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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 (SAN FRANCISCO DIVISION)
 12

13 PHILLIP TEMPLE, on behalf of himself,
 14 individually, and all others similarly
 situated,

15 Plaintiff,

16 vs.

17 GUARDSMARK, LLC, and DOES 1
 18 through 100, INCLUSIVE,

19 Defendant.

CASE NO. CV-09-2124-SI

**STIPULATION AND [PROPOSED] ORDER
 REGARDING PLAINTIFF'S DISCOVERY
 MOTION RE: MISSION PARTNERSHIP
 STATEMENTS**

Judge: The Honorable Susan Illston
 Location: Courtroom 10, 19th Floor

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1 WHEREAS, on May 28, 2010, Plaintiff Phillip Temple (“Plaintiff”) filed a Letter
2 Brief in this matter (“Letter Brief No. 2”);

3 WHEREAS, Guardsmark, LLC (“Guardsmark”) and Plaintiff have met and
4 conferred and have reached an agreement regarding certain facts that will eliminate the
5 need for the court to resolve Plaintiff’s Letter Brief Number 2;

6 NOW THEREFORE, Plaintiff and Defendant, through their counsel of record,
7 HEREBY STIPULATE that:

8 1. Guardsmark’s Mission Partnership Statements do not contain language stating
9 whether a client representative will relieve for purposes of taking a rest break those
10 Guardsmark security officers who work as the sole Guardsmark security officer at a client
11 site during a work shift of at least 8 hours;

12 2. Guardsmark stipulates that the putative Class as defined in the Second
13 Amended Complaint is numerous and ascertainable, and Guardsmark will not oppose
14 class certification of the putative Class as defined in the Second Amended Complaint
15 based on the lack of numerosity or ascertainability; notwithstanding the foregoing,
16 however, Guardsmark expressly reserves its right to oppose class certification under Rule
17 23(a)(2)-(4) and Rule 23(b) of the Federal Rules of Civil Procedure and relevant authority
18 related thereto;

19 3. Guardsmark’s Mission Partnership Statements for accounts in California during
20 the class period alleged in the Second Amended Complaint contain the following
21 language under the heading “Alertness”: “As a Security Officer, you must be mentally
22 capable of responding quickly to instructions and remain constantly alert at your post,
23 ready to react to any situation. Carry out orders promptly. Be an astute observer. And
24 *never* sleep on the job!”

