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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MONTEREY

ANGELA GARCIA, an individual, on behalf
of herself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

SUNDERSTORM INC., a Corporation;
SUNDERSTORM BAY LLC, a Limited
Liability Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 22CV001827

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: February 23, 2024
Hearing Time: 8:30 a.m.

Judge: Hon. Thomas W. Wills
Dept: 15

Date Filed: June 29, 2022
Trial Date: Not set

1 The unopposed motion of Plaintiff Angela Garcia (“Plaintiff”) for an order finally
2 approving the Class Action and PAGA Settlement Agreement and the Stipulation Regarding Cy
3 Pres (collectively the Agreement”) with Defendants Sunderstorm Inc. and Sunderstorm Bay LLC
4 (“Defendants”), attorneys’ fees and costs, service payment, and the expenses of the Administrator
5 duly came on for hearing on February 23, 2024 before the Honorable Thomas W. Wills.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Monterey, and over all
13 Parties to this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Six Hundred Thousand
16 Dollars (\$600,000) and the terms set forth in the Agreement are fair, reasonable, and adequate.
- 17 4. The Court further finds that the Settlement was the result of arm’s length
18 negotiations conducted after Class Counsel had adequately investigated the claims and became
19 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
20 Settlement, and the assistance of an experienced mediator in the settlement process, among other
21 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

22 **Preliminary Approval of the Settlement**

- 23 5. On October 3, 2023, the Court granted preliminary approval of the Settlement. At
24 this same time, the Court approved conditional certification of the Class for settlement purposes
25 only.
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1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about October 26, 2023. Mailing of the Class Notice to their last-known addresses was the best
5 notice practicable under the circumstances and was reasonably calculated to communicate actual
6 notice of the litigation and the proposed settlement to the Class. The Class Notice given to the
7 Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was December 11, 2023, which for re-mailings was extended by fourteen (14) days.
15 There was an adequate interval between notice and the deadline to permit Class Members to
16 choose what to do and to act on their decision. A full and fair opportunity has been afforded to the
17 Class Members to participate in this hearing, and all Class Members and other persons wishing to
18 be heard have had a full and fair opportunity to be heard. Class Members also have had a full and
19 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before Hon. Carl J. West (Ret.), an experienced mediator of
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1 wage and hour class actions. There has been no collusion between the Parties in reaching the
2 Settlement.

3 b. Plaintiff and Class Counsel's investigation and discovery have been
4 sufficient to allow the Court and counsel to act intelligently.

5 c. Counsel for all Parties are experienced in similar employment class action
6 litigation. Class Counsel recommended approval of the Agreement.

7 d. The percentage of objectors and requests for exclusion is small. No
8 objections were received. No requests for exclusion were received.

9 e. The participation rate was high. 202 Class Members will be mailed a
10 settlement payment, representing 100% of the overall Class.

11 9. The consideration to be given to the Class Members under the terms of the
12 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
13 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
14 Members' claims, given the uncertainties and significant risks of the litigation and the delays
15 which would ensue from continued prosecution of the action.

16 10. The Agreement is approved as fair, adequate and reasonable and in the best
17 interests of the Class Members.

18 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

19 11. An award of \$200,000 for attorneys' fees, representing one-third of the Gross
20 Settlement Amount, and \$15,000 for litigation costs and expenses, is reasonable, in light of the
21 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
22 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
23 and billing statement.

24 **Class Representative Service Payment**

25 12. The Agreement provides for a Class Representative Service Payment of not more
26 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that Class
27 Representative Service Payment in the amount of \$10,000 to the Plaintiff is reasonable in light of
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1 the risks and burdens undertaken by the Plaintiff in this litigation and for his time and effort in
2 bringing and prosecuting this matter on behalf of the Class.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payment to be made to the
5 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
6 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
7 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
8 Administrator has documented \$5,250 in fees and expenses, and this amount is reasonable in light
9 of the work performed by the Administrator.

10 **PAGA Penalties**

11 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
12 Amount of \$24,000, which shall be allocated \$18,000 to the Labor & Workforce Development
13 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
14 Agreement pursuant to the PAGA and \$6,000 to be distributed to the Aggrieved Employees and
15 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
16 (\$6,000) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
17 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay
18 Periods. "Aggrieved Employees" are all individuals who were employed by Defendants in
19 California and classified as a non-exempt employee at any time during the PAGA Period
20 (February 21, 2021 through July 1, 2023). Pursuant to Labor Code section 2699, subdivision
21 (l)(2), the LWDA was provided notice of the Agreement and these settlement terms and has not
22 indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 15. The Class is certified for the purposes of settlement only. The Class is defined as
27 follows:

1 All individuals who were employed by Defendants in California and classified as a
2 non-exempt employee at any time during the Class Period (June 29, 2018 through
3 July 1, 2023).

4 16. All persons who meet the foregoing definition are members of the Class, except for
5 those individuals who filed a valid and timely request for exclusion (“opt out”) from the Class.
6 There were no individuals who requested exclusion.

