, 2022 Spencer Decl. at ¶ 8; Grover Decl. at ¶ 15.

25 ³⁰ Oct. 11, 2022 Spencer Decl. at ¶ 10; Grover Decl. at ¶ 15.

26 ³¹ Oct. 11, 2022 Spencer Decl. at ¶ 9; Grover Decl. at ¶ 15.

27 ³² Ex. 3; Grover Decl. at ¶ 16.

28 ³³ Grover Decl. at ¶ 17.

³⁴ Ex. 1 at § III.K; Ex. 3 at ¶¶ 9-12.

³⁵ PSA Decl. at ¶ 3.

³⁶ PSA Decl. at ¶¶ 4-5, Ex. A.

1 updated addresses for 40 of the returned Notices. Ultimately, only 10 out of 741 Notices were
2 undeliverable, a 99%, mailing success rate.³⁷

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.³⁸ Thus, the deadline for Class Members to opt out or
5 object was January 5, 2023.³⁹ PSA has received no objections, timely or late.⁴⁰ PSA has
6 received no timely or late requests for exclusion.⁴¹ Class Counsel has received no opt outs or
7 objections, timely or late.⁴²

8 The Notice provided Class Members with information on how to dispute the number of
9 Qualified Weeks stated on their individualized Notice.⁴³ No disputes were received.⁴⁴

10 Because there are no opt outs, there are 741 Settlement Class Members.⁴⁵ The average
11 estimated individual gross settlement payment for each Settlement Class Member is \$405.53
12 (\$300,500 NSA/741 Class Members) and the highest individual gross settlement payment to be
13 paid will be approximately \$2,921.14.⁴⁶

14 **C. The Amended Stipulation and Notice clearly state the attorneys' fees**

15 Class Counsel is requesting attorneys' fees in the amount of \$159,194.56, which is 31% of
16 the amount Defendant will pay to fund the settlement, not including the amount that it will pay
17 for the employer's share of payroll taxes, plus \$11,305.44 in costs.⁴⁷ The requested fee amount is
18 intended to compensate Class Counsel for the benefits achieved for the Class, the efficient and
19 fair resolution of the Class claims, the risk of taking on a complex class action on a contingency
20 basis, the preclusion of accepting other work, plus all of the work that Class Counsel already
21

22 ³⁷ PSA Decl. at ¶¶ 6-7; Grover Decl. at ¶ 24.

23 ³⁸ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 25; Ex. 1 at §§ I.NN, III.K.7, III.K.8.

24 ³⁹ PSA Decl. at ¶¶ 8-9; Grover Decl. at ¶ 25.

24 ⁴⁰ PSA Decl. at ¶ 9.

25 ⁴¹ PSA Decl. at ¶ 8.

25 ⁴² Grover Decl. at ¶ 25.

26 ⁴³ Ex. 1 at § III.K.5.

26 ⁴⁴ PSA Decl. at ¶ 10; Grover Decl. at ¶ 26.

27 ⁴⁵ PSA Decl. at ¶¶ 8, 11; Grover Decl. at ¶¶ 25, 27, 31.

27 ⁴⁶ PSA Decl. at ¶¶ 13-14; Grover Decl. at ¶¶ 27, 31.

28 ⁴⁷ Grover Decl. at ¶¶ 47-69; see Ex. 1 at §§ III.L.1, III.L.4.

performed in litigating this action, documenting the settlement, securing approval of the settlement, making sure that the settlement is fairly administered and implemented, and obtaining dismissal of the action.⁴⁸ No Class Member objected to the fee request.⁴⁹

D. Enhancements for the Class Representatives.

The Amended Stipulation also provides a modest \$7,500 enhancement payment for the Class Representative Harrington and \$2,500 to Class Representative Oldham to compensate them for the risks, time and effort they expended in coming forward to provide invaluable information in support of the claims alleged in the complaint and for providing a general release.⁵⁰ Plaintiffs have submitted declarations in support of this request.

