

1 **JUSTICE FOR WORKERS, P.C.**
William C. Sung SB# 280792
2 E-Mail: william@justiceforworkers.com
Tiffany L. Luu SB# 335127
3 E-Mail: tluu@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
4 Los Angeles, CA 90010
Tel: 323-922-2000
5 Fax: 323-922-2000

6 Attorneys for Plaintiff DENNISHA LAMPKIN

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF RIVERSIDE**

10
11 DENNISHA LAMPKIN, an individual and on
behalf of all others similarly situated;

12 Plaintiff,

13
14 vs.

15 SUNSTATES SECURITY, INC., a Delaware
corporation; and DOES 1 through 50,

16 Defendants.
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Case No.: CVRI2305600

[Assigned for All Purposes to:
Hon. Harold W. Hopp, Dept. 1]

**NOTICE OF MOTION AND MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT; AND
MEMORANDUM OF POINTS AND
AUTHORITIES**

[Filed Concurrently with Notice of Filing
Class Action Settlement Agreement,
Declarations in Support Thereof, and
[Proposed] Order]

DATE: July 18, 2024

TIME: 8:30 a.m.

DEPT: 1

Reservation No.: 284869109588

Action Filed: October 18, 2023

Trial Date: None Set

1 **TO THE HONORABLE COURT, ALL PARTIES AND THEIR COUNSEL OF**
2 **RECORD:**

3 **PLEASE TAKE NOTICE THAT** on July 18, 2024 at 8:30 a.m. in Department 1 of the
4 Superior Court of the State of California for the County of Riverside, Historic Courthouse, located
5 at 4050 Main Street, Riverside, CA 92501, before the Honorable Harold W. Hopp, Judge presiding,
6 Plaintiff DENNISHA LAMPKIN (“Class Representative”) will and hereby does move the Court for
7 an Order:

8 1. Preliminarily approving the Class and PAGA Action Settlement Agreement
9 (“Settlement Agreement”) between Class Representative and Defendant SUNSTATES SECURITY,
10 INC. (“Defendant”) and the settlement fund in the amount of Five Hundred Forty-Four Thousand
11 Dollars and Zero Cents (\$544,000.00.) (“Gross Settlement Amount”), which is to be distributed as
12 follows: out of the Gross Settlement Amount, (a.) an estimated minimum of \$272,666.67 to be paid
13 to the Participating Class Members; (b.) up to \$10,000.00 to be paid to the Class Representative
14 Service Payment for his services to the Class; (c.) up to a total of \$181,333.33 to be paid to Class
15 Counsel for attorneys’ fees and reimbursement of actual costs up to a maximum of \$20,000.00; (d.)
16 the PAGA Payment of \$50,000, 75% of which, or \$37,500 will be paid to the Labor Workforce
17 Development Agency (the “LWDA”) and 25% of which, or \$12,500 will be paid to Aggrieved
18 Employees; and (e.) the Settlement Administrator to be paid for its fees and costs relating to the
19 claims administration process in the amount of \$10,000.00;

20 2. Finding on a preliminary basis that the Settlement appears to be within the range of
21 reasonableness of a settlement, and that the Class Representative Service Payment, Class Counsel
22 fees and costs, the Settlement Administrator fees, and the allocation of payments to Participating
23 Class Members, could ultimately be given final approval by this Court;

24 3. Approving the Notice of Proposed Settlement or Class Notice packet (“Class
25 Notice”) to be sent to Class Members, that is attached as Exhibits A-C to the Settlement Agreement;

26 4. Appointing Simpluris, Inc. as the Settlement Administrator; and

27 5. Setting the matter for a Final Fairness and Final Approval hearing.

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1 This Motion is made pursuant to Rule 3.769 of the California Rules of Court, which
2 provides for court approval of the settlement of a purported class action and allows the Court to
3 preliminarily certify a class for settlement purposes. The basis for this Motion, filed without any
4 opposition from Defendant, is that the proposed settlement is fair, adequate, and reasonable and the
5 procedures proposed by the Parties are adequate to ensure the opportunity of Class Members to
6 participate in, opt out of, or object to the settlement.

7 This Motion will be based on the Memorandum of Points and Authorities included herein,
8 the Settlement Agreement concurrently filed herewith, and the supporting Declarations of William
9 C. Sung ("Sung Decl."), Tiffany L. Luu ("Luu Decl."), Dennisha Lampkin ("Lampkin Decl."), Eric
10 Springer on behalf of Simpluris, Inc. ("Simpluris Decl."), David Kleiman ("Kleiman Decl."), and
11 Diana M. Estrada ("Estrada Decl."), and upon the oral arguments of counsel (should there be any)
12 and on the complete records and file herein.

13
14 DATED: June 21, 2024

JUSTICE FOR WORKERS, P.C.

15
16 By: 

17 William C. Sung

18 Tiffany L. Luu

19 Attorneys for Plaintiff DENNISHA LAMPKIN
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF THE CASE**

3 On October 18, 2023, Plaintiff DENNISHA LAMPKIN (“Plaintiff” or “Class
4 Representative”) filed a putative class action Complaint in Riverside Superior Court (Case No.
5 CVRI2305600) on behalf of herself and all similarly situated individuals against Defendant
6 SUNSTATES SECURITY, INC. (“Defendant”). In the operative Second Amended Complaint
7 (“SAC”), Plaintiff alleges the following causes of action (1) Meal Period Violations; (2) Rest Period
8 Violations; (3) Wage Statement Penalties; (4) Waiting Time Penalties; (5) Unfair Competition; (6)
9 Civil Penalties Under the California Private Attorneys General Act, California Labor Code §
10 2699.3, *et seq.* (the “PAGA”); (7) Minimum Wage Violations; (8) Overtime Wage Violations; (9)
11 Failure to Reimburse Business Expenses; (10) Failure to Timely Pay Wages and Maintain Required
12 Records; and (11) Unlawful Deductions.