7 17. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
8 best interest of the Class.

9 18. Class Counsel are awarded attorneys’ fees in the amount of \$200,000 and costs in
10 the amount of \$15,000. Class Counsel shall not seek or obtain any other compensation or
11 reimbursement from Defendants, Plaintiff or members of the Class.

12 19. The payment of Class Representative Service Payment in the amount of \$10,000 to
13 the Plaintiff is approved.

14 20. The payment of \$5,250 to the Administrator for its fees and expenses is approved.

15 21. The PAGA Penalties amount of \$24,000 is approved and is to be distributed in
16 accordance with the Agreement.

17 22. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall
18 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its
19 entry.

20 23. Neither the Agreement nor this Settlement is an admission by Defendants, nor is
21 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of
22 any wrongdoing by Defendants or that this Action is appropriate for class or representative
23 treatment (other than for settlement purposes), and this Settlement cannot be construed to support
24 any claim for subsequent violation penalty rates under the PAGA for the claims released in the
25 Agreement. Neither this Final Approval Order and Judgment, the Agreement, nor any document
26 referred to herein, nor any action taken to carry out the Agreement is, may be construed as, or may
27 be used as an admission by or against Defendants of any fault, wrongdoing or liability whatsoever.
28 The entering into or carrying out of the Agreement, and any negotiations or proceedings related

1 thereto, shall not in any event be construed as, or deemed to be evidence of, an admission or
2 concession with regard to the denials or defenses by Defendants. Notwithstanding these
3 restrictions, Defendants may file in the Action or in any other proceeding this Final Approval
4 Order and Judgment, the Agreement, or any other papers and records on file in the Action as
5 evidence of the Settlement to support a defense of *res judicata*, collateral estoppel, release, or
6 other theory of claim or issue preclusion or similar defense as to the Released Class Claims and/or
7 Released PAGA Claims.

8 24. Notice of entry of this Final Approval Order and Judgment shall be given to all
9 Parties by Class Counsel on behalf of Plaintiff and all Class Members. The Final Approval Order
10 and Judgment shall be posted on Class Counsel's website as set forth in the Class Notice to the
11 Class. It shall not be necessary to send notice of entry of this Final Approval Order and Judgment
12 to individual Class Members.

13 25. If the Agreement does not become final and effective in accordance with the terms
14 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
15 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
16 revert to their respective positions as of before entering into the Agreement, and expressly reserve
17 their respective rights regarding the prosecution and defense of this Action, including all available
18 defenses and affirmative defenses, and arguments that any claim in the Action could not be
19 certified as a class action and/or managed as a representative action.

20 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

21 26. Except as set forth in the Agreement and this Final Approval Order and Judgment,
22 Plaintiffs, and all members of the Class, shall take nothing in the Action.

23 27. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
24 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
25 supervise and adjudicate any dispute arising from or in connection with the distribution of
26 settlement benefits.

1 28. All Parties shall bear their own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 29. Effective on the date when Defendants fully funds the entire Gross Settlement
4 Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class
5 Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will
6 release claims against all Released Parties as set forth on Sections 1.38 and 1.39 of the Settlement
7 Agreement, including the following:

8 (a) All Participating Class Members, on behalf of themselves and their
9 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
10 and assigns, release Released Parties from the Released Class Claims. The "Released Class
11 Claims" are all claims and causes of action that were alleged, or reasonably could have been
12 alleged, based on the facts stated in the Operative Complaint, including all of the following: (a) all
13 class claims stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204,
14 210, 218, 221, 226 et seq, 226.7, 233, 246, 246.5, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,
15 2802; (b) all claims for unpaid wages, including claims for minimum, overtime, and double-time
16 wages, the alleged failure to pay for all time worked, the alleged failure to pay for off the clock
17 work, the alleged failure to pay for drug testing and other required testing and examinations, the
18 alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the
19 alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates,
20 the alleged improper rounding of time entries, and the alleged unlawful deductions from earned
21 wages; (c) all claims for meal period violations, including claims for late, short, interrupted,
22 rounded, and missed meal periods and the failure to pay premiums at all, or at the correct regular
23 rates, and the alleged failure to properly record meal periods; (d) all claims for rest break
24 violations, including claims for late, short, interrupted, missed, or otherwise improperly controlled
25 rest breaks and the failure to pay premiums at all or at the correct regular rates; (e) all claims for
26 unreimbursed expenses, including, but not limited to, expenses incurred for personal cell phone
27 usage, mileage, and home office expenses; (f) all claims for improper or inaccurate itemized wage
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1 statements, including any alleged violations of Labor Code Section 226(a)(1)-(9) based on the
2 facts and legal theories contained in the Operative Complaint, including the allegation that the
3 wage statements lacked the total number of hours worked and corresponding rates and the proper
4 legal entity of the employer, and including claims for injuries suffered therefrom; (g) all claims for
5 the untimely payment of wages, including regular, overtime, premium wages, paid sick leave, and
6 reporting time pay to employees under sections 204 and 210 of the Labor Code; (h) all claims for
7 the untimely payment of final wages and associated waiting time penalties under sections 201 to
8 203 of the Labor Code Section; (i) all claims for unpaid sick leave, including claims that paid sick
9 leave was not paid at the correct regular rate of pay; (j) all claims for civil penalties for the alleged
10 failure to pay employees for reporting time pay; and (k) all claims under the Business &
11 Professions Code (including Section 17200 et seq.) premised on the facts, claim, and causes of
12 action alleged in the Operative Complaint. Except as expressly set forth in this Agreement,
13 Participating Class Members do not release any other claims, including claims for vested benefits,
14 wrongful termination, violation of the Fair Employment and Housing Act, discrimination,
15 unemployment insurance, disability, social security, workers' compensation, or Class claims based
16 on facts occurring outside the Class Period.