E. Costs of administering the settlement.

The Amended Stipulation provides that PSA may be paid fees of up to \$12,000.⁵¹ PSA has performed and will continue to perform tasks necessary to the administration of the settlement, including providing notice to the Class Members, receiving requests for exclusion and objections, processing all returned mail, calculating individual settlement payments, handling inquiries from Class Members, and issuing and mailing settlement payments.⁵² PSA is seeking payment in the amount of \$9,000, which is less than the amount provided for in the Amended Stipulation.⁵³

III. ARGUMENT

A. Class Counsel requests an award under the common benefit doctrine.

1. A fee award of 31% is reasonable here.

Class Counsel seeks attorneys' fees of 31% of the amount Defendant will pay to fund the settlement, not including the amount that it will pay for the employer's share of the payroll taxes, under the "common fund" doctrine. The California Supreme Court recently clarified that the

⁴⁸ Grover Decl. at ¶¶ 47-49, 60-66; see Ex. 1 at § III.L.4.

⁴⁹ Grover Decl. at ¶¶ 25, 64; PSA Decl. at ¶ 9.

⁵⁰ Ex. 1 § III.L.3; Grover Decl. at ¶¶ 45-46.

⁵¹ Ex. 1 at § III.L.6.

⁵² See generally, PSA Declaration.

⁵³ PSA Decl. at ¶ 17, Ex. B; see Ex. 1 at § III.L.6.

percentage of the common fund is a proper and accepted method for awarding fees.⁵⁴ Indeed, courts have long recognized the “common fund” or “common benefit” doctrine, under which attorneys who create a common fund or benefit for a group of persons may be awarded their fees and costs to be paid out of the fund.⁵⁵ In *Laffitte*, the California Supreme Court held that,

when class action litigation establishes a monetary fund for the benefit of the class members, and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may determine the amount of a reasonable fee by choosing an appropriate percentage of the fund created.”⁵⁶

The California Supreme Court also noted that the percentage of the fund method “more accurately reflects the results achieved” than the lodestar method, serves as a “better approximation of market conditions in a contingency case,” and encourages “counsel to seek an early settlement and avoid unnecessarily prolonging the litigation.”⁵⁷

Plaintiffs have created a fixed common fund from which reasonable attorneys’ fees can be recovered. Each Settlement Class Member will receive an ascertainable settlement payment. Thus, the common fund doctrine enables the Court to determine a reasonable fee with “some exactitude.”⁵⁸

Accordingly, Class Counsel’s fee request of 31% of the amount Defendant will pay to fund the settlement, not including the employer’s share of payroll taxes, is fair and reasonable and is within the range of awards in California.

2. The circumstances of this case support the requested fee award.

Given the results achieved under the circumstances of this litigation, a fee award of

⁵⁴ *Laffitte, supra*, 1 Cal.5th at 503.

⁵⁵ *Id.*; see also, *Serrano v. Priest* (“*Serrano III*”) (1977) 20 Cal.3d 25, 34; *Glendale City Employees’ Assoc. v. City of Glendale* (1975) 15 Cal.3d 328, 341, fn.19; *In re Consumer Privacy Cases* (2009) 175 Cal.App.4th 545, 557; *Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478; *Mills v. Electric Auto-Lite Co.* (1970) 396 U.S. 375, 391-392.

⁵⁶ *Laffitte, supra*, 1 Cal.5th at 503 (providing an extended analysis of California law regarding fee award methodology).

⁵⁷ *Id.* at 503-04.

⁵⁸ *Paul, Johnson, Alston & Hunt v. Gaulty* (9th Cir. 1989) 886 F.2d 268, 271.

32.84% is reasonable. As encapsulated in *Sumitomo Copper Litigation*:⁵⁹

No one expects a lawyer whose compensation is contingent on the success of his services to charge, when successful, as little as he would charge a client who in advance of the litigation has agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

In that vein, this Court should consider the contingency nature of this case, the uncertainty of the outcome, the quality of the counsel, and the preclusion from other employment.⁶⁰

a) The contingent nature of this case.