13 The terms of the settlement provide that Defendant shall pay a Gross Settlement Amount of
14 Five Hundred Forty-Four Thousand Dollars and Zero Cents (\$544,000.00), which will be
15 distributed to the class on a non-reversionary basis without the need to submit claim forms.
16 (Class and PAGA Action Settlement Agreement (“Settlement Agreement”) at I.R.)
17 The settlement was achieved after extensive litigation, a full-day mediation well-respected
18 mediator, Steven G. Pearl, Esq. The settlement complies with the Court’s Class Action Case
19 Management Order #1 and meets all of the elements required for approval. Thus, the Court should
20 grant preliminary approval.

21 **II. PROCEDURAL POSTURE**

22 On October 10, 2023, Plaintiff submitted a letter to the California Labor & Workforce
23 Development Agency (“LWDA”) initiating administrative exhaustion of her claim for civil
24 penalties under the PAGA. (Declaration of William C. Sung (“Sung Decl.”) at ¶2, Ex. A.)

25 On October 18, 2023, Plaintiff filed a Class Action Complaint for (1) Meal Period
26 Violations (Labor Code §§ 226.7, 512, 558); (2) Rest Period Violations (Labor Code §§ 226.7, 512,
27 558.); (3) Wage Statement Penalties (Labor Code § 226); (4) Waiting Time Penalties (Labor Code
28 §§ 201-203); (5) Unfair Competition (Business & Professions Code §§ 17200, *et seq.*) (Sung Decl.

1 at ¶3.) On March 13, 2024, Plaintiff filed a First Amended Complaint adding a cause of action for
2 alleged Civil Penalties Under the California Private Attorneys General Act. (*Id.* at ¶4.) On or about
3 May 21, 2024, Plaintiff submitted an amended letter to the LWDA, which included additional
4 claims for alleged failure to pay minimum wages in violation of Labor Code §§ 1194, 1197, and
5 1197.1, failure to pay overtime wages in violation of Labor Code §§ 510 and 1198, and unlawful
6 deductions in violation of Labor Code §§ 221 and 224. (*Id.* at ¶5, Ex. B.) On May 31, 2024,
7 Plaintiff filed the operative Second Amended Complaint adding causes of action for Minimum
8 Wage Violations (Labor Code §§ 1182.12, 1194, 1194.2, 1197); Overtime Wage Violations (Labor
9 Code §§ 204, 510, 1194, 1198); Failure to Reimburse Necessary Business Expenses (Labor Code §
10 2802); Failure to Timely Pay Wages and Maintain Required Records (Labor Code §§ 204 and
11 1174); and Unlawful Deductions (Labor Code §§ 221 and 224). (*Id.* at ¶6.)

12 After exchanging informal discovery, the Parties agreed to engage in private mediation with
13 well-respected mediator, Steven G. Pearl, Esq. on March 25, 2024 and successfully reached a
14 resolution of the entire matter. (*Id.* at ¶7.) Plaintiff now moves for preliminary approval of the class
15 claims against Defendant.

16 **III. THE PARTIES' SETTLEMENT NEGOTIATIONS**

17 On December 19, 2023, the Parties scheduled a mediation with experienced wage and hour
18 mediator Steven G. Pearl, Esq. for March 25, 2024, and attended the full-day mediation session as
19 scheduled. (*Id.* at ¶7.) In advance of the mediation, the Parties discussed the basis of Plaintiff's legal
20 claims under the asserted Labor Code sections and the legal authorities for and against Plaintiff's
21 theories of liability. (*Id.* at ¶8.) The Parties also engaged in informal discovery, where Defendant
22 provided Plaintiff with data which included (1) a class list with Class Members' employee numbers,
23 dates of employment, job title, location worked, and pay rate; (2) Excel spreadsheets of time and
24 payroll records of 411 Class Members totaling over 65,000 rows of data; (3) Defendant's policies
25 and procedures at issue; and (4) responses to informal interrogatories related to the claims in this
26 case. (*Ibid.*) Based on the data produced by Defendant, Plaintiff subsequently conducted an
27 exposure analysis. (*Ibid.*)

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1 After independently analyzing and investigating the facts and law relevant to the Plaintiff's
2 claims, the Parties outlined their respective positions in mediation briefs for Mr. Pearl. (*Ibid.*)
3 Based on data provided by Defendant, Class Counsel also calculated the maximum exposure under
4 the Labor Code in preparation for mediation. (*Id.* at ¶10.)