17 (b) All Aggrieved Employees and the LWDA are deemed to release, on behalf
18 of themselves and their respective former and present representatives, agents, attorneys, heirs,
19 administrators, successors, and assigns, the Released Parties from the Released PAGA Claims.
20 The "Released PAGA Claims" are all claims for PAGA penalties that were alleged, or reasonably
21 could have been alleged, based on the facts stated in the Operative Complaint and the PAGA
22 Notice, which occurred during the PAGA Period, including the following: (a) All class claims
23 stated in the Operative Complaint alleging violations of sections 201, 202, 203, 204 et seq., 210,
24 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802,
25 California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of
26 Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and applicable Industrial
27 Welfare Commission Wage Order(s) including Industrial Wage Order 7(A)(3); (b) All claims for
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1 civil penalties for violations of unpaid wages, including unpaid minimum, overtime, and double-
2 time wages, the alleged failure to pay for all time worked, the alleged failure to pay for off the
3 clock work, the alleged failure to pay for drug testing and other required testing and examinations,
4 the alleged failure to pay for temperature checks and symptom questionnaires for Covid-19, the
5 alleged failure to pay for all hours worked at correct rates, including overtime at the correct rates,
6 the alleged improper rounding of time entries, and the alleged unlawful deductions from earned
7 wages; (c) All claims for civil penalties for meal period violations, including late, short,
8 interrupted, rounded, and missed meal periods and the failure to pay premiums at all, or at the
9 correct regular rates, and the alleged failure to properly record meal periods; (d.) All claims for
10 civil penalties for rest break violations, including late, short, interrupted, missed, or otherwise
11 improperly controlled rest breaks and the failure to pay premiums at all or at the correct regular
12 rates; (e) All claims for civil penalties for unreimbursed expenses, including, but not limited to,
13 expenses incurred for personal cell phone usage, mileage, and home office expenses; (f) All claims
14 for civil penalties for inaccurate itemized wage statements, including any alleged violations of
15 Labor Code Section 226(a)(1)-(9) based on the facts and legal theories contained in the PAGA
16 Notice, including the allegation that the wage statements lacked the total number of hours worked
17 and corresponding rates and the proper legal entity of the employer; (g) All claims for civil
18 penalties for the untimely payment of wages, including regular, overtime, premium wages, paid
19 sick leave, and reporting time pay to employees under sections 204 and 210 of the Labor Code; (h)
20 All claims for civil penalties for the untimely payment of final wages and associated waiting time
21 penalties under sections 201 to 203 of the Labor Code Section; (i) All claims for civil penalties for
22 unpaid sick leave, including claims that paid sick leave was not paid at the correct regular rate of
23 pay; (j) All claims for civil penalties for failing to provide suitable seating; (k) All claims for civil
24 penalties for alleged violations of Industrial Wage Order 7(A)(3) for failure to keep time records
25 showing when employees began and ended each shift and meal period; (l) All claims for civil
26 penalties for the alleged failure to pay employees for reporting time pay; and (m) All claims for
27 civil penalties for alleged violations of section 227.3 of the Labor Code. The Released PAGA
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1 Claims do not include other PAGA claims, underlying wage and hour claims, claims for wrongful
2 termination, violation of the Fair Employment and Housing Act discrimination, unemployment
3 insurance, disability, social security, worker's compensation, and PAGA claims outside of the
4 PAGA Period.

5 (c) Plaintiff and his or her respective former and present spouses,
6 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
7 and discharge Released Parties from all claims, transactions, or occurrences that occurred through
8 the Effective Date, as fully set forth in the Agreement.

9 30. For any Class Member or Aggrieved Employee whose Individual Class Payment
10 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
11 Administrator shall transmit the funds represented by such checks to the Children's Advocacy
12 Institute which is the cy pres beneficiary pursuant to the California Code of Civil Procedure
13 section 384(b) as set forth in the Stipulation and Order dated October 3, 2023.

14 31. The Court hereby enters judgment in the entire Action as of the filing date of this
15 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
16 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
17 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
18 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

19 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

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21 Dated: _____

22 _____
23 HON. THOMAS W. WILLS
24 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
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