Class Counsel provided experienced, competent representation and obtained a substantive settlement for the Class Members while prosecuting the case on a contingency basis. As the California Supreme Court has explained:

A contingent fee must be higher than a fee for the same legal services paid as they are performed. The contingent fee compensates the lawyer not only for the legal services he renders but for the loan of those services. The implicit interest rate on such a loan is higher because the risk of default (the loss of the case, which cancels the debt of the client to the lawyer) is much higher than that of conventional loans. A lawyer who both bears the risk of not being paid and provides legal services is not receiving the fair market value of his work if he is paid only for the second of these functions. If he is paid no more, competent counsel will be reluctant to accept fee award cases.⁶¹

From the outset of the case to the present, prosecution of this action has involved substantial financial risk for Class Counsel. Class Counsel undertook this matter on a purely contingent basis, with no assurance of recovery.⁶² In addition to their time, Class Counsel placed at risk its own resources to prosecute this action with no guarantee of success. The risks of this case are apparent in that class certification would likely have been a hard-fought issue, especially given the uncertainty regarding certification. Further, even if Plaintiffs successfully certified the class over Defendant's opposition, there still was no guarantee of success at trial or in any

⁵⁹ *In Re Sumitomo Copper Litig.*, (S.D.N.Y. 1999) 74 Supp. 2d 393, 396.

⁶⁰ See Grover Decl. at ¶¶ 2-4, 47, 27, 33-36, 52-54, 60-65.

⁶¹ *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132-1133 (internal citation, quotations omitted).

⁶² Grover Decl. at ¶¶ 47, 60-61.

subsequent appeals.⁶³ Despite such challenges, Class Counsel was able to persuade Defendant that it faced sufficient exposure such that it was willing to settle Plaintiffs' claims.

b) The experience, reputation, and ability of counsel, and the skill they displayed in litigation.

Class Counsel has substantial experience in complex class action litigation, including employment class actions.⁶⁴ Because of their experience and skill, Class Counsel was able to develop a thorough factual record regarding Defendant's alternative workweek, overtime pay and meal and rest break policies and practices.⁶⁵ Class Counsel persuaded Defendant that settlement was a better option than the costs and risks of continued and prolonged litigation and obtained an excellent result for the Class Members.

c) The results achieved.

The results of the settlement support Class Counsel's request for attorneys' fees. Class Counsel achieved an exceptional result in this case, under all the circumstances.⁶⁶ The Parties reached a non-collusive, arm's-length settlement, with the assistance of a respected mediator, after informal discovery and thoughtful negotiation.⁶⁷

Class Members' support for the results achieved by Class Counsel is demonstrated by the absence of any objections to either the settlement or to Class Counsel's request for fees, both of which were described clearly in the Notice.⁶⁸ Class Counsel's prosecution of this action resulted in tangible benefits for the Settlement Class Members. Because no Class Members have opted out, the estimated \$300,500 Net Settlement Amount will be divided by 741 Class Members.⁶⁹ Each Settlement Class Member will receive, on average, an individual gross settlement payment

⁶³ Grover Decl. at ¶¶ 27, 33-36, 60-61.

⁶⁴ Grover Decl. at ¶¶ 2-4, 27, 52-54, 62.

⁶⁵ Grover Decl. at ¶¶ 9-11, 15, 62-63; Oct. 11, 2022 Spencer Decl. at ¶¶ 4-7.

⁶⁶ Grover Decl. at ¶¶ 27-27, 62-64.

⁶⁷ Grover Decl. at ¶¶ 9-11, 33-37.

⁶⁸ PSA Decl. at ¶ 5, Ex. A (Notice); Grover Decl. at ¶¶ 25, 37, 64.

⁶⁹ PSA Decl. at ¶¶ 11-13; Ex. 1 at § III.L.2; Grover Decl. at ¶ 27, 31.

of \$405.53.⁷⁰ Class Members who are aggrieved employees also will receive Individual PAGA Payments according to the formula set forth in the Amended Stipulation.⁷¹

d) Preclusion of other employment.