5 The Parties participated in a full-day mediation with Mr. Pearl. (*Id.* at ¶7.) During the
6 mediation, the Parties debated the strengths and weaknesses of Plaintiff's claims and Defendant's
7 defenses thereto and the scope of employees whom Plaintiff could represent even if Plaintiff's legal
8 claims had merit. (*Id.*) After a full day of mediation, the Parties were able to resolve this matter. (*Id.*
9 at ¶7.) The Parties subsequently memorialized all formal terms in the Settlement Agreement. (*Id.*)

10 **IV. DISCUSSION**

11 Any settlement of class litigation must be reviewed and approved by the Court. This is done
12 in two steps: (1) an early (preliminary) review by the trial court; and (2) a final review after notice
13 has been distributed to the class members for their comment or objections. The Manual for
14 Complex Litigation (Third), § 30.41 states:

15 Approval of class action settlements involves a two-step process. First, counsel
16 submits the proposed terms of settlement and the court makes a preliminary fairness
17 evaluation. If the preliminary evaluation of the proposed settlement does not
18 disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly
19 preferential treatment of class representatives or of segments of the class, or
excessive compensation for attorneys, and appears to fall within the range of
possible approval, the court should direct that notice . . . be given to the class
members of a formal fairness hearing, at which arguments and evidence may be
presented in support of and in opposition to the settlement.

20 Thus, the preliminary approval by the trial court is simply a conditional finding that the
21 settlement appears to be within the range of acceptable settlements. As Professor Newberg
22 comments, "[t]he strength of the findings made by a judge at a preliminary hearing or conference
23 concerning a tentative settlement proposal may vary. The court may find that the settlement
24 proposal contains some merit, is within the range of reasonableness required for a settlement offer,
25 or is presumptively valid subject only to any objections that may be raised at a final hearing." 4
Alba Conte & Herbert B. Newberg, *Newberg on Class Actions*, § 11.26 (4th ed. 2002).

26 The procedures for the parties' submission of a proposed settlement for preliminary
27 approval by the court also are discussed in 4 Newberg on Class Actions:

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1 When the parties to an action reach a monetary settlement, they will usually prepare
2 and execute a joint stipulation of settlement, which is submitted to the court for
3 preliminary approval. The stipulation should set forth the central terms of the
agreement, including but not limited to, the amount of settlement, form of payment,
manner of determining the effective date of settlement and any recapture clause.

4 (*Id.* at § 11.24.)

5 Here, the Parties have reached such an agreement and have submitted to this Court in
6 connection with this Motion a copy of the Settlement Agreement fully setting forth the agreement
7 reached among the Parties. The Settlement Agreement sets forth all terms of the agreement reached
8 by the Parties, which complies with the Court’s October 27, 2023 Class Action Case Management
9 Order #1 (“CMO”).

10 **A. PROPOSED CLASS - CMO (G)(3)(a)(i)**

11 The current settlement is being settled on behalf of:

12 “Defendant's current and former non-exempt employees in California who were
13 employed at any time during the Class Period (defined as October 18, 2019 to May
15, 2024).”

14 (Settlement Agreement ¶¶I.C., I.I.)

15 The number of Class Members is estimated at 491 individuals and the number of PAGA
16 Aggrieved Employees is estimated at 280 individuals. (Sung Decl. ¶9.)

17 **B. ESTIMATE OF THE TOTAL AMOUNT OF DAMAGES, PENALTIES OR OTHER**
18 **RELIEF THAT THE CLASS WOULD BE AWARDED - CMO (G)(3)(a)(ii)**

19 Based on the data provided, Plaintiff believes that the class could have obtained damages of
20 approximately \$6,039,025.42 plus PAGA penalties. (Sung Decl. ¶10.) Specifically, Plaintiff
21 estimates the following damages for each of the causes of action as follows:

22 **1. Meal and Rest Period Premiums**

23 IWC Wage Order 5, § 11 provides in relevant part:

24 Unless the employee is relieved of all duty during a 30 minute meal period, the meal
25 period shall be considered an “on duty” meal period and counted as time worked. An
26 “on duty” meal period shall be permitted only when the nature of the work prevents
an employee from being relieved of all duty and when by written agreement between
the parties an on-the- job paid meal period is agreed to. The written agreement shall
state that the employee may, in writing, revoke the agreement at any time.

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1 Here, Plaintiff executed Defendant's On-Duty Meal Agreement at the beginning of her
2 employment as a security guard and took her meal breaks on duty. (Lampkin Decl. ¶ 3, Ex. A.)
3 Plaintiff alleges that the agreement is unenforceable because she and Class Members were coerced
4 into signing the agreement and risked losing their jobs if they revoke the agreement because
5 Defendant did not have any posts which allowed for off-duty meal periods. (SAC at ¶¶ 10-12.)
6 Plaintiff alleges Class Members were required to take rest periods on duty and on call at their posts.
7 (SAC at ¶ 13.) For each meal and rest break violation per shift, Plaintiff assesses 1 hour of pay at
8 the regular rate for damages. (Sung Decl. ¶10.a.) Class Counsel estimates the maximum exposure
9 for unpaid meal period premiums are \$1,558,141.16 and for unpaid rest period premiums are
10 \$1,558,141.16. (*Ibid.*)

11 **2. Unpaid Minimum and Overtime Wages Including Unlawful Deductions and**
12 **Unreimbursed Business Expenses**