As California law recognizes, Class Counsel's commitment to this litigation should not be assessed in a vacuum. A relevant factor in determining attorneys' fees is whether the litigation required Class Counsel to forego other employment.⁷² Additional work was available that Class Counsel had to forego to devote the time necessary to pursue this litigation.⁷³

B. A cross-check using the lodestar method supports Class Counsel's fee request.

The California Supreme Court has held that that conducting a lodestar cross-check to confirm the reasonableness of a percentage fee award is not required and is at the trial court's discretion.⁷⁴ If this Court opts to conduct a lodestar cross-check, that methodology also supports Class Counsel's fee request. Because this is a common fund case, the lodestar method, if used at all, serves only to cross check the reasonableness of the fee request.⁷⁵

Class Counsel's hourly rates are summarized in the Grover Declaration filed in support of this motion.⁷⁶ Class Counsel's hourly rates are well within the range of those found permissible for attorneys practicing class action litigation in the Northern District/San Francisco area market.⁷⁷ Class Counsel has spent approximately 248.50 hours litigating this case through

⁷⁰ PSA Decl. at ¶ 14; Grover Decl. at ¶¶ 27, 31.

⁷¹ Ex. 1 at § III.L.2.b.

⁷² See *Serrano III*, *supra*, 20 Cal.3d at 49.

⁷³ Grover Decl. at ¶ 65.

⁷⁴ *Laffitte*, *supra*, 1 Cal.5th at 506.

⁷⁵ See, e.g., *Glass v. UBS Fin. Servs., Inc.* (9th Cir. 2009) 331 F. App'x 452, 456 (approving the district court's "informal lodestar cross-check" for confirming the reasonableness of the percentage award); *Vizcaino v. Microsoft Corp.* (9th Cir. 2002) 290 F.3d 1043, 1050 (similar).

⁷⁶ Grover Decl. at ¶¶ 50-54.

⁷⁷ See, e.g., *Gonzalez v. S. Wine & Spirits of Am., Inc.*, (9th Cir. 2014) 555 F. App'x 704, 704-05 (reversing district court's order reducing attorneys' hourly rates without considering evidence of "prevailing hourly rates for comparable legal services in the community"); *Acosta v. Frito-Lay, Inc.* (N.D. Cal. May 14, 2018) No. 15-cv-02128-JSC, 2018 U.S. Dist. LEXIS 75988, at *37-39 (similar range of rates for Bay Area counsel experienced in complex class actions were reasonable); *Nitsch v. DreamWorks Animation SKG Inc.* (N.D. Cal. June 5, 2017) No. 14-cv-04062-LHK, 2017 U.S. Dist. Lexis 86124, at *32-33 (similar); *O'Bannon v. NCAA* (N.D. Cal. July 13, 2015) No. 09-cv-03329-CW (NC), 2015 U.S. Dist. LEXIS 91514, at *14 (similar); *Williams v.*

(Cont'd)

January 27, 2023, as described in further detail in the Grover Declaration.⁷⁸ Class Counsel expects to work another 15 hours completing the work on this motion and the final approval motion, preparing for and participating in the Final Approval Hearing, and dealing with claims administration issues.⁷⁹ The lodestar for Keller Grover through January 27, 2023 is \$181,350.⁸⁰ The expected final lodestar for Class Counsel is \$193,350.⁸¹ The fees requested represent a negative multiplier on the final lodestar.

C. No Class Member objected to the attorney fee award.

Counsel's intention to request payment of attorneys' fees and out-of-pocket costs was clearly disclosed to each Class Member in the Court-approved class settlement Notice.⁸² No objection, timely or late, was filed opposing the request for the maximum potential award of attorneys' fees and costs, signaling the Class Members' approval of the attorneys' fees award.⁸³

D. Class Counsel's request for costs also is reasonable.

Class Counsel's request for costs in the amount of \$11,305.44 is less than the maximum amount estimated in the Amended Stipulation and Notice.⁸⁴ As detailed in the Grover Declaration, in the course of this litigation, Class Counsel has incurred actual out-of-pocket costs in the amount of \$11,005.44 to date and expects to incur another \$300 in filing fees and service costs, for total costs of \$11,305.44.⁸⁵ In connection with a settlement, "[a]ttorneys may recover