13 Plaintiff alleges that Class Members are due unpaid wages, including overtime, due to
14 Defendant's unlawful rounding practices and Defendant unlawfully deducted on-duty meal and rest
15 periods from hours worked. (SAC at ¶¶ 16, 71.) Plaintiff alleges that Class Members are due
16 unreimbursed business expenses for using their personal cellphones and vehicles for work and
17 purchase of uniforms. (*Id.* at ¶ 17.) Assuming an average of one hour of unpaid wages per shift, the
18 maximum exposure for unpaid wages, including overtime premiums, are \$1,558,141.16. (Sung
19 Decl. ¶10.b.) Assuming unreimbursed expenses of \$10 per workweek, the maximum exposure for
20 unreimbursed expenses are \$200,075.71. (*Ibid.*)

21 **3. Labor Code Statutory and Civil Penalties**

22 Plaintiff alleges that Defendant failed to provide compliant wage statements and all wages
23 due upon separation of employment because the wage statements failed to accurately state the rate of
24 pay and hours worked as a result of unpaid wages and meal and rest period premiums and is owed
25 statutory penalties. (SAC at ¶14.) The maximum exposure for wage statement penalties under Labor
26 Code § 226(e) at \$50 per pay is \$381,650. (Sung Decl. ¶10.c.) There were 165 terminated
27 employees in the Class and the maximum exposure for waiting time penalties under Labor Code §
28 203 at 30 days' wages per employee is \$782,876.23. Assuming an 100% violation rate, civil

1 penalties under the Labor Code and PAGA for the above claims, as well as violation of Labor Code
2 §§ 204, 212, and 1174, are \$5,726,950. (*Ibid.*)

3 **C. ESTIMATE OF WHAT THE CLASS COULD REASONABLY EXPECT TO BE**
4 **AWARDED AT TRIAL - CMO (G)(3)(a)(iii)**

5 Plaintiff believes that she can prevail at trial and be awarded the entire amount of the
6 maximum exposure. (Sung Decl. ¶11.) However, having tried wage and hours cases to trial, Class
7 Counsel believes there is also a reasonable possibility that the Court may find in favor of Defendant
8 and award nothing to Plaintiff based on Defendant's defenses. (*Ibid.*)

9 As to meal and rest periods, Defendant contends that it has compliant written policies, the On-
10 Duty Meal Agreement complies with the requirements of the Wage Order, (*see* Lampkin Decl. ¶ 3,
11 Ex. A), employees could revoke the agreement because Defendant offered posts with break
12 relievers where employees could take off-duty meal periods, including in Rialto and Riverside close
13 to where Plaintiff was posted, and employees may leave their posts for rest periods, (Sung Decl.
14 ¶11.) For unpaid wages and deductions, Defendant contends that during most of the Class Period,
15 employees, including Plaintiff, recorded their hours worked on handwritten timesheets and
16 calculated hour worked based on the time written down by employees voluntarily without any
17 deductions for meal and rest periods unless employees clocked out for meal periods. (*Ibid.*)
18 Defendant further contends, starting in January 2024, Defendant began the transition to electronic
19 timekeeping system called TeamTime, the transition completed during the week of March 15, 2024,
20 employees clock in and out using an onsite mobile device or backup landline, and TeamTime
21 recorded and paid employees based on actual time clocked and did not round time punches. (*Ibid.*)
22 Defendant further contends that employees were provided shirts and hats with Sunstates logos and
23 purchased generic black pants which are non-reimbursable, were provided with radios and landline
24 phones, and were not required to use their personal cars other than commuting to work. (*Ibid.*)
25 While Plaintiff believes her claims have merit, Plaintiff recognizes that if the Court finds the On-
26 Duty Meal Agreement is enforceable, then it would award nothing on the meal period claims and
27 Defendant's defenses based on its meal and rest period policies and timekeeping and reimbursement
28 practices could present a hurdle to class certification and classwide liability. (*Ibid.*)

1 For wage statement penalties under Labor Code § 226(e) and waiting time penalties under
2 Labor Code § 203, Defendant contends that it would not be subject to statutory penalties based on a
3 good-faith defense since its policies and practices were legally complaint. (*Ibid.*) Notably,
4 Defendant relied on the appellate decision of *Naranjo v. Spectrum Security Services, Inc.* (2023) 88
5 Cal.App.5th 937, 951, for the proposition that an employer’s good-faith defenses precludes a
6 “willfulness” finding under Labor Code § 203 and a “knowing and intentional” finding under Labor
7 Code § 226(e) for the imposition of statutory penalties (and this holding has now been affirmed by
8 the California Supreme Court in *Naranjo v. Spectrum Security Services, Inc.* (May 6, 2024) 15
9 Cal.5th 1056). (*Ibid.*) Thus, the Court will be bound by *Naranjo* and could find that statutory
10 penalties are precluded by Defendant’s good-faith defenses. (*Ibid.*)

11 PAGA penalties are also subject to any good-faith defenses that Defendant may raise. (*Ibid.*)
12 Moreover, PAGA penalties are discretionary and subject to reduction by this Court. (*Ibid.*) Pursuant
13 to Labor Code § 2699(f)(2), the Court can decline to award the full amount of PAGA penalties
14 where “. . . if, based on the facts and circumstances of the particular case, to do otherwise, would
15 result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (*Ibid.*) Indeed, courts
16 have affirmed the reduction of PAGA penalties in the past. (*Ibid.*) As shown in *Carrington v.*
17 *Starbucks Corp.* (2018) 30 Cal.App.5th 504, 517, the Court of Appeal affirmed the trial court’s
18 reduction of PAGA penalties by 90%, citing the employer’s good-faith attempt at complying with
19 the law. (*Ibid.*) Defendant argued that based on their compliant policies and practices and the fact
20 that class recovery is available, the Court will significantly reduce any award of PAGA penalties
21 based on its good-faith compliance with the Labor Code. (*Id.*)

22 While the Parties disagree on the application of the law to the facts, each Party recognized in
23 negotiations that, if taken to class certification and trial, the other Party would at least have
24 reasonable arguments, such that the Gross Settlement Amount to which the Parties ultimately
25 agreed was reasonable. (*Ibid.*)

26 The total maximum exposure for class claims amounts to approximately \$6,039,025.42.
27 (*Ibid.*) On the on-duty meal period claim, if the Court finds the On-Duty Meal Agreements were
28 enforceable, then it would award nothing in damages, and Plaintiff believes there is at least a risk

1 factor of 50%, if not higher, bringing the realistic recovery to \$779,070.58. (*Ibid.*) For on-duty rest
2 breaks, there is no document to support Plaintiff's claims, Defendant has facially compliant rest
3 periods, and some Class Members might testify they were able to leave their posts for rest periods;
4 therefore, there is at least a 50% risk factor, bringing the realistic recovery to \$623,256.46. (*Ibid.*)
5 For the unpaid wages claims based on unlawful rounding and deductions and unreimbursed
6 business expenses, there is at least a 75% risk factor based on Defendant's defenses as discussed
7 above, bringing the realistic recovery for these claims to \$439,554.22. (*Ibid.*) Given the California
8 Supreme Court's decision in *Naranjo*, there is a 75% risk factor that the Court might find
9 Defendant's good-faith defenses preclude wage statement and waiting time penalties, bringing the
10 realistic damages to \$291,131.56. (*Ibid.*) Total PAGA penalties amounted to \$5,726,950. (*Ibid.*)
11 However, if the Court were to reduce the PAGA penalties by 90% similar to *Carrington*, the PAGA
12 penalties exposure would amount to approximately \$572,695. (*Ibid.*)

13 Thus, the total realistic class damages and PAGA penalties are \$2,861,521.94. (*Ibid.*) The
14 Gross Settlement Amount is 19% of the maximum class and PAGA recovery and well within the
15 reasonable range of settlement for class/PAGA actions. (*Ibid.*)

16 **D. ESTIMATE OF RECOVERY BY AVERAGE CLASS MEMBER AND AGGRIEVED**
17 **EMPLOYEE IF THE SETTLEMENT WERE APPROVED - CMO (G)(3)(a)(iv)&(v)**

18 Based on the estimated number of Class Members, which is 491 individuals, each Class
19 Member will receive, on a raw average, approximately \$555.33 (which is the pro-rata amount per
20 Class Member based on the estimated Net Settlement Amount of \$272,666.67). (*Id.* at ¶12.) Each
21 Aggrieved Employee would be a member of the Class. (*Id.* at ¶13.) Thus, in addition to the \$555.33
22 average recovery for Class Members, each of the estimated 280 Aggrieved Employees will receive,
23 on a raw average, an additional \$44.64 for the PAGA claims. (*Ibid.*)

24 **E. DISCOVERY AND OTHER FACTUAL INVESTIGATION - CMO (G)(3)(a)(vi)**

25 Plaintiff conducted informal discovery in this matter. (*Id.* at ¶14.) The Parties also engaged
26 in informal discovery, where Defendant provided Plaintiff with data which included (1) a class list
27 with Class Members' employee number, dates of employment, job title, location worked, and pay
28 rate; (2) Excel spreadsheets of time and payroll records of 411 Class Members totaling over 65,000

rows of data; (3) Defendant’s policies and procedures at issue; and (4) responses to informal interrogatories related to the claims in this case. (*Ibid.*) Class Counsel utilized the data from the class list, time and payroll records, and responses to informal interrogatories to perform damages calculation. (*Ibid.*)

F. OTHER PENDING LITIGATION - CMO (G)(3)(a)(vii)&(b)

The Parties are aware of two other class and PAGA actions that assert claims similar to those asserted in this action on behalf of a class or group of individuals some or all of whom would also be members of the Class defined in this Action. (Sung Decl. ¶15; Declaration of Diana M. Estrada “Estrada Decl.”) ¶2.) They are *Brittney Jones v. Sunstates, Inc.* filed on January 9, 2024, in Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2402599, and *Willard Raleigh v. Sunstates, Inc.*, filed on May 7, 2024, in Superior Court of the State of California for the County of San Bernardino, Case No. CIVSB2413413. (Estrada Decl. ¶2.) The initial case management conference for *Jones* is scheduled for September 9, 2024 and for *Raleigh* is scheduled for November 4, 2024, and discovery has not commenced. (*Ibid.*)

G. UNCASHED CHECKS, UNPAID RESIDUE OR OTHER UNCLAIMED OR ABANDONED FUNDS - CMO (G)(3)(c)

Participating Class Members shall have 180 days from the date of issuance of the check to negotiate the check. (Sung Decl. ¶16; Settlement Agreement ¶III.E.9.) The funds from any checks returned as undeliverable, and any checks not negotiated within 180 days, shall be transmitted to the California State Controller’s office in the name of the Class Member. (Sung Decl. ¶16; Settlement Agreement ¶III.E.9.) Plaintiff believes that sending the funds to the unclaimed funds is superior to redistribution to Class Members that cashed their checks because Class Members that either had their checks lost in the mail or otherwise did not deposit their checks within 180 days will still have an opportunity to receive their settlement funds beyond the 180 days. (Sung Decl. ¶16; Settlement Agreement ¶III.E.9.) In Class Counsel’s experience, there have been occasions where Class Members have contacted Class Counsel after the 180-day expiration to claim their settlement proceeds, and because the funds were sent to the State Controller’s office (or being held in trust by the settlement administrator per the direction of the State Controller), the Class Members were able