SuperShuttle Int'l, Inc. (N.D. Cal. Feb. 12, 2015) No. 12-cv-06493-WHO, 2015 U.S. Dist. LEXIS 19341, at *5 (similar); *Steinfeld v. Discover Fin. Servs.* (N.D. Cal. Mar. 31, 2014) No. C 12-01118 JSW, 2014 U.S. Dist. LEXIS 48540, at *4-5 (similar); *Vedachalam v. Tata Consulting Serv. Ltd.* (N.D. Cal. July 18, 2013) No. C 06-0963 CW, 2013 U.S. Dist. LEXIS 100796, at *8 (similar); *Bolton v. U.S. Nursing Corp.* (N.D. Cal. Oct. 18, 2013) No. C 12-4466 LB, 2013 U.S. Dist. LEXIS 150299, at *14-15 (similar); *see also*, Grover Decl. at ¶¶ 55-57 (noting range of hourly rates approved in recent Bay Area fee orders).

⁷⁸ Grover Decl. at ¶¶ 8-17, 49-50, Exs. 4-6.

⁷⁹ Grover Decl. at ¶¶ 17, 49.

⁸⁰ Grover Decl. at ¶¶ 50, 58.

⁸¹ Grover Decl. at ¶ 59; *see also*, ¶¶ 17, 49.

⁸² PSA Decl., Ex. A.

⁸³ PSA Decl. at ¶ 9; Grover Decl. at ¶¶ 25, 64.

⁸⁴ Ex. 1 at § III.L.4; PSA Decl., Ex. A (Notice).

⁸⁵ Grover Decl. at ¶¶ 67-68, Ex. 7.

1 their reasonable expenses that would typically be billed to paying clients in non-contingency
2 matters.”⁸⁶

3 As demonstrated in the Grover Declaration, the incurred costs included mediation fees,
4 filing fees, courier charges, legal research fees, conference call costs, and mailing charges.⁸⁷ The
5 costs that Class Counsel incurred litigating this action benefitted the Class Members and are the
6 type of costs that would be billed to a non-contingency client and, therefore, are appropriate for
7 reimbursement. Class Counsel’s \$11,305.44 cost request is reasonable, is less than the amount
8 estimated in the Notice and Amended Stipulation, and should be granted.

9 **E. The Class Representatives’ enhancements are also reasonable.**

10 As Class Representatives, Plaintiffs seek Incentive Awards/General Release Payments in
11 the amount of \$7,500 for Plaintiff Harrington, the original plaintiff, and \$2,500 for Plaintiff
12 Oldham, who was added later.⁸⁸ These payments are intended to recognize the respective time
13 and effort that, as Class Representatives, they spent on behalf of the Settlement Class.⁸⁹

14 When determining whether incentive awards are appropriate, courts consider a variety of
15 non-exclusive factors such as:

16 the actions the plaintiff has taken to protect the interests of the class, the
17 degree to which the class has benefitted from those actions, and the

18 ⁸⁶ See e.g., *In re Omnivision Techs.* (N.D. Cal. 2007) 559 F. Supp. 2d 1036, 1048 (approving
19 reimbursement of “photocopying, printing, postage and messenger services, court costs, legal
20 research on Lexis and Westlaw, experts and consultants, and the costs of travel for various
21 attorneys and their staff.”); *Morrison v. Am. Nat’l Red Cross*, (N.D. Cal. Jan. 8, 2021) No. 19-cv-
22 02855-HSG, 2021 U.S. Dist. LEXIS 4043, at *22 (approving reimbursement of mediation costs,
23 travel related fees, filing and service of process fees); *Larsen v. Trader Joe’s Co.* (N.D. Cal. July
24 11, 2014) No. 11-cv-05188-WHO, 2014 U.S. Dist. LEXIS 95538, at *32 (approving
25 reimbursement of “the type of expenses routinely charged to hourly clients”); *In re United Energy*
26 *Corp. Sec. Litig.* (C.D. Cal. Mar. 9, 1989) MDL No. 726, 1989 WL 73211, at *6 (approving
27 reimbursement of filing fees, postage, telephone bills, photocopying, legal research assistance,
28 deposition costs, and witness fees, citing Newberg, Attorney Fee Awards, § 2.19 (1987)). See
also, *Greko v. Diesel U.S.A., Inc.* (N.D. Cal. Apr. 26, 2013) No. 10-cv-02576 NC, 2013 U.S. Dist.
LEXIS 60114, at *35 (approving reasonable costs in class settlement); *Van Vranken, supra*, 901 F.
Supp. at 299 (same).