1 to receive their settlement funds. (Sung Decl. ¶16.) Thus, each of the Class Members’ right to
2 receive their settlement proceeds will be best protected by transmitting the funds to the State
3 Controller. (*Ibid.*)

4 **H. SETTLEMENT ADMINISTRATOR - CMO (G)(3)(d)**

5 The Settlement Agreement provides an amount not to exceed \$10,000 will be paid for
6 administration fees. (Settlement Agreement ¶III.B.4; Sung Decl. ¶17.) Plaintiff requested and
7 obtained bids from two class action administrators and received the lowest bid from Simpluris, Inc.
8 (Sung Decl. ¶17.) Simpluris, Inc. has extensive experience in administering employment class
9 action settlements and submitted a bid of \$9,000 including discounts. (Declaration of Eric Springer
10 (“Simpluris Decl.”) ¶¶5-13, Exs. A-C.)

11 **I. RELEASE BY CLASS MEMBERS IS LIMITED - CMO (G)(3)(e)**

12 The release is limited to Defendant Sunstates Security Inc., and its officers,
13 directors, employees and agents. (Settlement Agreement I.FF.) The following is a description of the
14 Participating Class Members’ Released Claims:

15 Upon entry of final judgment and payment by Defendant of the Gross Settlement
16 Amount (plus employer side payroll taxes), Participating Class Members, on behalf
17 of themselves and their respective representatives, agents, attorneys, heirs,
administrators, successors, and assigns, hereby do and shall be deemed to have
released the Released Parties from the Released Class Claims.

18 “Released Class Claims” mean all claims, damages, or causes of action alleged in, or
19 arising out of, the allegations in the Second Amended Complaint (as defined below)
20 in the Action that arose during the Class Period and which were alleged, or could
21 have been alleged, by Plaintiff based on any of the factual allegations contained in
22 the Second Amended Complaint in the Action, including, but not limited to, claims
23 under state, federal (i.e., Fair Labor Standards Act (“FLSA”)) or local law including,
24 but not limited to claims for unpaid minimum and overtime wages (including, inter
25 alia, in connection with off-the-clock work and improper rounding of time.), claims
26 related to noncompliant meal and rest breaks or periods and nonpayment of premium
27 pay for such, failure to comply with itemized employee wage statement provisions,
28 failure to pay wages due at separation and associated waiting time penalties, failure
to timely pay wages during employment, failure to maintain compliant time and
payroll records, the failure to reimburse for business expenses, and unfair or
unlawful business practices pursuant to California Business and Professions Code §
17200, et seq. based on the aforementioned. The Released Class Claims specifically
include, but are not limited to, all claims arising under California Labor Code
sections 201, 202, 203, 204, 210, 218.5, 226, 226.7, 510, 512, 558, 558.1, 1174,
1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800 and 2802, California Industrial
Welfare Commission Wage Order 4-2001, California Business and Profession Code
sections 17200, et seq., California Code of Civil Procedure section 1021.5, and
California common law of contract, interest and claims for attorney’s fees relating in

any way to those claims alleged and mentioned in the operative complaint in the Action.

(Settlement Agreement I.DD & III.F.1.)

The following is a description of the Aggrieved Employees' Released PAGA Claims: Upon entry of final judgment and payment by Defendant of the Gross Settlement Amount, the State of California and Plaintiff hereby do and shall be deemed to have released the Released Parties from the Released PAGA Claims.

"Released PAGA Claims" means any and all claims for civil penalties under PAGA based on the allegations in the PAGA Notice that arose during the PAGA Period, including violations of California Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2802, 2698, et seq., and IWC Wage Order 4-2001 as well as all facts, theories, or claims for civil penalties that would be considered administratively exhausted under applicable law by the PAGA Notice submitted in the Action.

(Settlement Agreement I.EE & III.F.2.)

J. NOTICE TO CLASS MEMBERS, NON-CLAIMS MADE SETTLEMENT, AND NO REVERSION TO DEFENDANT - CMO (G)(3)(f)-(h)

Notice to Class Members will be given by First Class Mail. (Settlement Agreement III.E.2.) Specifically, no later than 30 calendar days after the Court enters an Order Granting Preliminary Approval of the Settlement, Defendant will provide to the Settlement Administrator an electronic database containing each Class Member's Class Data. (*Id.* at III.E.2.a.) The Settlement Administrator shall update the Class Data using the National Change of Address database prior to mailing the Class Notice Packets. (*Id.* at III.E.2.b.) No later than 14 days after receiving the class data, the Settlement Administrator will mail the Class Notice Packets to all Class Members via first-class regular U.S. Mail using the mailing address information provided by Defendant. (*Ibid.*) If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not longer than 14 days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. (*Id.* at ¶III.E.2.c.) If a Notice Packet is returned as undeliverable with no forwarding address, the Settlement Administrator shall take reasonable steps including, performing address searches for all mail returned without a forwarding address using available email addresses, phone numbers, social security numbers, credit reports; and promptly re-mailing to Class Members for whom new

addresses are found. (*Ibid.*)