⁸⁷ See Grover Decl. at ¶ 67, Ex. 7.

⁸⁸ Ex. 1 at § III.L.3.

⁸⁹ Grover Decl. at ¶¶ 45-46; see also, Declaration of Michael Harrington and Declaration of
Branon Oldham submitted with this motion.

amount of time and effort the plaintiff expended in pursuing the litigation . . . the risk to the class representative in commencing suit, both financial and otherwise, the notoriety and personal difficulties encountered by the class representative, the duration of the litigation, and the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.⁹⁰

In this case, the Class Representatives performed the following tasks, among others:

(1) assisted Counsel in investigating and substantiating the claims alleged in this action; (2) assisted in the preparation of the complaint in this action; (3) produced evidentiary documents to Counsel; and (4) assisted in the preparation for the mediation and settlement of this litigation.⁹¹

Moreover, as with any plaintiff who files a civil action, the Class Representatives undertook the financial risk that, in the event of a judgment in favor of Defendant in this action, they could have been personally responsible for the costs awarded in favor of the Defendant.

Not a single Class Member has objected to the enhancement requested on behalf of the Class Representatives who brought this litigation on their behalf and who secured a benefit for them.⁹² In light of the work that the Class Representatives performed on behalf of Class Members, and the Class Members' positive response to the settlement, the requested enhancements are reasonable and appropriate.

F. Plaintiffs seek approval of the Settlement Administrator's fees incurred.

As part of the preliminary approval process, the Court approved the hiring of PSA as the Settlement Administrator.⁹³ In preliminarily approving the Amended Stipulation, the Court also tentatively approved the payment to PSA of up to \$12,000 to perform all of the duties required to administer the settlement.⁹⁴ PSA has performed all of its required duties to date and is committed to completing the settlement administration process.⁹⁵ PSA has calculated that its actual costs of

⁹⁰ *Clark, supra*, 175 Cal.App.4th at 804 (internal quotations omitted), *citing Cook, supra*, 142 F.3d at 1016 and *Van Vranken, supra*, 901 F. Supp. at 299.

⁹¹ *See generally*, Harrington and Oldham Declarations; *see* Grover Decl. at ¶¶ 45-46.

⁹² *See* PSA Decl. at ¶ 9; Grover Decl. at ¶ 25.

⁹³ Ex. 3 at ¶ 8.

⁹⁴ *See* Ex. 3; Ex. 1 at § III.L.6.

⁹⁵ *See generally*, PSA Declaration.

administering the settlement will be \$9,000;⁹⁶ which is less than the amount that Plaintiffs request the Court approve as part of its final order approving the Settlement.

IV. CONCLUSION

For all of the foregoing reasons, Plaintiffs request that the Court (1) approve Class Counsel's request for an award of attorneys' fees in the amount of \$159,194.56, (2) approve Class Counsel's request for payment of costs in the amount of \$11,305.44, (3) approve the Class Representative's enhancement awards/general release payments in the total amount of \$10,000, and (4) approve payment to PSA in the amount of \$9,000 for the costs it incurred administering this settlement.

Dated: January 27, 2023

Respectfully submitted,

KELLER GROVER LLP

By:



ERIC A. GROVER

ROBERT W. SPENCER

Attorneys for Plaintiffs and Class Counsel

⁹⁶ PSA Decl. at ¶ 17, Ex. B.

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 AWARD OF REASONABLE ATTORNEYS' FEES AND COSTS, CLASS REPRESENTATIVE ENHANCEMENTS, AND SETTLEMENT ADMINISTRATION FEES; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

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

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

Attorneys for Defendants
**CREATIVE SECURITY COMPANY,
INC**

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



JOEY GONZALEZ