Class Members will be automatically paid from the settlement and do not need to submit claim forms to be entitled to settlement payments pursuant to the terms of the Agreement. (Settlement Agreement ¶III.E.3.c., Ex. A.) If a Class Member does not wish to take part in this settlement and be bound by the release, the Class Member must submit an exclusion/opt-out request. (*Id.* at ¶III.E.3.c., Exs. B, C.) Should any Class Member not submit an exclusion/opt-out request, the Class Member will automatically become a Participating Class Member, will receipt payment, and will be bound by all terms and conditions of the Settlement. (*Id.* at ¶III.E.3.c.) Such obligations are thoroughly identified in each Class Member's Notice. (Settlement Agreement, Ex. A.)

This is a non-reversionary settlement, as the entirety of the settlement amount will be fully paid out. (Settlement Agreement ¶III.A.) None of the settlement funds will revert to Defendant. (*Ibid.*)

K. COMPENSATION FOR UNPAID WAGES - CMO (G)(3)(i)&(j)

20% of each Participating Class Member's Settlement Share is in settlement of wage claims ("Wage Portion") and is subject to wage withholdings and shall be reported on IRS Form W-2. (Settlement Agreement at III.C.3.a.) 40% of each Participating Class Member's Settlement Share is in settlement of claims for interest and 40% of each Participating Class Member's Settlement Share is in settlement of claims for penalties allegedly due to employees and shall not be subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at III.C.3.b.) The portion of the PAGA Payment distributed to Aggrieved Employees shall not be subject to wage withholdings and shall be reported on IRS Form 1099. (*Id.* at III.B.3.) The Gross Settlement Amount excludes any employer-side payroll taxes on the Wage Portion, which must be paid by Defendant. (*Id.* at III.A.)

L. PROPOSED NOTICE, OBJECTION AND EXCLUSION FORMS - CMO (G)(3)(k)

Attached as Exhibits A, B and C to the Settlement Agreement are the Proposed Class Notice, Objection Form and Exclusion Forms. Plaintiff prepared the forms based on previously approved forms by this Court. The Parties have attempted to draft the notice in a manner that will be likely to be readily understood. Defendant requires that the Class Members are fluent in English to

1 perform their job duties. (Declaration of David Kleiman ¶5.) Thus, notice in English only will be
2 sufficient.

3 **M. TYPICALITY AND ADEQUACY OF REPRESENTATION**

4 **1. Class Representative's Claims are Typical of the Class**

5 The commonality requirement is met when there are questions of law and fact common to the
6 class. *See Hanlon v. Chrysler Corp.* (1998) 150 F.3d 1011, 1019. ("The existence of shared legal
7 issues with divergent legal factual predicates is sufficient, as is a common core of salient facts
8 couple with disparate legal remedies within the class".) Commonality requires only that some
9 common legal or factual questions exist; the plaintiffs need not show that all issues in the litigation
10 are identical. *See Richmond v. Dart Industries, Inc.* (1981) 29 Cal.3d 462, 473. Defendant's conduct
11 is central to the commonality inquiry. *See City of San Jose v. Superior Court* (1974) 12 Ca1.3d 447,
12 460 (1974); *Vasquez v. Superior Court* (1971) 4 Cal.3d 800, 812-13. Where the employer's conduct
13 is uniformly directed at a class of employees, as it is here, the class wide impact of the Defendant's
14 policies satisfies the commonality requirement. *See Stephens v. Montgomery Ward & Co., Inc.*
15 (1987) 193 CalApp.3d 411, 421.

16 Plaintiff claims that Defendant, as a matter of its corporate policy, practice, or procedure
17 violated the Labor Code by requiring its employees to take meal and rest periods on duty,
18 unlawfully rounded employees' time or engaged in unlawful deductions, failed to reimburse
19 business expenses, and other derivative violations of the Labor Code. (Lampkin Decl. ¶4.) Plaintiff
20 was employed by Defendant, like all of the other Class Members, and allegedly suffered the same
21 Labor code violations at issue. (*Ibid.*) Thus, Plaintiff's claims are typical to those of Class Members.
22 (*See ibid.*)

23 The Class Representative does not have any interests adverse to the class, nor has any such
24 issue been raised or presented. (*Id.* at ¶5.) The Class Representative has taken all necessary steps to
25 represent the interests of the Class, by making herself available to answer questions, gather and
26 provide documents, and review and execute the Settlement Agreement and her accompanying
27 declaration. (*Id.* at ¶7.) For such reasons, the Class Representative has adequately represented the
28 Class Members and will continue to do so.

1 **2. Class Counsel Have Adequately Represented the Class and Has Experience**
2 **with Wage and Hour Class Actions**

3 From the inception of the case, Class Counsel have protected the interests of the Class. Class
4 Counsel analyzed the pre-mediation production, including the time and pay records, prior to the
5 mediation to perform a damages analysis. The mediation and settlement were obtained for the
6 benefit of the Class, not for the individual Class Representative. Class Counsel have are
7 experienced wage and hour class action attorneys and are competent to represent the class. (Sung
8 Decl. ¶¶18-23; Declaration of Tiffany L. Luu ¶¶ 2-6.)

9 **N. CLASS REPRESENTATIVE ENHANCEMENT AND ATTORNEYS' FEES/COSTS**

10 **1. Attorneys' Fees and Costs**

11 The Settlement Agreement allows Plaintiff to seek up to 33.33% of the Gross Settlement
12 Amount, or \$181,333.33, as payment for attorneys' fees. The California Supreme Court established
13 that when class action litigation establishes a monetary fund for the benefit of the class members,
14 and the trial court in its equitable powers awards class counsel a fee out of that fund, the court may
15 determine the amount of a reasonable fee by choosing an appropriate percentage of the fund
16 created. *Laffitte v. Robert Half Int'l* (2016) 1 Cal. 5th 480, 503. "The recognized advantages of the
17 percentage method—including relative ease of calculation, alignment of incentives between counsel
18 and the class, a better approximation of market conditions in a contingency case, and the
19 encouragement it provides counsel to seek an early settlement and avoid unnecessarily prolonging
20 the litigation." (*Ibid.* [internal citations omitted].) In *Laffitte*, the Court affirmed an award of
21 attorneys' fee award of \$6,333,333.33, based on 33.33% of the \$19 million common fund. (*Id.* at
22 503.) As in *Laffitte*, the parties have agreed to a 33.33% of the common fund for attorney's fees.

23 Further, the parties have agreed to payment of up to \$20,000.00 as reimbursement for Class
24 Counsel's litigation costs. (Settlement Agreement, ¶III.B.2.) Class counsel have, at their own risk,
25 expended costs, for example, to file this instant action, service of process, payment of mediation
26 fees and other litigation related costs. Class Counsel will only request the amounts actually
27 expended up to a maximum of \$20,000.00 and will provide their supporting declarations at the time
28 of final approval. Based on the foregoing, the court should preliminarily approve the attorney's fees

1 and costs being requested by class counsel.

2 **2. Proposed Payment to Class Representative**

3 Plaintiff requests an enhancement award of \$10,000.00. Plaintiff has not previously been a
4 named plaintiff in any other class action cases. (Lampkin Decl.. ¶6.) Plaintiff understood that the
5 filing of this action was a matter of public record and this was being prosecuted on a classwide
6 basis. (*Id.* at ¶7.) Plaintiff further understood that a representative action would take longer in
7 litigation than an individual action and undertook such risks. (*Ibid.*) Plaintiff did not incur any
8 expenses, but has expended a large amount of time on this matter. (*Ibid.*) Plaintiff spent
9 approximately 18 hours discussing this matter with Class Counsel on a number of occasions,
10 including proving substantive information regarding Defendant’s practices, and providing
11 documents related to her own claims and the claims of Class Members. (*Ibid.*) Most importantly,
12 Plaintiff was a current employee of Defendant and had been employed for two months when she
13 filed this Action against Defendant. (*Id.* at ¶8.) Plaintiff took a significant risk to her employment by
14 prosecuting this Action on behalf of Class Members. (*Ibid.*) Plaintiff believes, as a result of her
15 filing the Action, she was treated differently than her coworkers, including being passed over for a
16 promotion to a supervisor. (*Ibid.*) Plaintiff has resigned from her employment with Defendant.
17 (*Ibid.*)

18 Plaintiff took these risks upon herself and the whole class benefited from this. Class
19 members did not have to file individual lawsuits and bear the risks of payment of fees and costs if
20 they did not prevail, nor did they have to face the potential for retaliation and not getting future
21 employment had they filed a lawsuit which is a public record. These are significant benefits, even
22 apart from the time the Plaintiff has spent working on this case, that weigh in favor of granting the
23 requested enhancement, which is also consideration for the general individual release to which
24 Plaintiff agrees on her own behalf. Courts have routinely granted approval of settlements containing
25 such enhancements. In *League of Martin v. City of Milwaukee* (E. D. Wis. 1984) 588 F.Supp. 1004,
26 the court held that the proposal settlement properly granted the class representatives individual
27 relief. It is “not uncommon for Class Members . . . to receive special relief in settlement . . . [The
28 Plaintiff] . . . had been instrument in prosecuting this lawsuit since the date it was filed.” *Id.* at

1 1024. In *Kyriazi v. Western Elec. Co.* (D. N. J. 1981) 527 F.Supp. 18, a named plaintiff in a Title
2 VII class action was awarded individual relief of back-pay and interest, reinstatement, punitive
3 damages and counsel fees. Similarly, in *Women's Committee for Equal Employment Opportunity v.*
4 *NBC* (S.D.N.Y. 1977) 76 F.R.D. 173, the court approved as fair a settlement that included awards to
5 16 Class Representatives of virtually all the damages they sought.

6 **V. CONCLUSION**

7 For the foregoing reasons, Plaintiff respectfully requests that the Court grant preliminary
8 approval of the proposed settlement, sign the proposed Order, and approve and authorize mailing of
9 the proposed Class Notice. Plaintiff further requests that a hearing date for the final fairness and
10 final approval hearing be set for a date on or after January 20, 2025.

11
12 DATED: June 21, 2024

Respectfully submitted,

13 **JUSTICE FOR WORKERS, P.C.**

14
15
16 By: 

William C. Sung, Esq.

Tiffany L. Luu, Esq.

Attorneys for Plaintiff DENNISHA LAMPKIN